### SUBPART 217.78-CONTRACTS OR DELIVERY ORDERS ISSUED BY A NON-DOD AGENCY

(Revised June 8, 2010)

### 217.7800 Scope of subpart.

This subpart—

- (a) Implements section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375), section 801 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), and section 806 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84); and
- (b) Prescribes policy for the acquisition of supplies and services through the use of contracts or orders issued by non-DoD agencies.

#### 217.7801 Definitions.

As used in this subpart—

"Acquisition official" means—

- (1) A DoD contracting officer; or
- (2) Any other DoD official authorized to approve a direct acquisition or an assisted acquisition on behalf of DoD.
- "Assisted acquisition" means the type of interagency contracting through which acquisition officials of a non-DoD agency award a contract or a task or delivery order for the acquisition of supplies or services on behalf of DoD.
- "Direct acquisition" means the type of interagency contracting through which DoD orders a supply or service from a Governmentwide acquisition contract maintained by a non-DoD agency.
- "Governmentwide acquisition contract" means a task or delivery order contract that—
  - (1) Is entered into by a non-defense agency; and
- (2) May be used as the contract under which property or services are procured for one or more other departments or agencies of the Federal Government.
- "Non-DoD agency" means any department or agency of the Federal Government other than DoD.
- "Non-DoD agency that is an element of the intelligence community" means the Office of the Director of National Intelligence; the Central Intelligence Agency; the intelligence elements of the Federal Bureau of Investigation; the intelligence elements of the Department of Energy; the Bureau of Intelligence and Research of the Department of State; the Office of Intelligence and Analysis of the Department of the Treasury; and the elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard.

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## 217.7802 Policy.

- (a) A DoD acquisition official may place an order, make a purchase, or otherwise acquire supplies or services for DoD in excess of the simplified acquisition threshold through a non-DoD agency in any fiscal year only if the head of the non-DoD agency has certified that the non-DoD agency will comply with defense procurement requirements for the fiscal year to include applicable DoD financial management regulations.
- (1) This limitation shall not apply to the acquisition of supplies and services during any fiscal year for which there is in effect a written determination of the Under Secretary of Defense for Acquisition, Technology, and Logistics, that it is necessary in the interest of DoD to acquire supplies and services through the non-DoD agency during the fiscal year. A written determination with respect to a non-DoD agency shall apply to any category of acquisitions through the non-DoD agency that is specified in the determination.
- (2) Non-DoD agency certifications and additional information are available at <a href="http://www.acq.osd.mil/dpap/cpic/cp/interagency\_acquisition.html">http://www.acq.osd.mil/dpap/cpic/cp/interagency\_acquisition.html</a>.
- (3) The limitation in paragraph (a) of this section does not apply to contracts entered into by a non-DoD agency that is an element of the intelligence community for the performance of a joint program conducted to meet the needs of DoD and the non-DoD agency.
- (b) Departments and agencies shall establish and maintain procedures for reviewing and approving orders placed for supplies and services under non-DoD contracts, whether through direct acquisition or assisted acquisition, when the amount of the order exceeds the simplified acquisition threshold. These procedures shall include—
- (1) Evaluating whether using a non-DoD contract for the acquisition is in the best interest of DoD. Factors to be considered include—
  - (i) Satisfying customer requirements;
  - (ii) Schedule:
  - (iii) Cost effectiveness (taking into account discounts and fees); and
  - (iv) Contract administration (including oversight);
- (2) Determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;
- (3) Reviewing funding to ensure that it is used in accordance with appropriation limitations;
- (4) Providing unique terms, conditions, and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives, and other requirements; and

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(5) Collecting and reporting data on the use of assisted acquisition for analysis. Follow the reporting requirements in Subpart 204.6.

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