



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
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DEC 20 2004

MEMORANDUM FOR DISTRIBUTION

Subj: PROPER USE OF NON-DOD CONTRACTS

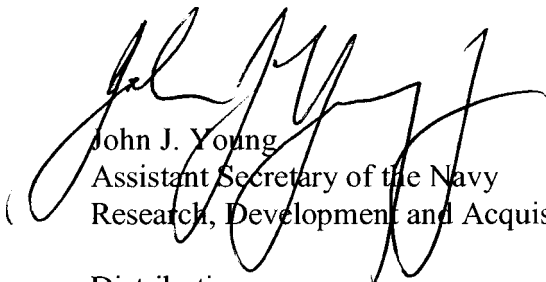
Ref: (a) Federal Acquisition Regulation (FAR) 2.101


Encl: (1) National Defense Authorization Act for FY 2005, Section 854
(2) OSD memorandum of October 29, 2004
(3) DoN Guidelines for Proper Use of Non-DoD Contracts of December 14, 2004

Recent Department of Defense (DoD) and other non-DoD Inspector General audits noted that DoD encountered a variety of problems using contracts awarded by non-DoD agencies. Congress and the Office of the Secretary of Defense (OSD) reacted to these findings by requiring specific approvals for use of non-DoD contracts (enclosures (1) and (2) respectively).

Addressees are required to establish procedures for reviewing and approving the use of non-DoD contract vehicles for supplies or services in excess of the simplified acquisition threshold (reference (a)) on or after January 1, 2005. Procedures must be consistent with financial management and acquisition regulations and conform to the guidelines of enclosure (3). Ensuring the proper use of non-DoD contracts requires collaboration of the DoN program management, financial management, legal and contracting communities. Program and other requiring managers must seek early involvement of appropriate financial management and contracting personnel to ensure that the resultant acquisition strategy is in the best interests of DoD in terms of meeting requirements, schedule, cost effectiveness, oversight and administration, and availability of a contract vehicle within DoD.

Within ten days from the date of this memorandum, please provide contact information for the individual(s) within your Command responsible for developing these procedures. Submit the contact information, and address questions/comments to Bob Johnson at ROBERT.F.JOHNSON@NAVY.MIL or 703-693-2936.


John J. Young
Assistant Secretary of the Navy
Research, Development and Acquisition


Richard Greco, Jr.
Assistant Secretary of the Navy
Financial Management and Comptroller

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SEC. 854. DEFENSE PROCUREMENTS MADE THROUGH CONTRACTS OF OTHER AGENCIES.

(a) **LIMITATION.** — The head of an agency may not procure goods or services (under section 1535 of title 31, United States Code, pursuant to a designation under section 11302(e) of title 40, United States Code, or otherwise) through a contract entered into by an agency outside the Department of Defense for an amount greater than the simplified acquisition threshold referred to in section 2304(g) of title 10, United States Code, unless the procurement is done in accordance with procedures prescribed by that head of an agency for reviewing and approving the use of such contracts.

(b) **Effective Date.** — The limitation in subsection (a) shall apply only with respect to orders for goods or services that are issued by the head of an agency to an agency outside the Department of Defense on or after the date that is 180 days after the date of the enactment of this Act.

(c) **INAPPLICABILITY TO CONTRACTS FOR CERTAIN SERVICES.** — This section does not apply to procurements of the following services:

(1) Printing, binding, or blank-book work to which section 502 of title 44, United States Code, applies.

(2) Services available under programs pursuant to section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106-481; 114 Stat. 2187; 2 U.S.C. 182c).

(d) **ANNUAL REPORT.** — (1) For each of fiscal years 2005 and 2006, each head of an agency shall submit to the Secretary of Defense a report on the service charges imposed on purchases made for an amount greater than the simplified acquisition threshold during such fiscal year through a contract entered into by an agency outside the Department of Defense.

(2) In the case of procurements made on orders issued by the head of a Defense Agency, Department of Defense Field Activity, or any other organization within the Department of Defense (other than a military department) under the authority of the Secretary of Defense as the head of an agency, the report under paragraph (1) shall be submitted by the head of that Defense Agency, Department of Defense Field Activity, or other organization, respectively.

(3) The report for a fiscal year under this subsection shall be submitted not later than December 31 of the calendar year in which such fiscal year ends.

(e) **DEFINITIONS.** — In this section:

(1) The term “head of an agency” means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force.

(2) The term “Defense Agency” has the meaning given such term in section 101(a)(11) of title 10, United States Code.

(3) The term “Department of Defense Field Activity” has the meaning given such term in section 101(a)(12) of such title.

Enclosure (1)



OFFICE OF THE SECRETARY OF DEFENSE

1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000



OCT 29 2004

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Proper Use of Non-DoD Contracts

Each year billions of Department of Defense (DoD) dollars are spent using non-DoD contracts to procure supplies and services. In many cases this represents an effective way to accomplish acquisitions in support of DoD's mission. For this reason, the use of non-DoD contracts is encouraged when it is the best method of procurement to meet DoD requirements. However, recent DoD and General Services Administration Inspector General reports identified several issues associated with the Department's use of non-DoD contracts for the acquisition of certain supplies and services. Non-DoD contracts may not be used to circumvent conditions and limitations imposed on the use of funds, nor are they a substitute for poor acquisition planning.

Military Departments and Defense Agencies must establish procedures for reviewing and approving the use of non-DoD contract vehicles when procuring supplies and services on or after January 1, 2005, for amounts greater than the simplified acquisition threshold. This requirement applies to both direct (*i.e.* orders placed by DoD) and assisted acquisitions (*i.e.* contracts awarded or orders placed by non-DoD entities, including franchise funds, on behalf of DoD), using DoD funds. These procedures must include:

- evaluating whether using a non-DoD contract for such actions is in the best interest of **the** DoD. Factors to be considered include:
 - satisfying customer requirements;
 - schedule;
 - cost effectiveness (taking into account discounts and fees); and
 - contract administration (including oversight);
- determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;
- reviewing funding to ensure it is used in accordance with appropriation limitations;
- 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, (*e.g.* the requirement that all clothing procured with DoD funding be of domestic origin); and
- collecting data on the use of assisted acquisitions for analysis.

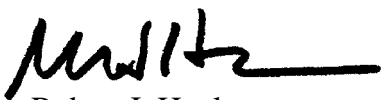


This new policy satisfies the requirements of Section 2330(b)(1)(C)(ii) of Title 10, United States Code as amended by Section 801 of the National Defense Authorization Act for Fiscal Year 2002. Section 801 requires advance approval to buy services via use of a "contract entered into or a task order issued, **by** an official of the United States outside of the DoD." Although Section 801 applies only to the procurement of services, we are applying this requirement to supplies in order to achieve consistency and discipline in the DoD acquisition process. The Defense Acquisition Regulation Council will issue coverage for the Defense Federal Acquisition Regulation Supplement that is consistent with the requirements of this memorandum.

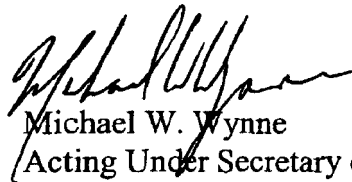
The use of multiple award contracts must **be** consistent with the requirements of Section **803** of the National Defense Authorization Act for Fiscal Year 2002 (Competition Requirements for Purchase of Services Pursuant to Multiple Award Contracts); Federal Acquisition Regulation (FAR) ~~Part~~ **8.002** (Priorities for Use of Government Supply Sources); FAR ~~Part~~ 17.5 (Interagency Acquisitions under the Economy Act); FAR ~~Part~~ 7 (Acquisition Planning); and DoD Instruction 4000.19 (Interservice and Intragovernmental Support).

While the Program Manager or requirements official has primary responsibility to ensure compliance with this policy, success will not be achieved without a team approach and specific support from the financial management and contracting communities. For example, the financial management community **shall:** (1) ensure the program manager or other appropriate individual has certified that **the** procedures established by the Military Department or Defense Agency have been followed and (2) ensure that funds are available and appropriate for the procurement action.

Please ensure widest dissemination of this memorandum and the procedures you establish. It is imperative that when non-DoD contracts are utilized to meet DoD requirements, they are utilized properly. The point of contact on this matter is Mr. Michael Canales. He can be reached at (703) 695-8571 or via email at michael.canales@osd.mil.



Robert J. Henke
Principal Deputy Under Secretary
of Defense (Comptroller)



Michael W. Wynne
Acting Under Secretary of Defense
(Acquisition, Technology, and Logistics)

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DoN Guidelines for Proper Use of Non-DoD Contracts

1. Definitions:

“Assisting Activity” means the department/agency/activity outside of DoD with contracting responsibility for a DoD requirement.

“Assisted Acquisition” means a contract awarded or a task or delivery order placed on behalf of the DoD by an official of the United States outside of the DoD.

“Direct Acquisition” means a task or delivery order placed by DoN against a contract vehicle established outside of the DoD.

“Non-DoD contracts” means contracts awarded by an official outside the DoD. These include Federal Supply Schedules, Blanket Purchase Agreements issued against Federal Supply Schedules, and other contracts/schedules awarded outside DoD.

“Requiring Individual” means the individual in the organization responsible for identifying and fulfilling the requirement.

“Requiring Activity Supporting Contracting Office” means the DoN contracting activity normally providing contracting support to the requiring organization.

2. Applicability:

These guidelines apply to the use of non-DoD contract vehicles for acquisition of supplies and/or services at or above the Simplified Acquisition Threshold identified in Section 2.101 of the Federal Acquisition Regulation.

3. General

Use of non-DoD contract vehicles is encouraged when it is the best method of procurement to meet DoD requirements. Non-DoD contract vehicles shall not be used to ‘bank’ funds. Nor is use of non-DoD contract vehicles a substitute for poor planning.

The primary responsibility to ensure that proper procedures are followed lies with the requiring organization. Requiring individuals must seek early involvement of their legal, financial management and Requiring Activity Supporting Contracting Office personnel to ensure that the acquisition strategy is in the best interests of DoD in terms of meeting requirements, schedule, cost effectiveness, oversight and administration, and availability of a contract vehicle within

DoD. For direct acquisitions, the DoN contracting officer can make the within scope determination and ensure that required DoD-unique terms and conditions are incorporated into the specific contract action.

Legal, financial management and Requiring Activity Supporting Contracting Office personnel shall advise the requiring individuals of DoD-unique terms and conditions based on the specifics of the proposed acquisition. These are DoD unique terms/conditions that are required by statute/directive/etc. to apply to DoD acquisition, regardless of who places the award. DoN legal, financial management and Requiring Activity Supporting Contracting Office personnel shall work with the requiring individuals to ensure that the assisting activity understands and incorporates such DoD unique terms and conditions.

4. Assisted Acquisitions

4.1 Decision Authority

ASN(RDA) is the decision authority for assisted acquisitions exceeding \$500,000,000. DASN(ACQ) is the decision authority for acquisitions exceeding \$50,000,000. The Requiring Organization Commander/Commanding Officer is the decision authority for requirements at or below \$50,000,000. This authority may be delegated, but for requirements above \$5,000,000, decision authority may only be delegated to an official in the Requiring Organization who is a Flag or General Officer; a member of the Senior Executive Service; or, for a requirement arising from a claimant activity without local Flag/General Officer/SES, the commanding officer of that activity.

4.2 Assisted Acquisition of Supplies

Requiring individuals coordinate with legal, financial management and Requiring Activity Supporting Contracting Office personnel early in the acquisition process for identification of DoD-unique terms/conditions and availability of suitable contracts within DoD.

For assisted acquisitions of supplies at or above the Simplified Acquisition Threshold placed against non-DoD contracts, requiring individuals must document for the record the following:

- (a) The action is in the best interests of DoD in terms of satisfying customer requirements, cost effectiveness, delivery schedule, availability/non-availability of suitable contracts within DoD, contract administration and any other applicable considerations.
- (b) DoD/DoN unique terms and conditions that are provided to the assisting activity and to be included in the contract award.
- (c) Funding is available and appropriate for the acquisition.
- (d) Supplies to be provided are within the scope of the basic contract; and
- (e) Procedures for assisted acquisition of supplies have been followed.

4.3 Assisted Acquisition of Services

Requiring individuals coordinate with legal, financial management and Requiring Activity Supporting Contracting Office personnel early in the requirements development phase for identification of DoD-unique terms/conditions and availability of suitable contracts within DoD.

For assisted acquisition of services at or above the Simplified Acquisition Threshold placed against non-DoD contracts, requiring individuals must document for the record the following:

- (a) The action is in the best interests of DoD in terms of satisfying customer requirements, cost effectiveness, delivery schedule, availability/non-availability of suitable contracts within DoD, contract administration and any other applicable considerations.
- (b) Approvals required by Navy-Marine Corps Acquisition Regulation Supplement 5237.170-3(b) have been obtained.
- (c) DoD/DoN unique terms and conditions were provided to the assisting activity and will be included in the contract award.
- (d) Funding is available and appropriate for the acquisition.
- (e) Services being ordered are within the scope of the basic contract; and
- (f) Procedures for assisted acquisition of services have been followed.

4.4 Economy Act

31 U.S.C. 1535 permits ordering supplies/services from another Federal agency when there is no other specific authority to do so. Interagency acquisitions subject to the Economy Act must comply with the requirements of Federal Acquisition Regulation 17.503 and Navy-Marine Corps Acquisition Regulation Supplement 5217.503. The Economy Act determination and findings may be used to document compliance with the procedures herein, provided that the determination addresses application of DoD-unique terms and conditions.

Assisted acquisitions by non-DoD activities are frequently covered by other statutory authorization and not covered by the Economy Act. Requiring individuals are responsible for ensuring there is adequate documentation to demonstrate that these assisted acquisitions comply with the OSD and DoN policies and procedures set forth herein.

5. Direct Acquisitions

5.1 Decision Authority

The decision authority for direct acquisitions is the business clearance approval official.

5.2 Direct Acquisition of Supplies

For direct acquisition of supplies at or above the Simplified Acquisition Threshold placed against non-DoD contracts, the contracting officer must document for the record the following:

- (a) The action is in the best interests of DoD in terms of satisfying customer requirements, cost effectiveness, delivery schedule, availability/non-availability of suitable contracts within DoD, contract administration and any other applicable considerations.
- (b) Funding is available and appropriate for the acquisition.
- (c) Terms, conditions and/or requirements unique to DoD or DoN are incorporated into the action to comply with applicable statutes, regulations and directives.
- (d) Supplies being ordered are within the scope of the basic contracts; and
- (e) Procedures for direct acquisition of supplies have been followed.

5.3 Direct Acquisition of Services

For direct acquisition of services at or above the Simplified Acquisition Threshold placed against non-DoD contracts, requiring individuals or the contracting officer must document for the record the following:

- (a) Compliance with the approval requirements at Navy-Marine Corps Acquisition Regulation Supplement 5237.170-3.
- (b) The action is in the best interests of DoD in terms of Satisfying customer requirements, cost effectiveness, delivery schedule, non-availability of a suitable contracts within DoD, contract administration and any other applicable considerations.
- (c) Funding is available and appropriate for the acquisition.
- (d) Terms, conditions and/or requirements unique to DoD or DoN are incorporated into the action to comply with applicable statutes, regulations and directives.
- (e) Services being ordered are within the scope of the basic contracts; and
- (f) Procedures for direct acquisition of services have been followed.

6. Record Data

At a minimum, the Requiring Organization shall establish procedures to record and report the data identified in Attachment (1) [NOTE: to the extent practicable, it is recommended that records be retained in electronic format to facilitate reporting and in anticipation of specific reporting requirements from OSD.]. Data records should be retained for at least two years following completion of the resultant contract/order.

Specific reporting requirements will be provided by separate correspondence.

Requiring Organization Report Format

Part	
	<p>Reporting Activity</p> <ul style="list-style-type: none"> a. Reporting/Requiring Organization (Major Claimant) w/DODAC (name/address) b. Requiring Activity w DODAC
II	<p>Requirement (Supply/Service)</p> <ul style="list-style-type: none"> a. Description of supply or service b. Funding (amount, type of funds, etc.) c. Federal Supply Class or Federal Service Code. If more than one class or category applies, enter the one that best represents the intent of the requirement. d. North Atlantic Industry Classification System (NAICS) Code.
III	<p>Requirement Identification</p> <ul style="list-style-type: none"> a. Document Control Number b. Date of Action c. Type of action (new requirement; change; funding document, etc) d. Rationale for Use of Non-DoD contract vehicle e. Decision Authority (name, title, contact information) f. Date of Decision g. Additional Cost/Fee for Use of Non-DoD Vehicle
IV	<p>Assisting Activity</p> <ul style="list-style-type: none"> a. Contracting Office (Department/agency; address) b. Contact Information for Contracting Officer c. Contract Number(s)/Delivery or Task Order Number(s) d. Assisting Activity Federal Procurement Data System - New Generation (FPDS-NG) or Defense Contract Action Data System (DCADS) information/link