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THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

JUL 20 2005

MEMORANDUM FOR : SEE DISTRIBUTION

SUBJECT: Proper Use of Non-DoD Contracts

Thank you for your support of the Department's policy regarding the "Proper Use of Non-DoD Contracts" dated October 29, 2004 (attached). We have made progress on this critical acquisition initiative but our task is not complete. With the end of the fiscal year upon us, we must ensure that all procurements using non-DoD contracts are properly planned and in the best interests of the Department. Procurements must be well defined, properly funded and meet all statutory, regulatory, and policy requirements, including your supplemental procedures, regardless of who performs the contracting function.

In order to ensure that the new policy is being followed, I ask you to conduct a review of your requirements and funds sent to non-DoD agencies for the purpose of awarding a contract or placing an order against a contract. The review should cover the period from January 2005 through September 2005. You should also conduct a similar review of procurements awarded by your contracting officers using non-DoD contracts. Included in the review should be an assessment of your compliance with the competition requirements of Section 803 of the 2002 National Defense Authorization Act. Please provide me a summary of your assessments by December 2005.

My point of contact for this undertaking is Michael Canales, DPAP/Policy. He can be reached at 703-695-8571, or via e-mail at Michael.Canales@osd.mil.



Kenneth J. King

Attachments:
As stated



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OFFICE OF THE SECRETARY OF DEFENSE

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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.

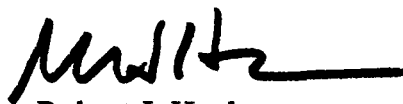


This new policy satisfies the requirements of Section 2330(b)(1)(C)(ii) of Title 10, United States Code as amended by Section 801 of the National Defense Authorization Act for Fiscal Year 2002. Section 801 requires advance approval to buy services via use of a "contract entered into or a task order issued, 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.

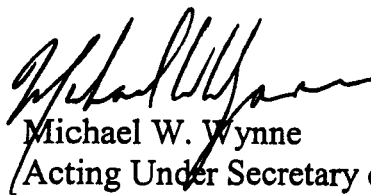
The use of multiple award contracts must be consistent with the requirements of Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Competition Requirements for Purchase of Services Pursuant to Multiple Award Contracts); Federal Acquisition Regulation (FAR) Part 8.002 (Priorities 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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