DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
ACQUISITION LOGISTICS AND TECHNOLOGY
103 ARMY PENTAGON
WASHINGTON DC 20310-0103

JUL 12 2005

SAAL-PP

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Proper Use of Non-Department of Defense (Non-DoD) Contracts

This memorandum establishes Army policy for reviewing and approving the use of non-DoD contract vehicles when procuring supplies or services on or after January 1, 2005, for amounts greater than the simplified acquisition threshold (SAT) (the generally applicable SAT currently is $100,000). These procedures implement Section 854 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375) and the associated requirements of the Office of the Secretary of Defense (OSD) policy memorandum, subject: Proper Use of Non-DoD Contracts, dated October 29, 2004 (Enclosure One).

Ensuring the proper use of non-DoD contract vehicles requires an emphasis on market research, acquisition planning and early involvement in the procurement process by requiring activity, contracting, and financial management personnel. Although the requirements community has the primary responsibility to ensure compliance with this policy, all must work closely together to develop an acquisition strategy (that complies with the procedures contained in this memorandum) and to ensure that use of a non-DoD contract is in the best interest of the Army.

This memorandum applies to both direct acquisitions (i.e., orders placed by an Army contracting or ordering officer against a non-DoD contract) and assisted acquisitions (i.e., contracts awarded or orders placed by non-DoD organizations using Army funds) for supplies and services. Except as expressly noted herein, this memorandum applies to all non-DoD contract vehicles, to include orders placed by Army personnel against the General Services Administration's Federal Supply Schedules.

Defense Federal Acquisition Regulation Supplement (DFARS), Army Federal Acquisition Regulation Supplement (AFARS), and DoD Financial Management Regulation changes will be forthcoming as a result of this policy. In the interim, addressees shall use the procedures set forth in Enclosure Two, which have an effective date of January 1, 2005.

The Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology) points of contact are Ms. Barbara Binney at (703) 604-7113, and Mr. Ed Cornett at (703) 604-7142, office symbol SAAL-PP. The Office of the Assistant Secretary of the Army (Financial Management and Comptroller) point of contact is Mr. Joseph Hemphill at (703) 692-7487, office symbol BUC-E.

This memorandum also rescinds the Deputy Assistant Secretary of the Army (Policy and Procurement) memorandums, subject: Military Interdepartmental Purchase Requests (MIPRs), dated March 4, 2002 and March 8, 2002.

Valerie L. Baldwin
Assistant Secretary of the Army
(Financial Management and Comptroller)

Claude M. Bolton, Jr.
Assistant Secretary of the Army
(Acquisition, Logistics and Technology)

Enclosures:
1. OSD Memorandum, Proper Use of Non-DoD Contracts, October 29, 2004
2. Army Policy for Proper Use of Non-DoD Contracts

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DEPARTMENT OF THE ARMY, OFFICE OF THE DEPUTY GENERAL COUNSEL (ACQUISITION)

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.

FEDERAL RECYCLING PROGRAM PRINTED ON RECYCLED PAPER

Enclosure 1

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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Army Policy
Proper Use of Non-Department of Defense (Non-DoD) Contracts

1. Definitions: For purposes of this policy –

a. Assisted acquisition means a contract awarded or a task or delivery order placed on the behalf of DoD by a non-DoD agency.

b. Designated contracting office means the Army/DoD contracting office that is responsible for providing primary contracting support to a particular requiring activity.

- In a situation where a requiring activity does not have a designated contracting office, the requiring activity shall contact the Office of Procurement Policy and Support under the Deputy Assistant Secretary of the Army (Policy and Procurement) (e-mail PSStaff@hqda.army.mil or PSStaff@saalt.army.mil) for assignment of an Army contracting office to perform the functions set forth in this policy.

c. Direct acquisition means a task or delivery order placed by a DoD official under contract awarded by a non-DoD agency. The term includes an order placed against the General Services Administration Federal Supply Schedules (GSA FSS).

d. Fund authorizing official means the individual who executes the funds authorization portion of a Military Interdepartmental Purchase Request (MIPR) (DD Form 448, blocks 14-17) or other equivalent form used to provide funding to a non-DoD organization in support of an order for supplies or services, certifying that funds for the procurement are properly chargeable to the allotment(s) provided and that the available balances are sufficient to cover the estimated price of the order.

e. Fund certifying official means the individual who executes the fund certification portion of the commitment document (e.g., Purchase Request and Commitment, DA Form 3953 (blocks19-22) or other equivalent form) certifying that the supplies or services being requested are properly chargeable to the allotment(s) provided, that available balances are sufficient to cover the cost thereof, and that funds have been committed.

f. Requiring activity means the Army organization that has a requirement for goods or services and requests the initiation of, and provides funding for, an assisted or direct acquisition to fulfill that requirement.

g. Assisted acquisition report means the annual report (per fiscal year) that shall be submitted by the requiring activity to report the use of assisted acquisitions.

2. Applicability:

a. Except as noted herein, this policy shall apply to the use of non-DoD contract vehicles for all procurements of supplies or services above the simplified acquisition threshold (SAT). The generally applicable SAT currently is $100,000 (41 U.S.C. 403(11)). For procurements in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States, the SAT currently is $250,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and $1,000,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States (41 U.S.C. 428a). See also, 41 U.S.C. 259(d)(1) and Federal Acquisition Regulation (FAR) Subpart 2.101. Future changes to the foregoing statutory thresholds shall be incorporated automatically into this policy.

b. This policy shall not apply to procurements of the following services:

(1) Printing, binding or blank-book work to which 44 U.S.C. 502 applies;

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

3. Procedures:

a. Direct acquisition of supplies and services –

(1) Prior to the placement of a direct acquisition order, the head of the requiring activity (O6/GS-15 level or higher) must execute a written certification that:

- The order is in the best interest of the Army considering the factors of availability of a suitable DoD contract vehicle, ability to satisfy customer requirements, delivery schedule, cost effectiveness and price (including any discounts and fees), contract administration (including ability to provide contract oversight), socio-economic opportunities, the comparative costs of using a DoD, as opposed to non-DoD, contractual instrument – to include administrative fees charged by the non-DoD activity, and any other applicable considerations;

- The supplies or services to be provided are within the scope of the non-DoD contract;

- The proposed funding is appropriate for the procurement and is being used in a manner consistent with any appropriation limitations;

- All unique terms, conditions and requirements will be incorporated into the order or contract, as appropriate, to comply with all applicable

DoD-unique statutes, regulations, directives and other requirements(e.g., compliance with 10 U.S.C. 2533a – Requirement to buy certain articles from American sources; exceptions ("Berry Amendment")); and

- The review and approval procedures set forth in paragraph 4, Management Review and Approval Requirements, of this policy memorandum have been completed.

(2) The requiring activity shall prepare this certification with the assistance of the contracting officer in the designated contracting office and the fund certifying official, and shall obtain these individuals' written coordination upon the certification.

(3) Additional requirements for direct acquisitions of services: Unless the contracting office has access to the servicing organization's contract (including the statement of work), the requiring activity shall obtain written concurrence from the non-DoD contracting officer at the servicing organization that the services to be provided are within the scope of the servicing organization's contract. The contracting officer in the designated contracting office also shall obtain written coordination from supporting legal counsel prior to placement of the order; legal review of orders for supplies shall be in accordance with contracting activity procedures.

(4) The contracting officer in the designated contracting office shall maintain a copy of the above certification and all accompanying reviews and coordination records in the contract file established for the direct acquisition.

(5) Army personnel are reminded that specific guidance regarding the use of MIPRs is available in the Federal Acquisition Regulation (FAR) subpart 17.5 and the Defense Federal Acquisition Regulation Supplement subpart 217.5 – "Interagency Acquisitions Under the Economy Act, " DoD Instruction 4000.19 – "Interservice and Intragovernmental Support," and DoD 7000.14R – DoD Financial Management Regulations (FMR), Volume 11A, Chapter 3 – "Economy Act Orders". These regulations should be consulted prior to placement of an order with a non-Army contracting office within the DoD.

b. <u>Assisted acquisition of supplies and services</u> –

(1) Prior to the transmittal of an assisted acquisition request to a non-DoD organization, the requiring activity shall consult with its designated contracting office (if there is no designated contracting office, see paragraph 1.b.), which will advise regarding the various DoD contractual options available to obtain the supplies and services, and which will provide any unique terms, conditions and requirements that must be incorporated into the resultant non-DoD order or contract to comply with all applicable DoD-unique statutes, regulations, directives and other requirements.

(2) Also prior to the transmittal of an assisted acquisition request to a non-DoD organization, the head of the requiring activity (O6/GS-15 level or higher) must execute a written certification that:

- The use of a non-DoD contract vehicle is in the best interest of the Army considering the factors of availability of a suitable DoD contract vehicle, ability to satisfy customer requirements, delivery schedule, cost effectiveness and price (including any discounts and fees), contract administration (including ability to provide contract oversight), socio-economic opportunities, the comparative costs of using a DoD, as opposed to non-DoD, contractual instrument – to include administrative fees charged by the non-DoD activity, and any other applicable considerations;

- The supplies or services to be provided are within the scope of the non-DoD contract;

- The proposed funding is appropriate for the procurement and is being used in a manner consistent with any appropriation limitations;

- All unique terms, conditions and requirements will be incorporated into the order or contract, as appropriate, to comply with all applicable DoD-unique statutes, regulations, directives and other requirements (e.g., compliance with 10 U.S.C. 2533a – Requirement to buy certain articles from American sources; exceptions ("Berry Amendment")); and

- The review and approval procedures set forth in paragraph 4, Management Review and Approval Requirements, of this policy memorandum have been completed.

(3) The requiring activity shall prepare this certification with the assistance of the contracting officer in the designated contracting office and the fund authorizing official, and shall obtain these individuals' written coordination upon the certification. The requiring activity shall also obtain written concurrence from the non-DoD contracting officer at the servicing organization that the supplies or services to be provided are within the scope of the non-DoD contract. The fund authorizing official shall annotate the MIPR or other equivalent form used to transmit funding to the servicing organization with the following statement: "This requirement has been processed in accordance with Section 854 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375) and the Army Policy memorandum on Proper Use of Non-Department of Defense contracts, dated July 12, 2005. The order is properly funded (correct appropriation and year), and it is in compliance with Army procedures for placement of orders on the Army's behalf by a non-DoD organization. Reference https://webportal.saalt.army.mil/saal-zp/armypolicyuseofnon-dodcontracts.pdf. The head of the requiring activity also shall

obtain written coordination from supporting legal counsel prior to transmittal of the order to the servicing agency.

(4) The requiring activity and fund authorizing official shall maintain a copy of the above certification and all accompanying reviews and coordination records in a file established for the non-DoD transaction. The requiring activity shall provide a copy of this certification to the non-DoD contracting officer at the servicing organization.

(5) The requiring activity shall request the servicing organization contracting officer to provide it with a copy of the Federal Procurement Data System report submitted in connection with the procurement action.

(6) For assisted acquisitions that are subject to the Economy Act, 31 U.S.C. 1535, the requiring activity also shall comply with the requirements of FAR Subpart 17.5 (including the determination and findings requirements at FAR 17.503) and Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 217.5. DoD Instruction 4000.19, Interservice and Intragovernmental Support, and the DoD Financial Management Regulation, DoD 7000.14-R, Vol. 11A, also apply to these transactions.

4. Management Review and Approval Requirements:

a. The review and approval procedures for acquisition of services set forth at DFARS Subpart 237.170-3(b), Army Federal Acquisition Regulation Supplement (AFARS) 5137.170-3(b) and AFARS 5137.5-3 apply to direct and assisted acquisitions. In accordance with these provisions, requiring activities shall obtain advance approval of direct and assisted acquisitions of services as follows:

(1) For a total planned dollar value of $500M or more, or identified by the Assistant Secretary of the Army (Acquisition, Logistics and Technology (ASA(ALT)) as special interest, obtain Deputy Assistant Secretary of the Army (Policy & Procurement) (DASA (P&P)) approval.

(2) For a total planned dollar value greater than $100M and less than $500M, obtain approval of the cognizant Program Executive Officer (PEO), Direct Reporting Program Manager (DRPM), or Head of Contracting Activity (HCA) (at HCA's discretion, delegable to a level no lower than the Principal Assistant Responsible for Contracting (PARC)) unless the acquisition is already covered in an acquisition strategy approved by the cognizant official; obtain PEO/DRPM/HCA approval of all acquisitions designated as special interest.

(3) For a total planned dollar value less than $100M, follow Major Command (MACOM) and the Army Contracting Agency (ACA) procedures.

(4) For a total planned dollar value less than $100M where the requiring activity does not fall under a MACOM or the ACA, follow procedures established by the

head of the requiring activity; such procedures should be commensurate with the acquisition's risk and operational impact.

b. Requiring activities shall obtain advance approval of direct and assisted acquisitions of supplies as follows:

(1) For a total planned dollar value of $500M or more, obtain the approval of the DASA(P&P).

(2) For a total planned dollar value greater than $100M and less than $500M, obtain the approval of the PEO, DRPM or requiring activity head who is a General Officer (GO) or a member of the Senior Executive Service (SES).

(3) For a total planned dollar value less than $100M, follow procedures established by the head of the requiring activity; such procedures should be commensurate with the acquisition's risk and operational impact.

5. Data Collection and Reporting Requirements for Assisted Acquisitions:

a. MACOM Commanders and PEOs/DRPMs shall ensure that requiring activities within their organizations collect data on their use of assisted acquisitions for purposes of analysis. No later than November 1st of each year, MACOM Commanders and PEOs/DRPMs shall submit the enclosed Army Assisted Acquisition Summary Report. A central report per Department of Defense Activity Address Code (DODAAC) from the MACOM Commanders and PEOs/DRPMS is required. To facilitate the collection of this data, the enclosed Assisted Acquisition Individual Report will be completed by the requiring activity for each funding document, which will be part of the documentation described in paragraph 3.b. above. The Army Assisted Acquisition Summary Report is available in a downloadable Excel spreadsheet format found at the ASA(ALT) website at:

https://webportal.saalt.army.mil/saal-zp/armyreportforassistedacquisition.xls

Download this report to enter the data and then electronically submit this report to PSStaff@hqda.army.mil or PSStaff@saalt.army.mil to the Office of Procurement Policy and Support (SAAL-PP). Negative reports are required in the event that no reportable assisted acquisitions were conducted. Requiring activities that do not fall under a MACOM or PEO/DRPM shall consolidate and submit the summary report directly to SAAL-PP.

b. To the maximum extent possible, the Federal Procurement Data System-Next Generation (FPDS-NG), the acquisition data system to be used by all federal agencies, will be relied upon to provide contract award data for analysis on non-DoD assisted acquisitions. The FPDS-NG is currently scheduled for implementation in fiscal year 2006. A change is being requested to add assisted acquisition to this report. However,

until that revision is made to the regulations, the requiring activity will maintain a centrally managed report and consolidate with the PEO/DRPM, the MACOM, or other requiring activity. Once the FPDS-NG system is automated to capture assisted acquisition reports, then the PM or the requiring activity will ask the non-DoD contracting office for a copy of the FPDS report for their assisted acquisition(s) and maintain a copy in the applicable file.

ARMY REPORT FOR PROPER USE ON NON-DOD CONTRACTS
Program Office / Requiring Activity
Assisted Acquisition Individual Report Format

Program Office/Requiring Activity

- *Organization Department of Defense Activity Address Code (DODAAC) (name, address, e- mail address, phone number)
- Maintain a copy of all documentation sent to the Non-DoD Contracting Office (Assisting Agency)

Requirement (Supply/Service)

- Description of supply or service
- * Funding (amount, type of funds (OMA,OPA, etc), fiscal year)
- * Federal Supply Group, Federal Supply Class, or Federal Service Code -- (If more than one applies, then enter the one that best represents the intent of the requirement. (Get this information from the Assisting Agency.)
- North American Industry Classification System (NAICS) Code (Get this information from the Assisting Agency.)

Requirement Identification

- * Operating Agency Code from the Standard Army Accounting Classification
- * Document control number (funding authorization document)
- Document date
- * Dollars obligated (include fee/service charge paid)
- * Fee or service charge paid to assisting agency (either directly by requiring activity or through contract vehicle by the contractor)
- Type of action (new requirement; change; funding document, etc.)
- Factors for use of non-DoD contract vehicle (all that apply) (satisfying customer requirements, cost effectiveness and price (including fees to be paid), delivery schedule, non-availability of a suitable contract within DoD, contract administration (surveillance plan for monitoring activities of the non-DoD Agency), socio-economic opportunities and any other applicable factors
- Decision Authority (name, title, contact information)
- Decision date

Assisting Agency

- * Assisting Agency Code
- Contracting Office (Agency name, address)
- Contracting Officer (name, contact information
- Contract number(s) / delivery or task order number(s)
- Copy of the Federal Procurement Data System Report prepared and submitted by the Assisting Agency

***Include in the Army Assisted Acquisition Summary Report**

ARMY ASSISTED ACQUISITION SUMMARY REPORT

FROM:

Report ending:

Program Office/Requiring ActivityDODAAC	Total number of contracts and/or orders awarded over $100,000 per funding authorization document	Operating Agency Code & Funding Authorization Document Number	Assisting Agency Code	Funding Amount/ Funding Type (OMA, OPA, etc.)/Year of Funding	Actual fee or service charge paid to assisting agency (nearest whole dollar)	Dollars Obligated (nearest whole dollar) (include fee/service charges paid	Supply/Service Code
	0				$ -	$ -	
	TOTAL ACTIONS				Total Fee Dollars Inclusive of fees paid for workyears	TOTAL DOLLARS	