



DEPARTMENT OF THE NAVY
SPACE AND NAVAL WARFARE SYSTEMS COMMAND
4301 PACIFIC HIGHWAY
SAN DIEGO, CA 92110-3127

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Ser 00/422

DEC 17 2004

MEMORANDUM

From: Commander, Space and Naval Warfare Systems Command

Subj: PROPER USE OF NON-DOD CONTRACTS

Ref: (a) SPAWARINST 4200.26B; Acquisition of Services

Encl: (1) OSD Memorandum of October 29, 2004
(2) DoN Guidelines for Procedures to Document Proper Use of Non-DoD Contracts (DRAFT)
(3) SPAWAR Procedures on the Proper Use of Non-DoD Contracts
(4) Table of Approval Authorities

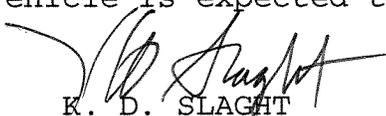
1. The Space and Naval Warfare Command (SPAWAR) and its affiliated Program Executive Officers (PEOs) and field activities annually procure services and supplies through non-DoD contracts. In many cases this represents an effective way to accomplish acquisition in support of our mission. However, recent DoD and GSA Inspector General reports have identified several issues that have arisen when using non-DoD contracts. Enclosure (1) requires the Military Departments and Defense Activities to establish procedures to review and approve the use of non-DoD contract vehicles for acquiring supplies and services in excess of the Simplified Acquisition Threshold (\$100K) on or after January 1, 2005. Enclosure (2) sets forth DoN Guidelines that all Navy activities must conform to when developing local procedures. Enclosure (3) establishes procedures for the SPAWAR Claimancy and its affiliated PEOs. Enclosure (4) is the table of authority for approving non-DoD contract actions.

2. While the Program Manager or requirements official has the primary responsibility to ensure compliance with this policy, success will not be achieved without the cooperation of the financial management and contracting communities within SPAWAR and its affiliated PEOs. SPAWAR procedures are effective 1 January 2005.

3. The HCA delegations for approval authority set forth in the procedures are effective until 30 September 2005.

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4. The approvals for services set forth in this memorandum are not required for task orders issued under the GSA FEDSIM SE&I contract. The GSA FEDSIM SE&I contract has obtained a separate blanket approval and may be used until June 2005, at which time, the NAVSEA Seaport Enhanced vehicle is expected to be awarded.



R. D. SLAGHT

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SPAWAR List 3

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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.

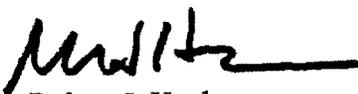


This new policy satisfies the requirements of Section 2330(b)(1)(C)(ii) of Title 10, United States Code as amended by Section 801 of the National Defense Authorization Act for Fiscal Year 2002. Section 801 requires advance approval to buy services via use of a "contract entered into or a task order issued,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

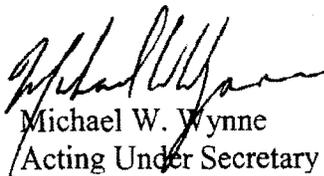
The use of multiple award contracts must be consistent with the requirements of Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Competition Requirements for Purchase of Services Pursuant to Multiple Award Contracts); Federal Acquisition Regulation (FAR) Part 8.002 (Priorities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

MEMORANDUM FOR DISTRIBUTION

Subj: PROPER USE OF NON-DOD CONTRACTS

Encl: (1) OSD memorandum of October 29, 2004, same subject

(2) DoN GUIDELINES FOR PROCEDURES TO DOCUMENT PROPER USE
OF NON-DOD CONTRACTS

Recent DOD and GSA IG audits noted that DoD encountered problems using contracts awarded by non-DoD agencies. DoD and GSA have been working jointly to "Get it Right" when working together to accomplish our missions.

Enclosure (1) requires the Military Departments and Defense Activities to establish procedures to review and approve the use of non-DoD contract vehicles for acquiring supplies or services in excess of the Simplified Acquisition Threshold on or after January 1, 2005. Each addressee must establish procedures that conform to the guidelines in enclosure (2). This will require the cooperation of our DoN comptroller/financial, contracting and requirements communities.

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.

Distribution:
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Enclosure (2)

**DoN GUIDELINES FOR PROCEDURES TO DOCUMENT
PROPER USE OF NON-DoD CONTRACTS**

DEFINITIONS:

"Acquiring Activity" means the Department/agency/activity that has contracting responsibility.

"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.

"Contracting officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

- "Administrative contracting officer (ACO)" refers to a contracting officer who is administering contracts.
- "Procuring Contracting Officer" [PCO] means that person with the authority to enter into, administer, and/or terminate contracts, responsible for actual award of the contract or placement of the task or delivery order.
- "Termination contracting officer (TCO)" refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of these areas.

"Direct Acquisition" means a task or delivery order placed by an official of the United States within the DoD against a contract vehicle established outside of the DoD.

"Requiring Activity" [RA] means the Department/agency/activity that has the requirement.

"Requiring Activity Supporting Contracting Office" (RASCO) means the DoN contracting activity normally providing contracting support to the requiring activity.

GENERAL

Use of non-DoD contracts is encouraged when it is the best method of procurement to meet DoD requirements. Decisions regarding use of non-DoD contract vehicles, whether assisted acquisitions or direct acquisitions, must be documented and

recorded. Non-DoD contracts shall not be used to circumvent conditions or limitations imposed on the use of funds nor as a substitute for poor planning. To the extent practical, policies/procedures shall be consistent with DFARS Subpart 208.70.

The decision to use a non-DoD vehicle must be supported in terms of:

- Meeting requirements (including special contract terms and conditions);
- Schedule;
- Cost effectiveness;
- Oversight and contract administration; and
- Availability of a contract vehicle within DoD.

These procedures apply to major and non-major Defense acquisition programs, major and non-major information technology acquisition programs, and all other requirements in support of the Department of the Navy.

RESPONSIBILITIES:

Requiring Activity:

The RA has responsibility for determining the acquisition strategy in terms of cost, schedule and quality after consultation with the comptroller/financial officer and RASCO.

The RASCO should be consulted as to the various contractual options available (i.e., in-house contract, direct acquisition; interdepartmental purchase request, etc.) and whether there are unique contract terms, conditions and/or requirements that an assisting agency must incorporate to comply with applicable DoD-unique statutes, regulations, directives and requirements.

Comptroller/financial officer advice should be sought to identify availability of funding and ensure its proposed use is in accordance with appropriation limitations.

RA procedures shall establish consistent document control number assignment guidelines to ensure that all actions are identified and reported. The RA shall record data on the use of direct and assisted acquisitions for analysis.

RAs shall provide the acquiring activity accurate and complete data necessary in support of the acquisition, including necessary determinations/justifications. The RA must also

identify any funding and appropriation limitations and any unique contract terms, conditions and/or requirements that the acquiring activity must incorporate to comply with applicable DoD-unique statutes, regulations, directives and requirements.

Requiring Activity Supporting Contracting Office:

The RASCO shall assist the RA in determining the availability of suitable contract vehicles within and outside of the DoD and advise on alternate acquisition strategies. To support the RA, the RASCO shall identify unique contract terms, conditions and/or requirements that an acquiring activity must incorporate to comply with applicable DoD-unique statutes, regulations, directives and requirements.

Acquiring Activity:

The acquiring activity has no responsibility to determine the validity of a stated requirement, but should bring apparent errors or inconsistencies in the requirement to the attention of the RA. The acquiring agency is authorized to create obligations against the funds cited in the purchase request without referral to the requiring.

In accordance with the Federal Acquisition Regulation, the procuring contracting officer (PCO) shall determine at time of award that the supplies to be provided or the services to be performed are within the scope of the contract vehicle used.

The acquiring activity shall provide the RA appropriate contract documentation, including data in Federal Procurement Data System-Next Generation (FPDS-NG) or Defense Contract Action Data System (DCADS).

PURCHASE REQUESTS (PRs)

RAs may utilize any purchase request documentation (DD Form 448: Military Interdepartmental Purchase Request; Economy Act, etc) recognized and accepted by both RA and the acquiring activity. Procurement requests shall, to the extent practicable, identify the requirement in terms of Federal Supply Class or Federal Service Code [FSC] and North American Industry Classification System (NAICS) code, Federal Stock Number, nomenclature, specification, drawing number, etc.

In addition to identifying the requirement, PRs for assisted acquisitions shall identify funding, limitations thereto, unique contract terms, conditions, and requirements that the acquiring activity must incorporate to comply with applicable DoD-unique statutes, regulations, directives and requirements. PRs shall request acquiring activities to provide copies of award documentations and the PCO determination that the supplies to be provided or the services to be performed are within the scope of the contract vehicle used.

If expiring funds are involved, the RA should make every effort to allow adequate lead-time for the acquiring activity. In such cases, the RA shall communicate with the acquiring activity to ascertain whether the acquiring activity can obligate the funds by the end of the fiscal year.

DECISION AUTHORITY:

ASN(RDA) is the decision authority for requirements exceeding \$500,000,000. DASN(ACQ) is the decision authority for requirements exceeding \$50,000,000.

Assisted Acquisitions:

The RA Commander/Commanding Officer is the decision authority for requirements at or below \$50,000,000. For requirements above \$5,000,000, decision authority may be delegated to a program manager who is a Flag or General Officer or a member of the Senior Executive Service. For RAs without a local SES/Flag/General Officer, decision authority may be delegated to the commanding officer of the RA, but not further.

Direct acquisitions:

If the contract will be awarded or the order placed by a DoN contracting activity, the Head of the Contracting Activity for the acquiring activity is the decision authority for actions at or below \$50,000,000. For acquisitions above \$5 million, decision authority may be delegated to the Deputy/Assistant Commander for Contracting, or a Flag or General officer or a member of the Senior Executive Service who is a member of the Acquisition Professional Community.

If the contract will be awarded or the order placed by an acquiring activity outside of DoN but within DoD, and the action

is at or below \$50,000,000, decision authority shall follow the policies/procedures of the acquiring activity.

RECORD DATA:

At a minimum, the RA shall establish recording requirements providing the information identified in Enclosure (1). NOTE: To the extent practicable, records should be kept in electronic format to allow linkage and in anticipation of additional reporting requirements from OSD.

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SPAWAR PROCEDURES ON THE PROPER USE OF NON-DOD CONTRACTS

1) Applicability and Definitions:

These procedures apply to the use of non-DoD contract vehicles for all acquisitions of supplies or services above the Simplified Acquisition Threshold.

Direct Acquisition - a task or delivery order placed by a SPAWAR contracting officer against a contract vehicle established outside the DoD.

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

Approval Official - the individual delegated the authority by the HCA to approve both Directed and Assisted Acquisitions. Enclosure (4) sets forth the approval threshold authorities.

2) Direct Acquisition of Supplies - For all direct acquisition of supplies placed against non-DoD contracts (including GSA Federal Supply Schedule (FSS) Orders, and for each Blanket Purchase Agreement issued against a GSA FSS, the Program Manager or the requirements official, must address the following criteria as a part of the Procurement Request in order for the approving official to make the appropriate assessment and decision that the action taken is in the best interest of SPAWAR:

- a) Satisfying customer requirements.
- b) Cost effectiveness and price.
- c) Delivery schedule.
- d) Oversight and contract administration.
- e) Non-Availability of a suitable contract vehicle within DoD (coordinate with your cognizant SPAWAR contracts Branch Head).
- f) Supplies to be provided are within the scope of the contract.
- g) Funding is available and appropriate for the acquisition.

Approval of Direct Acquisition of Supplies for HQ contracting actions will reside with the Executive Director of Contracts. Approvals for field activity contracting actions will reside with the Executive Directors at the SPAWAR Systems Centers San Diego and Charleston and the Commanding Officers at Norfolk and SSC New Orleans.

Enclosure (3)

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For actions below \$5 million, discretion is given to these designees to develop internal approval authorities up to \$5 million.

The approval documentation will be maintained by the cognizant SPAWAR contracting office with a copy to be included in the official contract file.

3) Assisted Acquisition of Supplies - The Program Manager or the requirements official shall coordinate with their cognizant contracting office on all supplies requirements proposed for award by non-DoD organizations using DoD funds. The contracting office shall advise the Program Manager and/or requirements official as to the various contractual options available to obtain the supplies and any DoD terms and conditions that must be incorporated into the resultant order or contract. The Program Manager or the requirements official must address the following criteria in order for the approving official to make the appropriate assessment and decision that the action taken is in the best interest of SPAWAR:

- a) Satisfying customer requirements.
- b) Cost effectiveness and price.
- c) Delivery schedule.
- d) Oversight and contract administration.
- e) Non-Availability of a suitable contract vehicle within DoD (Coordinate with your cognizant SPAWAR Contracts Office).
- f) Supplies to be provided are within the scope of the contract.
- g) Funding is available and appropriate for the acquisition.
- h) Provide DoD unique terms and conditions to the assisting agency to incorporate into the order or contract (coordinate with your cognizant SPAWAR Contracts Office)

Approval of Assisted Acquisition of Supplies will be made at the dollar thresholds delegated by the HCA as stated in Enclosure (4). The approval documentation will be maintained by the cognizant SPAWAR Program Manager or requirements official.

4) Direct Acquisition of Services - For all direct acquisition of services placed against non-DoD contracts (including GSA Federal Supply Schedule (FSS) Orders, and for each Blanket Purchase Agreement issued against a GSA FSS, the Program Manager or the requirements official, must address the following criteria as a part of the Procurement Request in order for the approving official to make the appropriate assessment and decision that the action taken is in the best interest of SPAWAR:

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- a) Satisfying customer requirements.
- b) Cost effectiveness and price.
- c) Delivery schedule.
- d) Oversight and contract administration.
- e) Non-Availability of a suitable contract vehicle within DoD (coordinate with your cognizant Contracting Office).
- f) Services to be provided are within the scope of the contract.
- g) Funding is available and appropriate for the acquisition.
- h) For non-ACAT services ensure the Performance Based Services Acquisitions and Acquisition Strategy requirements of reference(a) are met.

Approval of Direct Acquisition of Services for HQ contracting actions will reside with the Executive Director of Contracts. Approvals for field activity contracting actions will reside with the Executive Directors at the SPAWAR Systems Centers San Diego and Charleston and the Commanding Officers at Norfolk and the SITC New Orleans. For actions below \$5 million, discretion is given to these designees to develop internal approval authorities up to \$5 million. The approval documentation will be maintained by the cognizant SPAWAR contracting office with a copy to be included in the official contract file.

5) Assisted Acquisition of Services - The Program Manager or the requirements official shall coordinate with their cognizant contracting office on all service requirements proposed for award by non-DoD organizations using DoD funds. The contracting office shall advise the Program Manager and/or requirements official as to the various contractual options available to obtain the services and any DoD terms and conditions that must be incorporated into the resultant order or contract. The Program Manager or the requirements official must address the following criteria in order for the approving official to make the appropriate assessment and decision that the action taken is in the best interest of SPAWAR:

- a) Satisfying customer requirements.
- b) Cost effectiveness and price.
- c) Delivery schedule.
- d) Oversight and contract administration.
- e) Non-Availability of a suitable contract vehicle within DoD (Coordinate with your cognizant SPAWAR Contracts Office).
- f) Supplies to be provided are within the scope of the contract.
- g) Funding is available and appropriate for the acquisition.

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h) Provide DoD unique terms and conditions to the assisting agency to incorporate into the order or contract (coordinate with your cognizant SPAWAR Contracts Office).

i) For non-ACAT services ensure the Performance Based Services Acquisitions and Acquisition Strategy requirements of reference (a) are met.

Approval of Assisted Acquisition of Services will be made at the dollar thresholds delegated by the HCA as stated in enclosure (4). The approval documentation will be maintained by the cognizant SPAWAR Program Manager or requirements official.

6) SPAWAR Comptrollers (HQ and Echelon 3s) shall reject any IPRs over the \$100K threshold that would result in an assisted supply or service acquisition to a non-DoD activity until the action has been approved as described above.

7) Annually, all approval designees shall report the number of Direct and Assisted Acquisition approvals and dollar value to SPAWAR 02. The annual report will cover the period from the date of this memo to 30 September 2005. The report is due 15 October 2005.

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ASSISTED ACQUISITION OF SUPPLIES/SERVICES

SPAWAR HQ & PEO Thresholds for Approval of funds leaving the command for execution on Non-DOD contract vehicles.

<i>Dollar Threshold</i>	<i>Review Authority</i>	<i>Approval Authority</i>
\$100K to \$5 million	PM/DPM	PM/DPM
\$5M to \$15 million	PM/DPM	SPAWAR Deputy Commander, SPAWAR Executive Director for Contracts, SPAWAR Director Installations & Logistics, SPAWAR Chief Engineer, SPAWAR CIO, PEO-C4I & Space, PEO-IT, PEO-Space Systems
>\$15 million to \$50 million	PEO/SPAWAR 02	HCA - Commander SPAWAR HQ
>\$50 million	PEO/SPAWAR 02/HCA Commander SPAWAR	DASN (ACQ)

ASSISTED ACQUISITION OF SUPPLIES/SERVICES

SPAWAR Field Thresholds for Approval of funds leaving the command for execution on Non-DOD contract vehicles.

<i>Dollar Threshold</i>	<i>Review Authority</i>	<i>Approval Authority</i>
\$100K to \$5 million	TBD BY LOCAL PROCEDURES	TBD BY LOCAL PROCEDURES
\$5M to \$15 million	TBD BY LOCAL PROCEDURES	Commanding Officer/Executive Director
>\$15 million to \$50 million	SPAWAR 02	HCA - Commander SPAWAR HQ
>\$50 million	SPAWAR 02/HCA Commander SPAWAR	DASN (ACQ)

Subj: PROPER USE OF NON-DOD CONTRACTS

DIRECT ACQUISITIONS OF SUPPLIES/SERVICES

SPAWAR HQ & PEO Thresholds for Approval of acquisitions using non-DoD contract vehicles

<i>Dollar Threshold</i>	<i>Review Authority</i>	<i>Approval Authority</i>
Less than or equal to \$1 million	Negotiator/PCO	SPAWAR HQ PCO
\$1 million to \$3 million	PCO	02 Branch Head
>\$3 million to \$5 million	PCO/02 Branch Head	SPAWAR 02 Division Director
>\$5 million to \$15 million	SPAWAR 02 Division Director	SPAWAR 02/02A
>\$15 million to \$50 million	SPAWAR 02/02A	HCA - Commander SPAWAR HQ
>\$50 million	SPAWAR 02/02A	DASN (ACQ)

DIRECT ACQUISITIONS OF SUPPLIES/SERVICES

SPAWAR Field Thresholds for Approval of acquisitions using non-DoD contract vehicles

<i>Dollar Threshold</i>	<i>Review Authority</i>	<i>Approval Authority</i>
Less than or equal to \$1 million	TBD by Local Procedures	TBD by Local Procedures
\$1 million to \$3 million	TBD by Local Procedures	TBD by Local Procedures
>\$3 million to \$5 million	TBD by Local Procedures	TBD by Local Procedures
>\$5 million to \$15 million	SPAWAR 02 Division Director	SPAWAR 02/02A
>\$15 million to \$50 million	SPAWAR 02/02A	HCA - Commander SPAWAR HQ
>\$50 million	SPAWAR 02/02A	DASN (ACQ)