



## *PROPER USE of NON-DoD CONTRACTS*

### 1. PURPOSE

The purpose of this document is to provide SPAWAR Claimancy policy and guidance for the preparation and approval for the use of non-DoD contract vehicles. This policy does not apply to DoD Contracting Officers awarding DoD contracts using FAR Parts 13, 14 and 15.

### 2. POLICY

Each year billions of 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 interest of the customer, and most cost effective 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. For amounts greater than the simplified acquisition threshold SPAWAR Claimancy shall use the below review and approval procedures when acquiring supplies or services using non-DoD contract vehicles. These requirements apply for both direct (orders placed by SPAWAR on non-DoD vehicles) and assisted acquisitions (contracts awarded or orders placed by non-DoD entities).

**Department of Interior's (DoI) Acquisition Services Directorate (AQD) (formerly GovWorks)** See: [DASN \(A&LM\) Memo of April 4, 2008](#)

**DoD Wide Policy for Interagency Agreements with the Department of Energy Work For Others (WFO) Program to Access DoE-Owned RDP Facilities through IAs in FY12**

See: [DPAP Memo of September 30, 2011](#)

DoD components are prohibited from submitting interagency requests for furniture after July 1 of any Fiscal Year, regardless of the anticipated delivery date of the requirement.

### 3. RESPONSIBILITIES

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. SSC Pacific guidance is linked in the Toolbox below.

#### A. **Procuring Contracting Officers/Contract Specialists shall:**

1. As of June 2014, business decisions justifying the use of non-DoD, Contracting Officers must determine that fees associated with the acquisition are fair and reasonable. Notify the customer of any fees associated with the acquisition, and the total costs prior to sending funds to a non-DoD agency. Document either the Acquisition Strategy; Acquisition Plan; Business Clearance Memorandum; or Memo to File to support the business decision to use Non-DoD/Interagency contract vehicles. Documentation must include name of person and date contacted. Ensure the use of a non-DoD contract vehicle is in the best interests of the Department of Defense. Take into account the following:
  - Does this meet the customer's needs – quality, delivery, price
  - Is this within scope of the ordering vehicle
  - Is this a cost effective way of meeting the customer's need
  - Schedule
  - Contract administration
  - Consideration of small business (bundling)

All interagency acquisitions over \$500k entered into 03 November 2008 and thereafter must follow the guidelines provided in the [Office of Management and Budget, OFPP Interagency Acquisitions guide June 2008 edition](#):

- i. Include all of the elements listed in Appendix 2, or follow the model agreement provided in Appendix 3.
- ii. Utilize Appendix 1 to facilitate the clear identification of roles and responsibilities.

2. Review contract terms and conditions of the intended vehicle prior to placing orders and provide to the assisting agency unique requirements/terms and conditions associated with the acquisition.

(A listing of the DFARS clauses and provision is being developed to assist in this review. See toolbox item **#8** for suggested list of DFARS clauses/provisions. This list only applies to orders placed under GSA Federal Supply Schedule contracts. Other agency contracts must be obtained, reviewed and analyzed by the negotiator to determine what DFARS clauses need to be included.)

3. Determine if there is an available contract vehicle within DoD that can satisfy the requirement. Review links to the Air Force, Army and other Navy sites on the E-Commerce Central website to assist in this determination.

4. If (SPAWAR) is executing the contract action (direct), ensure metrics are being measured and collected for later reporting requirements. (see Procedures 4e below for the reporting format)

**B. *Program Manager/Technical Code:***

1. Ensure there is a bona fide need and define requirements accurately.
2. Services >\$100K must be Performance Based.
3. In collaboration with the Contracting Officer, perform Market Research (i.e. identify multiple potential sources)
4. Comply with the procedures of COMSPAWAR Memorandum dated 17 December 2004, toolbox item #4.
5. Before sending funds or requirements to a non-DoD agency for acquisition purposes determine in writing that the use of the non-DoD vehicle is in the best interests of the Government.

The determination should include at a minimum (see sample in below Tool Box):

- i. Are requirements within scope of the intended vehicle
  - ii. Schedule
  - iii. Cost effectiveness (including any fees paid)
  - iv. Ensure that the supplies or services are consistent with the appropriated funding being used.
  - v. Funds must be consistent with appropriation limitations.
6. Collect metrics in accordance with the format in Procedures below. Report annually by 15 Oct.

**C. *Financial Managers***

Financial Managers (HQ and Echelon 3) shall reject any Interdepartmental Purchase Requests (IPR) 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 below using the [2.0 Review of IPR for Non-DoD Contract Action](#) form ***or an approved Economy Act D&F.***

## **4. PROCEDURES**

### ***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 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 the DoD unique terms and conditions, PBSA waivers and non-availability of DoD Contract vehicles. Assisted acquisitions by non-DoD activities are frequently covered by other statutory authorization and not covered by the Economy Act. Program Offices/Requiring individuals are responsible for ensuring there is adequate documentation to demonstrate that these assisted acquisitions comply with the DoD and DoN policies herein.

Economy Act D&Fs are required whenever orders are placed outside of the Navy (Ref: [Comments on Further Delegation of Authority to Approve Economy Act Orders](#))

## **Federal Supply Schedules**

When using Federal Supply Schedules to satisfy procurements between the micro-purchase and simplified acquisition threshold the Contracting Officer will document via a memorandum when large business quotes are necessary, except when an ordering activity has approved justification limiting sources in accordance with FAR8.405-6. The Limited Sources Justification will address the consideration of small businesses and how the determination was made there were less than three small businesses on the schedule that will satisfy the government's requirements. The Limited Sources Justification will be provided with the DD2579 prior to review and approval by the Small Business Office.

### ***A. Assisted Acquisition of Supplies (non-DoD agency places order or awards contract for DoD use)***

Program offices/requiring individuals need to coordinate with legal, financial and contracting early in the acquisition process for identification of unique terms/conditions and availability of suitable contracts within DoD.

(1) For assisted acquisitions of supplies above the Simplified Acquisition threshold placed against non-DoD contracts, program offices or requiring individuals must document the record with the following:

- i. 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.
- ii. DoD/DoN unique terms and conditions that are provided to the assisting activity and to be included in the contract award (*see toolbox for suggested DFARS/provisions list. This list only applies to GSA Federal Supply Schedule contracts, other agency contracts must be obtained, reviewed and analyzed for the appropriate DFARS clauses to include*).
- iii. Funding is available and appropriate for the acquisition
- iv. Supplies to be provided are within scope of the intended vehicle.

(2) Collect the information for reporting purposes in the format provided below and report by 15 Oct. each year.

### ***B. Assisted Acquisition of Services (non-DoD agency places order or awards contract for DoD use)***

(1) For assisted acquisitions of services above the Simplified Acquisition threshold placed against non-DoD contracts, program offices or requiring individuals must document the record with the following:

- i. 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.

- ii. Business decisions justifying the use of non-DoD, Contracting Officers must determine that fees associated with the acquisition are fair and reasonable. Notify the customer of any fees associated with the acquisition, and the total costs prior to sending funds to a non-DoD agency. Document either the Acquisition Strategy; Acquisition Plan; Business Clearance Memorandum; or Memo to File to support the business decision to use Non-DoD/Interagency contract vehicles. Documentation must include name of person and date contacted.
- iii. Approvals required by Navy-Marine Corps Acquisition Regulations Supplement 5237.170-3(b), at the threshold indicated in the SCPPM document, [Acquisition of Services](#) have been obtained.
- iv. DoD/DoN unique terms and conditions that are provided to the assisting activity and to be included in the contract award (see toolbox for DFARS Clauses/provisions).
- v. Funding is available and appropriate for the acquisition.
- vi. Services to be provided are within scope of the intended vehicle.

(2) Collect the information for reporting purposes in the format provided below and report by 15 Oct each year.

***c. Direct Acquisition of Supplies*** (SPAWAR Contracting Officer places order on non-DoD vehicle)

1. For direct acquisitions of supplies over the simplified acquisition threshold placed against non-DoD contracts, the Contracting officer must document for the record the following:
  - i. 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.
  - ii. DoD/DoN unique terms and conditions are incorporated (*see toolbox for DFARS clauses/provisions. This list applies to orders under GSA Federal Supply Schedule contracts only. The negotiator must obtain, review and analyze the basic contracts of other agencies to determine the appropriate DFARS clauses to include.*)
  - iii. Funding is available and appropriate for the acquisition.
  - iv. Supplies to be provided are within scope.
  - v. Collect the information for reporting purposes in the format provided below and report by 15 Oct each year.

2. SSC-PAC specific guidance is linked in the Toolbox below.

***d. Direct Acquisition of Services*** (SPAWAR Contracting office places order on non-DoD vehicle)

- (1) For direct acquisitions of services over the simplified acquisition threshold placed against non-DoD contracts, the Contracting officer must document for the record the following:
  - i. Compliance with the approval requirements of the [Navy-Marine Corps Acquisition Regulations Supplement 5237.170-2](#), at the threshold indicated in the SCPPM document, [Acquisition of Services](#) have been obtained.

- ii. 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.
  - iii. Business decisions justifying the use of non-DoD, Contracting Officers must determine that fees associated with the acquisition are fair and reasonable. Notify the customer of any fees associated with the acquisition, and the total costs prior to sending funds to a non-DoD agency. Document either the Acquisition Strategy; Acquisition Plan; Business Clearance Memorandum; or Memo to File to support the business decision to use Non-DoD/Interagency contract vehicles. Documentation must include name of person and date contacted.
  - iv. DoD/DoN unique terms and conditions are incorporated (*see toolbox for DFARS clauses/provisions. This list applies to orders under GSA Federal Supply Schedule contracts only. The negotiator must obtain, review and analyze the basic contracts of other agencies to determine the appropriate DFARS clauses to include.*)
  - v. Funding is available and appropriate for the acquisition.
  - vi. Services to be provided are within scope of the intended vehicle.
- (2) Collect the information for reporting purposes in the format provided below and report by 15 Oct each year.
- (3) SSC-PAC specific guidance is linked in the Toolbox below.

***e. Metric/Record Data***

At a minimum, the Program office/Requirements activity shall record and report the data in the table as indicated below. It is recommended that records be maintained electronically to facilitate reporting and in anticipation of specific reporting requirements from OSD. Records must be maintained for at least 2 years following completion of the resultant contract/order. (Ref. NMCARS Change 03-14, DoN Guidelines for Proper Use of Non-DoD Contracts dtd. 14 Dec, 2004 and ASN(FM&C) Proper Use of Non-DoD Contracts dtd. 04 May, 2006.

Part	
I	<p><b>Reporting Activity</b></p> <ul style="list-style-type: none"> <li>a. Reporting/Requiring organization (major Claimant) w/DODAAC (name/address)</li> <li>b. Requiring Activity w/DODAAC</li> </ul>
II	<p><b>Requirement (Supplies/Service)</b></p> <ul style="list-style-type: none"> <li>a. Description of supply or service</li> <li>b. Funding (amount, type of funds)</li> <li>c. Federal Supply Class or Federal Service Code</li> <li>d. North Atlantic Industry Classification System (NAICS)</li> </ul>
III	<p><b>Requirement Identification</b></p> <ul style="list-style-type: none"> <li>a. Document control number (PR number)</li> <li>b. Date of Action</li> <li>c. Type of action (new requirement, change, funding action)</li> <li>d. Rationale for use of non-DoD contract</li> <li>e. Decision Authority</li> <li>f. Date of decision</li> <li>g. Additional cost/fee for use of non-DoD vehicle (i.e.GSA fees)</li> </ul>

IV	<p><b>Assisting Activity (other than DoD places order)</b></p> <p>a. Contracting Office (Department, agency, address)</p> <p>b. Contact information for Contracting Officer</p> <p>c. Contract Number/Delivery/task order number</p> <p>d. Assisting Activity Federal Procurement Data System- New Generation (FPDS-NG) or Defense Contract Action Data System (DCADS) information/link</p>
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## 5. APPROVALS

- a. **Approval Thresholds (Caution: See aforementioned policy concerning any inter-agency agreements over \$100,000 with GovWorks)**

### ASSISTED ACQUISITION OF SUPPLIES/SERVICES

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

<u>Dollar Threshold</u>	<u>Review Authority</u>	<u>Approval Authority</u>
\$100K to \$5 million	PM/DPM	PM/DPM
\$5M to \$15 million	PM/DPM	As applicable: SPAWAR Deputy Commander, or SPAWAR Director of Contracts, or SPAWAR Director Installations & Logistics, or SPAWAR Chief Engineer, or SPAWAR CIO, PEO-C4I & PEO Space Systems, or PEO-IT, or PEO-Space Systems
>\$15 million to \$50 million	PEO/SPAWAR <b>2.0</b>	HCA – Commander SPAWAR HQ
>\$50 million	PEO/SPAWAR <b>2.0</b> /HCA Commander SPAWAR	DASN ( <b>AP</b> )

### ASSISTED ACQUISITION OF SUPPLIES/SERVICES

**SPAWAR Field Activity Thresholds** for Approval of funds leaving the command for execution on

Non-DoD contract vehicles. (SSC-PAC specific guidance is in the toolbox below)

<b><u>Dollar Threshold</u></b>	<b>Review Authority</b>	<b>Approval Authority</b>
\$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 <b>2.0</b>	HCA – Commander SPAWAR HQ
>\$50 million	SPAWAR <b>2.0</b> /HCA Commander SPAWAR HQ	DASN ( <b>AP</b> )
> \$500 million	<b>2.0</b> /HCA/DASN ACQ	ASN( <b>RDA</b> )

**DIRECT ACQUISITIONS OF SUPPLIES/SERVICES**

**SPAWAR HQ & PEO Thresholds** for Approval of acquisitions using non-DoD contract vehicles (SSC-PAC specific guidance is in the toolbox below)

<b><u>Dollar Threshold</u></b>	<b>Review Authority</b>	<b>Approval Authority</b>
Less than or equal to \$3 million	Negotiator/PCO	SPAWAR HQ PCO
>\$3 million to \$5 million	PCO	SPAWAR <b>2.0</b> Branch Head
>\$5 million to \$15 million	SPAWAR <b>2.0</b> Branch Head	SPAWAR <b>2.0/2.0A</b>
>\$15 million to \$50 million	SPAWAR <b>2.0/2.0A</b>	HCA - Commander SPAWAR HQ
>\$50 million	SPAWAR <b>2.0/2.0</b> A/HCA Commander SPAWAR HQ	DASN ( <b>AP</b> )

**DIRECT ACQUISITIONS OF SUPPLIES/SERVICES**

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

<b><u>Dollar Threshold</u></b>	<b>Review Authority</b>	<b>Approval Authority</b>
Less than or equal to \$3 million	TBD by Local Procedures	TBD by Local Procedures
>\$3 million to \$50 million	TBD by Local Procedures	Executive Director SSC/Chief of the Contracts Office

## 6. MISCELLANEOUS

### TOOL BOX

#### Guidance

- (1) DPAP – [Interagency Acquisitions](#)
- (2) OMB – OFPP guide: [Interagency Acquisitions](#)
- (3) Meeting DoD Requirements Through Interagency Acquisition, DASN(A&LM) 20 November, 2008, DPAP 31 October 2008 and Improving the Management and Use of Interagency Acquisitions 06 June 2008 memoranda
- (4) DASN (A&LM) Memo of 4 April 2008, Interagency Acquisition with Dept. of Interior/Acquisition Services Directorate (Furniture restriction)
- (5) COMSPAWARCOM Memorandum, 17 December 2004, Proper Use of Non-DoD Contracts
- (6) ASN(RDA) Memorandum, 20 December 2004, Proper Use of Non-DoD Contracts
- (7) AT&L Memorandum, 29 October 2004, Proper Use of Non-DoD Contracts
- (8) Suggested DFARS Clauses and Agency unique provisions to include in GSA FSS orders/contracts
- (9) Comments on Further Delegation of Authority to Approve Economy Act Orders- General Counsel of the Navy
- (10) Non-Economy Act Orders with Non-DoD Agencies

#### SSC-Pacific Guidance

- (10) [Procedures for Acquiring Supplies and Services from an Agency Outside DOD](#) (Nov 2005)

#### Sample Determination

- (11) [Acquisition for Supplies & Services Sample Determination Memo](#) (Updated 1/29/16)

#### IPR Review Form

- (12) [2.0 Review of IPR for Non-DoD Contract Action](#) (Updated 7/29/14)