



ADMINISTRATIVE INSTRUCTION 120

PROPER USE OF NON-DoD CONTRACTS AND INTERAGENCY ACQUISITIONS

Originating Component: Director of Administration and Management

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Incorporates and Cancels: Washington Headquarters Services Operating Instruction 50-2, "Proper Use of Non-DoD Contracts and Interagency Agreements," August 18, 2010

Approved by: Barbara A. Westgate, Director, Washington Headquarters Services
Change 1 (Administrative)
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Purpose: In accordance with the authority in DoD Directive 5110.04 and DoD Instruction 5025.01, this issuance implements the requirements in Subpart 217.770 of the Defense Federal Acquisition Regulation Supplement (DFARS), assigns responsibilities, and provides guidance and procedures for reviewing and approving orders placed for supplies and services under non-DoD contracts, whether through direct acquisition or assisted acquisition at all dollar values.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to OSD, the Defense Agencies, and the DoD Field Activities that are serviced by the Washington Headquarters Services (WHS) Acquisition Directorate (AD) as the Single Enterprise Contracting Office (SECO), referred to in this issuance as the “requiring activities.”

1.2. POLICY. Pursuant to the Federal Acquisition Regulation (FAR), DFARS, and the January 18, 2008 and June 11, 2008 Director, Defense Procurement and Acquisition Policy (DPAP) Memorandums:

- a. Interagency acquisition will be used whenever it is the best method to satisfy mission needs, as determined by customer requirements, delivery schedule, non-availability of a suitable contract within DoD, cost effectiveness (including cost and servicing agency fees), contract administration (including oversight), and any other applicable factors.
- b. The scope of this issuance has been broadened beyond DFARS minimums to cover interagency acquisitions at all dollar values.

1.3. SUMMARY OF CHANGE 1.

This change is administrative and, in accordance with the March 21, 2022 Directives Division Memorandum:

- a. Reassigns the Director of Administration, Office of the Deputy Chief Management Officer of the Department of Defense responsibilities and duties to the Director of Administration and Management (DA&M) in accordance with Section 901 of Public Law 116-283, which eliminated the position of the Deputy Chief Management Officer of the Department of Defense effective January 1, 2021, and the January 11, 2021 Deputy Secretary of Defense Memorandum, which implemented Public Law 116-283 and reestablished the DA&M.
- b. Updates organizational titles and references for accuracy.

SECTION 2: RESPONSIBILITIES

2.1. DIRECTOR, WHS. In accordance with the delegated authority in the March 11, 2005 DPAP Memorandum, the Director, WHS, acts as Senior Procurement Executive for all actions processed by WHS AD.

2.2. DIRECTOR, WHS AD. Under the authority, direction, and control of the Director, WHS, the Director, WHS AD:

- a. Exercises SECO authorities regarding the interagency acquisition process and oversees contractual assistance to all serviced organizations.
- b. Ensures retention of all documents (including emails) concerning orders placed for supplies and services under non-DoD contracts, whether through assisted acquisition or direct acquisition in accordance with Item 010 of the National Archives General Records Schedule 1.1.

2.3. DIRECTOR, WHS FINANCIAL MANAGEMENT DIRECTORATE (FMD). Under the authority, direction, and control of the Director, WHS, the Director, WHS FMD, ensures that all funds are certified in accordance with the procedures and policies outlined in Chapters 3 and 18 of Volume 11A, DoD 7000-14-R.

2.4. GENERAL COUNSEL, WHS AND PENTAGON FORCE PROTECTION AGENCY (GC WHS/PFPA). Under the authority, direction, and control of the General Counsel of the Department of Defense, GC WHS/PFPA, performs a legal sufficiency review of all:

- a. Interagency agreements (IAs) for assisted acquisitions.
- b. Direct acquisitions in accordance with current WHS AD legal review thresholds.

2.5. REQUIRING ACTIVITY HEADS. The requiring activity heads:

- a. Ensure the servicing contracting office and WHS FMD have all necessary information to process actions.
- b. Provide support to the servicing contracting office during the entire acquisition lifecycle.

SECTION 3: PROCEDURES

3.1. PROCUREMENT REQUEST (PR) PACKAGE. The acquisition process begins when the requiring activity recognizes that it needs support outside of the government (e.g., a contractor) to meet its roles, functions, and missions in current or future operations. As in all requests for contract action, the requiring activity must provide a PR package to WHS AD.

a. The PR package for an assisted acquisition will not initially include evidence of funding commitment, but will include a draft best procurement approach determination, and, if applicable, a draft of determination and findings (D&F) in accordance with Sections 1535 through 1536 of Title 31, United States Code (U.S.C.), also known and referred to in this issuance as “the Economy Act.” These documents are explained in Paragraph 3.2.

b. In contrast, the PR package for a direct acquisition (i.e., when the requiring activity uses the SECO to place an order against a non-DoD contract) does require evidence of funding commitment but will not include a draft best procurement approach determination or a draft Economy Act D&F.

3.2. ASSISTED ACQUISITIONS.

a. Once a need for contractor support has been identified, the requiring activity will create a PR package in accordance with Paragraph 3.1.

(1) The requiring activity will draft a best procurement approach determination in accordance with Subpart 17.502-1(a)(1) of the FAR; Subpart 217.502-1 (a)(1) and Subpart 217.770 of the DFARS; and the June 6, 2008 Office of Federal Procurement Policy (OFPP) Memorandum. The determination must also address:

(a) Non-availability of other suitable DoD contracts.

(b) Small business considerations.

(c) Promoting and providing competition to the maximum extent practicable.

(2) If the proposed approach is subject to the Economy Act, the requiring activity must draft a D&F document in accordance with Subpart 17.502-2 of the FAR. Otherwise, the requiring activity will indicate the appropriate non-Economy Act authority in its PR package.

b. The requiring activity will provide the PR package to WHS AD for review. WHS AD is not required to provide input on all documents in the PR package, as this is ultimately the responsibility of the servicing agency contracting officer. However, WHS AD must concur on the best procurement approach determination, in accordance with Subpart 17.502-1(a)(1) of the FAR.

(1) If WHS AD disapproves the assisted acquisition, the PR package will be returned to the requiring activity, with WHS AD’s rationale, within 7 business days. The requiring activity

may request that its Senior Procurement Executive review the package for a final decision in accordance with the June 6, 2008 OFPP Memorandum.

(2) If WHS AD approves the assisted acquisition, it will provide written concurrence to the requiring activity within 7 business days of receiving the PR package.

c. The requiring activity must submit its request for committed funds, with written proof of WHS AD concurrence, to WHS FMD in accordance with Chapters 3 and 18 of Volume 11A of DoD 7000.14-R.

d. WHS AD will work with the requiring activity to:

(1) Finalize the best procurement approach determination. As part of this determination, WHS AD will provide the DoD-unique terms, conditions, and requirements that the servicing agency must incorporate into the order.

(2) Finalize the Economy Act D&F (if applicable).

(3) Verify that the servicing agency has certified that it will comply with defense procurement requirements in accordance with Section 801(b) of the National Defense Authorization Act for Fiscal Year 2008, or that the servicing agency has a waiver from Section 801(b) certification requirements that has been approved by the Director, DPAP. If appropriate, WHS AD will assist the requiring activity with the submission of its request for a waiver from Section 801(b) certification requirements, in accordance with the September 18, 2009 DPAP Memorandum.

e. The requiring activity will draft an IA with assistance from WHS AD. An IA is required for all assisted acquisitions regardless of dollar value, in accordance with the June 6, 2008 OFPP Memorandum. The IA will be formatted as:

(1) For assisted acquisitions greater than \$500,000: The October 31, 2008 DPAP Memorandum mandates the use of the interagency acquisition guidance provided in the June 6, 2008 OFPP Memorandum. The June 6, 2008 OFPP Memorandum requires agencies to create an IA containing the elements listed in its Appendix 2 or follow the model agreement in its Appendix 3.

(2) For assisted acquisitions equal to or less than \$500,000: The format provided in Appendices 2 and 3 of the June 6, 2008 OFPP Memorandum should be utilized to the maximum extent practicable.

(3) Regardless of format, the IA must include the requiring activity's DoD Activity Address Code. The servicing agency needs the DoD Activity Address Code in order to comply with the contract reporting requirements of Subpart 4.6 of the FAR.

f. After all documents have been completed, the requiring activity will provide the WHS AD with the PR package for review. Within 3 business days of receiving a completed PR package, WHS AD will coordinate with GC WHS/PFPA for a legal sufficiency review. GC WHS/PFPA will complete the legal sufficiency review within 5 business days of receipt from WHS AD.

g. Once the final package is approved, the requiring activity may initiate work with the servicing agency for contract placement. The requiring activity must provide the servicing agency with any additional requested information.

h. Over the course of the IA, the requiring activity will:

(1) Provide to the servicing agency a qualified contracting officer's representative (if applicable) to oversee service contract performance.

(2) Ensure contractor performance information is recorded in accordance with the DoD Class Deviation 2013-O0018.

(3) Review the IA annually in accordance with the June 6, 2008 OFPP Memorandum and the October 31, 2008 DPAP Memorandum.

(4) Update the points of contact in the IA, as necessary.

(5) Assist WHS FMD by monitoring the contract's balance of funds with the servicing agency, assisting invoice and payment processes, and facilitating the reconciliation of funds for the return of excess or expired funds held by the servicing agency.

3.3. DIRECT ACQUISITIONS. For all dollar values, the requiring activity and WHS AD contracting officer will follow the normal contracting procedures in the FAR and DFARS, as well as DoD and WHS AD policy. No IA is required. The contracting officer must include a best procurement approach determination in the contract file, in accordance with Subpart 17.502-1 of the FAR for all direct acquisitions, regardless of dollar value. This determination also must address small business considerations and competition requirements in accordance with Section 2304 of Title 10, U.S.C. as implemented in Subpart 6.1 of the FAR.

GLOSSARY

G.1. ACRONYMS.

| | |
|-------------|--|
| AD | Acquisition Directorate |
| D&F | determination and findings |
| DFARS | Defense Federal Acquisition Regulation Supplement |
| DPAP | Defense Procurement and Acquisition Policy |
| FAR | Federal Acquisition Regulation |
| FMD | Financial Management Directorate |
| GC WHS/PFPA | General Counsel, Washington Headquarters Services and Pentagon Force Protection Agency |
| IA | interagency agreement |
| OFPP | Office of Federal Procurement Policy |
| PR | procurement request |
| SECO | Single Enterprise Contracting Office |
| U.S.C. | United States Code |
| WHS | Washington Headquarters Services |

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

assisted acquisition. Defined in Subpart 2.101 of the FAR.

contract. Defined in Subpart 2.101 of the FAR.

direct acquisition. Defined in Subpart 2.101 of the FAR.

Economy Act order. The acquisition of supplies or services by one agency for another agency justified as being in the best interest of the government because it is more convenient and cheaper than directly contracting with a private source. See Section 1535 of Title 31, U.S.C.

IA. An agreement between agencies containing the terms and conditions governing an assisted acquisition or a direct acquisition. There are two legal authorities for IAs:

interagency acquisition. Defined in Subpart 2.101 of the FAR.

Non-Economy Act order. The acquisition of supplies or services by one agency for another agency as justified by a specific statutory authority other than Section 1535 of Title 31, U.S.C.

requiring activity. OSD, the Office of the DA&M, the Defense Agencies, and the DoD Field Activities that are serviced by the WHS AD as SECO. The requiring activity is the most familiar with the technical requirements of an acquisition.

requiring activity heads. The commander or director of the requiring activity, usually of the Senior Executive Service or flag or general officer level, who has authority over personnel and material requiring support.

REFERENCES

- Defense Federal Acquisition Regulation Supplement (DFARS), current edition
- Defense Procurement and Acquisition Policy Memorandum, “Delegation of Authority,” March 11, 2005¹
- Defense Procurement and Acquisition Policy Memorandum, “Interagency Acquisitions,” January 18, 2008
- Defense Procurement and Acquisition Policy Memorandum, “Interagency Acquisitions,” June 11, 2008
- Defense Procurement and Acquisition Policy Memorandum, “Meeting Department of Defense Requirements through Interagency Acquisition,” October 31, 2008
- Defense Procurement and Acquisition Policy Memorandum, “National Defense Authorization Act for Fiscal Year 2008 (Public Law No. 110-181), Section 801, Internal Controls for Procurements on Behalf of the Department of Defense by Certain Non-Defense Agencies, Requests for —Waiver,” September 18, 2009
- Washington Headquarters Services Memorandum, “Approval of Administrative Changes to Office of the Director of Administration and Management (ODA&M) DoD Issuances, Phase 2,” March 21, 2022
- DoD 7000.14-R, Volume 11A, “DoD Financial Management Regulation: Reimbursable Operations Policy,” November 2014, as amended
- DoD Class Deviation 2013-O0018, “Past Performance Evaluation Thresholds and Reporting Requirements,” September 24, 2013²
- DoD Directive 5110.04, “Washington Headquarters Services (WHS),” March 27, 2013
- DoD Instruction 5025.01, “DoD Issuance Program,” August 1, 2016, as amended
- Deputy Secretary of Defense Memorandum, “Disestablishment of the Chief Management Officer of the DoD and Realignment of Functions and Responsibilities,” January 11, 2021
- Deputy Secretary of Defense Memorandum, “Re-establishment of the Assistant to the Deputy Secretary of Defense for Intelligence and Oversight and the Director of Administration and Management,” January 11, 2021
- Federal Acquisition Regulation, current edition
- National Archives General Records Schedule 1.1, “Financial Management and Reporting Records,” current edition
- Office of Federal Procurement Policy Memorandum, “Improving the Management and Use of Interagency Acquisitions,” June 6, 2008
- Public Law 116-283, “William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021,” January 1, 2021
- United States Code, Title 10, Section 2304
- United States Code, Title 31

¹ Available through WHS AD.

² Available at <http://www.acq.osd.mil/dpap/policy/policyvault/USA005039-13-DPAP.pdf>