OFFICE OF THE SECRETARY OF DEFENSE

WASHINGTON, DC 20301

MEMORANDUM FOR: SEE DISTRIBUTION

JUN 14 2007

SUBJECT: DoD-Wide Prohibition to Order, Purchase, or Otherwise Procure Property or Services in an Amount in Excess of $100,000 through the GovWorks Federal Acquisition Center of the Department of the Interior's National Business Center

In accordance with section 811 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), the Department of Defense Inspector General (DoDIG) and the Department of Interior Inspector General (DoI IG) jointly have completed a review of the Department of Interior's (DoI's) contracting support to the Department of Defense (DoD). By letter of May 7, 2007 (Attachment 1), the DoD IG stated that "GovWorks, DoI's franchise fund, has not adequately improved its funding and contracting practices" and recommended to the Under Secretary of Defense for Acquisition, Technology, and Logistics (AT&L) that he restrict DoD Components from utilizing "GovWorks" for procurements in excess of $100,000, until DoI has taken corrective action.

You are directed to take immediate action to ensure that no interagency agreements for requirements in excess of $100,000 are entered into by your organization with GovWorks, the Federal Acquisition Center of the Department of the Interior's National Business Center, unless a determination has been made in writing by the Under Secretary of Defense (AT&L) that it is necessary in the interest of the Department to continue to procure property or services through GovWorks. Additionally, you may not submit multiple purchase requests for the same requirement cumulatively exceeding $100,000. These restrictions include contracts that are incrementally funded as well as the award of options on existing contracts.

You must ensure that any funds provided to GovWorks before the date of this memorandum, in excess of $100,000, that have not already been placed on contract are returned to the Department, unless a written determination to continue has been made the by USD(AT&L). Requests to continue must be forwarded to the Director, Defense Procurement and Acquisition Policy, for review. GovWorks is authorized to continue to perform contract administration on all existing contracts.

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A letter notifying the Department of the Interior of the restrictions outlined in this memorandum was issued by the Director, Defense Procurement and Acquisition Policy on May 31, 2007 (Attachment 2). The aforementioned restrictions shall remain in effect until rescinded.

This restriction does not apply to the Department of the Interior's Southwest Branch of the National Business Center since the recent DoDIG review has shown substantial improvements in compliance with Defense procurement requirements. Accordingly, the DoDIG recommended that DoD continue to use the Southwest Acquisition Branch for its procurements where it is in the Department's best interest. The POCs are Mr. Michael Canales (703-695-8571 or via e-mail, at michael.canales@osd.mil) and Ms. Kathryn Gillis (703-697-6875 or via e-mail at kathryn.gillis@osd.mil.

Kenneth J. Krieg
Under Secretary of Defense
(Acquisition, Technology, and Logistics)

Tina Jonas
Under Secretary of Defense
(Comptroller)

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MAY – 7 2007

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY, AND LOGISTICS

SUBJECT: Audit of DoD Acquisitions Through the Department of the Interior GovWorks Contracting Center

On October 11, 2006, we initiated our second audit of DoD acquisitions through the Department of the Interior (DOI).[1] Section 811(a)(2) of the "National Defense Authorization Act for Fiscal Year 2006" (Public Law 109-163) (the Authorization Act) requires a second audit of each non-Defense agency of the Federal Government that procured property or services in excess of $100 million on behalf of DoD during FY 2006 and was found not fully compliant with Defense procurement requirements. At the end of the second audit, the Authorization Act requires us to determine whether DoD should continue to use the non-Defense agency for acquisition support.

We have visited both of the DOI contracting centers authorized to do interagency contracting (GovWorks, in Herndon, Virginia; and the Southwest Acquisition Branch, at Fort Huachuca, Arizona) and have examined contracting practices and compliance with DoD policies and appropriation law. Additionally, we evaluated the effectiveness of DOI and DoD actions in correcting the problems we identified during our first audit.

This memorandum is to inform you that the Southwest Acquisition Branch of DOI has made substantial improvement in compliance with Defense procurement requirements. We recommend that DoD continue to use the Southwest Acquisition Branch for its procurements where DoD management concludes that it is in best interest of DoD. However, GovWorks, DOI's franchise fund, has not adequately improved its funding and contracting practices. Accordingly, we recommend that you restrict DoD Components from making GovWorks procurements in excess of the limits ($100,000) at Section 811(d)(2) of the Authorization Act until DOI has taken corrective action. The basis for our conclusions is summarized in the following paragraphs.

First Audit. Our first audit concluded that procedures for purchasing through DOI did not comply with laws and regulations. As a result, DoD customers were not assured of best value or balanced contract risk. We identified the following issues based on a review of 49 contracts awarded by the two DOI contracting centers.

- Contracts were generally awarded in a sole-source environment for which price reasonableness was not supported. The Southwest Acquisition Branch improperly delegated contracting responsibilities. Specifically, a DoD employee without a contracting officer warrant awarded contracts valued at $135 million.

- Technical reviews of contractor proposals were inadequate and an appropriate level of Government surveillance was not evident.

[1] Audit of FY 2006 and FY 2007 DoD Purchases Made Through the Department of the Interior (Project No. D2007-DOOOCF-0039.000)

- DoD customers permitted GovWorks to retain and use expired funds, potentially violating the Antideficiency Act. We identified 22 potential violations of the Antideficiency Act. Additionally, we identified $393 million potentially expired appropriations on GovWorks books.

- The DOI Southwest Acquisition Branch placed orders valued at $238.7 million through the Open Market Corridor before the system obtained security accreditation and agency head approval.

- A 10-year, $100 million lease funded by the Counterintelligence Field Activity through GovWorks may have violated the Antideficiency Act, circumvented congressional review, and annually cost $2.7 million more than if the General Services Administration awarded it.

These findings and recommendations were presented to DoD and DOI in DOI Inspector General Report No. XIN-MOA-0018-2005, "Audit of FY 2005 Department of the Interior Purchases Made on Behalf of the Department of Defense," January 9, 2007; and DoD Inspector General Report No. D-2007-044, "FY 2005 DoD Purchases Made Through the Department of the Interior," January 16, 2007.

Second Audit. Our second audit found that the Southwest Acquisition Branch had greatly improved its operations since our first audit. However, GovWorks had made little improvement in reducing its inventories of expired DoD appropriated funds or stopping its practice of using expired funds to make Defense procurements. Additionally, GovWorks has not honored a DoD request to halt the use of advance billings. Finally, we found that GovWorks was not compliant with section 803 of the "National Defense Authorization Act for FY 2002," (Public Law 107-107) requirements as implemented by DoD in the Defense Federal Acquisition Regulation Supplement (DFARS) 208.405-70, "Other ordering procedures."

Continued Use of Expired Appropriations to Make DoD Purchases. GovWorks has made very little progress in deobligating expired funds. As late as March 2007, GovWorks continued to use expired funds to make purchases on behalf of DoD well beyond the expiration dates of the funds. The DOI Inspector General and my auditors have identified 389 potential violations, valued at $69.5 million, of the Antideficiency Act resulting from the use of funds identified as potentially expired during our first audit. A majority of the potential Antideficiency Act violations relate to bona fide needs issues for the purchases of products. A typical example is as follows. On January 4, 2007, a GovWorks contracting officer awarded a General Services Administration Federal supply schedule order for the purchase of file cabinets. The contracting officer used FY 2006 OSD-wide operation and maintenance funds that were available for use only until September 30, 2006. GovWorks accepted the funds for this purchase on August 2, 2006, when the funds were still available for use.

The potential violations that we have identified are only a small portion of the total number of potential violations. We have reviewed only 50 of 1,970 Military Interdepartmental Purchase Requests (MIPRs), valued at about $200 million, that our first audit identified as citing expired funds. This use of expired funds was first discussed with GovWorks in December 2005. In February 2006, the DOI Inspector General highlighted these problems to the Deputy Secretary, DOI. On March 27, 2006, our office and the DOI Inspector General jointly presented this issue in our briefing to the Senate Armed Services Committee. A series of meetings were held among our office, your office, the Under Secretary Defense (Comptroller)/Chief Financial Officer, and senior management within DOI, in an attempt to preclude future funding problems. The Under

Secretary Defense (Comptroller)/Chief Financial Officer issued memorandums on March 27, 2006, and October 16, 2006, in an attempt to establish the ground rules for making interagency acquisitions. Additionally, your Director, Defense Procurement and Acquisition Policy sent a letter to DOI on January 29, 2007, expressing his concerns with the contracting and funding issues. Despite these efforts, the problem has continued.

Continued Use of Advance Billing. The Under Secretary Defense (Comptroller)/Chief Financial Officer concluded that a large obstacle to deobligating expired funds has been GovWork's practice of billing MIPRs upon receipt, in advance of the work required by the MIPR. The use of advance billing was initially required by legislation that created GovWorks, but the law was changed and GovWorks is no longer required to use advance billing. When advance billing is used, MIPRs used to fund acquisitions are shown on DoD financial records to be fully expended, and DoD cannot easily identify the MIPR funds as recoverable through a deobligation action. The Comptroller's office, on March 1, 2007, issued a notice "Advance Payments to Non-Department of Defense (DoD) Federal Agencies for Interagency Acquisitions" to DoD Components and to GovWorks. The notice states that the practice of advance billing was to no longer to be used for DoD procurements. Specifically, the memorandum stated:

> In accordance with current DoD policy, all DoD Components are directed to stop the practice of advancing funds to non-DoD federal entities unless the DoD Components are specifically authorized by law, legislative action, or Presidential authorization. This includes the practice of permitting advance billings without the receipt of goods or services. All existing advancements retained by a non-DoD federal agency must be returned.
>
> Components requesting goods or services from a non-DoD federal agency must be fully aware of the outside agency's billing practices and take appropriate action to ensure DoD funds are not disbursed in advance of contract performance. In addition, Components must work with their servicing disbursement sites to revise trading partner agreements to restrict other federal agencies' ability to withdraw funds prior to the delivery of goods or services performed. . . .

Despite the guidance, GovWorks has continued to use advance billing. Since March 1, 2007, GovWorks has received almost 230 MIPRs from DoD activities totaling $127.4 million that were all advance billed. GovWorks staff have told us that their billing process is automated and that they cannot halt the practice of advance billing until the automated system is changed. GovWorks could not provide a milestone date when the change to its automated system would be completed. We believe that GovWorks should not accept DoD MIPRs until they can halt advance billing.

Section 803 and DFARS 208.405-70 Compliance. During our second audit, we reviewed 20 contracts at GovWorks. Four of the 20 contracts reviewed were for furniture buys. For three of these contracts, contracting officers did not obtain three independent quotes. Instead, furniture dealers obtained quotes from selected vendors and provided the quotes to DoD requiring activities. The DoD requiring activities then provided the quotes to GovWorks contracting officers. Under this approach, GovWorks contracting officers were totally removed from the competitive process, did not provide any market research to identify potential sources, and did not oversee over how the quotes were obtained. Accordingly, GovWorks contracting officers did not meet the intent of Section 803 and its implementing regulation DFARS 208.405-70. Another five contracts for hand-held radios, helmet pads, tactical torch kits, and testing equipment did use e-Buy

but did not obtain the three quotes required by DFARS 208.405-70, and contracting officer efforts to meet that goal were not documented in the files.

Overall, we are not seeing progress at GovWorks toward correcting the deficiencies that we identified in our first audit. Accordingly, we see no reason to do further audit work at GovWorks and believe that it is in DoD's best interest to impose the procurement restrictions of the Authorization Act until these problems have been corrected. Nevertheless, section 811(e)(1) of the Authorization Act permits you to waive this restriction for up to 1 year if you determine in writing that it is necessary in the interest of the DoD to continue to procure property and services through GovWorks.

We expect to issue our draft report in June 2007. It will provide greater detail on the issues we have identified. Please contact Mr. Terry L. McKinney at (703) 604-9288 if you have questions about our audit work at DOI or the recommendations contained here.

Claude M. Kicklighter

cc:
Under Secretary of Defense (Comptroller)/Chief Financial Officer
Director, Defense Procurement and Acquisition Policy
Inspector General, DOI

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MAY 31 2007

Ms. Nina Rose Hatfield
Deputy Assistant Secretary for
Business Management & Wildland Fire
U.S. Department of Interior
1849 C Street NW
Washington, DC 20240

Dear Ms. Hatfield:

Thank you for your letter dated May 23, 2007. While we are encouraged by the noted substantial improvement in compliance with Defense procurement requirements by the Southwest Acquisition Branch, we continue to be disappointed by the findings with regard to the support provided to DoD by GovWorks as identified in the attached May 7, 2007 Department of Defense (DoD) Inspector General (DOD IG) letter to the Under Secretary of Defense for Acquisition, Technology and Logistics (AT&L).

In his letter regarding the recently concluded audit of the Department of the Interior's contracting support to DoD required by section 811 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163), the DoD IG concluded that "GovWorks, DoI's franchise fund, has not adequately improved its funding and contracting practices" and recommended the Under Secretary of Defense (AT&L) restrict DoD Components from utilizing GovWorks in accordance with section 811 (d) of the Act. The purpose of this letter is to notify you that we concur with the DoD IG's recommendation.

We direct that no interagency agreement in excess of $100,000, be accepted by GovWorks Federal Acquisition Center of the Department of Interior's National Business Center from DoD unless a determination has been made in writing by the Under Secretary of Defense (AT&L) that it is "necessary in the interest of the Department to procure the particular property or services...". This restriction shall remain in effect until rescinded. As requested previously, DoI must cease the practice of advanced funding and must comply with DoD's policy of "no advance" payments with respect to all interagency agreements.

You are advised that any funds in excess of $100,000 provided through an interagency agreement to GovWorks before the date of this letter that have not already been placed on contract by GovWorks must be returned to the Department immediately. GovWorks should continue to provide contract administration of all existing contracts.

In addition to the above, we must insist that no Contracting Officer who was involved with any of the potential Anti-Deficiency Act violations previously identified conduct any future contracting actions on behalf of DoD until those potential violations are resolved.

We are available to meet with you and your team at your earliest convenience to discuss this matter. My POC is Mr. Michael Canales and he can be reached at 703-695-8571 or via e-mail, at michael.canales@osd.mil.

Sincerely,

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Cc: Douglas J. Bourgeois, DoI