OFFICE OF THE UNDER SECRETARY OF DEFENSE
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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

JAN 1 8 2008

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY (POLICY AND PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION MANAGEMENT), ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
EXECUTIVE DIRECTOR, ACQUISITION, TECHNOLOGY AND SUPPLY DIRECTORATE (DLA)
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Interagency Acquisition

References: (a) "Interagency Acquisition: A Shared Responsibility" memo dated September 20, 2005 (U) (copy attached)
(b) "Designation of Contracting Officer's Representatives on Contracts for Services in Support of Department of Defense Requirements" memo dated December 6, 2006 (U) (copy attached)
(c) "Non-Economy Act Orders" memo dated October 16, 2006 (U) (copy attached)
(d) "Past Performance Information" memo dated November 27, 2007 (U) (copy attached)
(e) "Proper Use of Non-DoD Contracts" memo dated October 29, 2004 (U) (copy attached)

The purpose of this memorandum is to update the Department's policy on interagency acquisition and provide clarification of existing policy.

Proper Use of non-DoD Contracts and non-DoD Contracting Organizations

The Department encourages the use of non-DoD contracts and the services of assisting agencies to meet DoD requirements, when it is done properly, is in the best interest of the Department, and necessary to meet our needs. Utilizing a non-DoD contract or a non-DoD contracting organization is ultimately a business decision. As part of that process, DoD customers should be cognizant of the advantages that exist for the Department in utilizing interagency contracting, and they should be knowledgeable of

what contracting options are available to them, while considering the fees charged by the assisting agency and costs incurred by the Department. The fees that we pay should be commensurate with the task and effort provided by the assisting agency. Program managers and requirements officials must ensure that any fees paid to the assisting agencies are reasonable for the tasks they perform.

Roles and Responsibilities:

Reference (a) addressed the importance of teamwork and communication in the interagency acquisition process. This requirement has not changed; however, I want to comment further on the roles and responsibilities of the program managers and requirements officials, assisting agencies and contracting officers. While the following does not encompass all roles and responsibilities, it represents a few I would like to focus on.

Program Managers and Requirements Officials: Program managers and requirements officials must ensure non-DoD contracting officers use competitive procedures to acquire DoD requirements to the maximum extent possible. In the case of a sole source procurement, program managers and/or requirements officials, after performing due diligence and market research, must provide the assisting agency with the written justification for the non-competitive or sole source determination/justification in accordance with FAR 6.3 or FAR 8.405-6 if using GSA's Multiple Award Schedules. When using multiple award contracts, program managers and requirements officials should assist in documenting that exceptions to the fair opportunity process, if appropriate, are necessary and meet the requirement for statutory exception (FAR 16.505). All justifications must be well supported and clearly documented in the contract file.

Program managers and requirements officials must ensure that statements of work/requirements clearly, precisely, and completely specify the item or service to be procured. Well defined and complete acquisition packages must be provided to the assisting agency. While it is the contracting officer's responsibility to ensure that contract management, oversight, and surveillance functions are clearly assigned (including the appointment of properly trained Contracting Officer Representatives (CORs) where appropriate) and correctly performed (see reference (b)), the program manager and requirements officials should be actively involved in the process.

With regard to Non-Economy Act procurements, program managers and requirements officials must ensure that the requirements detailed in Reference (c) are met, including the required review by a DoD contracting officer when the value of the action exceeds $500,000. The "Non-Economy Act Acquisition Package Checklist" and the list of "Requesting Official Responsibilities" in Reference (c) will assist in ensuring that statute, policy, and regulation are complied with under non-Economy Act actions.

Assisting Agencies: It is the assisting agency's responsibility to ensure its acquisition workforce is capable, qualified, and authorized to acquire the requested supplies/and or services on behalf of DoD. Ultimately under an assisted acquisition, the assisting agency decides whether a specific action will be competed. In addition, the assisting agency must ensure that DoD requirements met via an interagency acquisition, are compliant with statute, regulation and policy, even if it is more limiting than the practices under which the assisting agency is authorized to operate.

Assisting agencies also must comply with FPDS-NG reporting requirements and ensure determinations of price reasonableness are documented for every contract or order they execute on our behalf. In addition, when an assisting agency places a contract on the Department's behalf that meets DoD thresholds for capturing past performance information (see Reference (d) Attachment A), then contractor performance should be evaluated, the information provided to the contractor for review and comment, and when finalized, the information should be captured in the automated past performance information database.

Contracting Officer: In accordance with Reference (c), it is Department policy that a warranted DoD contracting officer review each non-Economy Act order greater than $500,000 to ensure it complies with statute, policy, regulation, and local component requirements and procedures.

Past Performance - A Shared Responsibility

Reference (a) emphasized that "teamwork and communication" are critical to the success of interagency acquisition and that all parties to an interagency acquisition must ensure that the duties and responsibilities of contract administration and oversight are clearly assigned and correctly performed. This is especially important in performing assessments of contractor past performance (FAR 42.15). Reference (d) provides the Department's latest policy on past performance information and emphasizes that past performance information should be captured for all contracts that meet DoD thresholds. Interagency acquisitions are not exempt from this requirement.

Clarification

Reference (e) provided process details for Military Departments and Defense Agencies utilizing non-DoD contracts or non-DoD contracting organizations. The procedures included "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)". This should not be interpreted as requiring non-DoD assisting agency contracting officers

to include DFARS or other agency specific clauses in their resulting contracts or orders, although this is acceptable. Alternatively, DoD officials and the civilian assisting agency contracting officer must collaboratively review the DoD requirements to ascertain whether there are non-DoD contract clauses that provide similar and sufficient coverage. If non-DoD contract clauses are insufficient, both parties shall mutually agree to include such coverage as necessary, through revision of the performance work statement, statement of work, statement of objectives, or otherwise. This process should also be followed when civilian agencies request work under DoD contracts.

Policy links, training opportunities, and other relevant information on Interagency Acquisition is available on the Defense Procurement and Acquisition Policy website at http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html#acquisition_policy_memos and the GSA website at http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=13.

Additional guidance on Non-Economy Act Orders can be found in Reference (c), which revised financial management policy for Non-Economy Act Orders. The memorandum includes important policy requirements, especially in the areas of justification, certification of funds, bona fide need and deobligation. In addition, it includes policy on severable services, non-severable services and excess or expired funds.

My POC for Interagency Acquisition is Mr. Michael Canales. He can be reached at michael.canales@osd.mil or at 703-695-8571.

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MEMORANDUM FOR: SEE DISTRIBUTION

Subject: Interagency Acquisition: A Shared Responsibility

On July 29, 2005, the United State Government Accountability Office (GAO) issued a report entitled "Interagency Contracting: Franchise Funds Provide Convenience, but Value to DoD is Not Demonstrated (GAO Report GAO-05-546)" which, among other things, emphasized to both the Department of Defense (DoD) and the assisting agencies the importance of understanding shared responsibilities in the interagency acquisition process. The report can be found at http://www.acq.osd.mil/dpap/specificpolicy/index.htm.

Teamwork and communication are critical to the success of interagency acquisitions. Although the Federal Acquisition Regulations state that it is ultimately the contracting officer's responsibility to determine if a procurement package is sufficient for use in a solicitation, order, or contract, it is incumbent upon the DoD customer to provide the assisting agency with sufficient detail concerning the requirement. When using an assisting agency to issue a solicitation, place an order, or issue a contract on our behalf, DoD customers must ensure that their requirements are clearly defined, and include measurable outcomes desired. Similarly, all parties to an interagency acquisition must ensure that the duties and responsibilities of contract administration and oversight are clearly assigned and correctly performed.

The decision to meet DoD mission needs via an interagency acquisition is a business decision. DoD and the assisting agencies have a shared responsibility when an interagency acquisition is determined to be the right approach to meet DoD requirements. This shared responsibility begins with acquisition planning and does not end until contract close-out. The DoD policy on the "Proper Use of Non-DoD Contracts" can be found at http://www.acq.osd.mil/dpap/specificpolicy/index.htm. My point of contact is Mike Canales. He can be reached at 703-695-8571 or via e-mail at michael.canales@osd.mil.

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