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ACQUISITION,
TECHNOLOGY,
AND LOGISTICS

FEB 2 3 2016

MEMORANDUM FOR DOD COMPONENT ACQUISITION EXECUTIVES

SUBJECT: Supplemental Guidance for Review and Submission of Industry Requests for an Adjusted Defense Exportability Features Pilot Program Cost-Sharing Portion

References: (a) Section 243 of the Fiscal Year 2011 National Defense Authorization Act for Fiscal Year 2011 (Public Law 111-383), as amended
(b) AT&L Defense Exportability Features (DEF) Policy Implementation Memorandum and Guidelines, dated April 9, 2015

The purpose of this memorandum is to issue supplemental guidance to assist the DoD Components with acquisition responsibility in responding to industry requests to adjust their DEF Pilot Program cost-sharing portion to a share other than 50%.

The DEF Pilot Program was first authorized by Congress in the National Defense Authorization Act (NDAA) for Fiscal Year 2011 (reference (a)). It was amended in Fiscal Year 2012 to include a requirement for DEF contracts to contain a cost-sharing provision for industry to bear at least half of the cost of DEF activities. Congress further amended the legislation in the Fiscal Year 2015 NDAA to authorize the Secretary of Defense to approve industry cost-sharing portions other than half that he "considers appropriate upon showing of good cause." DEF Pilot Program policy guidelines for implementing the pilot program and this Congressional amendment were subsequently published in AT&L's DEF Policy Implementation Memorandum and Guidelines (see reference (b)). Paragraph 5.1.2 and Annex D of reference (b) provide procedures for requesting an adjusted DEF cost-sharing portion from the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics (OUSD (AT&L)).

The attached Supplemental Guidance for Review and Submission of Industry Requests for an Adjusted DEF Cost-Sharing Portion is intended to amplify the required documentation and review procedures found in Annex D of reference (b) and should be followed in seeking the USD (AT&L)'s approval of any industry request for an adjusted cost-sharing portion. This supplemental guidance specifically addresses the required justification documentation, analyses, and review procedures for Program Executive Officers/Program Managers, Component Acquisition Executives, and the OUSD (AT&L)/International Cooperation (IC).

The AT&L/IC point of contact for the DEF Pilot Program, Eric Kaniut, may be reached at eric.g.kaniut.civ@mail.mil, or (703) 695-1618.

Keith B. Webster
Director, International Cooperation

Attachments:
As Stated

cc:
Assistant Secretary of Defense for Acquisition
Assistant Secretary of Defense for Research and Engineering
Director, Defense Pricing
Director, Defense Procurement and Acquisition Policy
General Counsel of the Department of Defense

Supplemental Guidance for Review and Submission of Industry Requests for an Adjusted DEF Cost-Sharing Portion

1. Industry requests for an adjusted DEF Pilot Program cost-sharing portion for "good cause" will be in accordance with the USD(AT&L) DEF Pilot Program Policy Implementation Memorandum and Guidelines, dated April 9, 2015, Annex D, which describes the procedures DoD Components should follow. Per Annex D, the PEO/PM will review and analyze any requests for an adjusted industry cost-sharing portion before forwarding their assessment and recommendations through their Component Acquisition Executive (CAE) to the Director, OUSD (AT&L)/IC, who will review and forward recommendations to the USD (AT&L) for decision. The following supplemental guidance amplifies the required documentation and review procedures found in Annex D and should be followed in seeking USD (AT&L) approval of an adjusted industry cost-sharing portion.

2. The sponsoring DoD Component PEO/PM shall have their technical, contracting, and legal experts review the industry request and provide their analyses of whether the industry request meets the DEF Guidelines' criteria for adjusting the industry DEF cost-share from 50% to a different cost share. The PEO will submit a signed memorandum with the required supporting documentation described below to their CAE. The CAE will review the package to ensure the request and PEO/PM analyses meet the Annex D criteria. The CAE's technical, contracting, and legal experts shall also review the industry request and provide their analyses to the CAE. The CAE shall submit a memorandum with the CAE's endorsement (positive or negative), recommendation(s) and supporting documentation to the Director, AT&L/International Cooperation.

3. **Step One**: The required justification documentation submitted to AT&L/IC should include (at a minimum):
    a. Draft DEF statement of work for the proposed DEF effort, which includes the contractor's rough order of magnitude (ROM) estimate for the work.
    b. Government cost estimate for the program and the DEF effort (including the contractor's funding if the cost share remains at 50% and if the cost share is adjusted based upon the contractor's request).
    c. The date the contract was/will be signed (the USD(AT&L) guidance is applicable to DEF Pilot Program cost-sharing contracts signed after the FY15 NDAA was enacted in December 2014).
    d. Whether DEF is a required contract line item number in a contract or is/was included in the evaluation criteria of a source selection.
    e. Contractor "good cause" justification explaining why their request for an adjusted cost sharing portion other than 50% is justified and why the cost-sharing portion

(40%, 30%, etc.) is "appropriate" per the criteria in Annex D (i.e. risk, competition, ROI, industrial base considerations, intellectual property, and any other additional relevant factors).

f. Detailed PEO/PM technical, contractual, and legal analyses of whether the industry request provides a "good cause" justification that meets the Annex D criteria to adjust industry cost-share from 50%, and whether the adjusted cost-share (40%, 30%, 20%, etc.) is "appropriate". Also included in the PEO/PM's analyses will be the government's analysis of the contractor cost estimate for the DEF effort.

g. DoD CAE review and analysis of the industry request and the PEO/PM endorsement based on the Annex D criteria for "good cause", and the CAE's formal recommendation (positive or negative) with accompanying rationale for that recommendation. This analysis will include any expected impacts if the request is granted or denied.

4. **Step Two**: The Director, OUSD (AT&L)/IC, will:
   a. Review the justification documentation provided by the CAE.
   b. Consult with subject matter experts in OASD (A), OASD (R&E), Defense Pricing, DPAP, OGC, the DoD CAE staff, and any other DoD stakeholders, as appropriate.
   c. Coordinate draft recommendations with the:
      - Office of the Assistant Secretary of Defense for Acquisition
      - Office of the Assistant Secretary of Defense for Research and Engineering
      - OUSD (AT&L)/Office of the Director, Defense Pricing
      - OUSD (AT&L)/Office of the Director, Defense Procurement and Acquisition Policy
      - OSD Office of General Counsel.

5. **Step Three**: The Director, OUSD (AT&L)/IC, will forward the request with its review and analysis, final coordinated comments and recommendations, and the required supporting documentation to the USD (AT&L) for final decision. The Director will include a recommendation in this package.

6. **Step Four**: The OUSD (AT&L)/IC will document the USD (AT&L)'s decisions and notify the PEO/PM via a formal memorandum to the sponsoring DoD Component's CAE. The PEO/PM shall then take action to ensure that the program and contract documents are consistent with the USD (AT&L) decision.