



**DEPARTMENT OF DEFENSE
EDUCATION ACTIVITY**

4040 NORTH FAIRFAX DRIVE
ARLINGTON, VIRGINIA 22203-1635

Procurement Division

DoDEA Administrative Instruction 8000.7
May 4, 2005

**DEPARTMENT OF DEFENSE EDUCATION ACTIVITY
ADMINISTRATIVE INSTRUCTION**

SUBJECT: Proper Use of Non-DoD Contracts

- References: (a) DoD Instruction 4000.19, "Interservice and Intergovernmental Support," August 9, 1995
(b) Section 1535 of title 31, United States Code, Agency Agreements
(c) Federal Acquisition Regulation, Part 17 of the FAR, "Special Contracting Methods," current edition
(d) Federal Acquisition Regulation, Part 10 of the FAR, "Market Research," current edition

1. PURPOSE

This Administrative Instruction establishes the Department of Defense Education Activity (DoDEA) procedures for reviewing and approving the use of non-Department of Defense (DoD)/Federal activities or contract vehicles when procuring supplies and services for amounts greater than the simplified acquisition threshold in accordance with enclosure 1 and references (a), (b), and (c).

2. APPLICABILITY

This Administrative Instruction applies to the Office of the Director, Department of Defense Education Activity; the Director, Domestic Dependent Elementary and Secondary Schools, and Department of Defense Dependent Schools, Cuba (DDESS/DoDDS-Cuba); the Director, Department of Defense Dependents Schools, Europe (DoDDS-E); the Director, Department of Defense Dependents Schools, Pacific, and Domestic Dependent Elementary and Secondary Schools, Guam (DoDDS-P/DDESS-Guam); and all DoDEA District Superintendents, School Principals, Teachers, and Support Staff.

3. DEFINITIONS

3.1. Assisted Acquisitions. Contracts awarded/placed by non-DoD entities, on behalf of the Department of Defense.

3.2. Non-DoD Contracts. Contracts written by non-DoD/Federal activities (e.g., General Services Administration (GSA), GovWorks, Department of Interior). This includes contracts entered into by another agency outside the Department of Defense.

3.3. Bona Fide Needs Rule. Provides that a fiscal appropriation may be obligated only to meet a legitimate or bona fide need arising in the fiscal year for which the appropriation was made.

4. POLICY

It is DoDEA policy that:

4.1. When requiring support above the simplified acquisition threshold (\$100,000), priority should be given to the use of procurement sources available first within DoDEA, second from other DoD procurement offices, and finally from non-DoD/Federal procurement offices.

4.2. Requests for assisted acquisitions awarded by non-DoD/Federal activities and direct orders awarded by DoDEA contracting officers shall include a determination and finding.

5. RESPONSIBILITIES

5.1. The Director, Department of Defense Education Activity, as the Head of the Contracting Activity, shall exercise authority, direction, and control over the Chief, Procurement Division, Department of Defense Education Activity.

5.2. The Chief, Procurement Division, Department of Defense Education Activity, shall:

5.2.1. Develop overall procedures for reviewing and approving the use of non-DoD/Federal activities or contract vehicles when procuring supplies and services above simplified acquisition threshold.

5.2.2. Approve determination and findings above the \$1 Million dollar threshold level.

5.2.3. Ensure effective management controls are in place.

5.3. The Financial Manager, Resource Management Division, Department of Defense Education Activity shall ensure that DoDEA staff customers or other requirements officials have followed the procedures established within this policy when off-loading agency funds for

assisted acquisitions; and have verified and certified that funds are available and appropriate for the procurement action.

5.4. The Chief, Procurement Policy and Compliance, Department of Defense Education Activity, shall:

5.4.1. Review, analyze, and provide agency reports.

5.4.2. Develop post-award review processes/procedures to analyze data on non-DoD contract vehicle usage.

5.5. The DoDEA Requirement Personnel shall:

5.5.1. Ensure there is a bona fide need.

5.5.2. Define requirements accurately, and completely.

5.5.3. Perform market research in accordance with reference (d).

5.5.4. Ensure that a written determination and finding has been approved by the Chief, Procurement Division, DoDEA, before sending funds or requirements to a non-DoD/Federal agency.

5.5.5. Review funding to ensure that it is used in accordance with appropriations limitations.

5.5.6. Provide technical information on the requirement.

5.6. The Chief, Procurement Offices, Department of Defense Education Activity shall:

5.6.1. Approve determination and findings between the \$100,000 and \$1 Million dollar threshold level.

5.6.2. Ensure that DoDEA staff customers or other requirement officials have followed the procedures established within this policy.

5.7. The DoDEA Contracting Officer shall:

5.7.1. Ensure a written determination and finding has been approved on assisted acquisitions and forward a signed copy to the DoDEA Procurement Policy and Compliance Office for analysis. The written determination must include the following:

5.7.1.1. Determine if the acquisition meets the customer's needs with respect to quality, delivery, and price.

5.7.1.2. Validate that the acquisition is within the scope of the contract.

5.7.1.3. Ensure the acquisition is cost-effective (including fees and discounts).

5.7.1.4. Determine if the acquisition will meet the intended schedule.

5.7.1.5. Review the acquisition to determine if it includes adequate contract administration.

5.7.1.6. Determine if supplies or services to be provided are within the scope of the contract to be used.

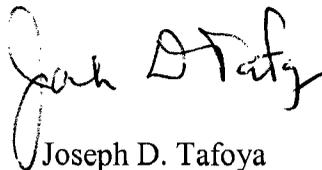
5.7.1.7. Review small business concerns to ensure they have been considered (review for bundling).

5.7.2. Review the contract terms and conditions of assisting agencies' vehicles prior to placing orders and provide to the assisting agency any unique requirements/terms and conditions associated with the acquisition.

5.7.3. Maintain a copy of the Determination and Finding in the contract file.

6. EFFECTIVE DATE

This Administrative Instruction is effective immediately.



Joseph D. Tafoya
Director

Enclosure - 1

E1. Proper Use of Non-DoD Contracts

E1. ENCLOSURE 1
PROPER USE OF NON-DOD CONTRACTS



OFFICE OF THE SECRETARY OF DEFENSE

1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000



OCT 29 2004

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Proper Use of Non-DoD Contracts

Each year billions of Department of Defense (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 method of 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.

Military Departments and Defense Agencies must establish procedures for reviewing and approving the use of non-DoD contract vehicles when procuring supplies and services on or after January 1, 2005, for amounts greater than the simplified acquisition threshold. This requirement applies to both direct (*i.e.* orders placed by DoD) and assisted acquisitions (*i.e.* contracts awarded or orders placed by non-DoD entities, including franchise funds, on behalf of DoD), using DoD funds. These procedures must include:

- evaluating whether using a non-DoD contract for such actions is in the best interest of the DoD. Factors to be considered include:
 - satisfying customer requirements;
 - schedule;
 - cost effectiveness (taking into account discounts and fees); and
 - contract administration (including oversight);
- determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;
- reviewing funding to ensure it is used in accordance with appropriation limitations;
- 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); and
- collecting data on the use of assisted acquisitions for analysis.

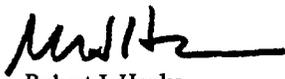
E1. ENCLOSURE 1
PROPER USE OF NON-DOD CONTRACTS

This new policy satisfies the requirements of Section 2330(b)(1)(C)(ii) of Title 10, United States Code as amended by Section 801 of the National Defense Authorization Act for Fiscal Year 2002. Section 801 requires advance approval to buy services via use of a "contract entered into or a task order issued, by an official of the United States outside of the DoD." Although Section 801 applies only to the procurement of services, we are applying this requirement to supplies in order to achieve consistency and discipline in the DoD acquisition process. The Defense Acquisition Regulation Council will issue coverage for the Defense Federal Acquisition Regulation Supplement that is consistent with the requirements of this memorandum.

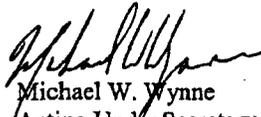
The use of multiple award contracts must be consistent with the requirements of Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Competition Requirements for Purchase of Services Pursuant to Multiple Award Contracts); Federal Acquisition Regulation (FAR) Part 8.002 (Priorities for Use of Government Supply Sources); FAR Part 17.5 (Interagency Acquisitions under the Economy Act); FAR Part 7 (Acquisition Planning); and DoD Instruction 4000.19 (Interservice and Intragovernmental Support).

While the Program Manager or requirements official has primary responsibility to ensure compliance with this policy, success will not be achieved without a team approach and specific support from the financial management and contracting communities. For example, the financial management community shall: (1) ensure the program manager or other appropriate individual has certified that the procedures established by the Military Department or Defense Agency have been followed and (2) ensure that funds are available and appropriate for the procurement action.

Please ensure widest dissemination of this memorandum and the procedures you establish. It is imperative that when non-DoD contracts are utilized to meet DoD requirements, they are utilized properly. The point of contact on this matter is Mr. Michael Canales. He can be reached at (703) 695-8571 or via email at michael.canales@osd.mil.



Robert J. Henke
Principal Deputy Under Secretary
of Defense (Comptroller)



Michael W. Wynne
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(Acquisition, Technology, and Logistics)

E1. ENCLOSURE 1
PROPER USE OF NON-DOD CONTRACTS

DISTRIBUTION:

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