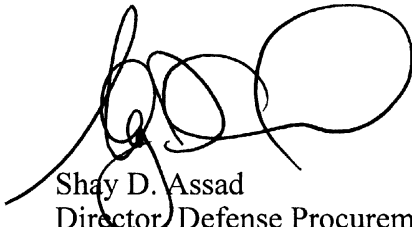


Determination in Accordance with Section 801 of the National Defense Authorization Act for Fiscal Year 2008 (NDAA 2008), as amended, by the Under Secretary of Defense for Acquisition, Technology, and Logistics [USD(AT&L)] as Delegated to the Director, Defense Procurement and Acquisition Policy, to Continue to Procure Property and Services Through the Department of Energy (DoE) in support of Department of Defense (DoD) Components for Fiscal Year 2011.

- Public Law 110-181, section 801, “Internal Controls for Procurements on Behalf of the Department of Defense by Certain Non-Defense Agencies,” at subsection (b)(1) allows an acquisition official of the Department of Defense to place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold (typically \$100,000) through a non-defense agency only if the head of the non-defense agency has certified that the agency will comply with defense procurement requirements for the fiscal year.
- The Department of Defense Inspector General (DoDIG) recently provided the Department a draft audit of their audit conducted at multiple Department of Energy (DoE) laboratories and other locations. Preliminary findings do not warrant limiting DoD’s use of DoE support. The Department of Energy has not certified in accordance with section 801 requirements. However, based on the requests of the components the Department needs to continue to procure supplies and services through DoE. Therefore, it is my determination that it is necessary and in the interest of the Department to continue to procure property and services through DoE. I authorize all DoD components to utilize the services of DoE for the procurement of essential mission related requirements only.
- This determination is valid for DoD requirements for fiscal year 2011, executed on behalf of DoD by DoE, up to a total amount of \$2.5B. Each component utilizing the services of DoE is directed to comply with all applicable statutory, regulatory and policy requirements, including the policy of September 24, 2010 (attached), to maintain sufficient tracking records toward the authorized ceiling, and to provide monthly obligation reports to the Deputy Director, Defense Procurement and Acquisition Policy, Contract Policy and International Contracting. In addition, each component is required to ensure that all affected Department of Defense contract files are documented and available for review or audit by the Department of Defense Inspector General.



Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

SEP 24 2010

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION & LOGISTICS MANAGEMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: DoD-Wide Policy for Using the Department of Energy's (DoE's) Work for Others
Program (WFO) to Access DoE-Owned Research, Development and Production
Facilities through Interagency Agreements (IAs) in Fiscal Year 2011

The Department of Defense Inspector General (DoDIG) recently completed an audit of Department of Defense (DoD) Purchases Made Through the Department of Energy (DoDIG audit Project No. D2009-D000CF-0069-000). The audit was conducted in accordance with the requirements of section 801 of the 2008 National Defense Authorization Act (NDAA) as amended. Although the audit is not final, the DoDIG has provided the Department its findings and recommendations. As a direct result of the audit, and in response to those findings and recommendations, the following policy is imposed, effective October 1, 2010, when entering into Interagency Agreements with the Department of Energy.

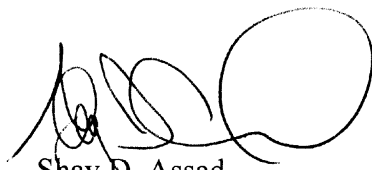
Each component will enter into and administer all DoD WFO projects performed at DoE facilities in accordance with existing statutes, regulation and policy consistent with their standards, policies and procedures except as such policies and procedures may be amended by the provisions set forth below, and:

- Ensure that a warranted DoD contracting officer reviews each requirement in excess of \$100K designated for performance by the Department of Energy. The warranted contracting officer will, at a minimum, ensure that supporting documents demonstrate that:
 - Sufficient market research has been completed and sufficient documentation exists that demonstrates that the specific DoE location/center is capable of performing the required tasks;
 - The description of the supplies and/or services to be provided are specific, definite and certain;

- Either an Economy Act D&F (FAR 17.5, DFARS 217.5) has been properly executed for the requirement, or, if the Economy Act is not the authority that DoE will be operating under when executing the requirement then the requirements of DFARS 217.7802(b) have been met and that a “Best Interest Determination” has been executed;
- An Interagency Agreement, in the general format prescribed by the Office of Federal Procurement Policy (OFPP) (June 2008) as amended, has been prepared and executed for the requirement.
- An assessment that the proposed cost/price is reasonable has been performed. At a minimum this will include: an independent government cost estimate (IGCE) prepared by DOD; detailed pricing information (proposal prepared by DoE) that has been reviewed by the cognizant DoD technical project manager/Contracting Officer Representative (COR) to ensure the hours and skill mix proposed are reasonable for the task(s) to be accomplished; an assessment that the quantity and type of materials proposed are necessary and reasonable.
- Each Interagency Agreement documents cost/price reasonableness.
- A qualified DoD technical project manager/COR has been identified and appointed, by a warranted contracting officer of the DoD requiring activity, to perform Contracting Officer Representative (COR) functions, including monitoring contractor performance, and reviewing contractor invoices.

You are also reminded that in accordance with FAR 17.502, “Interagency Acquisition Under the Economy Act,” the Economy Act may not be used by an agency to circumvent conditions and limitations imposed on the use of funds.

My POC for this is Mr. Michael Canales 703-695-8571 or via e-mail at michael.canales@osd.mil.



Shay D. Assad
Director, Defense Procurement
and Acquisition Policy