

H.R.4986

National Defense Authorization Act for Fiscal Year 2008 (Enrolled as Agreed to or Passed by Both House and Senate)

SEC. 801. INTERNAL CONTROLS FOR PROCUREMENTS ON BEHALF OF THE DEPARTMENT OF DEFENSE BY CERTAIN NON-DEFENSE AGENCIES.**(a) Inspectors General Reviews and Determinations-**

(1) IN GENERAL- For each covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of such covered non-defense agency shall, not later than the date specified in paragraph (2), jointly--

(A) review--

- (i) the procurement policies, procedures, and internal controls of such covered non-defense agency that are applicable to the procurement of property and services on behalf of the Department by such covered non-defense agency; and**
- (ii) the administration of such policies, procedures, and internal controls; and**

(B) determine in writing whether such covered non-defense agency is or is not compliant with defense procurement requirements.

(2) DEADLINE FOR REVIEWS AND DETERMINATIONS- The reviews and determinations required by paragraph (1) shall take place as follows:

(A) In the case of the General Services Administration, by not later than March 15, 2010.

(B) In the case of each of the Department of the Treasury, the Department of the Interior, and the National Aeronautics and Space Administration, by not later than March 15, 2011.

(C) In the case of each of the Department of Veterans Affairs and the National Institutes of Health, by not later than March 15, 2012.

(3) SEPARATE REVIEWS AND DETERMINATIONS- The Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency may by joint agreement conduct separate reviews of the procurement of property and services on behalf of the Department of Defense that are conducted by separate business units, or under separate government-wide acquisition contracts, of the covered non-defense agency. If such separate reviews are conducted, the Inspectors General shall make a separate determination under paragraph (1)(B) with respect to each such separate review.

(4) MEMORANDA OF UNDERSTANDING FOR REVIEWS AND DETERMINATIONS- Not later than one year before a review and

determination is required under this subsection with respect to a covered non-defense agency, the Inspector General of the Department of Defense and the Inspector General of the covered non-defense agency shall enter into a memorandum of understanding with each other to carry out such review and determination.

(5) **TERMINATION OF NON-COMPLIANCE DETERMINATION-** If the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency determine, pursuant to paragraph (1)(B), that a covered non-defense agency is not compliant with defense procurement requirements, the Inspectors General shall terminate such a determination effective on the date on which the Inspectors General jointly-

(A) determine that the non-defense agency is compliant with defense procurement requirements; and

(B) notify the Secretary of Defense of that determination.

(6) **RESOLUTION OF DISAGREEMENTS-** If the Inspector General of the Department of Defense and the Inspector General of a covered non-defense agency are unable to agree on a joint determination under this subsection, a determination by the Inspector General of the Department of Defense under this subsection shall be conclusive for the purposes of this section.

(b) **Limitation on Procurements on Behalf of Department of Defense-**

(1) Except as provided in paragraph (2), an acquisition official of the Department of Defense may place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold through a non-defense agency only if--

(A) in the case of a procurement by any non-defense agency in any fiscal year, the head of the non-defense agency has certified that the non-defense agency will comply with defense procurement requirements for the fiscal year;

(B) in the case of--

(i) a procurement by a covered non-defense agency in a fiscal year for which a memorandum of understanding is required by subsection (a)(4), the Inspector General of the Department of Defense and the Inspector General of the covered non-defense agency have entered into such a memorandum of understanding; or

(ii) a procurement by a covered non-defense agency in a fiscal year following the Inspectors General review and determination required by subsection (a), the Inspectors General have determined that a covered non-defense agency is compliant with defense procurement requirements or have

terminated a prior determination of non-compliance in accordance with subsection (a)(5); and

(C) the procurement is not otherwise prohibited by section 817 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364) or section 811 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163).

(2) EXCEPTION FOR PROCUREMENTS OF NECESSARY PROPERTY AND SERVICES-

(A) IN GENERAL- The limitation in paragraph (1) shall not apply to the procurement of property and services on behalf of the Department of Defense by a non-defense agency during any fiscal year for which there is in effect a written determination of the Under Secretary of Defense for Acquisition, Technology, and Logistics that it is necessary in the interest of the Department of Defense to procure property and services through the non-defense agency during such fiscal year.

(B) SCOPE OF PARTICULAR EXCEPTION- A written determination with respect to a non-defense agency under subparagraph (A) shall apply to any category of procurements through the non-defense agency that is specified in the determination.

(c) Guidance on Interagency Contracting-

(1) REQUIREMENT- Not later than 180 days after the date of enactment of this Act, the Secretary of Defense shall issue guidance on the use of *interagency contracting* by the Department of Defense.

(2) MATTERS COVERED- The guidance required by paragraph (1) shall address the circumstances in which it is appropriate for Department of Defense acquisition officials to procure goods or services through a contract entered into by an agency outside the Department of Defense. At a minimum, the guidance shall address--

(A) the circumstances in which it is appropriate for such acquisition officials to use direct acquisitions;

(B) the circumstances in which it is appropriate for such acquisition officials to use assisted acquisitions;

(C) the circumstances in which it is appropriate for such acquisition officials to use interagency contracting to acquire items unique to the Department of Defense and the procedures for approving such *interagency contracting*;

(D) the circumstances in which it is appropriate for such acquisition officials to use interagency contracting to acquire items that are already being provided under a contract awarded by the Department of Defense;

(E) tools that should be used by such acquisition officials to determine whether items are already being provided under a contract awarded by the Department of Defense; and

(F) procedures for ensuring that defense procurement requirements are identified and communicated to outside agencies involved in interagency contracting.

(d) **Compliance With Defense Procurement Requirements-** For the purposes of this section, a non-defense agency is compliant with defense procurement requirements if the procurement policies, procedures, and internal controls of the non-defense agency applicable to the procurement of products and services on behalf of the Department of Defense, and the manner in which they are administered, are adequate to ensure the compliance of the non-defense agency with the requirements of laws and regulations (including applicable Department of Defense financial management regulations) that apply to procurements of property and services made directly by the Department of Defense.

(e) **Treatment of Procurements for Fiscal Year Purposes-** For the purposes of this section, a procurement shall be treated as being made during a particular fiscal year to the extent that funds are obligated by the Department of Defense for the procurement in that fiscal year.

(f) **Definitions-** In this section:

(1) **NON-DEFENSE AGENCY-** The term 'non-defense agency' means any department or agency of the Federal Government other than the Department of Defense. Such term includes a covered non-defense agency.

(2) **COVERED NON-DEFENSE AGENCY-** The term 'covered non-defense agency' means each of the following:

(A) The General Services Administration.

(B) The Department of the Treasury.

(C) The Department of the Interior.

(D) The National Aeronautics and Space Administration.

(E) The Department of Veterans Affairs.

(F) The National Institutes of Health.

(3) **GOVERNMENT-WIDE ACQUISITION CONTRACT-** The term 'government-wide acquisition contract' means a task or delivery order contract that--

(A) is entered into by a non-defense agency; and

(B) may be used as the contract under which property or services are procured for one or more other departments or agencies of the Federal Government.

(4) **SIMPLIFIED ACQUISITION THRESHOLD-** The term 'simplified acquisition threshold' has the meaning provided by section 2302(7) of title 10, United States Code.

(5) **INTERAGENCY CONTRACTING-** The term 'interagency contracting' means the exercise of the authority under section 1535 of title 31, United

States Code, or other statutory authority, for Federal agencies to purchase goods and services under contracts entered into or administered by other agencies.

(6) ACQUISITION OFFICIAL- The term `acquisition official', with respect to the Department of Defense, means--

- (A) a contracting officer of the Department of Defense; or
- (B) any other Department of Defense official authorized to approve a direct acquisition or an assisted acquisition on behalf of the Department of Defense.

(7) DIRECT ACQUISITION- The term `direct acquisition', with respect to the Department of Defense, means the type of interagency contracting through which the Department of Defense orders an item or service from a government-wide acquisition contract maintained by a non-defense agency.

(8) ASSISTED ACQUISITION- The term `assisted acquisition', with respect to the Department of Defense, means the type of interagency contracting through which acquisition officials of a non-defense agency award a contract or task or delivery order for the procurement of goods or services on behalf of the Department of Defense.