



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

JUL 01 2019

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND
(ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
INSPECTOR GENERAL OF THE DEPARTMENT OF
DEFENSE
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION & LOGISTICS MANAGEMENT),
ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DEFENSE FIELD ACTIVITIES

SUBJECT: Waiver to Section 801 of the National Defense Authorization Act for Fiscal
Year 2008

This waiver is in accordance with Section 801 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008, as amended, by the Under Secretary of Defense for Acquisition, and Sustainment as delegated to the Principal Director, Defense Pricing and Contracting, as re-delegated to the Director, Contract Policy. Several Department of Defense Components have requested to continue receiving contract administration of supplies and services through the Department of Health and Human Services (HHS) during fiscal year 2019.

- Under NDAA FY 2008 (Public Law 110-181), section 801, "Internal Controls for Procurements on Behalf of the Department of Defense (DoD) by Certain Non-Defense Agencies," at subsection (b)(1), allows an acquisition official of the DoD to place an order, make a purchase, or otherwise procure property or services for the DoD in excess of the simplified acquisition threshold 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.
- HHS did certify in accordance with the requirements of section 801 (b)(1) of the NDAA FY 2008. However, on the attached June 19, 2019 memorandum, HHS formally withdrew its Program Support Center's (PSC) fiscal year (FY) 2019 certification under Section 801. DoD requires continued PSC administration for the already awarded supplies and services contracts (approximately 500 contracts/modifications in excess of \$1 billion) for FY 2019. This waiver is necessary

in order to maintain continuity of operations and provide timely transition of contract cognizance to the DoD.

- Based upon the information contained in the memorandum of June 19, 2019, from the Acting Deputy Assistant Secretary for Acquisitions, I determined that it is necessary and in the best interests of DoD to continue contract administration of existing PSC contracts/orders placed by PSC on behalf of DoD in accordance with the safeguards described in the memorandum.
- PSC shall receive concurrence of their respective DoD customer authorizing the use of this waiver. The concurrence shall be at a level no lower than the requiring activities' General Officer or Senior Executive Service level.

This waiver is valid for contract administration through FY 2019 or until such time contracts are transitioned to the DoD, whichever occurs first. My point of contact for this is Mr. Greg Snyder who can be reached at 703-614-0719, or gregory.d.snyder.civ@mail.mil.

A handwritten signature in black ink, appearing to read "Kim Herrington", with a small "for" written at the end.

Kim Herrington
Acting Principal Director,
Defense Pricing and Contracting

Attachment:
As stated



Wednesday, June 19, 2019

Jill Stichlich
Director, Contract Policy
Office of the Under Secretary of Defense for Acquisition and Sustainment
Defense Pricing and Contracting

Subject: HHS FY 2019 Section 801 (2008 NDAA) Certification

Dear Ms. Stichlich:

This is to formally withdraw the U.S. Department of Health and Human Services (HHS), Program Support Center's (PSC) fiscal year (FY) 2019 certification under Section 801 of the Fiscal Year 2008 National Defense Authorization Act (NDAA). In addition, I am writing to request clarification of DoD policy regarding whether a FAR 17.703(e) waiver is required under these circumstances, and if so, whether DoD will grant a blanket FAR 17.703(e) waiver to enable PSC to perform contract administration for approximately 500 active contracts/orders placed by PSC on behalf of several U.S. Department of Defense (DoD) components.

1. Background

Section 801 of the Fiscal Year 2008 National Defense Authorization Act (NDAA), "Internal Controls for Procurements on Behalf of the Department of Defense by certain Non-Defense Agencies," required the heads of all non-DoD agencies that provide acquisition support to the Department certify that their respective non-Defense agencies will comply with defense procurement requirements for fiscal year (FY) 2019 for assisted acquisitions executed on behalf of DoD in FY 2019. This requirement is included in the FAR at FAR 17.7.

For FY 2019, the HHS Senior Procurement Executive (SPE) certified that acquisitions conducted by the PSC Strategic Acquisition Service contracting office (and other contracting officers within HHS) would comply with defense procurement requirements for FY 2019. As the result of an internal review that is ongoing, HHS has determined that PSC is currently unable to certify that it will comply with defense procurement requirements for FY 2019 for assisted acquisitions executed on behalf of DoD.

On June 14, 2019, PSC notified affected DoD components that PSC is terminating its assisted acquisition program for non-HHS agencies effective immediately. PSC stated that as a result of an internal review that is ongoing, PSC is currently unable to certify that it will comply with defense procurement requirements for FY 2019 for assisted acquisitions executed on behalf of DoD. PSC also stated that as of June 2019, your office removed the HHS FAR 17.7 certification from its website at https://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html.

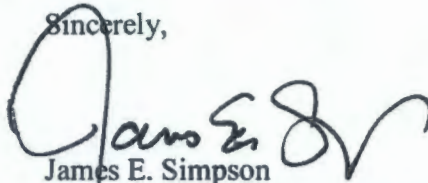
PSC made the decision to terminate its assisted acquisition program for non-HHS agencies based on a determination that the PSC Strategic Acquisition Service contracting office is not currently capable of compliance, particularly in the area of contract administration for FAR Part 4.4, Safeguarding Classified Information Within Industry, FAR 17.5, Assisted Acquisitions, and FAR 17.7, Interagency Acquisitions: Acquisitions by Nondefense Agencies on behalf of the Department of Defense. HHS and PSC have put safeguards in place to address the non-compliance during the orderly termination of PSC's assisted acquisition program for non-HHS agencies. Those safeguards are set forth in a Memorandum of Understanding (MOU) template that specifies how PSC and the DoD funding/requesting agency will take corrective action to address the requirements of FAR 4.4, 17.5, and 17.7. PSC intends to track the approximately 500 active contracts/orders placed by PSC on behalf of U.S. Department of Defense (DoD) components through the MOU process.

2. PSC Clarification / Waiver Request

In light of PSC's withdrawal of its certification under Section 801 of the Fiscal Year 2008 National Defense Authorization Act (NDAA), we question whether FAR Subpart 17.7 and DoD policy now require DoD acquisition officials to obtain a FAR 17.703(e) waiver (or equivalent) in order for PSC to continue conducting contract administration on the approximately 500 active contracts/orders placed by PSC on behalf of several U.S. Department of Defense (DoD) components.

Through this communication, PSC requests that DoD clarify its policy decision regarding whether a FAR 17.703(e) waiver (or equivalent) is required, and if so, whether DoD is amenable to granting a blanket waiver permitting PSC to conduct contract administration through 30 September 2020 on the approximately 500 active contracts/orders placed by PSC.

Sincerely,

A handwritten signature in black ink, appearing to read "James E. Simpson", written over a large, stylized circular flourish.

James E. Simpson
Deputy Assistant Secretary for Acquisitions (DAS-A) (Acting)
Office of The Assistant Secretary of Administration
Department of Health and Human Services