



TRICARE
MANAGEMENT
ACTIVITY

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MEMORANDUM FOR CHIEF MEDICAL OFFICER
CHIEF FINANCIAL OFFICER
CHIEF CENTRAL OPERATIONS OFFICER
CHIEF INFORMATION OFFICER
DEPLOYMENT SUPPORT OFFICER
OFFICE OF GENERAL COUNSEL
CHIEF OF STAFF, TMA

SUBJECT: Appropriate Management Oversight and Use of TMA Non-Personal Services Contracts

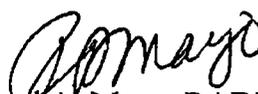
The purpose of this memorandum is to stress your responsibility in ensuring TMA personnel under your supervisory purview, who serve as Government Task Managers or Program Managers, comply with their responsibilities in the management and use of their respective non-personal services contracts. This guidance is intended to improve the overall effectiveness of our management responsibilities for contracted labor. We have included this issue as an Assessable Unit under the Management Control Program for TMA.

Enclosed you will find specific contract guidance and reference information to assist your staff in fulfilling their contract administration responsibilities as required by the Defense Federal Acquisition Regulation Supplement (DFARS). This document addresses eleven areas where the administration and oversight of contracts requires increased awareness by the TMA staff:

1. Ensure that Government task managers receive formal training
2. Through competition, obtain fair costs for contract support services
3. Prohibit the use of contract staff in inherently governmental functions
4. Understand organizational conflict of interest (OCI) categories
5. Require a task manager provision in all contracts
6. Enforce contractor identification requirements
7. Ensure that no more than one contract or delivery order is issued against each Military Interdepartmental Purchase Request (MIPR)
8. Conduct timely and accurate invoice processing
9. Ensure appropriate security provisions are included in all contracts

- 10 Require that Functional Chiefs and Deputy Chiefs approve all labor costs
11. Collect and report contractor past performance information

Please ensure this information receives comprehensive distribution among your staff. My point of contact for additional information regarding this item of interest is Ms. Suzanne Curtis. She can be reached at (703) 681-1143 or by email at suzanne.curtis@tma.osd.mil



Richard A. Mayo, RADM, MC, USN
Deputy Director

Attachment
As stated

cc:
Deputy Chief of Staff, Regional Liaison Office

**CONTRACT MANAGEMENT OVERSIGHT RESPONSIBILITIES
AND
AREAS OF SPECIAL INTEREST**

The TMA Procurement Support office has developed and published an extensive Desk Top Reference and other pertinent reference material that outlines the Government's responsibility in administering non-personal services contracts. You can locate the Desk Top Reference at <http://www.tricare.osd.mil/contracting/otherservices/index.cfm>. As a Government Task Manager or Program Manager administering non-personal services contracts, you need to familiarize yourself with the content of this website. The TMA Procurement Support staff is always available to answer your questions regarding the management and administration of your contract vehicles.

The following are areas of special interest of which Government Task Managers and Program Managers need to be aware and comply with.

- 1. FORMAL TRAINING FOR GOVERNMENT TASK MANAGERS.** For each contract or delivery order, the Government must assign a manager to handle certain specific contractual duties. This task manager, when officially trained, certified, and designated, is known as the Contracting Officer's Representative (COR), or in the case of delivery orders, the COR-DO. The COR-DO is delegated specific technical, functional and oversight responsibilities for the delivery order. The COR-DO serves as the official point of contact for coordination on the individual delivery order. The COR-DO will manage the delivery order on a day-to-day basis, will review contractor performance and deliverables, and will receive and approve all contractor invoices. These responsibilities are inherently governmental in nature and may not be delegated to non-government employees.

As indicated above, the task manager is required to become certified as a COR. Certification courses are available from a number of Government agencies, including the Defense Acquisition University (DAU) and the Federal Acquisition Institute (FAI), FAI courses are available on-line at www.faionline.com. See your designated Acquisition Manager for assistance in identifying an appropriate certification course. Following successful completion of COR training, the COR-DO will be nominated by the requiring activity, and will be approved and officially designated the COR-DO by the contracting officer. COR-DO refresher training should be obtained at least once each year. Supervisors are responsible that their staff performing COR or COR-DO duties have completed the requisite training. In addition, they must retain a copy of the COR or COR-DO certificate of training.

- 2. SUPPORT COMPETITION FOR NON-PERSONAL SERVICES CONTRACTS.** Government Task Managers and Program Managers must encourage and support procedures that provide a fair opportunity for contractors to compete for non-personal services contracts. By doing so, the Government increases the probability of obtaining contract services at a reasonable cost. Government Task Managers and Program Managers should apply the following guidelines to maximize competition and thereby obtain reasonable rates for their contract support services:

- a. Clearly define your requirement. Know what you want accomplished and understand what contract services you need to fulfill your requirement. This process takes time, but results in a less ambiguous requirement, which allows the potential contractors to better understand your needs and how best to meet them. Ambiguous requirements can result in excessive clarification questions during the proposal period, in contractor over-bidding, or contractors declining to bid at all. This results in a delayed contracting process and in higher costs to the Government.
- b. Conduct research as you build your Independent Government Cost Estimate (IGCE). There are many tools at your disposal to assist you in building your IGCE. The TMA Procurement Support office can assist you in obtaining historical data on reasonable contract labor rates, which contract vehicles are available and appropriate to your requirement, and what fees are associated with those vehicles. An accurate IGCE is especially valuable during the proposal evaluation phase.
- c. Receive at least three proposals. DOD regulations require that you give fair opportunity to contract holders when issuing orders against existing contracts. DFARS 216.505-70 and DFARS 208.4 require that when you do not offer the opportunity to **all** contract holders, the Government must actually **receive** at least three proposals. You should either use a TMA contract that will make it feasible to offer the opportunity to all contract holders, or you should identify a bidder's list that you believe will give you the highest probability that at least three contractors will actually bid.
- d. Do not submit by name requests for contract employees. When you build your requirement, the key is to know what you want accomplished and not who you want to do the work. Government Task Managers and Program Managers should not ask their contractors to hire specific individuals or to assign specific individuals to tasks. The contract requires the contractor (company) to provide a specific product or service. It is up to the contractor to determine how to provide that product or service. Asking specific individuals to perform these services is giving the contractor direction on "how" to do the required work. This presents two potential problems. First the contractor can hold the Government accountable if the required employee does not perform adequately. Also, the direction can be interpreted as creating a personal services relationship since the Government is participating in planning and managing the Contractor's work. Finally, such a request results in overpriced rates. In order to provide a specific individual, the contractor often must pay a premium to hire the individual. This premium salary is directly translated into a premium labor rate for the Government. For these reasons, it is important to identify the service and/or product you need performed and let the contractor propose the appropriate staff with requisite skills to support the contract.

3. PROHIBIT THE USE OF CONTRACTOR STAFF IN INHERENTLY GOVERNMENTAL POSITIONS.

Government Task Managers and Program Managers must ensure their contract support personnel are not performing inherently governmental functions. As a matter of policy, an "inherently governmental function" is a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority or the making of value judgments in making decisions for the Government. An inherently

governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to:

- a. Bind the United States to take or not take some action by contract, policy, regulation, authorization, order, or otherwise.
- b. Determine, protect, and advance the economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise:
 - Significantly affect the life, liberty, or property of private persons;
 - Commission, appoint, direct, or control officers of employees of the United States; or
 - Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriated and other Federal funds.

Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations. These are functions contractors can perform in support of the Government. ***Simply put, contractors cannot be in a decision making position which either directs government employees, determines policy making decisions, or obligates the use of Federal funds.***

4. UNDERSTAND ORGANIZATIONAL CONFLICT OF INTEREST (OCI) CATEGORIES:

Government Task Managers and Program Managers need to be familiar with OCI categories, and the specific categorization assigned to each of their respective contracts. The OCI categorization process ensures that contractors are not inadvertently exposed to situations or information that may result in a potential OCI.

TMA has categorized all its non-purchased care requirements into three broad categories, as defined below. The purpose of this categorization is to avoid OCI situations and where they are deemed unavoidable, mitigate the Government's risk in accordance with Federal Acquisition Regulation (FAR) Subpart 9.5.

TMA's OCI categories are defined as follows:

- Category 1: TMA Internal Support: Services which, by their very nature, give the contractor access to extensive data about the contracts of all other TMA contractors.
- Category 2: Program Management Support: Services which assist TMA in planning and managing its activities and programs. This includes, for example: requirements analysis, acquisition support, budget planning and management, business process reengineering, program planning and execution support, and independent technical management support.
- Category 3: Product Support. Services or end items required to meet the mission requirements of TMA's non-purchased care activities and programs. This includes, for example: concept exploration and development, system design, system

development and integration, COTS procurement and integration, internal development testing, deployment, installation, operations, and maintenance.

Contractor participation in more than one of these areas may give rise to an unfair competitive advantage resulting from access to advance acquisition planning, source selection sensitive or proprietary information. Furthermore, contractor participation in more than one area may give rise to a real or apparent loss of contractor impartiality and objectivity where its advisory or planning assistance in one area potentially affects its present or future participation in another area.

For example, it would be inappropriate to involve one of your Category 3 contractors in budget, acquisition, or program planning and management. This situation could give your Category 3 contractor a potential unfair advantage in where to focus its future marketing efforts. Further, the advice and assistance of the Category 3 contractor could be viewed as lacking impartiality because the Category 3 contractor might have an interest in the Government pursuing one alternative over another.

The purpose of this categorization is to accomplish the following three objectives: (1) to inform prospective offerors that TMA presumes that award of a contract or order in the subject category will give rise to real or apparent OCIs with respect to requirements in the other two categories; (2) to assist current contractors and prospective offerors in developing their own business strategies regarding participation in TMA requirements and in identifying and, where possible, avoiding or mitigating against OCIs; and (3) to ensure that all current contractors and prospective offerors are afforded the maximum practicable opportunity to compete for all TMA requirements consistent with the restrictions required under FAR Subpart 9.5 and sound business practices.

For purposes of identifying, avoiding, and /or mitigating against OCIs, TMA will examine all its non-purchased care requirements and acquisitions regardless of the cognizant contracting activity (e.g., DCC-W, GSA, VA, or any other agency) or the type of contract vehicle used (e.g., D/SIDDOMS, PMI BPA, or GSA FSS order)

Each TMA non-purchased care solicitation will therefore be designated as falling within one of the three above defined categories.

- 5. INCLUDE A PROVISION FOR TASK MANAGER IN ALL CONTRACTS:** TMA is not authorized to issue personal services contracts.

A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil services laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws.

The employer-employee relationship under a personal services contract occurs when, as a result of the contract's terms or the manner of its administration during performance,

contractor personnel are subject to the relatively continuous supervision and control of a Government office or employee. The Task Manager provision in the contract prevents any appearance that the Government has an employer-employee relationship. Rather the employee takes his/her direction from the corporate Task Manager.

Unfortunately, the lines of distinction between what constitutes a personal services contract and a non-personal services contract are somewhat blurred. By having a Task Manager, who is an employee of the contractor and who is responsible for supervising staff and activities on the contract, the arrangement cannot be considered a personal services contract. Government Task Managers and Program Managers must ensure the contractor Task Manager provision is included in all their contract vehicles.

- 6. ENFORCE THE CONTRACTOR IDENTIFICATION REQUIREMENT:** As described above, a personal services contract is one in which the contractor is subject to the relatively continuous supervision and control of a Government office or employee. Therefore, if the Contractor employee is indistinguishable from a Government employee, then a personal services situation exists. Therefore, it is imperative that both Government and Contractor staff make the status of Contractors clear at all times. Further, enforcing the requirement that they identify themselves as contractors at all times will also ensure that a contractor is not inappropriately afforded access to situations where sensitive information is being distributed and/or discussed. Contractors are not only required to wear their badge identifying themselves as contractors, but they must use other means to ensure that their contractor status is clear. For example, during meetings, as attendance is taken, contractors should not only identify themselves as assisting a specific TMA element, but they should also state they are a contractor and state the name of their company. Contractors should also clearly identify themselves as contractors on all email. They should provide their name and company name in their signature block. These precautions are needed to ensure that our contracting staffs are not inadvertently given access to inappropriate information or are allowed to perform inherently governmental functions.
- 7. ENSURE THAT NO MORE THAN ONE CONTRACT OR DELIVERY ORDER IS ISSUED AGAINST EACH MIPR.** Purchase request packages sent by TMA to a contracting office other than DCC-W are typically funded via a Military Interdepartmental Purchase Request (MIPR), DD Form 448. To optimize the use of TMA funds and reduce future unliquidated obligated balances, there must be only one contract awarded or delivery/task order issued for each MIPR. The TPS Office will distribute award documentation received from the contracting office to both the Resource Management Directorate and the requiring activity. If the award amount is less than the amount sent on the MIPR, the Financial Operations Division will automatically send out an amendment to the original MIPR to retrieve the excess funding. Unexpired funds that are returned to TMA will be credited to the original requiring activity's Account Processing Code (APC).
- 8. CONDUCT TIMELY AND ACCURATE INVOICE PROCESSING:** Government Task Managers and Program Managers must process invoice and receiving reports in a timely manner. Invoices that are not processed within 30 days of receipt result in Government interest payments to the contractor.

With the funding constraints TMA is facing, we can ill afford to pay interest penalties under the Prompt Payment Act. TMA does not budget for interest on late payments made to contractors.

Delays in processing invoices and receiving reports can be partially attributed to inefficient paper processing. A recent change to the Defense Federal Acquisition Regulations Supplement (DFARS) mandates end-to-end electronic processing of payment requests and supporting documentation, such as receiving reports in cases where the contractor is able to submit a payment request in electronic form. The DFARS clause 252.232-7003, Electronic Submission of Payment Requests will be incorporated in every order issued on behalf of TMA and will be adhered to for all TMA contracts and delivery orders.

If the terms of a contract call for a receiving report, the performing contractor should be strongly encouraged to submit both the invoice and receiving report using the Wide Area Workflow-Receipt and Acceptance (WAWF-RA) system. WAWF-RA is the DOD standard system that enables the Government to electronically process data and perform the government receipt and acceptance process previously captured by the DD Form 250, Material Inspection Receiving Report. The TMA Procurement Support office has developed a detailed WAWF-RA On Ramp Guide with step-by-step instructions on implementing WAWF-RA for your contracts. Contact the TPS WAWF-RA POC at (703) 681-1143 ext 5429, for a copy. You can register to use WAWF-RA by accessing the WAWF-RA web site at <https://rmb.ogden.disa.mil/>. The benefits of WAWF-RA to DOD are global accessibility of documents, reduced need for re-keying, improved data accuracy, real-time processing, secure transactions with audit capability and faster processing resulting in fewer interest penalties. For vendors, benefits include the capability to electronically submit invoices, reduction of lost or misplaced documents, and online access to contract payment records.

Within TMA, the Contracting Officer's Representative for the Delivery Order (COR-DO), formerly referred to as the ACOR, performs the government receipt and acceptance responsibilities for delivery orders. The COR-DO is a government official designated by the Contracting Officer with specific legal authorities and accompanying responsibilities. These responsibilities cannot be delegated to supporting contractor personnel.

TMA COR-DOs and Program Managers are reminded of the September 16, 2002 memorandum, Policy Change Requiring Additional Oversight for Receiving Reports (DD Form 250). This policy requires that receiving reports and associated invoices for non purchased care services or products provided to TMA or purchased with TMA funds must be reviewed and approved by two individuals - the COR-DO, and the Program Manager or equivalent. The TPS Contracting Officer's Representative for the Prime Contract (COR-PC) will make random checks of COR-DO contract administration files to insure this policy is being followed. In most cases WAWF-RA supports this second review electronically. If a TMA contract is paid via the Mechanization of Contract Administration Services (MOCAS) system, there may be instances where a WAWF-RA document must be printed by the COR-DO and initialed and dated by the Program Manager.

9. ENSURE THAT APPROPRIATE SECURITY PROVISIONS ARE INCLUDED IN ALL CONTRACTS.

The Government Task Manager and Program Manager should ensure that appropriate security requirements are adhered to and appropriate security provisions are included in all contracts. Use of the templates provided by TPS and available on the TRICARE website will ensure that your security requirements are addressed. Reference on DOD Personnel Security Program can be found at

http://www.dtic.mil/whs/directives/corres/pdf/52002r_0187/p52002r.pdf and the TMA Privacy Office Website at <http://tricare.osd.mil/tmaprivacy/personnel-security.cfm> . For physical security the link is

http://www.dtic.mil/whs/directives/corres/pdf/d52008_042591/d52008p.pdf . The link <http://www.tricare.osd.mil/imtr/mhssaisa.html> is the appropriate reference for ADP Software Exchange and Release. Any unique requirements you may have regarding Contractor access to Government facilities should be added to the templates under the section entitled, "Government Furnished Facilities". Your narrative should specify the location of the facility, the times of day and days of week that the contractor may access the facility, and must also specify if contractor staff are authorized to access the facility when Government staff are not present. If the contractor will be provided keys or codes to access Government facilities, the contract must specify that the keys and codes must be tracked and protected as Government Furnished equipment.

10. FUNCTIONAL CHIEF/DEPUTY CHIEF REVIEW OF INDEPENDENT GOVERNMENT COST ESTIMATES (IGCEs).

PRWs are required for all TMA contract actions (including IGCEs). All TMA PRWs require the signature of the TMA Functional Chief or Deputy Chief¹. This includes review and approval of all IGCEs to determine that the labor categories are appropriate to the work, that the labor mix is appropriate to the task, that the rates are reasonable, and that the overall estimated cost is deemed to be a good value when compared to the end product/services. This determination includes four critical steps:

- Step 1: First, the labor categories identified on the IGCE must be determined to be appropriate to the Statement of Work. For example, a board certified physician is not an appropriate labor category for use on a financial management task, nor is a senior financial manager appropriate to a clinical process analysis task.
- Step 2: Once the labor categories are determined to be appropriate to the task, the labor mix must be analyzed to determine if it is appropriate. It is especially important to understand that it may be more cost effective to buy appropriate portions of senior, more expensive skill sets, rather than full time support from junior, less expensive skill sets.
- Step 3: Once the labor categories and skill mix are determined to be appropriate to the task, then labor rates must be determined to be appropriate for each labor category. It is important to be particularly mindful of labor hour costs that exceed \$100 per hour. The rates included in TMA's D/SIDDOMS II and D/SIDDOMS 3 contracts have been reviewed, approved, and confirmed to be fair and reasonable by the Defense Contract Audit Agency (DCAA) and the Defense Contracting Command – Washington (DCC-W).

¹ The policy refers to "Directors", now known as Functional Chiefs and Deputy Chiefs in the new TMA organization.

However, when any non-TMA contract vehicle is used (including GSA schedules or other Multi-Agency Contracts), the program office must provide evidence to the approving official that the labor rates are reasonable. Such evidence should be established using various tools available through the TPS office, such as D/SIDDOMS II and D/SIDDOMS 3 contract rates, Civilian Pay Conversion Charts developed to support A-76 activities, DCAA resources, and other market survey techniques. A final “sanity check” for rates can be accomplished by converting an appropriate Government Service (GS) salary to a comparable contractor rate. This can be done by first determining an appropriate GS grade and step. Take the appropriate GS salary and divide by 2080 (the number of hours in a typical work year) to determine the unloaded hourly rate. Next, apply a typical “multiple” to this rate, to account for overhead, fringe benefits, etc... Generally, typical multiples for Government site work range from 1.5 – 2.0 and multiples for Contractor site work generally range from 1.8 – 2.7. Finally, add a reasonable profit factor, which would typically be expected to be between 7 and 11 percent. The resulting “rate” will provide an approximation of what you would expect to pay for a contractor at the comparable GS Grade and Step. The table below provides description and formulas for this process.

STEPS FOR CONVERTING GS SALARY TO COMPARABLE CONTRACTOR LOADED HOURLY LABOR RATE		
STEP	DESCRIPTION	FORMULA
1	Determine GS Grade and Step	GS
2	Divide GS Salary by 2080 (the number of work hours per year) to determine the GS “Hourly Rate”	GS/2080
3	Multiply the GS “hourly rate” by an appropriate multiple (first determine if work will be at Contractor site or Government site, then determine if the work will be done by a large or small business. Typically, multiples are higher for large businesses because they provide more “perks” such as training hours and training programs, conference facilities, etc)	$(GS/2080)*2$
4	Factor in reasonable profit for the Contractor (between 7% and 11%). If you are ensuring full time work for the Contractor, the profit should be lower, while, part-time, on-call work will typically include profit on the higher end of the range).	$((GS/2080)*2)*1.08$

- Step 4: Once the categories, skill mix, and rates are determined to be fair and reasonable, the final step is to determine if the overall estimated cost (including both labor and any associated ODCs) is appropriate to the anticipated product/service, within specific program budget and schedule constraints.

This IGCE approval process is especially important when Time and Materials (T&M) contract types are being used. T&M contracts provide extremely high risk to the Government because:

- they do not guarantee any product at the end of the contract,
- they do not offer the benefit of diluted rates when the contractor works more than 40 hours per week,
- they provide the Government no insight into the contractor's profit or the actual salary paid to the employee.

This IGCE review policy was established as part of the Procurement Request Worksheet (PRW) review and approval process, which was directed in the TMA Chief Operating Officer policy memorandum dated September 16, 2002. Approval of the PRW will constitute approval of both the labor categories and the labor rates. As with any procurement, significant deviation from the IGCE requires approval through the same channels.

- 11. COLLECT CONTRACTOR PAST PERFORMANCE INFORMATION:** Government Task Managers and Program Managers are required by FAR 42.1502, Contractor Performance Information, and FAR 15.304, Evaluation Factors and Significant Subfactors, to collect past performance information on each contract that exceeds \$1,000,000.00. The Contractor Performance Assessment Reporting System (CPARS) has been adopted by TMA to electronically capture assessment data and manage the evaluation process. Upon completion, the past performance information is transferred to the Federal Past Performance Information Retrieval System (PPIRS) for use in future source selection evaluation boards. Contact the TMA Falls Church, VA CPARS POC at (703) 681-1143, Ext. 5429. Additional information can be found at the CPARS website: <http://www.cpars.navy.mil>.