

Army Implements Congressional Direction to In-sourcing

by Buehler, Kimberly

Throughout the past couple of decades the federal government has grown increasingly reliant on contractor-provided manpower supplied through service contracts. The downsizing of the Army's civilian workforce and the increasing contractor workforce was driven by various factors, including increased requirements resulting from overseas contingency operations, staffing limitations, hiring restrictions, and budget cuts. Managers had few options for servicing contracts to attain a ready and skilled labor pool.

Hardly a day goes by without a news article about government contractors. Articles cover the wide spectrum of issues associated with a robust contractor workforce, such as the number of contractors in the "shadow workforce" and the lack of oversight and surveillance on service contracts. For the Army, the mission-critical, contractor-provided services in Iraq and Afghanistan have been of particular media and internal DOD interest.

After years of supporting outsourcing, congressional focus has shifted to decreasing dependence on service contracting by increasing the civilian workforce. Congress expressed concern that DOD has outsourced inherently governmental functions in key mission areas and operationally executed unauthorized personal services contracts. As a result, the National Defense Authorization Act for FY08 (NDAA 08) brought new statutory requirements for DOD on service contracts and civilian hiring.

NDAA 08 Section 324 directs DOD to consider using civilian employees to perform new functions and the work currently being performed by contractors. The statute requires this to be accomplished outside of the A-76 process. Acquisition planners are directed to give special consideration to in-sourcing for:

- Functions performed by DOD employees at any time during the previous 10 years.
- Functions "closely associated with inherently governmental activities" as defined in Federal Acquisition Regulation (FAR) 7503(d).
- Functions performed pursuant to a contract awarded on a noncompetitive basis.
- Contracts with documented poor performance records resulting from excessive costs or inferior quality.

NDAA 08 Section 807 requires DOD to submit an annual inventory of the activities performed under service contracts and review those activities for unauthorized personal services, inherently governmental functions, and functions closely associated with inherently governmental functions. The section also directs that military service secretaries review contracts in the inventory and take appropriate corrective action to continue, discontinue, or convert the activities to DOD civilian performance. The review mandated at Section 807 supports the identification of in-sourcing opportunities required under NDAA 08 Section 324. The Deputy Under Secretary of Defense for

Acquisition and Technology selected the Army to provide the pilot inventory of service contract activities required under NDAA 08 Section 807 because the Secretary of the Army (SecArmy) has had required manpower reporting for all service contracts since January 2005. The Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA(M&RA)) created a Contractor Manpower Reporting Application (CMRA) to capture data from contractors on labor hour expenditures by function, funding source, and mission supported. Contractors input data into the CMRA annually between October and December. The ASA(M&RA) converts the number of labor hours reported to an estimate of government full-time equivalents. The manpower reporting requirement applies to all service contracts except utility services, foreign military sales, and construction. For reporting purposes, services are defined in FAR Subsection 37.101.

ASA(M&RA) submitted the prototype inventory to the Office of the Defense Procurement, Acquisition Policy, and Strategic Sourcing on June 13, 2008. Data was compiled from CMRA, the Federal Procurement Data System-Next Generation, and the Army Contracting Business Intelligence System. The report was coordinated with the Deputy ASA (DASA) (Procurement).

To comply with future review and reporting requirements of NDAA 08 Sections 324 and 807 and to reemphasize longstanding FAR Subpart 7.5 and 37.104 responsibilities and limitations for inherently governmental functions and personal services contracts, the ASA(M&RA) revised the process and form used to document services contract approval. The SecArmy formalized the services contract approval process via a memorandum on Feb. 23, 2006. The process established completion of the Request for Civilian Hire or Services Contract Approval form before contracting for new service requirements and exercising options on existing requirements. The process also required monthly reporting to the ASA(M &RA) on the number of service contracts approved and disapproved at each Army Command, Service Component Command, and Direct Reporting Unit. On May 8, 2008, the ASA(M&RA) changed the report from monthly to quarterly and it now collects the information required under NDAA 08 Sections 324 and 807.

The ASA(M &RA) also revised the Request for Civilian Hire or Services Contract Approval form to include a set of accompanying worksheets. The revised form now includes the certification that:

- The requirement does not include inherently governmental functions.
- The requirement does not include unauthorized personal services either in the way the work statement is written or in the way the contract operates.
- In the case of work closely associated with inherently governmental functions or noncompetitive contracts, special consideration was given to using federal government employees.
- The contract was either reported in the CMRA, was not reported in the CMRA (with explanation), or the CMRA reporting requirement was included in the work statement if it was a new requirement.

The four worksheets that now accompany the revised Request for Civilian Hire or Services Contract Approval form are designed to assist requirements officials and senior leadership with completing the certification statement. The worksheets mirror the FAR Subpart 7.5 and 37.104 criteria for inherently governmental functions and personal services contracts. Putting the FAR requirements into the worksheet format enhances visibility of the requirements and ensures that appropriate risk mitigations are developed to prevent contracting for unauthorized personal services or inherently governmental functions. Completion of the revised form and worksheets is mandatory for all new service contracts and the exercise of options on existing service contracts as of Oct. 1, 2008.

More information and documents on the Army's policies for service contract approval, in-sourcing, and NDAA 08 Sections 324 and 807 requirements can be found on the ASA(M&RA) Web site at <http://www.asamra.army.mil/insourcing/>.

Kimberly Buehler is a procurement analyst in the Office of the DASA (Procurement), Procurement Policy and Support Directorate. She holds a BA. in history/ secondary education from Trenton State College and an M. A. in art history from Temple University. Buehler is certified Level III in contracting and Level I in program management, and is a U.S. Army Acquisition Corps member.