



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JAN 29 2013

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Private Sector Notification Requirements in Support of In-sourcing Actions

This memorandum provides implementing direction on the notification of private sector providers (contractors) when making a determination to in-source a contracted service for civilian or military performance. This guidance is issued in accordance with section 2463 of title 10, United States Code, as amended by section 938 of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112-81, and is intended to supplement existing policies related to section 2463 and in-sourcing. This guidance is effective upon issuance, and is not applicable retroactively.

The leadership of each Component, organization, or command shall determine and document final decisions to in-source. Within 20 business days of the receipt of such decision, the contracting officer shall provide a written notification to affected incumbent private sector providers. No formal hiring or contract related actions may be initiated prior to such notification, except for preliminary internal actions associated with hiring or contract modification. Notifications issued by contracting officers to affected private sector providers may summarize, in an appropriate format, the requiring official's final determination as to why the service is being in-sourced and shall be coordinated with the Component's in-sourcing program official. Component in-sourcing program officials may delegate the coordination of the notification statement as noted above. Whenever possible, determinations to in-source should be made so as to align with contracting decisions, for example to preclude exercising option periods or re-competitions of expiring contracts. Simultaneously, to meet the statutory requirement to provide notifications to the Congressional defense committees, Component's in-sourcing program officials shall provide copies of all notifications, via email, to the points of contact provided below. This office will provide them to the Congressional defense committees on a quarterly basis.

The Department greatly values the support provided by private sector firms and recognizes that the contractors are, and will continue to be, a vital source of expertise, innovation, and support to the Department's Total Force. However, in-sourcing continues to be an important, effective, and necessary workforce shaping tool to appropriately align inherently governmental activities to government performance; perform functions more efficiently and effectively; and protect the public's interest while providing the best value for taxpayers.

In-sourcing of contracted services falls into three categories of justification - work that is determined, as it is being executed, to be:

- 1) Inherently Governmental Functions: Consistent with statutes and policy, Components should take immediate action to in-source (or divest) work performed under contract that is determined to be inherently governmental as defined in

Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, "Performance of Inherently Governmental and Critical Functions" (available at: <http://www.gpo.gov/fdsys/pkg/FR-2011-09-12/pdf/2011-23165.pdf>).

- 2) Work Closely Associated with Inherently Governmental Functions, Critical in Nature, and Unauthorized Personal Services: Consistent with section 2463 of title 10, United States Code; OFPP Policy Letter 11-01; and DoD Instruction 1100.22, "Policy and Procedures for Determining Workforce Mix", some work that, while not inherently governmental (including many non-inherently governmental acquisition functions), may not be appropriate for continued performance by the private sector (for example: to mitigate risk, ensure continuity of operations, build internal capability, meet and/or maintain readiness). In certain instances, increased management control and oversight of such work, modifications to the statement of work or changes to how services are performed may be appropriate in lieu of in-sourcing. In instances where in-sourcing (or divestiture) is determined to be appropriate Components should take action expeditiously.
- 3) Cost-Based In-sourcing Decisions: Contracted services may be in-sourced if the work is determined to be cost effectively delivered by civilians, based on a cost analysis conducted in accordance with Directive-Type Memorandum (DTM) 09-007, "Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contractor Support" (or successor guidance), provided the conversion differential required under section 2463 of title 10, United States Codes is met.

The Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics will incorporate the requirements for notification set forth in this memorandum into the Defense Federal Acquisition Regulation Supplement. Additionally, the requirements set forth in this memorandum will be incorporated in a future DoD issuance on in-sourcing. Components may issue, after appropriate coordination with this office, supplemental guidance regarding in-sourcing of contracted services and/or related notification requirements.

Please ensure maximum distribution of this memorandum across your organization. Questions regarding application and implementation of this memorandum to in-sourcing actions should be addressed to the following points of contact within the Office of Total Force Planning & Requirements: Mr. Thomas Hessel (thomas.hessel@osd.mil or 703-697-3402) and Ms. Amy Parker (amy.parker@osd.mil or 703-697-1735).



Frederick Vollrath
Principal Deputy Assistant Secretary of Defense
(Readiness and Force Management)
Performing the Duties of the Assistant
Secretary of Defense (Readiness and Force
Management)

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