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UNITED STATES CODE SERVICE
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*** CURRENT THROUGH PL 111-4, APPROVED 2/11/2009 ***

TITLE 10. ARMED FORCES
SUBTITLE A. GENERAL MILITARY LAW
PART IV. SERVICE, SUPPLY, AND PROCUREMENT
CHAPTER 137. PROCUREMENT GENERALLY

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10 USCS § 2330a

§ 2330a. Procurement of services: tracking of purchases

(a) Data collection required. The Secretary of Defense shall establish a data collection system to provide management information with regard to each purchase of services by a military department or Defense Agency in excess of the simplified acquisition threshold, regardless of whether such a purchase is made in the form of a contract, task order, delivery order, military interdepartmental purchase request, or any other form of interagency agreement.

(b) Data to be collected. The data required to be collected under subsection (a) includes the following:

- (1) The services purchased.
- (2) The total dollar amount of the purchase.
- (3) The form of contracting action used to make the purchase.
- (4) Whether the purchase was made through--
 - (A) a performance-based contract, performance-based task order, or other performance-based arrangement that contains firm fixed prices for the specific tasks to be performed;
 - (B) any other performance-based contract, performance-based task order, or performance-based arrangement; or
 - (C) any contract, task order, or other arrangement that is not performance based.
- (5) In the case of a purchase made through an agency other than the Department of Defense, the agency through which the purchase is made.
- (6) The extent of competition provided in making the purchase and whether there was more than one offer.
- (7) Whether the purchase was made from--
 - (A) a small business concern;
 - (B) a small business concern owned and controlled by socially and economically disadvantaged individuals; or
 - (C) a small business concern owned and controlled by women.

(c) Inventory.

(1) Not later than the end of the third quarter of each fiscal year, the Secretary of Defense shall submit to Congress an annual inventory of the activities performed during the preceding fiscal year pursuant to contracts for services for or on behalf of the Department of Defense. The entry for an activity on an inventory under this subsection shall include, for

the fiscal year covered by such entry, the following:

- (A) The functions and missions performed by the contractor.
 - (B) The contracting organization, the component of the Department of Defense administering the contract, and the organization whose requirements are being met through contractor performance of the function.
 - (C) The funding source for the contract under which the function is performed by appropriation and operating agency.
 - (D) The fiscal year for which the activity first appeared on an inventory under this section.
 - (E) The number of full-time contractor employees (or its equivalent) paid for the performance of the activity.
 - (F) A determination whether the contract pursuant to which the activity is performed is a personal services contract.
 - (G) A summary of the data required to be collected for the activity under subsection (a).
- (2) The inventory required under this subsection shall be submitted in unclassified form, but may include a classified annex.

(d) Public availability of inventories. Not later than 30 days after the date on which an inventory under subsection (c) is required to be submitted to Congress, the Secretary shall--

- (1) make the inventory available to the public; and
- (2) publish in the Federal Register a notice that the inventory is available to the public.

(e) Review and planning requirements. Within 90 days after the date on which an inventory is submitted under subsection (c), the Secretary of the military department or head of the Defense Agency responsible for activities in the inventory shall--

- (1) review the contracts and activities in the inventory for which such Secretary or agency head is responsible;
- (2) ensure that--
 - (A) each contract on the list that is a personal services contract has been entered into, and is being performed, in accordance with applicable statutory and regulatory requirements;
 - (B) the activities on the list do not include any inherently governmental functions; and
 - (C) to the maximum extent practicable, the activities on the list do not include any functions closely associated with inherently governmental functions;
- (3) identify activities that should be considered for conversion--
 - (A) to performance by civilian employees of the Department of Defense pursuant to section 2463 of this title; or
 - (B) to an acquisition approach that would be more advantageous to the Department of Defense; and
- (4) develop a plan to provide for appropriate consideration of the conversion of activities identified under paragraph (3) within a reasonable period of time.

(f) Rule of construction. Nothing in this section shall be construed to authorize the performance of personal services by a contractor except where expressly authorized by a provision of law other than this section.

(g) Definitions. In this section:

- (1) The term "performance-based", with respect to a contract, task order, or arrangement, means that the contract, task order, or arrangement, respectively, includes the use of performance work statements that set forth contract requirements in clear, specific, and objective terms with measurable outcomes.
- (2) The definitions set forth in section 2225(f) of this title [10 USCS § 2225(f)] for the terms "simplified acquisition threshold", "small business concern", "small business concern owned and controlled by socially and economically disadvantaged individuals", and "small business concern owned and controlled by women" shall apply.
- (3) Function closely associated with inherently governmental functions. The term "function closely associated with inherently governmental functions" has the meaning given that term in section 2383(b)(3) of this title [10 USCS § 2383(b)(3)].
- (4) Inherently governmental functions. The term "inherently governmental functions" has the meaning given that term in section 2383(b)(2) of this title [10 USCS § 2383(b)(2)].
- (5) Personal services contract. The term "personal services contract" means a contract under which, as a result of its

terms or conditions or the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of one or more Government officers or employees, except that the giving of an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that makes a contract a personal services contract.

HISTORY:

(Added Dec. 28, 2001, P.L. 107-107, Div A, Title VIII, Subtitle A, § 801(c), 115 Stat. 1176.)

(As amended Jan. 28, 2008, P.L. 110-181, Div A, Title VIII, Subtitle A, § 807(a), 122 Stat. 213.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

2008. Act Jan. 28, 2008 (effective on enactment as provided by § 807(b) of such Act, which appears as a note to this section), redesignated subsec. (d) as subsec. (g); substituted subsecs. (c)-(f) for former subsec. (c), which read: "(c) Compatibility with data collection system for information technology purchases. To the maximum extent practicable, a single data collection system shall be used to collect data under this section and information under section 2225 of this title."; and, in subsec. (g) as redesignated, added paras. (3)-(5).

Other provisions:

Effective date of Jan. 28, 2008 amendments. Act Jan. 28, 2008, P.L. 110-181, Div A, Title VIII, Subtitle A, § 807(b), 122 Stat. 215, provides:

"(1) The amendments made by subsection (a) [amending this section] shall be effective upon the date of the enactment of this Act.

"(2) The first inventory required by *section 2330a(c) of title 10, United States Code*, as added by subsection (a), shall be submitted not later than the end of the third quarter of fiscal year 2008."

Development of guidance on personal services contracts. Act Oct. 14, 2008, P.L. 110-417, [Div A,] Title VIII, Subtitle D, § 831, 122 Stat. 4534, provides:

"(a) Guidance required. Not later than 270 days after the date of the enactment of this Act, the Secretary of Defense shall develop guidance related to personal services contracts to--

"(1) require a clear distinction between employees of the Department of Defense and employees of Department of Defense contractors;

"(2) provide appropriate safeguards with respect to when, where, and to what extent the Secretary may enter into a contract for the procurement of personal services; and

"(3) assess and take steps to mitigate the risk that, as implemented and administered, non-personal services contracts may become personal services contracts.

"(b) Definition of personal services contract. In this section, the term 'personal services contract' has the meaning given that term in *section 2330a(g)(5) of title 10, United States Code*."