DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111

MAY 0 8 2008

SAMR-FM

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation of Section 324 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 119-181)(FY 2008 NDAA)—Guidelines and Procedures on In-sourcing New and Contracted Out Functions

1. References:

a. 10 United States Code §§ 115a, 129, 129a, 2330a(c) and 2463 (as amended by the National Defense Authorization Act for FY 2008 §§ 324 and 807).

b. Memorandum, Deputy Secretary of Defense, Subject as above, 4 April 2008 (Enclosure 1)

c. Department of Defense Instruction 1100.22, Guidance for Determining Workforce Mix, September 7, 2006 (incorporating Change 1, April 6, 2007) (Enclosure 2).

d. Memorandum, Secretary of the Army, 4 September 2007, subject: Army Policy for Civilian Workforce Management and Service Contracts (Enclosure 3).

e. Memorandum, Secretary of the Army, 2 February 2007, subject: Lifting of Civilian Hiring Restriction and Civilian Execution Plans (Enclosure 4).

f. Memorandum, Secretary of the Army, 29 January 2007, subject: Improved Management and Justification of Service Contract Requirements (Enclosure 5).

g. Memorandum, Secretary of the Army, 23 February 2006, subject: Army Policy for Civilian Hiring and Initiation/Continuation of Contracts for Service Personnel (Enclosure 6).

h. Memorandum, Secretary of the Army, 7 January 2005, subject: Accounting for Contract Services (Enclosure 7).

2. The purpose of this memorandum is to supplement DoD policy on in-sourcing pursuant to Section 324 issued via reference b above. Section 324 required the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) to issue guidelines and procedures that ensure that consideration is given to using DoD civilian employees to perform new functions and functions that are performed by contractors. The USD(P&R)'s guidelines and procedures are being implemented as part of the

Manpower Management Program. For the most part, the provisions of this statute are consistent with previous SecArmy guidance regarding in-sourcing issued via references "d through h" above. New and additional procedures and policies are outlined below.

3. **Abbreviated Concept Plans for In-Sourcing.** Pursuant to SecArmy guidance (reference e), the Army currently has a well-defined process for obtaining civilian authorizations for in-sourced contract services in an abbreviated concept plan process. To date, this process has primarily involved identifying an enduring funding source for the in-sourced requirement and using an economic analysis to identify savings. However, cost is only one of several grounds for special consideration for in-sourcing under FY2008 NDAA §324. Sometimes it is inappropriate to continue contracting a function as a matter of law or policy, such as when a contract involves an inherently governmental function, is closely associated with inherently governmental functions, or operates as a personal services contract without statutory authority. Therefore, the DepSecDef guidance (reference b) mandates in-sourcing inherently governmental functions and exempt functions under the DODI 1100.22 Manpower Mix Criteria (reference c) without requiring an economic analysis in these circumstances. Conditioning approval of an in-sourcing concept plan based on savings in these circumstances is inappropriate. Therefore, the in-sourcing concept plans must document the rationale for applying a Manpower Mix Criteria and associated Function Code for the in-sourced function based on the DODI 1100.22 (reference c). All in-sourced positions that are based solely on an economic analysis as the basis for in-sourcing the function, are coded under the manpower mix criteria as reviewable for public-private competition at some point in the future (code R). HQDA will process abbreviated concept plans for in-sourcing within 30 calendar days from receipt.

4. **Scope Includes A-76 Contracts**. Section 324 applies to all contracted services including contracts awarded via public–private competition pursuant to OMB Circular A-76. Contracts can only be in-sourced outside of the A-76 process. Prior Army guidance for in-sourcing had excluded contracts that had been awarded through the A-76 process. These new procedures eliminate the previous exclusion for A-76 contracts and require that the abbreviated concept plan process for in-sourcing described in paragraph 3 above be used.

5. **Contract Requirements Requiring Special Scrutiny**. Sections 324 and 807 and DepSecDef guidance (references a and c) require the SecArmy to review contracted services to ensure that inappropriate/unauthorized personal services contracts and contracts performing inherently governmental functions or closely associated with inherently governmental functions are being discontinued or in-sourced. In order to discourage inappropriate personal services contracts, concept plans which are currently required only for military and civilian requirements will now be required for contract requirements performed within government facilities. In addition, there is a separate

concern with contractors performing certain functions that are closely associated with inherently governmental functions or have a high risk of involving inherently governmental activities. Therefore, to discourage these kinds of contracts, concept plans are required in specific functional areas where the risk of continued reliance on contractors may involve inherently governmental functions, such as: security; program management support to program executive offices, program or project managers; contracting support and administration; and support to the Planning, Programming, Budgeting and Execution process (excluding information technology support functions). Concept plans are required in these circumstances irrespective of whether the requirement has been previously reported or documented because these types of contracts require special scrutiny to assure compliance with the statutes and policies in references a through c. Contracts are to be discontinued or in-sourced if they are likely to operate as inappropriate/unauthorized personal services contracts; if they constitute the performance of inherently governmental functions; or are closely associated with the performance of inherently governmental functions. Personal services and inherently governmental determinations must consider not simply the written tasks in a statement of work but also the factual circumstances within which a contract will be performed, based on an application of the risk considerations in the DoD Manpower Mix Criteria (reference c). Corrective actions should be taken as soon as practical without incurring additional costs to the government or disrupting operational capabilities in coordination with appropriate acquisition professionals and legal counsel.

6. **Contractor Inventory Reporting**. The requirements and manpower mix criteria validation for all contracted services required by statute and OSD guidance (references a through c) will continue to be performed as part of the current review processes established by each Senior Commander and HQDA Principal in compliance with prior SecArmy guidance (references e through h). As stated in reference g, this review takes place before the processing of all statements of work for contracts to procure services or to exercise options on existing contracts for services. The scope of this review applies to all contracted services whether they are performed inside or outside a government facility and irrespective of whether the contract vehicle used to procure services for an Army requiring activity involves a non-Army contracting activity or a reimbursable or supplemental funding source. The Sections 324 and 807, now require the use of a contractor inventory similar to the Contractor Manpower Reporting Application (CMRA) required by prior SecArmy guidance (reference h). However, to ensure that actions required by Sections 324 and 807 are effectively implemented, the following additional actions must now be included in each report for the SecArmy routed through the ASA(M&RA), which is now changed from a monthly to a quarterly report:

- A status report on the actions taken and results achieved by the Senior Commander or HQDA Principal in ensuring the accuracy and completeness of CMRA data and documentation of contract requirements in The Army

Authorization Documents System (TAADS) and Structure and Manpower Allocation System (SAMAS);

- A status report on actions taken to discontinue, in-source or continue the performance of all contracted services (At a future date, a data field will be added to CMRA to account for all personal services contracts and the decisions taken based upon the reviews required by Sections 324 and 807);
- A status report on in-sourcing concept plans and concept plans required by paragraph 5 above;
- A comparison between the contract work year equivalents reported in CMRA and projected contact work year equivalents in TAADS and SAMAS, distinguishing between contract work year equivalents paid for with supplemental funds from those funded from the base budget.;
- The Senior Commander or HQDA Principal must sign the status report with a certification that he or she has taken due diligence to comply with these requirements. This certification process requires review by appropriate legal counsel that supports the reporting organization.

7. **Oversight of Reporting**. This reporting will be audited and validated during the course of the Command Plan process as informed by the Generating Force Census effort intended to identify the total military, civilian employee and contractor support by functional area and organization within the Generating Force. As necessary, individual meetings may be scheduled between the SecArmy and each HQDA Principal or Senior Commander in order to assure full compliance with the statutory requirements. Congress specifically provided for DOD Inspector General review of the Department's implementation of these statutory requirements.

8. **Manpower Requirements Validation**. All requirements will be revalidated in the Command Plan process with the goal of balancing requirements and authorizations.

9. **Major Headquarters Activity Limitations**. Proposed concept plans to in-source contracts that operate as personal services contracts, or involve inherently governmental functions or functions closely related to inherently governmental functions are encouraged, even if this increases the size of major headquarters activities. Similarly, proposed concept plans to in-source in order to save funds are encouraged, even if this increases the size of major headquarters activities. Other increases to major headquarters activities are generally discouraged and may only be supported by a concept plan that includes: (a) fully-documented workload increases for valid missions assigned by HQDA, and (2) offsets from other major headquarters accounts. Congress repealed the general major headquarters limit in NDAA for FY 2008 section 901 but retained the separate statutory limits applicable to the Secretariat and Army Staff in 10 United States Code Section 2314(f). Although Congress repealed the general limitation, the reporting regime was retained that requires an explanation of

increases to major headquarters activities. In addition, the Appropriations Committees may reduce funding for major headquarters activities if these reports lack appropriate justification. In addition, all reorganization proposals must be scrutinized in the concept plan process to make sure they do not trigger major headquarters activities issues.

10. **Overhires.** Once an in-sourcing concept plan is approved, commands may overhire to fill an in-sourced position prior to the effective date when the position is documented.

11. Command Plan Guidance, Resource Formulation Guidance and other HQDA guidance should conform to the above guidelines. The point of contact for this action is Dr. John Anderson, 703-693-2119 or Ms. Eileen Ginsburg, 703-693-2109.

Encl

08 May 08

RONALD J. JAMES
Assistant Secretary of the Army
(Manpower and Reserve Affairs)

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Commander, US Army Reserve Command
Commander, US Army Acquisition Support Center
Commander, US Army Installation Management Command