



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



January 16, 2001

REPLY TO
ATTENTION OF

Exemption Number 2001-0001

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (ACQUISITION,
(LOGISTICS AND TECHNOLOGY)

SUBJECT: Research and Development Exemption

References:

a. Memorandum, SAMR, 14 August 2000, subject: Interim Guidance for Fiscal Year 2000 Inventory of Commercial Activities and Inherently Governmental Activities (Inventory).

b. Memorandum, AMCOSA, 3 October 2000, subject: U.S. Army Materiel Command (AMC) Analysis of Commercial and Inherently Governmental Activities (CIGA) FY00 Inventory.

c. Memorandum, Army Materiel Command, 20 December 2000, subject: Research and development—Exemption Request.

I have determined that the research and development function performed by Army scientists and engineers in the Army Materiel Command and the Army Research Institute is a non-inherently Governmental function that should be exempted from private sector performance on the basis of risk to national security. Civilian employees performing this function will be reported in the Federal Activities Inventory Reform (FAIR) Act Inventory under Office of Management and Budget (OMB) Reason Code A. OMB Reason Code A is designed to identify specific non-inherently Governmental (commercial) activities that should not be subjected to privatization, outsourcing or competition for purposes of the FAIR Act. Military personnel performing this function are not reported in the public FAIR inventory. The criteria for identifying the exemption are described at the enclosure.

As pointed out in the referenced December 20th memorandum, approximately 70 percent of all work assigned to the Army Materiel Command Research Development and Engineering Centers and the Army Research Lab is contracted. Further, the functional community believes that this ratio expresses the outer bounds of contracting required to retain sufficient Government oversight and capability. That memorandum also suggests that it is appropriate to contract for research and development work where there is no organic capability within the Government; where there is sufficient



commercial interest apart from military applications in areas such as information technology; or where the export of the technology or its ready availability poses no risks to national security. The memorandum argues that, in general, contractors should not make baseline programmatic decisions on contracts, schedules, cost, design and performance changes, or make recommendations to milestone decision authorities. In addition, contractors should not represent the Army at formal requirements generation or future systems direction meetings, boards or councils across the Army, DoD and private industry, or with allied nations.

A small cadre of the existing military personnel included within the scope of this exemption provide knowledge of Army doctrine and tactics critical to applying technology to the real world of Army operations. A core Government workforce of civilian employees is required for the research and development function to maintain the knowledge base, corporate memory and oversight body to provide a "smart buyer" capability. The core workforce within the scope of this exemption writes the statements of work, evaluates contractor proposals and reviews contractor performance. These civilian employees have no ties to commercial activities or defense industries that may benefit from the procurement of technologies or weapon systems. More importantly, certain core capabilities within the scope of this exemption involve the research and development of technologies that are not commercially practicable or available, such as large caliber ballistics and propellants, rocketry, armor, advanced weapons sensors and target acquisition technologies. This civilian workforce provides the forward-deployed research and development advisors and the scientific and technological interface with the soldier through the Field Assistance in Science and Technology program.

Additionally, I note that the question of converting the DoD's and Army's research and development laboratories to Government-owned, contractor-operated laboratories based on the example afforded by the Department of Energy (DOE) laboratories has been considered on a number of occasions. A decision was made not to follow the DOE example, in part because of the potential for Government-owned, contractor-operated laboratories to be "less closely connected to their Government customer than DoD laboratories." See, e.g., Section VB., p. 26, Federal Advisory Commission on Consolidation and Conversion of Defense Research and Development Laboratories, report to the Secretary of Defense, September 1991. There were real concerns that such entities would be "less able to transfer technology to Army users, provide technical support to operating forces, or carry out technology assessments for the Army." See, e.g., p. 154, National Research Council report, The Army Research Laboratory, Alternative Organization and Management Options, 1994. In addition, I note that these studies concluded that the steps required to convert the DoD labs from Government-owned, Government-operated to contractor-operated were inappropriate because of the costs of conversion and because many of the original advantages of Government-owned, contractor-operated facilities had been eliminated by regulation and practice.

As senior officials with technical responsibility for the research and development function, the analysis of the risks involved by the Commander, Army Materiel Command, and the concurrence of your Office of the Deputy Assistant Secretary for

Research and Technology in that analysis, are entitled to great weight, as are their judgments that further contracting of the research and development function is inappropriate for the reasons stated in this exemption policy.

I note that section 802 of the 1980 Defense Authorization Act, Public Law 96-107 allows for the competing under OMB Circular A-76 procedures of research and development support functions, but completely bars the application of A-76 procedures to the contracting of performance of the basic research and development function itself.

In the event the question of conversion of Army laboratories to Government-owned, contractor-operated entities arises, or in the event an unsolicited proposal is received from private sector entities proposing such conversion, I would ask that that such proposals be coordinated with this office.

Continuation of this exemption is conditioned on solid progress in developing appropriate ratios of in-house to contract that may be used to evaluate expected increases in workload in this functional area in Army Materiel Command. This will require solid progress by Army Materiel Command in adoption of workload-based systems and the implementation and use of the contractor inventory data collected pursuant to the Army Final Rule, codified at 32 CFR Part 668, to evaluate the risks of contracting the full requirement within a function.


Patrick T. Henry
Assistant Secretary of the Army
(Manpower and Reserve Affairs)

Enclosure

CF: Cdr, AMC

**National Security Exemption
Research and Development
Functions**

The scope of this excludes RDT&E support.

1. Unit Identification Codes

- XDW262AA – US Army Research Laboratory**
- X6W1DFAA – US Army Aviation and Missile Command Research, Development and Engineering Center**
- X7W4GHAA – US Army Tank Automotive Research, Development and Engineering Center**
- X74WMKAA – US Army Research and Development Center, Picatinny Arsenal**
- X8W4G8AA – US Army Communications and Electronics Command Research, Development, and Engineer Center, Fort Monmouth**
- W038AA – US Army Natick Research, Development and Engineer Center**
- W4MLAA – US Army Edgewood Research, Development and Engineer Center**
- XAW1D1AA – US Army Edgewood and Natick Research, Development and Engineer Center**
- X9W317AA – US Army Simulation, Training, and Instrumentation Command**

- W3VS31 – US Army Research Institute**

2. Occupation Codes

All Military

GS-12 and higher

800 Series (all) – Engineers

1300 Series (all) – Scientific

1500 Series (all) – Operations Research and Mathematics

1910 – Quality Assurance