From:

SMART Core

Sent:

Monday, April 04, 2011 04:26:26

To:

Cc:

Adkins, William T; Walt, Daniel J

Subject:

PROCUREMENT ROLES AND RESPONSIBILITIES - GSO AND DOD PERSONNEL

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Info Office:

ADM

MRN:

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SECSTATE WASHDC

Action:

AMEMBASSY PORT AU PRINCE ROUTINE; ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE ROUTINE

E.O.:

13526

TAGS:

AMGT

Reference:

98 STATE 164061
00 STATE 22587
00 STATE 93804
03 STATE 037835
08 STATE 000654
SECDEF Msg 021516Z OCT 98
DIA Msg 071458Z SEP 10

Correction Reason:

Additional Drafter and/or Approver

Subject:

PROCUREMENT ROLES AND RESPONSIBILITIES - GSO AND DOD PERSONNEL

UNCLAS STATE 030953

E.O. 13526: N/A
TAGS: AMGT
SUBJECT: PROCUREMENT ROLES AND RESPONSIBILITIES
- GSO AND DOD PERSONNEL

REF: (A) 98 STATE 164061, (B) 00 STATE 22587,
(C) 00 STATE 93804, (D) 03 STATE 037835, (E) 08 STATE 000654, (F) SECDEF Msg 021516Z OCT 98,
(G) DIA Msg 071458Z SEP 10

1. Introduction:

A. This cable from State's Procurement
Executive Corey Rindner has been reviewed and approved by the Office of DoD's Director, Defense Procurement and Acquisition Policy (DPAP).

B. This cable updates and clarifies the roles and responsibilities of DoD and State Management/General Service Officer (MGMT/GSO) personnel at overseas embassies and consulates on procurement matters. This includes both DoD personnel permanently assigned to posts and those with business in the area requesting support from posts.

C. REF (A) provides clarification on acquisition services and the fees under

International Cooperative Administrative Support Services (ICASS) at any post. REF (B) covers the provision of procurement services by State under ICASS and discusses serviced agency special authorities. REF (C) provides guidelines regarding the acquisition of official vehicles by overseas posts. REF (D) is a joint cable from State and Defense Logistics Agency (DLA) that provides guidance to outline the roles and responsibilities of the Defense Energy Support Center (now known as DLA Energy) and Admin/MGMT/GSO personnel at overseas posts on fuel procurement matters. REF (E) is a joint cable outlining the roles and responsibilities of DoD and State MGMT/GSO personnel at overseas posts on procurement matters. REF (F) provides the DoD policy for the approval of offshore procurement of vehicles using security assistance funds. REF (G) provides guidance on the acquisition of non-armored vehicles for DIA Defense Attachi Offices (DAOs).

2. Compliance with all applicable statutes, regulations and directives:

A. State and DoD want to make the procurement process work as smoothly as possible. DoD personnel, employing the services of MGMT/GSO Contracting Officers, are reminded of their responsibility to provide documentation to the assisting agency, as circumstances dictate, that specifies any DoD-unique requirements and otherwise provides assurance that such DoD requirements comply with all applicable statutes, regulations and directives.

B. DoD personnel should become familiar with the requirements associated with interagency acquisition maintained on the Defense Procurement and Acquisition Policy webpage, http://www.acq.osd.mil/dpap/cpic/cp/interagency _acquisition.html, when contemplating requesting acquisition support from State. This site contains both a series of "Frequently Asked Questions" and the latest DoD policies. For purposes of Section 801(b) of the Fiscal Year 2008 National Defense Authorization Act, Internal Controls for Procurements on Behalf of the Department of Defense by Certain Non- Defense Agencies, Request for "Waiver," State is a non-certifying, non-defense agency. This means that DoD Components may not request State to procure property or services in excess of the simplified acquisition threshold (SAT) (normally USD 150,000 - see Federal Acquisition Regulation (FAR) 2.101) or warrant level of the GSO/Mgmt Officer, whichever is less (note some GSO/Mgmt Officers only have $100,000 warrants) without a waiver approved by the Director, Defense Procurement and Acquisition Policy (DPAP) and A/OPE. Waiver requests must be submitted through the agency focal point in accordance with procedures found at the aforementioned webpage. Even though DoD has a waiver policy in place for procurements exceeding SAT, STATE contracting support of DoD is limited to simplified, non-complex, low dollar value, commercial type, non-programmatic procurements for U.S. Government personnel use.

C. For informational purposes, DIA currently has an approved Office of Secretary of Defense (OSD) waiver on file to continue to conduct business with the Department of State for efforts exceeding the simplified acquisition threshold; however, note restrictions in last sentence of para B above. To confirm the continued authorization of DIA to use services of the Department of State for such requirements, please contact Anthony E. Cicala, Chief, Acquisition Policy, DIA, at (703) 907- 1846, or Gary Blasser, Deputy Chief, Acquisition Policy, DIA, at (703) 907-0730 and post A/OPE desk officer identified in paragraph 7.

3. Government-wide Commercial Purchase Card
(GCPC): DoD employees are encouraged to use the DoD government-wide commercial purchase card for acquisitions while at overseas posts.
It is most commonly used for purchases at or below the micro-purchase threshold of USD 3,000 per transaction. However, authorized individuals from DAOs and Security Cooperation Offices (SCOs), and military units tasked with supporting theater security cooperation efforts, may use government-wide commercial purchase cards for individual transactions up to USD 30,000, as appropriate [see Defense Federal Acquisition Regulation Supplement (DFARS) 213.301, DoD Government Charge Card Guidebook and agency requirements]. The card provides a quick and reliable means for DoD personnel to meet small dollar value needs without having to submit procurement requests to MGMT/GSO and pay the associated ICASS charges. It also provides an excellent record of acquisition transactions. Contact the respective procurement office at the Headquarters providing support to request a government-wide commercial purchase card. For DAOs contact Robert (Chris) Mohn, DIA GPC Program Manager at (301) 394-5309, or Bonnie Healy, DIA Deputy GPC Program Manager at 402- 232-8083.

4. Direct Procurement for DoD offices:

A. If a purchase card transaction is not appropriate, DoD personnel should generally look first to their normal DoD source of procurement support.

B. Post procurement support is normally restricted to those routine non-complex services and supplies used by U.S. Government personnel permanently assigned at post and acquired for USG employee direct use that are covered under the local ICASS agreement that the post has with agencies under Chief of Mission authority. Post procurement offices are not staffed to support TDY/TAD military personnel. TDY/TAD military personnel shall arrange for contracted transportation, lodging and most other contracted support through their supporting contracting offices. Post procurement offices may assist with points of contact and vendor information. Post procurement offices are not staffed or sufficiently knowledgeable regarding DoD-unique procurement policy requirements, special authorities and programs to provide procurement support for complex program procurements, nor do they possess the needed assistance authorities to complete certain transactions. Certain categories of procurements defined in REF (E) (such as Partnership for Peace, Humanitarian Assistance, FMS case related work for host government, military exercises/training, base operations, weapons procurement, aviation fuels and construction, President's Emergency Plan for Aids Relief (PEPFAR) projects) must be handled by DoD procurement offices.

C. Procurement Process: Paragraphs C.1 through C.11 provide guidance in chronological order following the steps in the procurement process. Procurement actions submitted to your DoD Procurement Office may not follow the same requirements found in the paragraphs below if special authorities exist; however, the basic procedures should be similar.

C.1. Acquisition Planning: Sound procurement begins with adequate planning. All procurement actions take a certain amount of lead time. The most successful procurements are planned in advance. DoD personnel assigned at post should hold an acquisition planning meeting at the beginning of each fiscal year with the

MGMT/GSO section to discuss upcoming procurement requirements. Additionally, regularly scheduled meetings are also advisable. For guidance you may also review State's Office of the Procurement Executive's (A/OPE) sample on acquisition planning (available at http://AOPE.A.STATE.GOV (DoS intranet website available to all DoS, DoD and other agency personnel under COM authority overseas) or on the World Wide Web at http://www.statebuy.state.gov, click on DOSAR, under "References," then click on "605 - 612, Subchapter B - Competition and Acquisition Planning," below which will appear a subfolder entitled "PDF Format." Click on "PDF Format," then go to Part 607). DoD Personnel at post, or that will be on temporary assignment in the area deployed to support theater security cooperation efforts, should also review and be familiar with requirements set forth in DFARS 207.1 and this cable and begin working arrangements for procurement support at least 60 days prior to the need or else as soon as practicable.

The Geographic Combatant Commands (GCCs) may need to write a Contract Support Integration Plan (CSIP) that addresses how DoD will carry out procurement actions in a theater of operations. This should include how DoD/military contracting officers integrate with DoS MGMT/GSO sections.

C.2. Requisition Practices: Splitting a procurement request to avoid a mandated procurement threshold is illegal. Obligation of funds with specifics to be determined later, in order to obligate funds prior to the end of a fiscal year, is not acceptable. Obligation of funds on a procurement document for needs that may arise in the next fiscal year, in order to save the funds, is also illegal and violates Appropriation Law.

C.3. State Contracting Authority: The Procurement Executive appoints MGMT/GSOs as Contracting Officers. Appointments are limited by dollar value, training and need. Appointments are usually in the amount of USD 100,000 or USD 250,000. A Contracting Officer must receive prior approval from OPE prior to soliciting proposals and awarding a contract with a dollar value over the warrant limitation.

C.4. Procurement Requests: The procurement process cannot begin without a proper purchase request, DS-1970 (or equivalent, if the post already requires a different form). The request must consist of, at a minimum, a statement of work, suggested source list, and evidence of funding, or if funding is not currently available, appropriate rationale in accordance with statute, FAR, and supplementing regulatory procedures as applicable, followed by estimated cost. A sample of DOS's Abroad Procurement Request Form DS-1970 can be found at A/OPE's intranet webpage or on the World Wide Web at http://www.state.gov/documents/organization/79993.pdf.

C.5. Funding: Normally, DoD purchase requests should include a certification that funds are available, supported by an obligation number on the certification. If funding is not available at the time a purchase request is being prepared, then DoD must state on the procurement request that funding is currently unavailable, and provide any relevant documentation. The MGMT/GSO must have some assurance that funds are or will soon be available to be able to start a procurement action. In no event may the Contracting Officer sign a contract or modification, purchase order, or delivery order without a written funds certification from DoD.

This certification is required by FAR 32.702. Any procurement action that is not supported by adequate and proper funding may be a violation of the Anti-Deficiency Act, which imposes criminal penalties.

C.6. Market Surveys: DoD personnel and staff can be especially helpful to the MGMT/GSO by conducting vendor market research for each procurement. Likewise, visiting military units/personnel utilizing DoD procurement organizations to support theater security cooperation efforts, in coordination with DAOs/SCOs at post, should consult with post well in advance of such events regarding potential local sources. Market research is defined by FAR Part 10 as determining whether the commercial marketplace has the items needed to meet the government's requirements. At this early stage in the procurement process, the government is not soliciting formal quotations or proposals. DoD may provide names of market sources to acquisition personnel (either at State or the DoD Acquisition activity). These names should be representative of what the market has to offer, not simply favorite sources. DoD personnel are cautioned to make no commitments to prospective vendors (see paragraph 6).

C.7. Competition: Government policy is to compete procurements to the maximum extent practicable. Although there are exceptions to this policy, the general rule is that for simplified acquisitions (valued between USD 3,000 and USD 150,000), at least three sources should be asked to provide price quotations in accordance with FAR 13.104. For procurements above that amount, all responsible sources should be given an opportunity to compete. Any exceptions must be documented in a signed justification that complies with FAR 6.303 (for contracts) or FAR 13.106-3 (for simplified acquisitions). Justifications over $150,000 will be posted on FedBizOps with signatures of the requestor and Contracting Officer. The justification must include information such as description of efforts made to find competition, market survey data, basis for determining the price to be reasonable, unique qualifications of the contractor or basis for urgency determination, actions planned to promote competition in the future, etc. The FAR is accessible through A/OPE'S Intranet web site listed in paragraph 4 above as well as DoD's DPAP public website at http://www.acq.osd.mil/dpap/dars/far.html.

C.8. Solicitation Process: The MGMT/GSO, as Contracting Officer, has responsibility to prepare the solicitation, publicize the procurement action to promote competition, issue the solicitation and award the contract if they are the contracting activity. In cases where the exact amount or delivery times for supplies or services is uncertain, blanket purchase agreements or indefinite quantity contracts/purchase orders can be awarded. These arrangements establish a means for placing orders when specific needs arise. Further information appears in A/OPE's Overseas Contracting and Simplified Acquisition Guidebook, Chapter 2 on A/OPE's intranet web site.

C.9. Evaluation and Award: After responses are received, the Contracting Officer may ask DoD staff to assist in the evaluation process. The Contracting Officer decides who will be awarded the contract or purchase order. DoD's first appearance in the MGMT/GSO's office for a given procurement should not be to present a "done DEAL" with a pre-selected contractor and a purchase order prepared for signature by the MGMT/GSO (see sub-paragraph C.7. and paragraph 6). The MGMT/GSO must be involved in the procurement process from the beginning, and

reduced ICASS charges are not available to DoD or other agencies that assist in the procurement process.

C.10. Contract Administration: Awarding a contract or purchase order is no assurance that the necessary work will be done. Every contract or simplified acquisition must be administered. The Contracting Officer will normally appoint a DoD person to serve as Contracting Officer Representative (COR), with duties specified in a COR appointment letter. The COR's duties include monitoring the contractor's work to ensure compliance with the contract, reporting problems to the Contracting Officer, reviewing invoices for adequacy, and related functions. Detailed guidance is found in State's COR Handbook, 14 FAH-2, available on the web at http://www.state.gov/documents/organization/89068.pdf. COR training is also available from Defense Acquisition University (DAU) Continuous Learning Center (CLC106 and CLC206). The DAU website is www.dau.mil. All CORs must be FAC- COR certified in accordance with Office of Mgmt and Budget, Office of Federal Procurement Policy Letter 05-01.

C.11. Procurement Files: The official file for any contract or simplified acquisition conducted by the MGMT/GSO will remain with the MGMT/GSO. The MGMT/GSO will send a copy of the purchase order, delivery order, call (under a blanket purchase agreement), or contract to DoD personnel at post as the requiring office and to the COR, if in a different location from the requiring office.

5. Vehicles. REF (C) covers acquisition of official vehicles by overseas posts, including agencies other than State. Generally, DoD purchases of vehicles must be both approved and purchased through DoD channels/chain of command in accordance with DoD procurement and motor vehicles program authorities. In certain circumstances, when DoD provides the requisite approval/ authority, post or a State Regional Procurement Support Office (RPSO) can make the purchase of non-U.S. manufactured vehicles from non-U.S. sources. Requests in excess of the local MGMT/GSO's warrant level should be referred back to the requestor's supporting agency contracting office (see paragraph 2) for procurement action.

Likewise, requests for leasing of vehicles in excess of 60 days generally should be referred back to the requestor's supporting agency contracting office for procurement action. Note that in accordance with FAR 7.401 at http://farsite.hill.af.mil/ and 14 FAM 438.4 at http://www.state.gov/documents/organization/124283.pdf, requestor must provide a cost/benefit analysis to justify leasing versus buying.

Leasing or purchasing of armored vehicles for DOD activities must be submitted to DOD acquisition offices. Procurement requests for vehicles intended for host nation government use must also be referred to the requestor's supporting agency contracting office for procurement action.

Below are specific rules applying only to SCOs/DAOs:

A. Procedures for SCOs. REF (F) covers approval authority for offshore procurement of SCO vehicles. Normally, SCOs may only purchase U.S. manufactured vehicles. However, DSCA has been delegated authority to approve Buy America Act (BAA) waivers for off-shore procurement of foreign-manufactured vehicles for SCOs. DSCA will consider exceptions on a case-by-case basis, with approval of

the geographic combatant commander; force protection, personnel security and safety are the most compelling reasons for approval on an exception basis. After identifying a vehicle for SCO use, the Senior Defense Official/Defense Attachi (SDO/DATT) or SCO Chief will forward the purchase request along with a cost comparison and endorsement by the post Regional Security Officer (RSO) to the cognizant geographic combatant commander (GCC). The GCC will evaluate the request and provide DSCA its endorsement as part of the request packet for DSCA approval/ disapproval. If the request is approved, DSCA will notify the respective GCC which will then work with the SCO and supporting post MGMT/GSO to procure the vehicle using Title 22 Security Assistance funding for USG employee direct use (not host government).

B. Procedures for DAOs. REF (G) provides guidance on the acquisition of non-armored vehicles/indigenous motor vehicles to support DAOs worldwide. DAOs are not required to forward non-armored vehicle requests to GCCs for evaluation and approval. After coordination and receipt of fund cite cable from HQ DIA, DAOs may process such requests either directly with GSOs (if within GSO/Mgmt Officer warrant) or other applicable procurement offices. See REF (G) for additional guidance.

6. Unauthorized Commitments:

A. An unauthorized commitment has been made if personnel, other than a bonafide warranted Contracting Officer with the authority to obligate the government, orders a contractor to do work, and no contract, purchase order, or other procurement instrument is in place. Additionally, if a Contracting Officer Representative (COR) under a contract, purchase order, etc., directs the contractor to perform work not already required under that contract or purchase order, the COR has moved outside the scope of COR authority and an unauthorized commitment has been made. Work must stop, and the contractor may not be paid unless and until the unauthorized commitment is ratified.

B. Ratification procedures are found in FAR 1.602-3 (See http://farsite.hill.af.mil/) and Department of State Acquisition Regulation (DOSAR) subpart 601.6.

C. State will not ratify unauthorized commitments made by DoD personnel, whether visiting or permanently assigned to post.

D. For those unauthorized commitments made by visiting DoD personnel, post will send them directly to the pertinent GCC Operational Contract Support POC (see para 7) for assistance, along with an information copy to the DoD POC. While the GCC does not have contracting authority and cannot adjudicate unauthorized commitments, it is responsible for coordinating theater security cooperation efforts in its Area of Responsibility. The GCC will have cognizance of the particular military units that execute such efforts and routinely communicates with such units in the normal course of business. Normally, the military will look to the contracting activity that routinely supports the Service unit whose member(s) made the unauthorized commitment for processing of the ratification request.

E. The OCS POC in the pertinent GCC shall inform the appropriate theater security cooperation POC within the command of the issue. Non-payment and delay of payment of DoD bills in foreign countries can have a negative effect on in country relationships and the willingness of contractors to work with the U.S. in the future. The OCS POC shall work with the security assistance POC as necessary to determine or verify the particular military unit to whom the person who executed the unauthorized commitment was assigned. The OCS POC shall then determine and refer the issue to the appropriate supporting military contracting activity that should be responsible for adjudicating the unauthorized commitment and provide an info email on the referral to both the particular consulate or embassy and the DoD POCs.

F. Once the GCC identifies and refers the ratification request to the appropriate military unit, it will be processed in accordance with appropriate component/ service/agency regulations. Every effort should be made to resolve issues at the lowest level possible. The supporting military contracting activity shall provide regular status updates to the cognizant embassy/consulate, OCS POC and the DOD POCs and work to expeditiously complete adjudication of the unauthorized commitment and payment of vendors.

G. For ratification of unauthorized commitments made by military personnel in Defense Attache organizations, contact DIA's Ms. Karen Blum, Head of the Contracting Activity (HCA) at (703) 907-2874 or Mr. Paul Courtney, Deputy HCA at 202-231-6544.

H. Disciplinary action may be taken and the person making the unauthorized commitment may be required to pay the contractor from personal funds if the ratifying official decides that it is not appropriate to ratify the action. Ratification is an unusual step, and must be supported by strong justification. Its approval should never be assumed.

7. Questions/Assistance: A/OPE is committed to providing continued support and assistance regarding these matters. Please don't hesitate to contact the following offices for further clarification or assistance:

GCC Operational Contract Support POCs:
Maintained on GCC Operational Contract Support webpages. See: http://www.acq.osd.mil/dpap/pacc/cc/areas_of_responsibility.html, and clicking on the pertinent AOR. If you need assistance, contact Bill Reich, 571-256-7009, email william.reich@osd.mil or Jill Stiglich, 571- 256-7008, jill.stiglich@osd.mil

DoD: Bill Reich, 571-256-7009, email william.reich@osd.mil or Jill Stiglich, 571- 256-7008, jill.stiglich@osd.mil, Richard Ginman, 703-695-4235, email richard.ginman@osd.mil

DLA Energy POC (for fuel purchases): George Atwood, 703-767-8502, fax 703-767-8506, or email george.atwood@dla.mil

DSCA POC (for SCO vehicle purchases): Paul S. Gendrolis, Office of the Comptroller, DSCA, DSN 664-0051/703-604-0051, email paul.gendrolis@dsca.mil

U.S. European Command (USEUCOM) (for partnership for peace, humanitarian assistance, etc.): Amy McCall DSN (314) 430-2123, email to:amy.mccall@eucom.mil

PEPFAR (President's Emergency Plan For Aids Relief): Dr. Michael Grillo, 619-553-8398, or email michael.grillo@med.navy.mil

U.S. Africa Command (USAFRICOM); Logistics Policy and Programs Branch, Chief of Contracting: opl-ls-cons@africom.mil

STATE A/OPE/EAD DESK OFFICERS:
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