



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-3000

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Treatment of Nontraditional Defense Contractors

Nontraditional Defense Contractors (NDCs) play an important role in providing innovative capabilities to the Department of Defense. To encourage continued participation in the defense innovation and industrial base by NDCs, this memo reminds Contracting Officers (COs) that contractors may make an NDC determination about their suppliers and subcontractors, so long as the suppliers and subcontractors meet the definition of an NDC, as defined in 10 United States Code (U.S.C) § 3014. Defense Federal Acquisition Regulation Supplement (DFARS) 215.408(5) requires that COs insert DFARS Provision 252.215-7010, "Requirements for Certified Cost or Pricing Data and Data Other than Certified Cost or Pricing Data," in solicitations when it is reasonably certain the submission of certified cost or pricing data or data other than certified cost or pricing data will be required. The solicitation provision at DFARS 252.215-7010 stipulates that in lieu of submitting certified cost or pricing data, an offeror may submit a written request demonstrating it meets one of the exceptions.

If an offeror seeks an exception based on the fact it meets the definition of an NDC, the DFARS provision 252.215-7010 requires that the offeror shall provide, at a minimum, a statement to the CO that it meets the NDC statutory definition. COs should validate and document the status of an NDC prior to contract award to ensure the conditions of section 10 U.S.C. § 3014 are met. If accepted by the CO, prime contractors may treat products and services provided by NDCs as commercial products and commercial services as specified in 10 U.S.C. § 3457.

Whether an offeror seeks the exception or not, contracting officers may use their discretion about the treatment of NDCs, at both the prime and subcontractor level.

My point of contact for this memorandum is Ms. Paula Smith, who may be reached at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

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