



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

SEP 18 2019

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION
EXECUTIVE)
INSPECTOR GENERAL OF THE
DEPARTMENT OF DEFENSE
DEPUTY ASSISTANT SECRETARY OF THE
ARMY (PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE
NAVY (ACQUISITION & LOGISTICS
MANAGEMENT), ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DEFENSE FIELD ACTIVITIES

SUBJECT: Fiscal Year 2020 Waiver to Section 801 of the National Defense Authorization
Act for Fiscal Year 2008

This waiver is in accordance with Section 801 of the National Defense Authorization Act (NDAA) for fiscal year (FY) 2008, as amended, by the Under Secretary of Defense for Acquisition, and Sustainment who has delegated the waiver authority to the Principal Director, Defense Pricing and Contracting. Several Department of Defense (DoD) Components have requested to continue receiving contract administration of supplies and services through the Assisted Acquisition division of the Program Support Center (PSC) within the Department of Health and Human Services (HHS) during FY 2020.

The NDAA FY 2008 (Public Law 110-181), Section 801, "Internal Controls for Procurements on Behalf of the Department of Defense (DoD) by Certain Non-Defense Agencies," at subsection (b)(1), allows an acquisition official of DoD to place an order, make a purchase, or otherwise procure property or services for the DoD in excess of the simplified acquisition threshold through a non-defense agency only if the head of the non-defense agency has certified that the agency will comply with defense procurement requirements for the fiscal year.

In the attached September 13, 2019, memorandum, PSC states it does not intend to provide a certification under Section 801 for any of its divisions in FY 2020. On September 6, 2019, a Section 801 waiver was issued for contract administration by the Federal Occupational

Health (FOH) division of the PSC. The waiver specifies that DoD requires continued FOH administration of already awarded contracts in specified service areas for a period of sixty (60) days to maintain continuity of operations until follow on contracts can be awarded by DoD. Due to the September 6, 2019, waiver, contracts awarded by FOH, are not covered by this waiver memorandum.

Specific to the active contracts awarded by the Assisted Acquisition division of PSC for DoD requirements, DoD requires FY 2020 contract administration for supplies and service for contracts awarded for DoD requirements that have a period of performance continuing into FY 2020. This waiver is necessary to maintain continuity of operations. This waiver is for those PSC contracts that were identified in my July 1, 2019, section 801 waiver memorandum that only covered a period of performance through FY 2019.

I hereby determine that it is necessary and in the best interests of DoD for PSC to continue FY 2020 contract administration of the existing contracts/orders placed by PSC's Assisted Acquisition division on behalf of DoD through October 31, 2019.

If a requiring activity identifies a need for continued PSC contract administration after October 31, 2019, but not to exceed performance beyond September 30, 2020, the requiring activity's General Officer or Senior Executive Service member must provide PSC the following information on or before October 22, 2019:

- (A) Classification review of the performance work statement, contract, and associated funding documents (MIPRs) by an authorized representative that has the authority to approve a Contract Security Classification Specification, DD Form 254.
- (B) Copy of the applicable interagency agreement, or proposed terms for an interagency agreement, that describes roles and responsibilities for contract administration and management in accordance with FAR 17.502-1(b).
- (C) Designated contracting officer's representative that has the experience and training required in accordance with Federal and Defense Acquisition Regulations.
- (D) Certification that the General Officer or Senior Executive Service member making the request for PSC contract administration in FY 2020 is the same General Officer or Senior Executive Service member for the program receiving the contract deliverables.

PSC set up a mailbox for the DoD submissions: MOUSubmissions@psc.hhs.gov. Submissions cannot go directly to a person at PSC due to the need for FAR 4.4 corrective action.

This waiver is valid for the performance of administration of PSC contracts awarded on behalf of DoD activities through FY 2020, subject to the limitations specified. My point of contact for this is Mr. Greg Snyder who can be reached at 703-614-0719, or gregory.d.snyder.civ@mail.mil.

A handwritten signature in blue ink, appearing to read "Kim Herrington for".

Kim Herrington
Acting Principal Director,
Defense Pricing and Contracting

Attachments:
As stated



DEPARTMENT OF HEALTH & HUMAN SERVICES

Program Support Center
Acquisition Management Services
7700 Wisconsin Avenue, 8th Floor
Bethesda, MD 20857

September 13, 2019

Michael Pelkey
Acting Director, Contract Policy
Office of the Under Secretary of Defense for Acquisition and Sustainment
Defense Pricing and Contracting

Subject: HHS Program Support Center FY 2020 Section 801 Certification

Dear Mr. Pelkey:

This correspondence is to notify you that the Program Support Center (PSC) within the Department of Health and Human Services (HHS) does not intend to certify under Section 801 of the Fiscal Year 2008 National Defense Authorization Act (NDAA) for the upcoming fiscal year beginning October 1, 2019. PSC has identified the contracts for Department of Defense (DoD) requirements awarded through its Assisted Acquisition division and on behalf of its Federal Occupational Health (FOH) division.¹ PSC is reviewing the contracts awarded on behalf of its Real Estate and Financial Services divisions to determine if PSC has awarded contracts for DoD requirements that are impacted by PSC's decertification.

This correspondence is also to request your assistance in putting safeguards in place for active PSC contracts/orders for DoD requirements. PSC's Assisted Acquisition division is currently administering contracts/orders for DoD requirements that have a period of performance that continues into FY 2020.² PSC notified your office on June 19, 2019, that PSC made the decision to terminate its assisted acquisition program for non-HHS agencies in part based on a determination that the PSC Strategic Acquisition Service contracting office was not currently capable of compliance, particularly in the area of contract administration for FAR Part 4.4, *Safeguarding Classified Information Within Industry*, FAR 17.5, *Interagency Acquisitions*, and FAR 17.7, *Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense*. PSC stated in its June 19, 2019 letter that it was putting safeguards in place to address the noncompliance during the orderly termination of PSC's assisted acquisition program through a memorandum of understanding (MOU) process.

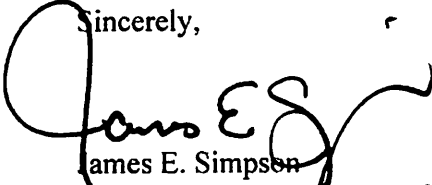
On July 1, 2019, DoD issued a Section 801 waiver that required PSC to receive the concurrence of its DoD customers authorizing the use of the waiver for fiscal year 2019. The

¹ On September 6, 2019, Mr. Kim Herrington, Acting Principle Director, Defense Pricing and Contracting, issued a Section 801 waiver to allow continued FOH administration of already awarded contracts in specified areas for a period of sixty (60) days to maintain continuity of operations until follow on contracts can be awarded by DoD.

² PSC's Assisted Acquisition division has also identified active Indefinite Delivery Indefinite Quantity (IDIQ) and Blanket Purchase Agreement (BPA) contract vehicles that support DoD requirements. PSC intends to terminate these IDIQs and BPAs by November 1, 2019.

process has been largely unsuccessful, which has led to PSC's inability to address FAR 4.4, 17.5, and 17.7 corrective action; name a new contracting officer's representative to PSC contracts/orders; and other contract administration and closeout obstacles. To address these issues in fiscal year 2020, PSC requests DoD's assistance in identifying the General Officer or Senior Executive Service member for the program that is receiving the contract deliverables for the PSC contracts/orders that have a period of performance that extends into fiscal year 2020. PSC also requests a single point of contact in each DoD service/component that is available to assist PSC in obtaining the concurrence of the requiring activities' General Officer or Senior Executive Service member. A concurrence and an MOU are necessary to address FAR 4.4, 17.5, and 17.7 noncompliance for contracts/orders that have a period of performance in fiscal year 2020. General Officer or Senior Executive Service member concurrence is also necessary to verify the receipt of contract deliverables and commence contract closeout procedures. If PSC does not receive General Officer or Senior Executive Service member concurrence through the MOU process on or before October 31, 2019, PSC intends to move contracts for DoD requirements that have an active period of performance in fiscal year 2020 into a termination status.

Please address any questions concerning PSC's request to my attention at James.Simpson2@hhs.gov.

Sincerely,


James E. Simpson
Deputy Assistant Secretary for Acquisitions (DAS-A) (Acting)
Office of the Assistant Secretary of Administration
Department of Health and Human Services