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SECNAV INSTRUCTION 4200.31C

From: Secretary of the Navy

Subj: ACQUIRING AND MANAGING CONSULTING SERVICES

Ref: (a) DOD Directive 4205.2, "Acquiring and Managing Contracted Advisory and Assistance Services", of 10 Feb 92 (NOTAL)
(b) OMB Circular A-11 Change of 23 Oct 92 (NOTAL)
(c) FAR Part 37 "Service Contracting" (NOTAL)
(d) DFARS Part 37 "Service Contracting"
(e) Federal Personnel Manual, Section 304 (NOTAL)
(f) DoD Directive 5105.4, "Department of Defense Federal Advisory Committee Management Program", of 5 Sep 89 (NOTAL)
(g) SECNAVINST 5200.35C, "Department of Navy Management Control Program", of 7 Jan 91 (NOTAL)

Encl: (1) Guide to Contracted Advisory and Assistance Services

1. Purpose

a. To revise policy, assign responsibilities, and prescribe procedures for planning, acquiring, managing, evaluating, and reporting Consulting Services (CS), which were formerly designated Contracted Advisory and Assistance Services (CAAS).

b. To implement the Department of Defense (DOD) management policy in reference (a) and the direction of the Congress as implemented in reference (b).

This is a complete revision and should be read in its entirety.

2. Cancellation. SECNAVINST 4200.31B.

3. Background. Historically, CS have been viewed as a resource which may be properly employed to accomplish Department of the Navy (DON) programs, but a resource which requires greater visibility, review, and oversight than other resources.

a. Continuing Congressional interest and revised DOD guidance necessitate updating policies and procedures for the identification, acquisition, management, and control of CS. During FY 1990 and FY 1991, this interest was manifested as a statutory limitation on the amount of funds which could be obligated for CAAS. For FY 1994, Congress, in Public Law 102-394, redefined CS

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and required that the Office of Management and Budget (OMB) establish the funding for CS for each Department and Agency as a separate object class in each budget submitted to Congress under Section 1105 of Title 31, United States Code. In compliance with this law, OMB, in reference (b), provided revised guidance defining object class 25.1 for CS. As a result, CAAS, as defined in reference (a), will no longer be reported. Instead an "Exhibit 15E", developed for collecting and reporting CS data to OMB and Congress to comply with the reporting requirements contained in 31 U.S.C. 1114, 10 U.S.C. 2212, and P.L. 102-394 is required. This instruction incorporates initiatives to ensure the effective and efficient procurement and oversight of CS efforts.
For additional guidance in acquiring these services, see references (c) and (d).

b. Congressional concerns stem from both the cost and nature of CS. CS involve substantial DON resources and there is a perception that these services may be excessive to need, duplicative, or not effectively utilized. More importantly, when contractors provide advice or assistance which may affect decision making, influence policy development, or provide staff support to project or program management, it is essential to ensure that the contractor's performance is free of conflicts of interest and does not impinge upon the performance of inherently governmental functions by government employees. As such, CS require an appropriate degree of enhanced management and oversight. When using contractor provided products, final decisions and actions must reflect the independent conclusions of DOD officials. The definitions below are intended to encompass contractual effort where these concerns are likely to be present.

4. Definitions. CS are advisory and assistance services acquired by contract from non-governmental sources (including Federally Funded Research and Development Centers (FFRDCs) and other non-profit organizations) to support or improve organization policy development, decision-making, management, and administration; support program or project management and administration; provide management and support services for Research and Development (R&D) activities; provide engineering and technical support services; or improve the effectiveness of management processes or procedures. The products of CS may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training, and technical support. Object Class 25.1 CS include services that provide management and professional support services; studies, analyses and evaluations; and engineering and technical services defined as follows:

a. Management and Professional Support Services (MSS). Contractual services that provide assistance, advice, or training for the efficient and effective management and operation of organizations, activities (including management, scientific and engineering support services for R&D activities), or systems. These services are normally closely related to the basic responsibilities and mission of the agency contracting for the services. Includes efforts that support or contribute to improved organization of program management, logistics, management, project monitoring and reporting, data collection, budgeting, accounting, auditing, and technical support for conferences and training programs. It also includes services to review and

assess existing managerial policies and organizations; develop alternative procedures, organizations, and policies; and to examine alternative applications and adaptations of existing or developing technologies.

b. Studies, Analyses, and Evaluations (SAE). Contractual services that provide organized, analytic assessments or evaluations in support of policy development, decision-making, management, or administration. Includes studies in support of R&D activities. Also includes obligations for models, methodologies, and related software supporting studies, analyses, or evaluations. Examples include: cost, benefit or effectiveness analyses of concepts, plans, tactics, forces, systems, policies, personnel management methods, and programs; studies specifying the application of information technology and other information resources to support missions and objectives; technology assessments and management and operations research studies in support of R&D objectives; evaluations of foreign force and equipment capabilities, foreign threats, net assessments and geopolitical subjects; analyses of material, personnel, logistics and management systems; and environmental impact statements.

c. Engineering and Technical Services (ETS). Contractual services used to support the program office or manager during the acquisition cycle by providing such services as systems engineering and technical direction as defined in Federal Acquisition Regulation (FAR) 9.505-1(b) (NOTAL), required either to ensure the effective operation and maintenance of a weapon system or major system as defined in OMB Circular No. A-109 (NOTAL), or to provide direct support of a weapons system that is essential to R&D, production, or maintenance of the system. Examples include determining system performance specifications; identifying and resolving interface problems; developing test requirements, evaluating test data and overseeing test design; developing work statements, determining parameters, overseeing other contractor's operations and resolving technical controversies. Also includes services of contractor technical representatives providing assistance and training necessary to maintain and operate fielded systems, equipment and components (including software when applicable) at design or required levels of effectiveness.

5. Applicability and Scope. This instruction:

a. Applies to the acquisition and oversight of CS as defined above by all elements of the DON. If this instruction conflicts with existing related DON instructions, this instruction shall govern until such other instructions are revised.

b. Does not apply to CS obtained through personnel appointments or advisory committees under references (e) and (f).

c. Does not apply to contracted services for routine maintenance and engineering and engineering and services for routine automatic data processing and telecommunications efforts (Federal information processing resources as defined in subpart 201-39.201 of the Federal Information Resources Management Regulations (FIRMR)) unless they are an integral part of CS. For example: installation, operation, or maintenance of systems; monitoring day-to-day

hardware (or software) performance; and support services required to accomplish these particular actions. However, services that recommend to the government decision maker which modification or repair may be necessary (especially if assisting in evaluating contractor A's proposal versus contractor B's), or whether to repair, modify or do nothing are examples of CS which should be reported.

e. Does not apply to architectural and engineering services as defined in FAR 36.102 which are for construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property or to services supporting research on theoretical mathematics and basic medical, biological, physical, social, psychological, or other phenomena.

f. Does not apply to training which maintains skills necessary for normal operations and training obtained for individual professional development.

g. Does not apply to services supporting the Foreign Military Sales Program paid for with fund that will be reimbursed by the foreign customer or services citing other non-appropriated funds.

6. Policy

a. The acquisition of CS is a legitimate way to support DON operations. Accordingly, they may be used at all organizational levels to help managers achieve maximum effectiveness or efficiency to meet mission requirements. However, the DON shall maintain organic resources to perform inherently Governmental functions. These functions are defined in OMB Policy letter 92-1 as, ". . . function[s] that [are] so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority or the use of value judgments in making decisions for the Government" (NOTAL). When contractors provide advice or assistance which may affect decision making, influence policy development, or provide support to project or program management of a kind similar to that provided by government personnel, it is essential to ensure that the contractor's performance is free of potential conflicts of interest and does not impinge upon the performance of inherently governmental functions. As such, CS require an appropriate degree of enhanced management and oversight. When using contractor provided products, final decisions or actions must reflect the independent conclusions of DON officials. Accordingly, DON claimants shall retain the technical capability to prescribe, monitor, and evaluate the work of the contractor.

b. CS shall not be used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures; awarded on a preferential basis to former Government employees; used under any circumstances specifically to aid in influencing or enacting legislation; or procured through grants or cooperative agreements.

c. Conflicts of interest, where the contractor or an affiliate has a collateral interest in the result of the contract, shall be avoided. Clauses to prevent such conflict of interest shall be included in solicitations. (See FAR

9.5 (NOTAL)). Contractor employees performing under DON contracts shall be required to sign appropriate disclosure statements. Contracts shall be administered in a manner to ensure that contract terms and conditions are followed and that improper employer-employee relationships are not created (see SECNAVINST 4200.27A).

d. The requirements of references (c) and (d) shall be met in the solicitation, award, and administration of all CS contracts. Requirements shall be identified as far in advance as possible to permit competition to the maximum practical extent and the work to be done must be specific enough so that a contract can be written describing the services required in clear and unambiguous terms.

e. The following guidelines should be used to determine when CS are an appropriate resource:

(1) When suitable in-house capability is unavailable or cannot be obtained in time to meet the needs of the DON claimant, or it is not cost effective to establish an in-house capability (for example, because the special or unique skills or expertise are not required full-time).

(2) When the requirement is anticipated to be of a short-term, temporary period of time. If the requirement is for a long or continuing period, an analysis should be performed to determine if in-house or contracting out is the most efficient means of performance.

(3) Contracts for CS may not be continued for longer than 5 years without review by the DON Director for CS, or designee, for compliance with this instruction.

7. Procedures

a. Identification. The management and oversight of CS as a resource is a team responsibility. It requires the identification, planning, budgeting, acquisition and accounting for CS requirements financed by appropriated accounts and Defense Business Operations Fund (DBOF). CS shall be identified in the planning and budget formulation phases by the program manager and the budget officer and incorporated into the operating plan (see paragraph 7b). The final decision as to whether the contractual effort shall be classified as a Consulting Service lies with the claimant or activity comptroller who is responsible for identifying the obligations for object class 25.1. Disagreements between claimants as to whether a specific contract action constitutes a consulting service will be referred to the Office of the Comptroller of the Navy (NAVCOMPT) (NCB-6) for resolution.

(1) The activity (customer) having the requirement for contractor support has the primary responsibility for ensuring that the CS are properly identified, budgeted, and reported. Each proposed contract action shall be evaluated separately to determine if the services required meet the CS definition provided in this instruction.

(2) The appropriation or account ultimately charged with the contract costs determines what appropriated account or DBOF fund should be identified in planning, budgeting, and accounting for CS requirements. DBOF or other revolving funds shall plan, budget, and account for CS associated with overhead functions. CS citing DBOF accounting data directly in support of a customer order shall be planned, budgeted, and accounted for by the issuing/requiring activity, i.e., by the customer who holds the appropriated account.

(3) When interdepartmental transfers of funds, such as a Military Interdepartmental Purchase Request or an Inter-Agency Cost Reimbursable Order are used to procure CS, the organization issuing the funds, rather than the organization receiving the funds, shall ensure the funds are properly reported in the DoD accounting system and budget exhibit.

(4) In the above instances, it is obviously necessary that communication be maintained between the requiring activity and the executing activity to ensure that information is available to all parties. For example, the executing activity should inform the requiring activity as soon as possible (in time to support the budget when possible) when execution of the customer order will require the use of CS. To ensure accurate recording of obligation information, the performing activity which acquires CS which direct cites customer finds, is responsible for providing a copy of the obligating document to the requiring activity.

b. Operating Plan. The operating plan is the document maintained at the requiring activity which identifies projected and ongoing CS requirements for a specified fiscal year(s). The details of the operating plan constitutes the supporting documentation and explanatory detail and shall be summarized and displayed in the budget exhibit for CS.

(1) All requiring activities (i.e., the organization with identified requirements for CS) shall maintain operating plans. Operating plans shall be consolidated from all sub-claimants and maintained at the appropriate organizational level within the major claimant and shall be kept current.

(2) Operating plans shall include, at a minimum, the following information for each ongoing and projected CAAS requirement:

(a) Description of the requirement.

(b) Justification of the need.

(c) Estimated cost.

(d) Explanation of why contractual services are needed to satisfy the requirements.

(3) Before initiating procurement action, the requiring activity or manager shall ensure that proposed CS are in conformance with the operating

plan. Claimants shall ensure that deviations from approved plans adhere to DON funding policy and do not violate current ceilings or funding levels.

(4) Requiring activities shall identify requirements for CS to the claimant's organization or functional area responsible for compiling "Exhibit 15E" for CS.

(5) Claimant Commanders, Program Executive Officers and Direct Reporting Program Managers or their designee must review and approve in writing the annual Operating Plan for their activities. This approval authority may not be delegated below a Senior Executive Service (SES) manager; a general or flag officer; an officer in the grade of 0-6 filling a general or flag officer position; or an officer in the grade of 0-6 who has subordinate SES personnel. Copies of this approved plan must be provided to requiring activities for execution.

c. Budget Exhibit. "Exhibit 15E" is the source document from which total estimates of obligations for object class 25.1 CS are identified and reported by DOD to OMB and Congress. The Comptroller of the Navy shall provide guidance concerning format and schedule for the preparation and submission of the exhibit supporting CS.

d. Accounting Procedures. All obligations for CS shall be recorded in the accounting system of each DON claimant per DOD 7220.9-M of October 1983 (NOTAL).

(1) Services acquired for support of weapon systems and generic type functions shall be discretely accounted for in the three categories defined in this instruction. For purposes of identifying CS obligations under Section 918, FY 1986 Defense Authorization Act, the assignment of a CS category code is the determining factor.

(2) Reimbursable orders to non-DBOF activities and direct cite orders to all field activities (DBOF and non-DBOF) should contain a statement that funds are, or are not, provided for CS. If funds are provided for CS, a separate line of accounting must be identified. If the receiving or contracting activity disagrees with the determination as to whether the services are or are not CS, a confirmation may be requested from the issuing activity. If a disagreement still exists, the issue may be referred to the Comptroller of the Navy (NCB-6) for resolution.

(3) All CS transactions originating in technical operating budgets (TOBs) issued to field activities should be captured in the mechanized system of the claimant.

(4) Off-line reporting is to be established for all CS transactions that cannot be identified in a mechanized system.

e. Procurement and Contract Administration. The project office or officer, contracting officer's technical representative, and the contracting officer must

all be involved in ensuring a successful procurement. The responsibilities and duties shift from one to another throughout this part of the overall process. The following guidelines apply:

(1) CS should be procured through a separate contract action if possible. When CS is a portion of a larger contract action, it shall be a separately identified contract line item number and separately priced.

(2) Each purchase request package for CS, including task orders, shall include the following information:

(a) The type of consulting service being procured as defined by the three reporting categories in this instruction. The appropriate category shall be designated by the requiring activity comptroller to ensure proper accounting classification and identification of object class 25.1 obligations. This identification of the accounting classification code may also assist the contracting officer in identifying the Federal Procurement Data System (FPDS) code and recording the contract action in the FPDS. However, the determination of the detailed FPDS code does not control whether the contract is accounted as object class 25.1 CS. For purposes of accounting for obligations for object class 25.1 CS, the assignment of the accounting code is the determining factor.

(b) A statement of work describing in as clear and unambiguous terms as possible the work to be performed, the deliverable(s), and a specified period of performance.

(c) Certification by the requiring activity that such services have been reviewed for the most effective or efficient means of accomplishment. If the requirement is being met with consulting service resources but is considered long term and could be more effectively completed with in-house resources, a statement citing action being taken to acquire additional resources or an explanation of why contracting out is necessary shall be included.

(d) Procurement requests for studies must contain a statement that the Defense Technical Information Center (DTIC) and other applicable information sources have been queried and that no known existing scientific, technical, or management report could fulfill the requirement. Information may be queried directly from DTIC through an on-line search of the Defense RDT&E On-Line System (DROLS) or directly to DTIC, Cameron Station, Alexandria, VA 22314. Other potential sources of information include The Center For Naval Analysis, Alexandria, VA; Defense Logistics Studies Information Exchange, Fort Lee, VA; Institute for Defense Analysis, Alexandria, VA; the Naval Audit Service; the General Accounting Office, Reports and Publications Division, Washington, DC; the National Technical Information Service, Springfield, VA; the Libraries of DOD Service Schools; the Naval Postgraduate School or the Pentagon Library.

(e) Estimated cost and level of effort expressed in staff-years, staff-months, or staff-hours.

(f) Proposed evaluation and selection criteria for competitive awards.

(g) Surveillance plans specifying how contractor performance, performance standards, and deduction schedules, as required shall be assessed.

(h) Properly chargeable funds certified by the cognizant fiscal or budget office.

(3) All procurement requests for CS shall, as a minimum, be approved by an official at a level above the requiring activity, office, or organization. Additionally, approval for all procurement requests for CS which are initiated during the fourth quarter of the fiscal year, for award during the same fiscal year, shall be by an official at a second level or higher, above the requiring activity, office, or organization. For proposed contract actions estimated at $50,000 or more, the approval authority may not be delegated below the positions identified in 7b(5) above.

(4) Approval by Claimant Commanders, Program Executive Officers, or Direct Reporting Program Officers of the operating plan constitutes approval authority for those activities where there are no military or civilian grade levels identified in paragraph 7b(5). In such instances, a copy of the Claimant Commanders' written approval of the effort as incorporated in the Operating Plan must be included with the procurement request.

(5) The requiring activity shall maintain a file to include a copy of the approved procurement request and appropriate supporting documentation, listing, or summary of contract items delivered, and documentation of Government acceptance per reference (c).

8. Responsibilities

a. The Assistant Secretary of the Navy (Financial Management) (ASN(FM)) has designated the Principle Deputy Assistant Secretary of the Navy as Director of CS for the DON. The ASN(FM) shall exercise general supervision over the activities of the Director of CS for the DON.

b. The Director of CS for the DON shall ensure that:

(1) The overall process, procedures, and practices for the identification, acquisition, and management of CS resources within the DON comply with this instruction and other applicable policy guidelines.

(2) That compliance with reference (g) covers CS through internal management control assessable units.

c. The Assistant Secretary of the Navy (Research, Development and Acquisition) shall ensure that advice and staff support regarding procurement policy and the FPDS are provided as necessary to support the Director of CS for the DON.

d. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) shall provide manpower policy guidance as necessary to assist in determining when procurement of CS is appropriate to support DON programs.

e. NAVCOMPT (NCB-6) shall establish procedures to ensure that:

(1) Requirements for CS are properly identified and justified in the budget;

(2) The budget adheres to Congressional direction;

(3) Obligations for CS are properly entered in accounting systems;

(4) Funds for CS are administered following the budget plan;

(5) Training for the identification, acquisition, management, and use of CS is implemented by all claimants; and

(6) Any deviations from the budget plan adhere to DON funding policy and conform to current ceilings or funding levels.

9. Action. DON major claimants and all Echelon 2 level commands shall appoint, as a collateral duty, a Coordinator for CS who shall ensure that:

a. Adequate controls are established at the appropriate level of accountability so that resources for CS are used for the purposes identified in the operating plan. When changes to the operating plan occur, adhere to procedures established for review, approval, and reporting.

b. Operating plans are periodically reviewed at an appropriate organizational level to identify opportunities for savings through consolidation of similar requirements. At a minimum, the operating plan shall be reviewed prior to compilation of each required budget submission.

c. Claimants are in compliance with reference (g) by including CS through internal management control assessable units.

d. Training for the identification, acquisition, management, and use of CS specific to each claimant's requirements is implemented utilizing the guidance provided here to all sub-claimants, components and/or program managers within their respective organizations. Background information supporting this training is provided in enclosure (1).

e. The contract action is properly evaluated at its conclusion or when otherwise deemed appropriate (e.g., prior to renewal of an option, completion of a separate task or service, etc.) to assess its utility to the organization and the performance of the contractor.

f. Accurate and appropriate CS contract actions and outputs (especially studies) are reported to the Defense Technical Information Center (DTIC) and other relevant data repositories.

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Acting

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GUIDE TO

CONTRACTED ADVISORY & ASSISTANCE SERVICES

OFFICE OF THE UNDER SECRETARY OF DEFENSE (ACQUISITION)

Prepared by:

OFFICE OF THE DIRECTOR, DoD CONTRACTED ADVISORY & ASSISTANCE SERVICES

3 April 1992

FOREWORD

The Office of the Under Secretary of Defense (Acquisition) is issuing this guide to help Department of Defense (DoD) personnel better understand the process and procedures for acquiring contracted advisory and assistance services (CAAS) and other contracted services. We believe that the guide will enhance the Department's capability to efficiently and effectively use contracted services when deemed appropriate.

This guide was prepared by the Office of the Director, DoD CAAS, and benefits from the background, knowledge and insights of a number of people involved in the process for acquiring and using contracted services. Our special thanks and gratitude to all those who took the time to contribute to the publication of this guide.

We welcome your comments regarding this guide. Please contact the Office of the Director, DoD Contracted Advisory and Assistance Services at 703-756-2096 or DSN 289-2096 with your suggestions and/or questions.

ROBERT A. NEMETZ
Director, DoD Contracted Advisory
and Assistance Services

A GUIDE FOR CONTRACTED ADVISORY AND ASSISTANCE SERVICES

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CHAPTER 1 INTRODUCTION

1.1 Purpose

The purpose of this guide is to help DoD personnel understand the process and procedures for acquiring contractor support services in general and specifically Contracted Advisory and Assistance Services (CAAS). Our goal is to ensure that CAAS: (1) is used only when necessary or cost effective to meet mission requirements; (2) achieves its intended purpose; and (3) is procured at a fair and reasonable price. Appendix A contains a glossary of terms used in this guide.

1.2 Scope

This guide is intended for managers and action officers who are unable to meet essential mission requirements with available in-house resources and need help from an alternative resource such as contractor support. It describes in general terms the overall process and procedures for identifying the need and acquiring contractor support. The process usually includes procedures for: determining and justifying requirements and resources; obtaining a contractor to perform the service; and, proper execution and oversight of the resulting contract. The guide also describes how to determine if a contractor support requirement is CAAS and under the purview of DoD Directive 4205.2, "Acquiring and Managing Contracted Advisory and Assistance Services" (revised version effective February 10, 1992).

The guide provides general information on the CAAS process. It is not to be relied upon as a source of regulatory guidance, which can be found in the DoD CAAS Directive and in each of the DoD Component's implementing document. It does provide useful information to help determine when the use of contracted services is appropriate and the process to acquire those needed services.

There are documents other than DoDD 4205.2 related to the process and procedures for managing and acquiring contractor support. Managers and action officers using contractor support should be aware of these other policy and procedural documents. For your information, Appendix B lists these related documents.

CHAPTER 2. BACKGROUND

2.1 Using Contracted Support and Services

It is Government policy to consider the private sector as a source for services to support the Government's operations. The DoD uses contractor support to help perform its mission because it can be more efficient or cost-effective, or because of constraints on the use or availability of in-house resources.

The DoD normally acquires contractor support through a *service* contract. A *service* contract directly engages the time and effort of a contractor, whose primary purpose is to perform an identifiable function or task rather than to furnish an end item of supply. DoD contracts for a wide variety of services, from highly specialized technical, scientific and management advice and assistance, to routine support functions, such as grounds maintenance, operating a computer facility and providing food services. However, there are important policies and guidelines for using the private sector to perform services. Knowledge of them by the requiring activity is essential if the Government is to maintain control of and accountability for its functions.

2.2 Inherently Governmental Functions and Contractor Support

When considering using contractor support and when making determinations on what activities, functions or tasks are candidates for contracting out, the requiring activity must ensure that contractors do not perform ***inherently governmental functions***. An ***inherently governmental function*** is one which is so intimately related to the public interest as to mandate its performance by Government employees. For example, it is Government policy that contractors or consultants shall not be used to perform work of a policy, decision-making or managerial nature. These functions include those activities which require either the exercise of discretion in applying Government authority or the use of value judgements in making decisions for the Government. For example, policy decisions should always be made by Government officials. They must approve of the analytical process leading to decision options and must make or approve the value judgements throughout the process. Appendix C, contains a list of functions usually considered to be inherently governmental. Closely related to inherently governmental functions and just as important, is the concept of ***core capability***.

2.3 Core Capability and Contractor Support

While some functions/tasks are inherently governmental, many others are candidates for contracting out. When making these determinations, requiring activities should keep in mind that whether the Government does its job with its own employees or by contract, it must have the ***core capability***. Core capability includes: (1) a sufficient number of trained and experienced Government staff to properly manage and be accountable for its work; (2) maintaining a capability to write and/or administer related service contracts; and (3) retaining a residual capability to perform certain complex service requirements in emergency situations. For example, when contracting for highly specialized services (a typical use of CAAS), organizations must remain accountable and retain control over decisions and other governmental functions that may be based on the contractor's performance and work

products. Organization officials should ensure that the technical expertise is available within the organization to make sound judgements on: (1) what the requirements should be; (2) the estimated costs; and (3) whether the contractor is performing to the contract terms and conditions. Appendix D contains an illustrative list of services and functions that are not considered to be inherently governmental, but may approach being in that category and require special attention to the terms of the contract and the manner of performance.

Unlike inherently governmental functions, the core capability can vary over time and circumstances. Contracting out too many functions/requirements could deplete the core capability. The organization's managerial or technical capacity should not be eroded over time through the use of contractor support to the degree that future contracts could not be effectively monitored or evaluated. On the other hand, doing more with Government employees could lessen flexibility needed to respond to various situations. The objective is to strike a proper balance between contracting out and use of Government employees based on the appropriate match between resources available and requirements to be carried out.

2.4 Contracted Services and CAAS

In almost every discussion regarding CAAS management and reporting, the problem of identifying what is a CAAS effort is raised. It is a continuing problem but greatly helped by the publication of the revised DoD CAAS Directive containing a simplified and easier to apply CAAS definition. The new Directive also identifies the requiring activity as having primary responsibility for determining which of its contractor support requirements are CAAS.

Here is a suggested approach for identifying which contract actions are CAAS. First, identify all of the requiring activity's ongoing or projected contractor support requirements. Next, compare those requirements; i.e., contracted services, to the CAAS definition found in DoD Directive 4205.2, and/or your Component implementing directive and determine which requirements meet the definition. Contractor support requirements that fall within the definition are CAAS unless specifically excluded/exempted by the DoD Directive. A key... **it is the deliverable and/or service being contracted for that determines CAAS.** It is a misnomer to identify a contract as a "CAAS contract"--**the contract is the vehicle for procuring services, some or all of the services can fall within the definition of CAAS.** It is not unusual to procure both CAAS and non-CAAS services from the same contract...especially a task order or similar type umbrella contract. Nor is it unusual to procure services through a contract primarily for materiel items or hardware systems.

2.5 Why the Concern and Focus on CAAS Management and Reporting Controls?

Why are we managing and reporting CAAS separately from other service contracting actions? Over the years, the Congress, the GAO and the Inspectors General have criticized the acquisition, management and use of contracted services by Government agencies. These criticisms have focused on the perception that there is a higher risk for waste, fraud and abuse occurring when contracting for services, particularly those for advice and assistance. Recently, Congress has become concerned that the Government is contracting out work that should be done by Government employees or that could be done more cost effectively using in-house resources. Since most of the concerns and alleged abuses have been associated with contracting for advice or assistance, additional procedures and safeguards were established for

CAAS. Here is a list of the most often cited concerns and/or abuses in the acquisition and use of CAAS:

- Inadequate procedures for determining what services are appropriate for contracting out and to avoid contractors from performing inherently governmental functions--both prior to and during contract performance;

- Contracting out long-term or recurring requirements that can be done more cost-effectively using in-house resources;

- Duplication of services already available (i.e., limited use of the Defense Technical Information Center (DTIC) repository or completed studies, analyses, and reports);

- Limited competition, excessive use of sole-source contracts, unsolicited proposals and contract modifications to avoid compliance with the Competition-in-Contracting Act (CICA);

- Inadequate controls and procedures to avoid potential conflicts of interest; and

- Inaccurate identification and reporting of CAAS.

In an effort to prevent abuses and to strengthen management and reporting of CAAS, the Office of Management and Budget (OMB) revised and reissued Circular No. A-120, " Guidelines for the Use of Advisory and Assistance Services" on January 4, 1988. This Circular established policy, assigned responsibilities, and set guidelines to be followed by agencies in determining and controlling the appropriate use of advisory and assistance services obtained from non-governmental sources. DoD Directive 4205.2 implements Circular No. A-120.

CHAPTER 3. ROLES AND RESPONSIBILITIES IN THE CAAS ACQUISITION PROCESS

3.1 CAAS Roles and Responsibilities

Successful acquisition and use of contractor support requires the skills, cooperation and teamwork between the requiring activities and the various functional areas that participate in the overall process. Each player in the process has their area of responsibility, but they should also be aware of how their area interacts with others. The following summarizes what should be considered common knowledge for both users and participants in the CAAS process.

3.2 Requiring Activity

Requiring activities determine the need for contractor support services and have primary responsibility for identifying, justifying, and reporting CAAS requirements. The requiring activity identifies and justifies the resources (both in-house and contractor support) it needs to accomplish its mission and forwards that information to the appropriate activity for inclusion in the budget request. It initiates and obtains management approval of the procurement request for contracted services and oversees and reports on the performance of the contractor.

3.3 Manpower

The manpower function implements Government policy within DoD for the use of contractor support. It also implements Government policy and guidelines on what constitutes inherently governmental functions. It validates the feasibility and availability of in-house resources and, if applicable, coordinates on procurement requests for contractor support.

3.4 Fiscal Management

The component comptroller does the following: certifies that properly chargeable funds are available for contractor support; compiles, develops and submits the budget request to the appropriate organizational level; monitors the budget authority after Congressional approval of the budget; requests and compiles the annual CAAS Budget Exhibit and ensures the adequacy of an accounting system to track and monitor CAAS commitments, obligations, and expenditures, as well as any other useful historical information; and ensures that accurate budget submissions reflecting current and future CAAS requirements are submitted from all DoD components. For interdepartmental transfer of funds, the fiscal management activity within the organization issuing the funds, rather than the organization receiving the funds shall ensure the funds are properly reported in the DoD accounting system and CAAS budget exhibit.

3.5 Contracting Office

The contracting office is responsible for procuring contractor support in accordance with laws and regulations set forth in the Federal Acquisition Regulation and it's supplements. In carrying out this responsibility, contracting offices should advise and assist customers in all

phases of the acquisition process. Contracting office actions usually begin upon receipt of a procurement request initiated by the requiring activity after passing through the comptroller/fiscal management function to determine availability of funds. However, at any time during the acquisition process, organizations having questions or needing information related to contracted services, should contact their servicing contracting office for assistance. Responsibilities of the contracting office include:

- Reviewing procurement requests for completeness, possible conflicts of interest, and any restrictions on opportunities for competitive bidding;
- Determining appropriate contract type;
- Developing, in coordination with the requiring activity, the synopsis for the Commerce Business Daily;
- Developing, in coordination with the requiring activity, evaluation factors and selection criteria, when appropriate;
- In coordination with the legal office, ensuring that the proposed contract action is consistent with existing laws and regulations;
- Assisting the requiring activity in development of the surveillance plan and delegating appropriate contract administration technical responsibilities to the contracting officer's representative (COR/COTR);
- Issuing the solicitation, overseeing the selection process, making contract award, and notifying the other relevant functions/organizations of award;
- Ensuring that the appropriate Federal Procurement Data System (FPDS) service category code is selected and included in the FPDS/DD 350 system.

CHAPTER 4. CAAS ACQUISITION PROCESS AND PROCEDURES

4.1 Acquiring CAAS

The following sections describe the process that normally occurs when acquiring CAAS, and most other contracted services. The process is described in three phases: (1) requirements and resource determination; (2) procurement; and (3) contract administration and oversight.

4.2 Requirements and Resource Determination

Annually, or when major changes occur, DoD managers are expected to review their assigned missions and work load to ensure that their total force requirements represent the most cost effective and flexible mix of resources necessary to support mission accomplishment. The composition of DoD's force structure is based upon the "Total Force" policy which recognizes that all elements of the Defense work force contribute to national security. Those elements include the active, reserve and retired military; the civilian work force; DoD contractors and host nation support. When reviewing available resources, caution should be exercised to ensure that *inherently governmental functions* are performed by DoD employees and that a sufficient number of DoD employees are maintained to satisfy essential *core capability* requirements. However, utilization of contractor support continues to represent a cost-effective and viable option to satisfying workload requirements that are not inherently governmental or core. Other alternatives include use of overtime, temporary employees, and inter-agency or intra-agency support agreements; justifying additional full or part-time permanent staff; and repriortizing workload or retraining existing staff.

If the alternative decided upon includes contractor services/support, funding must be identified. Depending upon when the requirement(s) was known and when it must be completed, the requiring activity may have: (1) previously budgeted for funds to be available for anticipated contractor support; (2) to request funds during the budget process to be available in the future; or (3) request that funds be made immediately available from another source.

At this point, whether the requirement includes CAAS, may not have been determined. However, this is a good place to discuss three documents that are part of the CAAS process and important to the management and reporting of CAAS requirements and resources. They are; the ***DoD Budget***, the ***CAAS Budget Exhibit***, and the ***CAAS Operating Plan***.

4. 2(a). CAAS and the DoD Budget. The DoD budget request includes funding for contractor services requirements, but does not specify those that may be CAAS. Requiring activities justify funding for known or anticipated requirements when preparing the budget request...requirements that are known to be CAAS, are reported in the CAAS Budget Exhibit.

4. 2(b). CAAS Budget Exhibit. The CAAS Budget Exhibit identifies projected CAAS requirements and previous year CAAS expenditures. It's purpose is to identify those completed and projected requirements and funding that meet the definition of CAAS. It is compiled and submitted to the Congress at about the same time as the DoD Budget. Specific data requirements for the exhibit are contained in DoD 7110. 1M, "DoD Budget Guidance Manual". DoD Components usually establish their own internal collection procedures.

4. 2(c). CAAS Operating Plan. The CAAS Operating Plan is a new requirement established to quickly and easily identify, at any given time, ongoing and projected CAAS at the organization level. Since CAAS is primarily used to meet short-term, nonrecurring or unanticipated requirements, it isn't feasible to identify or project all requirements in the CAAS budget exhibit. Also, the budget exhibit is prepared annually and can become out-of-date soon after submission.

The plan is a useful management tool to quickly identify current CAAS requirements, update additions, cancellations or changes to requirements, and to provide a record of what requirements are being addressed, which ones remain and those no longer necessary.

Details of the content and format of the CAAS Operating Plan are determined by the DoD Component CAAS Director, but should include as a minimum the following information for each ongoing and projected CAAS requirement:

- A description of the requirement.
- Justification of the need.
- The amount of the obligated funds for an awarded or ongoing contract action and estimated costs for projected efforts.
- Explanation of why contracting out is appropriate for meeting the requirement.

Assuming that the requiring activity has identified its CAAS requirements and the necessary funds are available...we begin the procurement phase.

4.3 Procurement

The procurement phase includes preparation of the necessary paperwork to specify what the contractor will do, and a estimate of how much it will cost, specifying how the contractor's performance will be monitored, and the development of evaluation criteria to help select a qualified contractor.

4.3(a). Procurement Request. The requiring activity usually initiates procurement by submitting a procurement request to the contracting office that includes:

- A statement of work (SOW), describing to the extent necessary, the work to be performed, the deliverable(s), and the specified period of performance.

- Performance standards and surveillance plan to oversee and assess contractor performance...level of detail determined by the kind of service being procured.

- Estimated cost and level of effort expressed in staff-years, staff-months or staff-hours, or some other detailed estimate of the cost to the Government. This information is needed by the contracting officer to evaluate proposals, prepare the Government's negotiation position, and to determine whether the contract price is fair and reasonable.

- Identification of the CAAS reporting category that best defines the service being procured. The three categories are: (1) studies, analyses and/or evaluations; (2) management support services; and (3) engineering and technical support.

- Certification by the approving official that the services do not unnecessarily duplicate previously performed work or services, and are being obtained in the most cost-effective manner. If the CAAS requirement is considered long-term and could be cost-effectively done by in-house resources, a statement citing action being taken to hire additional resources or an explanation of why contracting out is necessary shall be included.

- Evaluation and selection criteria for competitively negotiated awards.

- Properly chargeable funds certified by the cognizant fiscal/budget office.

While the requiring activity initiates the procurement request, the contracting officer is the individual responsible for the procurement method and the resulting contract action. Successful procurements are usually the result of good teamwork between the contracting office and the requiring activity. This close relationship often begins when contracting out is selected as the course of action and prior to initiating the procurement request. **People responsible for preparing the procurement request, especially the SOW, surveillance plan and cost estimate, are urged to contact the contracting office early on.** All contracting offices have available useful materiels and guidelines designed to help get the job done. The following goes into more detail on specific parts of the procurement request.

4.3(b). Statement of Work. Perhaps the most critical component of the procurement request and the resulting contract action is the SOW. The SOW must:

- Describe requirements in clear and concise language.

  - The SOW must avoid incorporating requirements which are not essential because these will result in unnecessary costs. An example would be requiring unnecessary data or reports to be delivered.

  - The SOW must be clearly worded. In the event of litigation, any ambiguities could be construed against the Government.

- **Be performance oriented.**

  - The SOW should tell the contractor **what** is to be accomplished, without dictating **how** the task is to be accomplished. Heavy reliance on mandatory publications, regulations, or specifications is restrictive and adds cost while reducing flexibility and innovation.

- **Be complete.**

  - The SOW should be complete when submitted for contracting action. Once the contracting officer decides on the appropriate procurement method and solicits vendors to respond to the Government's requirement, changes can be accommodated, but they are administratively costly and time consuming.

  - After contract award, SOW changes may not be feasible or must be negotiated in a sole source environment and this limits the Government's ability to negotiate a fair and reasonable price.

- **Avoid the requesting of personal services.**

  - Personal services occur when under the terms of the contract or the manner of its administration, contractor personnel are subject to direct supervision and control by the Government. Personal services are permitted only in very limited circumstances and must be authorized by specific statute. In the ordinary course of business, the contractor is expected to manage and supervise its own employees.

When drafting the SOW, it is important to keep in mind that proposal evaluation criteria (for competitively negotiated procurements) and the contract surveillance plan must be directly related to the SOW requirements.

4.3(c). Contractor Selection. The proposal evaluation criteria should be tailored to the individual acquisition and include only those factors which will have an impact on the selection decision. The criteria must be clearly stated in the Request For Proposal (RFP) and should be developed in coordination with the contracting office to ensure compliance with applicable policy and procedures.

While lowest price is sometimes the deciding factor in contract award, usually the Government selects the proposal offering the greatest or "best value" in terms of performance and other factors. Price and past performance are evaluated as general considerations along with the other established criteria. Again, evaluation factors should be considered in coordination with the contracting office and decided upon prior to release of the solicitation or RFP.

Contractor selection can range from a relatively simple bargaining process, in which the techniques of discussion, persuasion, give-and-take are used, to a formal source selection process in which a group is established to evaluate proposals and recommend the best qualified offeror to the contracting officer or selecting official. After selection of the successful offeror, a contract is awarded and performance begins soon after.

4.3(d). Contract Performance and Oversight. The surveillance plan is the tool by which contractor performance is evaluated. The plan does not have to cover all of the requirements of the SOW, but it should include all those that provide indications as to the acceptability of the contractor's performance. The complexity of the plan is tailored to the individual SOW and can range from a simple check to insure that a report is received on time to a surveillance procedure in which contractor performance of a specific requirement is reviewed on a recurring basis throughout the performance period of the contract. Although developed by the requiring activity, the plan is approved by the contracting officer and is used for contract administration. Care should be taken to update the surveillance plan when the SOW is changed.

The teamwork between the requiring activity and the contracting office does not stop with the award of a contract and approval of a surveillance plan. The requiring activity must appoint, and the contracting officer approve, an individual or team of individuals with sufficient expertise and technical knowledge to evaluate contractor performance. This person(s) is the Contracting Officer's Representative (COR). The COR must ensure the Government is getting what it pays for. All discrepancies should be reported to the contracting officer immediately, so appropriate contractual remedies can be exercised. The COR should also ensure that the contractor is not asked to perform tasks that are not covered in the SOW. Training for COR's is usually available and often mandatory.

4.3(e). Contractor Evaluation. The job of the COR and technical personnel is not complete when the contract period ends. While the contract is underway, an objective evaluation of contractor performance is done using the surveillance plan. When the contract is completed a more subjective final evaluation is done and it serves as a tool to determine if the Government got what it asked for. The COR has overall responsibility for contractor evaluation report, but should seek input from the contracting officer and others with significant involvement in the contract. The following guidelines are provided to assist in the evaluation.

- Did the Contractor meet the requirement(s)?
- How were the results of the contract used?
- How did the contractor perform?

When the deliverable of the service contract is a study, an analysis or a technical report, copies of the final report should be submitted to the Defense Technical Information Center. This requirement should also be included in the contract.

CHAPTER 5. INTERNAL MANAGEMENT CONTROLS IN THE CAAS PROCESS

Since 1983, DoD has implemented the Federal Manager's Financial Integrity Act (FMFIA) through the Internal Management Control (IMC) Program. The passage of the Chief Financial Officers (CFO) Act of 1990 has placed an even greater emphasis on internal control evaluation. Since annual management certification of the effectiveness of internal controls is now highlighted by both the FMFIA and the CFO Act, the role of managerial assessment has become even more important.

Management must ensure that reasonable internal controls are in effect throughout the CAAS acquisition process as a matter of routine oversight. Managers are required by DoD Directive 5010.38, "DoD Internal Management Control Program", to periodically test and report on the status of internal controls within their area of responsibility. These reviews are called "risk assessments" and should be conducted as required by the directive to help ensure the adequacy of management controls.

Every manager should conduct or participate in risk assessments based on management responsibilities. The various approaches to the risk assessment process permit it to be a relatively informal process, requiring a minimum of time. DoD Components have the freedom to review or segment CAAS either organizationally or functionally. Functional responsibility is the most widely used and recommended method of segmentation. The use of "memory jogger" checklists, developed by functional offices at the Component headquarters policy level is encouraged. Before a checklist is used by an affected manager, intervening managers should be able to modify it to make it more specific to their environment. A manager's commitment to a meaningful assessment of internal controls is more important than a rigid, formal documentation of that assessment.

APPENDIX A

GLOSSARY

CAAS Accounting Procedures. DoD accounting procedures to record and report CAAS obligations and expenditures. DoD 7220.9-M contains specific guidance to be followed by each DoD Component when recording and reporting CAAS obligations, expenditures, and transactions.

CAAS Budget Exhibit. The source document from which total CAAS expenditures and estimates are derived and reported by the Department of Defense to the Office of Management and Budget (OMB) and the Congress. DoD 7110.1-M contains specific instructions for completing the annual CAAS budget exhibit.

CAAS Exemptions. Specific kinds of services or activities exempted from the purview of this Directive.

CAAS Operating Plan. The document maintained at the requiring activity or a level of organization specified by the DoD Component CAAS Director that identifies projected and ongoing CAAS actions for a specified fiscal year.

CAAS Reporting Categories. Categories that group advisory and assistance services for reporting CAAS contract actions in the annual CAAS budget exhibit and in the DoD accounting system. CAAS reporting categories are:

1. Studies, Analyses, and Evaluations. These services are organized, analytic assessments to understand and/or evaluate complex issues to improve policy development, decision-making, management, or administration. These efforts result in documents containing data or leading to conclusions and/or recommendations. Databases, models, methodologies, and related software created in support of a study, analysis, or evaluation are to be considered part of the overall effort.

2. Management and Professional Support Services. These services provide engineering or technical support, assistance, advice, or training for the efficient and effective management and operation of DoD organizations, activities, or systems. They are normally closely related to the basic responsibilities and mission of the using organization. This category includes efforts that support or contribute to improved organization or program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, auditing, and administrative and/or technical support for conferences and training programs.

3. Engineering and Technical Services. These services (for example, technical representatives) take the form of advice, assistance, training, or hands-on training (that is, direct assistance) necessary to maintain and operate fielded weapon systems, equipment, and components (including software when applicable) at design or required levels of effectiveness. Engineering and technical services consist of:

(a) Contract field services, which are engineering and technical services provided on-site at DoD Defense locations by the trained and qualified engineers and technicians of commercial or industrial companies.

(b) Contract plant services, which are engineering and technical services provided by the trained and qualified engineers and technicians of a manufacturer of military equipment or components in the manufacturer's own plants and facilities.

(c) Field service representatives, which are employees of a manufacturer of military equipment or components who provide a liaison or advisory service between their company and the military users of their company's equipment or components.

Contracted Advisory and Assistance Services (CAAS). Those services acquired by contract from nongovernmental sources to support or improve organization policy development, decision-making, management and administration, program and/or project management and administration, or to improve the effectiveness of management processes or procedures.

Contracted Services. Services that directly engage the time and effort of a contractor to perform an identifiable task rather than furnish an end item of supply. Includes separately identified services delivered under a contract when the primary purpose is to provide supplies, equipment, or hardware.

Contracting Action. Any written action obligating or de-obligating funds for procuring services to meet DoD requirements, to include definitive contracts, purchase orders, job orders, task orders, delivery orders, other orders against existing contracts, and contract modifications, change orders or agreements, supplemental agreements, funding changes, option exercises, and notices of termination or cancellation.

Inherently Governmental Functions. This has the same meaning as Governmental functions in Section 6.e. of OMB Circular A-76. That section provides as follows: A Governmental function is a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority or the use of value judgements in making decisions for the Government. Government functions normally fall into two categories:

1. The act of governing: that is, the discretionary exercise of Government authority. Examples include criminal investigations, prosecutions, and other judicial functions; management of Government programs requiring value judgements, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support, or combat service role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers, and other natural resources; direction of intelligence and counter-intelligence operations; and regulation of industry and commerce, including food and drugs.

2. **Monetary transactions and entitlements**, such as tax collection and revenue disbursements; control of treasury accounts and money supply; and the administration of public trusts. An inherently governmental function involves the determination of policy and the direction and control of Federal employees or, in some cases, of activities and property of private citizens. Such functions do not normally include functions that are primarily ministerial and internal in nature, such as building security; mail operations; operation of libraries and cafeterias; housekeeping; and the maintenance of the physical plant, vehicles, or other electrical or mechanical equipment. Inherently governmental functions do not encompass functions considered "commercial," as defined in OMB Circular No. A-76.

Requiring Activity. The organization that identified the requirement for CAAS.

APPENDIX B

REFERENCES

Public Law 100-370 "CAAS Accounting Procedures" requires DoD to maintain an accounting procedure to identify and control expenditures for CAAS.

OMB Circular No. A-120, "Guidelines for the Use of Advisory and Assistance Services," January 4, 1988, establishes policies and guidelines for the Executive Branch for determining, controlling, and reporting advisory and assistance services.

OMB Circular A-123, "Internal Control Systems," August 16, 1983, prescribes policies and procedures for organizations to adequately establish, maintain, and report internal controls. The internal control function within each DoD Component would use this document to ensure the integrity of CAAS. The fiscal management function, i.e., budget and accounting may use this circular for broad guidance.

Federal Acquisition Regulation (FAR) is a procedural guide for procuring services and materials. This document is used by the contracting officer for procuring contractor support.

DoD FAR Supplement (DFARS) provides DoD specific guidance on procuring services and materials. This document would be used by the contracting officer for procuring contractor support.

DoD Directive 4205.2, "Managing, Acquiring, and Using Contracted Advisory and Assistance Services," February 10, 1992, establishes DoD policies and procedures for CAAS.

DoD Directive 3200.12, "DoD Scientific and Technical Information Program," February 25, 1983, establishes the missions and functions of the Defense Technical Information Center (DTIC).

DoD 7220.9-M, "DoD Accounting Manual," October 1983, establishes policies and procedures for DoD financial accounting systems. This manual is used by an organization's fiscal management function to ensure that proper accounting for CAAS support is accomplished.

DoD 7110.1M, "DoD Budget Guidance Manual," July 1990, provides general guidance on the DoD budget process i.e., formulation and submission of budget estimates, administration of the budget. The manual is used by an organization's fiscal management function when compiling the annual budget request.

APPENDIX C

INHERENTLY GOVERNMENTAL FUNCTIONS

The following is an illustrative list of functions considered to be inherently governmental functions:

1. The conduct of criminal investigations.

2. The control of prosecutions and performance of judicial functions (other than those relating to arbitration or other methods of alternative dispute resolution).

3. The command of military forces, especially the leadership of military personnel who are members of the combat, combat support or combat service support arms.

4. The conduct of foreign relations and the determination of foreign policy.

5. The determination of agency policy, such as determining the substance and application of regulations.

6. The determination of Federal program priorities or budget requests.

7. The direction and control of Federal employees.

8. The direction and control of intelligence and counter-intelligence operations.

9. The approval of Congressional testimony prepared for delivery by a Federal official.

10. The approval of agency responses to Congressional correspondence.

11. The selection or nonselection of individuals for Federal Government employment.

12. The approval of position descriptions and performance standards for Federal employees.

13. The determination of what Government property is to be disposed of and on what terms.

14. In Federal procurement activities;

    (a) determining what property or services are to be acquired by the Government;

    (b) participating as a voting member on any boards or in any meetings regarding evaluation of contractor proposals, to include final source selection;

(c) approval of any contractual documents, to include documents defining requirements, incentive plans, evaluation criteria;

(d) awarding contracts;

(e) administering Federal contracts (including the ordering of changes in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services);

(f) terminating contracts; and

(g) determining whether contract costs are reasonable, allocable, and allowable.

15. The approval of agency responses to audit reports from an inspector general, the General Accounting Office, or other Federal audit entity.

16. The approval of Freedom of Information Act requests, other than routine requests that do not require the exercise of judgement.

17. The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or basic eligibility to participate in Government programs.

18. The approval of Federal licensing actions and inspections.

19. The determination of budget policy, guidance, and strategy.

20. The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds.

21. Control of the money supply.

22. Administration of public trusts.

APPENDIX D

OTHER SERVICES REQUIRING APPROPRIATE CONTROLS

The following illustrative list is of services and actions that are not considered to be Governmental functions. However, they may approach being in that category because of the way in which the contractor performs the contract or the manner in which the Government administers contractor performance. When contracting for such requirements, agencies should be fully aware of the terms of the contract, contractor performance, and contract administration. This is to ensure that appropriate agency control and accountability is preserved and to avoid the perception that the agency is improperly contracting for inherently governmental functions.

This is an illustrative listing, and is not intended to promote or discourage the use of the following types of contractor services:

1. Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.

2. Services that involve or relate to reorganization and planning activities.

3. Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.

4. Services that involve or relate to the development of regulations.

5. Services that involve or relate to the evaluation of another contractor's performance.

6. Services in support of strategic acquisition planning.

7. Contractors' providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).

8. Contractors' providing technical evaluation of contract proposals.

9. Contractors' providing specialized expertise in the development of statements of work.

10. Contractors' providing support in preparing responses to Freedom of Information Act requests.

11. Contractors' working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the Defense Industrial Security Program described in FAR 4.402(b)).

12. Contractors' providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.

13. Contractors' participation in any situation where it might be assumed that the contractors are agency employees or representatives.

14. Contractors' participating as nonvoting members of, or technical advisors to, a source selection board or source selection evaluation board.

15. Contractors' serving as arbitrators or as other persons hired to provide alternative methods of dispute resolution.

16. Contractors' construction of buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

17. Contractors' providing inspection services.

18. Contractors' providing legal advice and interpretations of regulations and statutes to Government officials.

19. Contractors' providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.