MEMORANDUM FOR DISTRIBUTION

Subj: SECTION 806 OF THE STROM THURMOND NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

Encl: (1) USD(AT&L) memo dated April 5, 2002

Ref: (a) ABM memo dated March 28, 2001; same subject
(b) USD(AT&L) memo dated November 20, 2000
(c) DFARS 207.103(h)

Reference (a) forwarded reference (b), which required all DoD components to submit acquisition plans or strategies for purchases of conventional ammunition, as defined in DoDD 5160.65, to the Deputy for Ammunition, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology), for review and concurrence. The USD(AT&L) policy direction in reference (b) was issued as a result of Section 806 of the FY 1999 DoD Authorization Act. Subsequently, reference (c) implemented the requirements of Section 806 and reference (b).

By enclosure (1), USD(AT&L) reiterated the DoD implementing policy. Moreover, Army records have recently been reviewed to assess compliance with the Section 806 requirements. Based on this review, USD(AT&L) has concluded that the small number of acquisition plans submitted by the Military Departments since promulgation of the DoD policy in November 2000 is an indication that the statute has not been fully implemented.

Accordingly, it is requested that cognizant acquisition personnel be reminded of the importance of complying with the statutory requirements of Section 806 and the DoD implementing policy.

M. E. Shugard
Executive Director
Acquisition and Business Management
SUBJ: SECTION 806 OF THE STROM THURMOND NATIONAL DEFENSE
AUTHORIZATION ACT FOR FISCAL YEAR 1999

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MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
ATTN: SERVICE ACQUISITION EXECUTIVES

SUBJECT: Section 806 of the Strom Thurmond National Defense Authorization
Act for Fiscal Year 1999

The purpose of this memorandum is to invite addressees’ attention to the full
implementation of section 806 of the Strom Thurmond National Defense Authorization
Act for Fiscal Year 1999 (PL105-261).

Section 806 of the Strom Thurmond National Defense Authorization Act for
Fiscal Year 1999 states that the official designated as the single manager for conventional
ammunition (SMCA) in the Department of Defense shall limit a specific procurement of
ammunition to sources within the national technology and industrial base in accordance
with section 2304(c)(3) of title 10, United States Code (U.S.C.), if that manager
determines that such limitation is necessary to maintain a facility, producer,
manufacturer, or other supplier available for furnishing an essential item of ammunition
or ammunition component in cases of national emergency or to achieve industrial
mobilization. This encompasses all procurements for conventional ammunition including
those Army procurements that the SMCA does not manage and procurements by other
Military Departments and defense agencies. Section 806 specifies that the term
conventional ammunition has the meaning given that term in Department of Defense
Directive (DoDD) 5160.65, dated March 8, 1995, and includes missiles, torpedoes, naval
mines, and other Service-unique ammunition. Section 806 does not change the criteria
set out in 10 U.S.C. 2304, for using other than competitive procedures.

A recent review of Army records to assess compliance with section 806
requirements shows that only 5 of 106 acquisition plans were submitted, to the SMCA,
by the Navy and Air Force since promulgation of the DoD implementing policy in
November 2000. Although data has not been collected to quantify the total number of
munitions procurements within DoD over this 15-month period, the paucity of Navy and
Air Force submittals is a clear indication that the law has not been fully implemented. In
this light, I am restating the Department’s policy direction with respect to section 806 and
the procurement of conventional ammunition, as follows:
The Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(AL&T)), will publish annually a Conventional Ammunition End Item/Component-at-Risk List. This list will identify ammunition or components that potentially qualify for restricted competition. While this list is indicative of ammunition or components for which restrictions may be determined to be applicable, the ASA(AL&T) is not constrained to this list and may identify other conventional ammunition for which restrictions are necessary at any time.

Acquisition plans or strategies for all procurements of conventional ammunition, by all Military Services and defense agencies, will be submitted to the ASA(AL&T) for review and concurrence regardless of the acquisition category. New procurements of conventional ammunition covered by previously approved acquisition plans must also be submitted to the ASA(AL&T) in order to comply with the requirements of section 806.

The ASA(AL&T) will review the procurement approach to determine if the plan or strategy is consistent with retaining those national technology and industrial base capabilities required in accordance with section 806 and 10 U.S.C 2304(c)(3), considering all risk factors.

If the ASA(AL&T) concurs with the acquisition plan/strategy, he will provide his decision to that effect in writing to the Military Department or defense agency involved, and that Military Department or defense agency may proceed with the procurement. If the ASA(AL&T) disagrees with the acquisition plan or strategy, the Military Department or defense agency involved will be notified. The ASA(AL&T), with assistance from the Army Office of the Executive Director for Conventional Ammunition, will attempt to resolve the disagreement with the Military Department. If no agreement is reached, the ASA(AL&T) will make the final determination on the appropriate acquisition approach.

Justifications and Approvals (J&As) for section 806 related exceptions to competition will be processed following established regulations and policies. The Deputy Under Secretary of Defense (Industrial Policy) will monitor the implementation and execution of the section 806 process.

Please ensure that this policy receives the broadest possible dissemination throughout the munitions acquisition community. I appreciate your cooperation on this matter.

E. C. Aldridge, Jr.

Attachment:
As stated
the head of the procuring activity granting the waiver determines
that the requirement under that paragraph should be waived in
the case of such subcontracts and justifies in writing the reasons
for the determination."

SEC. 604. PROCUREMENT OF CONVENTIONAL AMMUNITION.

(a) AUTHORITY.—The official in the Department of Defense des-
ignated as the single manager for conventional ammunition in
the Department shall have the authority to restrict the procurement
of conventional ammunition to sources within the national tech-
ology and industrial base in accordance with the authority in
section 2304(c) of title 10, United States Code.

(b) REQUIREMENT.—The official in the Department of Defense
designated as the single manager for conventional ammunition
in the Department of Defense shall limit a specific procurement
of ammunition to sources within the national technology and indus-
trial base in accordance with section 2304(c)(3) of title 10, United
States Code, in any case in which that manager determines that
such limitation is necessary to maintain a facility, producer, manu-
facturer, or other supplier available for furnishing an essential
term of ammunition or ammunition component in cases of national
emergency or to achieve industrial mobilization.

(c) CONVENTIONAL AMMUNITION DEFINED.—For purposes of this
section, the term "conventional ammunition" has the meaning given
that term in Department of Defense Directive 5102.85, dated March
8, 1986.

SEC. 605. PARA-ARAMID FIBERS AND YARNS.

(a) AUTHORITY.—The Secretary of Defense may procure articles
containing para-aramid fibers and yarns manufactured in a foreign
country referred to in subsection (d) if the Secretary determines
that—

(1) procuring articles that contain only para-aramid fibers
and yarns manufactured from suppliers within the national
technology and industrial base would result in sole-source con-
tracts or subcontracts for the supply of such para-aramid fibers
and yarns; and

(2) such sole-source contracts or subcontracts would not
be in the best interests of the Government or consistent with
the objectives of section 2304 of title 10, United States Code.

(b) SUBMISSION TO CONGRESS.—Not later than 30 days after
making a determination under subsection (a), the Secretary shall
submit to Congress a copy of the determination.

(c) APPLICABILITY TO SUBCONTACTS.—The authority under sub-
section (a) applies with respect to subcontractors under Department
of Defense contracts as well as to such contracts.

(d) FOREIGN COUNTRIES COVERED.—The authority under sub-
section (a) applies with respect to a foreign country that—

(1) is a party to a defense memorandum of understanding
entered into under section 2531 of this title; and

(2) permits United States firms that manufacture para-
aramid fibers and yarns to compete with foreign firms for
the sale of para-aramid fibers and yarns in that country, as
determined by the Secretary of Defense.

(e) DEFINITION.—In this section, the term "national technology
and industrial base" has the meaning given that term in section
2500 of title 10, United States Code.
The conferees agree that the term "exceptional circumstances" requires more than the belief that it may be possible to determine the contract price to be fair and reasonable without the submission of certified cost and pricing data. For example, a waiver may be appropriate in circumstances where it is possible to determine price reasonableness without cost or pricing data and the contracting officer determines that it would not be possible to enter into a contract with a particular contractor in the absence of a waiver. The conferees direct the Department of Defense to work with the appropriate executive branch officials to clarify the situations in which an exceptional circumstances waiver may be granted.

Procurement of conventional ammunition (sec. 802)

The House bill contained a provision (sec. 801) that would require that ammunition or ammunition components procured by the Department of Defense (DOD) be acquired from domestic sources pursuant to section 2634 of title 10, United States Code.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would assign to the single manager for conventional ammunition in the DOD the authority to restrict the procurement of conventional ammunition to the national technology and industrial base. The amendment would also require the single manager for conventional ammunition to limit specific procurements in accordance with section 2304c(3) of title 10, United States Code, in cases where it is determined that doing so is necessary to maintain a facility, producer, manufacturer, or other supplier available for furnishing an essential item of ammunition or ammunition component in cases of national emergency or to achieve industrial mobilization.

This provision supersedes existing guidance issued by the DOD as it relates to the procurement of ammunition from domestic sources. The conferees direct the Department of the Army to issue new guidance to replace the DOD guidance superseded by this provision. The conferees intend that the determination specified in the provision be conducted within the Department of the Army using procedures prescribed by the Secretary of the Army.

Para-aramid fibers and yarns (sec. 807)

The Senate amendment contained a provision (sec. 801) that would authorize the Secretary of Defense to procure articles containing para-aramid fibers and yarns manufactured in a foreign country that is a party to a defense memorandum of understanding, if such country allows U.S. manufacturers of that product to compete for sales to that foreign country.

The House bill contained no similar provisions.

The House recedes with an amendment that would allow the Secretary of Defense to procure articles containing yarns and fibers manufactured in a country with whom the United States has a defense memorandum of understanding upon making a determination described in the provision.