MEMORANDUM FOR DISTRIBUTION

Subject: Class Deviation – Limitation on Amounts Available for Contracted Services

In response to paragraphs (c)(1) and (e)(2) of section 808 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81), the Director of Defense Procurement and Acquisition Policy (DPAP) issued a class deviation (same subject, dated June 6, 2012). Subsequently, DPAP issued the attached memorandum, (same subject, dated July 31, 2012) which rescinds and supersedes the June 6, 2012 memorandum. DPAP’s memorandum details the requirements to be in compliance with the Law.

Should it be necessary for a contract or task or delivery order to be awarded to a contractor in FY12 or FY13, including commercial contract services and competitively awarded contract services, for continuing services at an annual cost to the Government that exceeds the annual cost paid by the DoD component concerned for the same or similar services in FY10, a Determination and Findings shall be submitted through DASN(AP) via RDAPolicy@navy.mil with written approval obtained prior to contract award or order issuance. Please be aware that the requirements of this paragraph also apply to contracted services that were previously provided by a different contractor.

This class deviation is effective immediately and remains in effect until incorporated into the FAR or DFARS or otherwise rescinded. Accordingly, I am requesting that you advise contracting personnel under your cognizance of this class deviation and the additional compliance requirements contained in paragraphs (c)(1) and (e)(2) of section 808 of the Act.

My point of contact for this matter is Ms. Denise Randolph. She can be reached on (703) 614-9767 or via Denise.Randolph@navy.mil.

Althea H. Coetzee
RDML, SC, USN
Executive Director
DASN(AP)

Attachment:
As stated
Subject: Class Deviation – Limitation on Amounts Available for Contracted Services

Distribution:
CMC (LB)
MARCORSYSCOM (CT)
MSC (N10)
NAVAIRSYSCOM (2.0)
NAVFACENGCOM (ACQ)
NAVSEASYSCOM (02)
NAVSUPSYSCOM (N7)
ONR (02)
SPAWARSYSCOM (2.0)
SSP (SPN)
AGC(RD&A)
MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE) COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE) DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT) DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION AND PROCUREMENT) DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING) DIRECTORS OF THE DEFENSE AGENCIES DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation—Limitation on Amounts Available for Contracted Services

This class deviation rescinds and supersedes Class Deviation 2012-00008. The deviation implements the attached Deputy Secretary of Defense memorandum “Guidance for Limitation on Aggregate Annual Amount Available for Contracted Services” dated June 03, 2012, and paragraphs (c)(1) and (c)(2) of section 808 of the National Defense Authorization Act for Fiscal Year 2012. Section 808 limits the amount of funds the Department may obligate for contract services in Fiscal Years 2012 and 2013. The Deputy Secretary memorandum indicates that each DoD component must take action to ensure compliance with the limitation on the aggregate obligation amount for contract services.

Effective immediately contracting officers shall implement section 808 by complying with the following requirements:

(1) When establishing negotiation objectives for labor and overhead rates for any contract or task or delivery order that includes contract services, where the contract services have an estimated value in excess of $10,000,000 in fiscal year 2012 or 2013, in addition to the requirements of DFARS 215.406-1, unless the rates are otherwise established by law, and unless approval of negotiation objectives has already been granted—

(a) Negotiation objectives for labor and overhead rates shall not exceed labor and overhead rates paid to that contractor for the same or similar contract services in Fiscal Year 2010. Contracting officers shall coordinate with the Defense Contract Audit Agency and the Defense Contract Management Agency (DCMA), for those contractors with contracts over which DCMA has cognizance, to determine the applicable 2010 rates; and
(b) In circumstances such as contractor reorganizations and accounting system changes, where the applicable 2010 labor and overhead rates cannot reasonably be compared to the proposed rates, contracting officers shall document the circumstances and develop estimated labor and overhead rates, with supporting rationale, for inclusion in their negotiation objectives, not to exceed the total labor and overhead rates per hour paid to that contractor for the same or similar contract services in Fiscal Year 2010; and

(2) Prior to award or issuance of any contract or task or delivery order that includes contract services, where the contract services have an estimated value in excess of $10,000,000, in fiscal year 2012 or 2013, including commercial contract services and competitively awarded contract services, that provides for continuing contract services at an annual cost to the Government that exceeds the annual cost paid by the DoD component concerned for the same or similar contract services in fiscal year 2010, contracting officers shall obtain approval in writing by the Secretary of the Military Department or Head of the DoD component. The requirement of this paragraph also applies where the contract services were previously provided by a different contractor.

For the purposes of this deviation, the term “contract services” means services procured from contractors, excluding those services relating to research, development, test and evaluation; military construction; overseas contingency operations; and object class codes 25.3 and 25.6 (see Attachment 1 of the Deputy Secretary of Defense memorandum).

This class deviation remains in effect until it is incorporated in the DFARS, or is otherwise rescinded. My points of contact are Mr. Mark Gomersall at 571-372-6099, or mark.gomersall@osd.mil, and Mr. John Tenaglia at 703-697-8334, or john.tenaglia@osd.mil.

[Signature]

Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated
MEMORANDUM FOR: SEE DISTRIBUTION

JUN 03 2012

SUBJECT: Guidance for Limitation on Aggregate Annual Amount Available for Contracted Services

This memorandum provides guidance (Attachment 1) regarding compliance with section 808 of the National Defense Authorization Act for Fiscal Year 2012, P.L. 112-81. Section 808 limits the amount of funds the Department may obligate for contract services in FY 2012 and FY 2013. Consistent with this statutory language, the Department’s obligations for all contracted services shall not exceed, in FY 2012 and FY 2013, the total amount requested for the Department for all contracted services in the President’s FY 2010 budget submission, excluding contracted services relating to overseas contingency operations, military construction, and research and development. Each Component must take action to ensure compliance with the limitation on the aggregate amount for contracted services reflected in your FY 2012-enacted budget and FY 2013 President’s Budget request.

Given the nature of how appropriated funds are allocated to fulfill requirements for contracted services and the fact we are well into the year of execution for FY 2012, compliance with section 808 will require close coordination among all stakeholders. Execution will be measured using obligations from base funds, reported semi-annually in the Department’s accounting systems as described in Attachment 2, to ensure that there is no migration or growth of contracted services that were excluded from the FY 2010 baseline and as tracked against Component services portfolios and contractor inventories.

Questions regarding this guidance should be directed to the following points of contact:
Office of the Under Secretary of Defense (OUSD) (Comptroller): Mr. Keith Anderson (keith.anderson@osd.mil); OUSD (Personnel and Readiness): Ms. Amy Parker (amy.parker@osd.mil) and Mr. Thomas Hessel (thomas.hessel@osd.mil); and OUSD (Acquisition, Technology and Logistics): Mr. John Tenaglia (john.tenaglia@osd.mil) and Mr. Jeffrey Grover (jeffrey.grover@osd.mil).

[Signature]

Attachments:
As stated
DISTRIBUTION:
SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMEN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDERS OF THE COMBATANT COMMANDS
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
DIRECTOR, OPERATIONAL TEST AND EVALUATION
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES
PRESIDENT, DEFENSE ACQUISITION UNIVERSITY
PRESIDENT, NATIONAL DEFENSE UNIVERSITY
Guidance to Implement Section 808 of the National Defense Authorization Act for
Fiscal Year 2012, P.L. 112-81

1. The primary means by which the Department is to meet or be below the aggregate annual limitation for contracted services is for the individual Military Departments and Defense Components to limit obligations for contracted services to the FY 2012 enacted budget amount and FY 2013 President’s Budget request. The following adjustments apply:

a. Excluding amounts allocated for overseas contingency operations, military construction, and research, development, test and evaluation;

b. Including all object classification code 25 categories, except 25.3 (Other goods and services from Federal sources) and 25.6 (Medical Care) as defined in DoD Financial Management Regulation 7000.14-R Volume I: General Financial Management Information, Systems and Requirements, Appendix A;

c. Excluding statutory exceptions for offsetting cost increases associated with the number of civilian billets approved above the number of billets in the FY 2010 civilian personnel baseline as part of the Department’s efficiencies initiatives; and

d. Excluding amounts adjusted for net transfer from funding for overseas contingency operations.

Except where approved increases to the current limitations on civilian personnel occur, each Military Department and Defense Agency will not exceed the FY 2012 President’s Budget enacted amount for contract services and FY 2013 President’s Budget request for the Department to meet the aggregate limitation, as reflected in this attachment.

2. For all contracts or task orders with an estimated value of more than $10,000,000 awarded for contracted services in FY 2012 or FY 2013, contracting officers shall establish negotiation objectives for direct labor and overhead rates that are less than or equal to direct labor and overhead rates paid to that contractor for the same or similar contracted services in FY 2010. Contracting officers shall coordinate with the Defense Contract Management Agency and the Defense Contract Audit Agency to determine the applicable rates. In the event such contracts or task orders are to be awarded that provide for continuing services at an annual cost that exceeds the annual cost paid by the Military Department or Defense Agency/Field Activity for the same or similar services paid in FY 2010, the Secretary of the Military Department or the Head of the Defense Agency/Field Activity must provide written approval prior to contract award or order issuance.

3. The Secretaries of the Military Departments and the Heads of the Defense Agencies/Field Activities (to include the Offices of the Secretary of Defense, the Joint Staff, the Combatant Commands, and all other organizations of the Department of Defense) shall identify and eliminate any instance where such organization is utilizing contracted services to perform inherently governmental functions. In instances where inherently governmental functions are found to be performed under contract, the department or...
agency shall take immediate actions to either in-source the work to government civilian performance or immediately divest the function and associated workload, reducing the scope of the contract. The term “inherently governmental functions” is defined in the Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, Performance of Inherently Governmental and Critical Functions, available online at (http://www.whitehouse.gov/omb/procurement_index_work_performance/).

4. The Secretaries of the Military Departments and the Heads of the Defense Components (to include the Offices of the Secretary of Defense, the Joint Staff, the Combatant Commands, and all other organizations of the Department of Defense) shall reduce by 10 percent per fiscal year in FY 2012 and FY 2013 obligations for staff augmentation contracts and contracts for the performance of functions closely associated with inherently governmental functions (as defined in section 2383(b)(3) of title 10, U.S.C., and described in OFPP Policy Letter 11-01).

a. Section 808 defines staff augmentation contracts as contracts for personnel who are subject to the direction of a government official other than the contracting officer for the contract, including but not limited to contractor personnel who perform personal service contracts. The reductions for staff augmentation contracts have already been factored into the budget documentation for FY 2012 and FY 2013. However, the aforementioned senior officials are responsible for ensuring those reductions are sustained.

b. For the purpose of fulfilling the requirement to reduce by 10 percent the amount of contracted services spent acquiring functions that are closely associated with inherently governmental functions, Components should use the classification in the FY 2010 Inventory of Contract Services as the baseline amount. If this data is unknown in the FY 2010 inventory, Components should use the classification in the FY 2011 Inventory of Contract Services.

5. The Secretaries of the Military Departments and the Heads of the Defense Agencies shall assign responsibility for overseeing and implementing this guidance to the officials designated pursuant to section 2330 of title 10, U.S.C., and section 812(b) of the National Defense Authorization Act for Fiscal Year 2006, P.L. 109-163, and ensure that the contractor inventory and program and budget proponents provide appropriate support.

6. As required by section 235 of title 10, U.S.C., this information must be consistent with a component’s contractor inventory compiled pursuant to section 2330a.
(\$\$ in Thousands)

<table>
<thead>
<tr>
<th>Contract Services</th>
<th>FY 2012 PB Enacted</th>
<th>FY 2013 PB Request</th>
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<tbody>
<tr>
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<td>(PRCP Base only)</td>
<td>(CIS (00-FEB-2012 Final))</td>
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**Army**

- Aircraft Procurement, Army
  - 252,176
- Army General Gift Fund (Trust)
- Environmental Restoration, Army
  - 346,031
- Family Housing Construction, Army
- Family Housing Operation and Maintenance, Army
- Joint Improvised Explosive Device Defeat Fund
  - 128,417
- Military Personnel, Army
  - 165,326
- Missile Procurement, Army
  - 11,143
- National Science Center, Army
  - 53,182
- Operation and Maintenance, Army
  - 25
- Operation and Maintenance, Army National Guard
  - 7,162,514
- Operation and Maintenance, Army Reserve
  - 1,246,324
- Other Procurement, Army
  - 626,164
- Procurement of Ammunition, Army
  - 129,062
- Procurement of Weapons and Tracked Combat Vehicles, Army
  - 173,597
- Restoration of the Rocky Mountain Arsenal
  - 25
- **TOTAL**
  - 10,337,483

**Air Force**

- Aircraft Procurement, Air Force
  - 77,598
- Family Housing Operation and Maintenance, Air Force
  - 131,836
- Military Personnel, Air Force
  - 109,931
- Missile Procurement, Air Force
  - 174,439
- Operation and Maintenance, Air Force
  - 13,376,274
- Operation and Maintenance, Air Force Reserve
  - 399,743
- Operation and Maintenance, Air Force, Recovery Act
  - 1,405,440
- Operation and Maintenance, Air National Guard
  - 179,978
- Other Procurement, Air Force
  - 2,694
- Procurement of Ammunition, Air Force
- **TOTAL**
  - 15,857,933

**Navy**

- Aircraft Procurement, Navy
  - 368,734
- Family Housing Operation and Maintenance, Navy and Marine Corps
  - 124,701
- Military Personnel, Marine Corps
  - 11,343
- Military Personnel, Navy
  - 6,008
- National Defense Sealift Fund
  - 19,280
- Operation and Maintenance, Marine Corps
  - 1,382,299
- Operation and Maintenance, Marine Corps Reserve
  - 75,740
- Operation and Maintenance, Marine Corps Reserve, Recovery Act
- Operation and Maintenance, Marine Corps, Recovery Act
- Operation and Maintenance, Navy
  - 9,231,443
- Operation and Maintenance, Navy Reserve
  - 393,168
- Operation and Maintenance, Navy Reserve, Recovery Act
- Operation and Maintenance, Navy, Recovery Act
- Other Procurement, Navy
  - 306,890
- Procurement of Ammunition, Navy and Marine Corps
  - 4,437
- Procurement, Marine Corps
  - 42,275
- Shipbuilding and Conversion, Navy
  - 333,268
- Weapons Procurement, Navy
  - 49,878
- **TOTAL**
  - 12,349,484

Attachment 2
Attachment, 5 of 6
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<th>Program/Project</th>
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**Department TOTAL**

| Department TOTAL | 54,741,916 | 53,564,320 |

**Section 808 Exceptions**

| FY 2010 PB Request Baseline | 50,876,660 | 50,876,660 |
| FY 2010 PB Request Adjusted IAW Sec 808 | 56,458,770 | 59,039,068 |

**Below Section 808 Annual Aggregate Limitation**

| Below Section 808 Annual Aggregate Limitation | 1,726,254 | 473,246 |

Excludes Civil Functions, MILCON and RDT&E appropriations
Excludes Overseas Contingency Operations (Afghanistan Security Funds and Iraq Security Forces Fund)
Includes Major Category 25 - Contract Services
Excludes Minor Category: 310 - GDS/Service from other Agencies; 320 - Pay Foreign Nationals; and 330 - Buy from Revolving Funds
Excludes Minor Category: 610 - Medical Care