MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
DIRECTORS OF THE DEFENSE AGENCIES


Section 883 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 authorizes a six-year pilot program under which Defense Logistics Agency (DLA) storage and distribution services support may be made available to a contractor in support of the performance by the contractor of a contract for the production, modification, maintenance, or repair of a weapon system that is entered into by the Department of Defense (DoD). This memorandum provides implementation guidance for the authorized pilot program and constitutes the regulations required by section 883, subsection (d).

Policy:

- DLA may make available storage and distribution services support as a pilot program under the authority of NDAA section 883 to a contractor in support of the performance by the contractor of a contract for the production, modification, maintenance, or repair of a weapon system that is entered into by DoD.

- The Director, DLA is authorized to enter into storage and distribution support contracts and make determinations under the authority of section 883 and this policy. The Director, DLA may further delegate this authority. The Director, DLA is authorized to publish implementing regulations or guidance based on this policy and section 883.

- The authority to enter into contracts under this pilot program shall be limited to a total of five contracts and shall expire on December 23, 2022. Any contracts entered into before December 23, 2022, shall continue in effect according to their terms.

- Storage and distribution services shall be provided to a contractor under this authority only when it is in the best interests of the United States to do so. This determination shall be made by the Director, DLA or an official delegated by the Director, with delegations authorized to a level no lower than the Director, DLA Logistics Operations (J3). In determining whether a proposed contract is in the best interest of the U.S. Government (USG), DLA should consider factors such as reduction of overall weapon systems costs or achievement of operational advantages. Storage and distribution services provided under the pilot program shall not interfere with the mission of DLA or any Military Department involved with the pilot program.
Procedures:

• At the request of DLA, or when otherwise determined appropriate by the contracting Military Department, the Military Departments will include in solicitations for contracts for which storage and distribution services are going to be made available a statement notifying offerors that DLA is authorized to provide logistics support and services under the authority of the section 883 pilot program to any contractor awarded the contract, describing the range of logistics support and services that are available, and stating that the contractor will not be required to accept the offer of support and services.

• Contracts for the pilot program under this authority shall be between a contractor (supported contractor) with a contract with DoD for the production, modification, maintenance, or repair of a weapon system (supported contract) and the Director, DLA, and are subject to title 10, United States Code, section 2208(h), and its implementing regulations.

• The storage and distribution support services that may be provided under this pilot are the storage and distribution of materiel and repair parts necessary for the performance of the supported contract.

• Rates charged to a supported contractor for storage and distribution services shall reflect the full cost to the United States for the resources used in providing the support services including the costs of resources used, but not paid for by DoD.

• DLA may not charge a supported contractor for any effort of the supported contractor to correct a deficiency in the performance of logistics support and logistics services provided to the contractor by DLA under a support contract. Thus, DLA will credit or refund, as appropriate, the supported contractor for reasonable and necessary costs incurred by the contractor to correct such a deficiency. A credit or refund will only be provided to the extent that the contractor establishes that the costs were directly incurred by the contractor in correcting such deficiencies. Loss of profits, indirect costs, consequential damages, and interest will not be credited or refunded. The amount credited or refunded may not exceed the amount of the costs required to be charged by DLA under the support contract. Any claim by a weapon systems contractor must be submitted in writing within 90 days of the date that the contractor knew, or should have known, of the need for corrective action. No credit or refund will be made for claims submitted after that date.

• A supported contractor may not be provided logistics support or logistics services unless the supported contract and the DLA contract with the supported contractor provide that the supported contractor remains responsible for deficient performance on its prime contract even though the deficient performance is attributable to DLA, and the supported contract includes a clause requiring the supported contractor to indemnify the
Government against any failure by the supported contractor to perform with regard to storage and distribution requirements.

- DLA may include provisions in contracts with supported contractors that provide for limitation of DLA’s liability. DLA will consider standard commercial practice and the best interests of the USG in prescribing such provisions.

- With respect to a supported contract described in subsection (d)(3) of section 883 that is being performed for a department or agency outside DoD, no charge will be imposed on that department or agency for any effort of DoD personnel or the contractor to correct deficiencies in the performance of such contract except as authorized by law or regulation.

- DLA shall include in the contracts appropriate Government Furnished Property clauses in accordance with Federal Acquisition Regulation Part 45 and Defense Federal Acquisition Regulation Supplement Part 245.

- Storage and distribution services provided under this authority shall not conflict with any obligation of the United States under any treaty or other international agreement.

- The Director, DLA shall submit to Office of the Assistant Secretary of Defense for Logistics and Materiel Readiness (or its successor) not later than the end of the fourth year of operation of the pilot program a report describing:
  - The cost effectiveness for both the Government and industry of the pilot program; and
  - How support contracts under the pilot program affected meeting the requirements of primary contracts.

My point of contact for this memorandum is Mr. Kenneth D. Watson, Deputy Assistant Secretary of Defense for Maintenance Policy and Programs, at kenneth.d.watson1.civ@mail.mil or 703-697-7980.

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