



Department of Defense INSTRUCTION

NUMBER 4105.67

February 26, 2014

Incorporating Change 2, December 1, 2017

USD(P&R)

SUBJECT: Nonappropriated Fund (NAF) Procurement Policy and Procedure

References: See Enclosure 1

1. PURPOSE. This instruction:

a. Reissues DoD Directive (DoDD) 4105.67 (Reference (a)) as a DoD instruction (DoDI) in accordance with the authority in DoDD 5124.02 (Reference (b)) to establish policy, assign responsibilities, and prescribe procedures for procurements using NAF.

b. Authorizes DoD nonappropriated fund instrumentalities (NAFIs) to enter into certain contracts and agreements with other federal agencies and instrumentalities in accordance with the authorities in sections 2484(h)(2)(A) and 2492 of Title 10, United States Code (U.S.C.) (Reference (c)).

c. Incorporates and cancels DoDI 4105.71 (Reference (d)) and DoDI 7060.03 (Reference (e)).

2. APPLICABILITY

a. This instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this instruction as the "DoD Components").

b. This instruction creates no rights or remedies and may not be relied on by any person, organization, or other non-governmental entity to allege a denial of any rights or remedies.

3. POLICY. It is DoD policy that:

a. DoD NAFIs governed by DoDI 1015.15 (Reference (f)) are instrumentalities of the United States and have the inherent authority to enter into contracts and leases using NAF.

b. NAF procurements will be accomplished by trained procurement personnel in a fair, equitable, and impartial manner, and to the best value for the NAFI. Appropriated fund (APF) and NAF procurement personnel must perform NAF-funded contract actions in accordance with NAF procurement procedures and will ensure the actions are not bound by the APF procedures listed in paragraph 3i of this instruction. However, when in the best interest of the NAFI, as determined by the NAFI, existing APF contracts may be used to fulfill NAF requirements in accordance with paragraph 1.a. of Enclosure 2 of this instruction.

c. NAF procurements must be executed in compliance with the requirements of applicable statutes, regulations, and directives.

d. Personnel accomplishing NAF procurements must comply with DoDD 5500.07 (Reference (g)).

e. Personal service contracts, as defined in Volume 1403 of DoDI 1400.25 (Reference (h)), are prohibited.

f. The exchange services must implement a program that ensures private label and non-branded direct-import merchandise is not produced by child or forced labor as requested by House Report 107-194, which accompanied the National Defense Authorization Act for Fiscal Year 2002 (Reference (i)), and in accordance with procedures in section 12 of Enclosure 2 of this instruction.

g. DoD favors and promotes the sale of U.S. merchandise items and services in overseas NAFIs as prescribed in Enclosure 3 of this instruction.

h. DoD NAFIs will procure sustainable goods and services when they represent the best value to the NAFI.

i. The following do not apply to NAF procurements:

(1) Federal Acquisition Regulation (Reference (j)), the Defense Federal Acquisition Regulation Supplement (Reference (k)), or DoD Component supplements.

(2) Chapter 137, "Procurement Generally," of Reference (c).

(3) Section 631 et seq. of Title 15, U.S.C., also known as "the Small Business Act," as amended (Reference (l)).

(4) Sections 8301-8303 of Title 41, U.S.C. (Reference (m)), also known and referred to in this instruction as "the Buy American Act (BAA)," and sections 2501-2581 of Title 19, U.S.C., also known and referred to in this instruction as "the Trade Agreements Act (TAA) of 1979" (Reference (n)), do not apply to NAFI purchases of resale items.

4. RESPONSIBILITIES

a. Under Secretary of Defense for Personnel and Readiness (USD(P&R)). The USD(P&R) establishes uniform DoD NAF procurement policy.

b. Assistant Secretary of Defense for Manpower and Reserve Affairs (ASD(M&RA)). Under the authority, direction, and control of the USD(P&R), the ASD(M&RA) establishes guidance for the proper administration and management of NAF procurements and monitors compliance as prescribed in this instruction.

c. DoD Component Heads. DoD Component heads:

(1) Establish NAF procurement procedures consistent with this instruction. They may delegate the authority to develop procurement procedures to the exchange services.

(2) Establish NAF procurement management oversight and internal control systems.

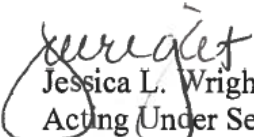
(3) May establish procurement advisory groups where NAF procurement personnel and legal counsel supporting NAFIs can meet to discuss means of improving procurement actions. Advisory groups will consist solely of U.S. Government personnel.

(4) Must review and approve NAF facility leases with an annual cost of \$200,000 or greater before contract award.

5. PROCEDURES. Enclosure 2 provides general procedures for NAF procurements that are in the best interest of the NAFI and must be followed absent specific prohibition in federal law, federal regulation, Executive order, or DoD issuance. Enclosure 3 provides procedures for the international balance of payments program as it applies to NAFIs.

6. RELEASABILITY. **Cleared for public release**. This instruction is available on the Internet from the ~~DoD Issuances~~ *Directives Division* Website at <http://www.dtic.mil/whs/directives> <http://www.esd.whs.mil/DD/>.

7. EFFECTIVE DATE. This instruction is effective February 26, 2014.


Jessica L. Wright
Acting Under Secretary of Defense for
Personnel and Readiness

Enclosures

1. References
2. NAF Procurement Procedures
3. NAFI International Balance of Payments Program Procedures

Glossary

competitive negotiation. The method of procurement that permits oral and or written responses to a solicitation and subsequent negotiation of prices, terms or conditions of the proposed contract to achieve the best value for the NAFI. This method of procurement allows the contracting officer the widest latitude in arriving at a fair and reasonable price and mutually agreed upon terms.

construction. Includes erection, installation, or assembly of a new facility; the addition, expansion, extension, alteration, conversion, or replacement of an existing facility; the relocation of facilities and equipment; the adjustment of interior arrangements or other physical characteristics of a facility; the installation of utilities and equipment made a part of a facility, and related site preparation, excavation, filling and landscaping or other improvements. It includes pouring, dredging, excavating, and painting. It does not include installation of carpet, wall covering, or draperies.

contract. An agreement that creates a legal obligation. The elements of a contract are a mutual agreement; between competent parties; for a legal purpose; involving the exchange of legal consideration; and that creates a mutuality of obligation to perform between the parties. The term contract, as used in this instruction, includes without limitation, formal bilateral contracts, purchase orders, consignment sales agreements, amendments and modifications thereto, as well as other agreements entered into by an authorized contracting officer acting within his or her authority.

contracting authority. The position(s) prescribed by the DoD Component's procedures (or exchange procedures if delegated in accordance with paragraph 4c(1) of the responsibilities in this instruction) as responsible for the procurement authority of the NAFI(s).

contracting officer. An individual delegated with the authority to legally bind the NAFI by entering into, modifying, administering, and terminating contracts.

COR. An individual authorized in writing by a contracting officer to monitor contractor performance and/or help administer a contract. This definition applies to contracting officer's technical representative and ACORs.

determination of responsibility. The contracting officer's judgment that a prospective contractor has adequate financial and technical resources or the capability to get the resources, and a satisfactory record of performance demonstrating its capacity to perform the contract.

exchange services. The Army & Air Force Exchange Service, the Navy Exchange Service Command, and the Marine Corps Exchange.

excess foreign currencies. The currencies of countries held by the U.S. Treasury in excess supply for all U.S. Government needs, and periodically declared to the Office of Management and Budget by the U.S. Treasury as excess. The lists of countries are transmitted to the DoD Components from time to time by appropriate DoD issuances.