DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

AUG - 1 2012

MEMORANDUM FOR DISTRIBUTION

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

In response to paragraphs (c)(1) and (c)(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class deviation is effective immediately and remains in effect until incorporated into the FAR or DFARS or otherwise rescinded.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 (c)(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:
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OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

JUL 31 2012

In reply refer to
DARS Tracking Number: 2012-O0012

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-O0008. 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.

Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MEMORANDUM FOR: SEE DISTRIBUTION

JUN 0 3 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).

Ashton B. Carter

Attachments:
As stated

OSD006113-12

DISTRIBUTION:
SECRETARIES OF THE MILITARY DEPARTMENTS
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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 1: 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)

Contract Services
(Includes all appropriations except MILCON and RDT&E)
Object Class 25.xxx (excluding .3 and .6)

Army	FY 2012 PB Enacted (PRCP Base only)	FY 2013 PB Request (CIS (00-FEB-2012 Final))
Aircraft Procurement, Army	252,176	213,510
Army General Gift Fund (Trust)		5,448
Environmental Restoration, Army	346,031	
Family Housing Construction, Army		
Family Housing Operation and Maintenance, Army	128,417	127,423
Joint Improvised Explosive Device Defeat Fund	185,328	172,328
Military Personnel, Army	11,143	10,171
Missile Procurement, Army	53,182	48,212
National Science Center, Army	25	25
Operation and Maintenance, Army	7,162,514	10,107,133
Operation and Maintenance, Army National Guard	1,246,324	1,280,219
Operation and Maintenance, Army Reserve	626,184	502,257
Other Procurement, Army	129,062	112,253
Procurement of Ammunition, Army	173,597	151,504
Procurement of Weapons and Tracked Combat Vehicles, Army	23,500	20,394
Restoration of the Rocky Mountain Arsenal		8,000
TOTAL	**10,337,483**	**12,758,877**

Air Force		
Aircraft Procurement, Air Force	77,598	75,866
Family Housing Operation and Maintenance, Air Force	131,836	216,713
Military Personnel, Air Force	109,931	114,901
Missile Procurement, Air Force	174,439	168,922
Operation and Maintenance, Air Force	13,376,274	13,485,354
Operation and Maintenance, Air Force Reserve	399,743	376,144
Operation and Maintenance, Air Force, Recovery Act		
Operation and Maintenance, Air National Guard	1,405,440	1,309,815
Other Procurement, Air Force	179,978	164,412
Procurement of Ammunition, Air Force	2,694	2,536
TOTAL	**15,857,933**	**15,914,663**

Navy		
Aircraft Procurement, Navy	368,734	323,708
Family Housing Operation and Maintenance, Navy and Marine Corps	124,701	118,519
Military Personnel, Marine Corps	11,343	10,021
Military Personnel, Navy	6,008	5,700
National Defense Sealift Fund	19,280	9,896
Operation and Maintenance, Marine Corps	1,382,299	1,377,606
Operation and Maintenance, Marine Corps Reserve	75,740	84,194
Operation and Maintenance, Marine Corps Reserve, Recovery Act		
Operation and Maintenance, Marine Corps, Recovery Act		
Operation and Maintenance, Navy	9,231,443	10,879,377
Operation and Maintenance, Navy Reserve	393,186	337,913
Operation and Maintenance, Navy Reserve, Recovery Act		
Operation and Maintenance, Navy, Recovery Act		
Other Procurement, Navy	306,890	271,510
Procurement of Ammunition, Navy and Marine Corps	4,437	2,871
Procurement, Marine Corps	42,275	33,755
Shipbuilding and Conversion, Navy	333,268	331,183
Weapons Procurement, Navy	49,878	42,823
TOTAL	**12,349,484**	**13,829,076**

($$ in Thousands)

Contract Services
(Includes all appropriations except MILCON and RDT&E)
Object Class 25.xxx (excluding .3 and .6)

Defense	FY 2012 PB Enacted (PRCP Base only)	FY 2013 PB Request (CIS (00-FEB-2012 Final))
Chemical Agents and Munitions Destruction, Army	1,152,848	989,579
Cooperative Threat Reduction Account	455,175	421,379
Defense Coalition Support, Defense		
Defense Production Act Purchases	213,558	94,316
Department of Defense Acquisition Workforce Development Fund	161,074	466,287
Department of Defense Family Housing Improvement Fund	2,184	1,786
Disposal of Department of Defense Real Property	91,202	7,855
DoD Overseas Military Facility Investment Recovery	7,295	229
Drug Interdiction and Counter-drug Activities, Defense	347,796	299,842
Family Housing Operation and Maintenance, Defense-Wide	3,103	2,006
Lease of Department of Defense Real Property	91,815	12,029
Office of the Inspector General, Recovery Act		
Office of the Inspector General	47,072	19,032
Operation and Maintenance, Defense-Wide		
DAU	19,544	19,259
DCAA	15,225	17,237
DCMA	41,113	44,236
DFAS	11,975	17,513
DHRA	424,308	459,284
DIA	1,156,881	1,039,683
DISA	841,094	849,558
DLA	124,457	71,014
DLSA	2,608	1,768
DMACT	81,554	70,562
DODEA	280,111	297,403
DPMO	622	693
DSCA	56,936	60,482
DSS	68,894	64,871
DTRA	200,578	210,139
DTSA	6,408	6,727
MDA	202,342	255,729
NDU	6,780	7,316
NGA	1,384,321	1,499,319
NSA	2,941,862	2,558,101
OEA	36,172	141,193
OSD	986,144	849,862
SOCOM	1,095,167	1,659,037
TJS	249,664	199,037
WHS	156,036	136,136
Overseas Humanitarian, Disaster and Civic Aid	108,078	57,647
Procurement, Defense-Wide	107,433	80,299
United States Court of Appeals for the Armed Forces	390	490
Defense Health Program	3,017,197	3,073,269
TOTAL	**16,197,016**	**16,062,204**
Department TOTAL	**54,741,916**	**58,564,820**

Section 808 Exceptions

FY 2010 PB Request Baseline	50,876,680	50,876,680
Adjustment for Civilian Pay Increase from FY 2010 PB	3,030,446	3,809,499
OCO to Base Transfer	2,561,644	4,352,887
FY 2010 PB Request Adjusted IAW Sec 808	**56,468,770**	**59,039,066**
Below Section 808 Annual Aggregate Limitation	**-1,726,854**	**-474,246**

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