

**SUBPART 217.78—CONTRACTS OR DELIVERY ORDERS ISSUED BY A NON-
DOD AGENCY**

(Revised June 8, 2010)

217.7800 Scope of subpart.

This subpart—

(a) Implements section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375), section 801 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), and section 806 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84); and

(b) Prescribes policy for the acquisition of supplies and services through the use of contracts or orders issued by non-DoD agencies.

217.7801 Definitions.

As used in this subpart—

“Acquisition official” means—

(1) A DoD contracting officer; or

(2) Any other DoD official authorized to approve a direct acquisition or an assisted acquisition on behalf of DoD.

“Assisted acquisition” means the type of interagency contracting through which acquisition officials of a non-DoD agency award a contract or a task or delivery order for the acquisition of supplies or services on behalf of DoD.

“Direct acquisition” means the type of interagency contracting through which DoD orders a supply or service from a Governmentwide acquisition contract maintained by a non-DoD agency.

“Governmentwide acquisition contract” means a task or delivery order contract that—

(1) Is entered into by a non-defense agency; and

(2) May be used as the contract under which property or services are procured for one or more other departments or agencies of the Federal Government.

“Non-DoD agency” means any department or agency of the Federal Government other than DoD.

“Non-DoD agency that is an element of the intelligence community” means the Office of the Director of National Intelligence; the Central Intelligence Agency; the intelligence elements of the Federal Bureau of Investigation; the intelligence elements of the Department of Energy; the Bureau of Intelligence and Research of the Department of State; the Office of Intelligence and Analysis of the Department of the Treasury; and the elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard.

217.7802 Policy.

(a) A DoD acquisition official may place an order, make a purchase, or otherwise acquire supplies or services for DoD in excess of the simplified acquisition threshold through a non-DoD agency in any fiscal year only if the head of the non-DoD agency has certified that the non-DoD agency will comply with defense procurement requirements for the fiscal year to include applicable DoD financial management regulations.

(1) This limitation shall not apply to the acquisition of supplies and services during any fiscal year for which there is in effect a written determination of the Under Secretary of Defense for Acquisition, Technology, and Logistics, that it is necessary in the interest of DoD to acquire supplies and services through the non-DoD agency during the fiscal year. A written determination with respect to a non-DoD agency shall apply to any category of acquisitions through the non-DoD agency that is specified in the determination.

(2) Non-DoD agency certifications and additional information are available at http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html.

(3) The limitation in paragraph (a) of this section does not apply to contracts entered into by a non-DoD agency that is an element of the intelligence community for the performance of a joint program conducted to meet the needs of DoD and the non-DoD agency.

(b) Departments and agencies shall establish and maintain procedures for reviewing and approving orders placed for supplies and services under non-DoD contracts, whether through direct acquisition or assisted acquisition, when the amount of the order exceeds the simplified acquisition threshold. These procedures shall include—

(1) Evaluating whether using a non-DoD contract for the acquisition is in the best interest of DoD. Factors to be considered include—

- (i) Satisfying customer requirements;
- (ii) Schedule;
- (iii) Cost effectiveness (taking into account discounts and fees); and
- (iv) Contract administration (including oversight);

(2) Determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;

(3) Reviewing funding to ensure that it is used in accordance with appropriation limitations;

(4) Providing unique terms, conditions, and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives, and other requirements; and

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(5) Collecting and reporting data on the use of assisted acquisition for analysis. Follow the reporting requirements in Subpart 204.6.