



DEPARTMENT OF THE NAVY  
SPACE AND NAVAL WARFARE SYSTEMS COMMAND  
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SAN DIEGO, CA 92110-3127

SPAWARNOTE 4200  
2.0  
11 May 2012

SPAWAR NOTICE 4200

From: Commander, Space and Naval Warfare Systems Command

Subj: SPAWAR SERVICE CONTRACTING TRIPWIRES

Ref: (a) Under Secretary of Defense (Acquisition, Technology, and Logistics) Memorandum dated 3 Nov 10  
(b) Assistant Secretary of the Navy (Research, Development, and Acquisition) Memorandum dated 29 Mar 11  
(c) SPAWARINST 4200.26C, SPAWAR Acquisition Procedures

Encl: (1) SPAWAR Service Contracting Tripwires

1. Purpose. This notice provides policy for the oversight of planning and executing services acquisition requirements mentioned in the references above. As Head of the Contracting Activity (HCA), I am setting tripwires in concert with reference (a), Implementation Directive for Better Buying Power, to improve the services tradecraft and that will alert the SPAWAR leadership to risk areas before unintended situations occur. The tripwires outlined in enclosure (1) are tools to improve visibility and accountability at higher management levels and to ensure these decisions are documented.

2. Background. Reference (b) reported that services contracting now represent more than 50 percent of all Department of Navy's contracted annual obligations. Services support is key to the success of providing the Navy Warfighter its requirements. However, we recognize that the process for procuring services is not as mature as the process for buying weapon systems. Across the Navy, SYSCOMS have held service courts or contract courts. SPAWAR conducted discovery level Service Acquisition Requirements Review Boards (SARRB) which confirmed the procurement goodness but identified areas that without oversight can be opportunity for mishaps. The implementation of the tripwires is facilitated by reference (c) which establishes the contracting guidance and procedures for the SPAWAR Claimancy.

3. Scope. Established herein are tripwires which cover all service requirements funded and executed at SPAWAR Systems Command including all Competencies, PEOs, Directorates, and Field Activities. This includes any service requirements fulfilled by non-SPAWAR activities on behalf of SPAWAR through MIPR, IPR or other funds transfer methods. The specific tripwire execution strategy is outlined in enclosure (1).

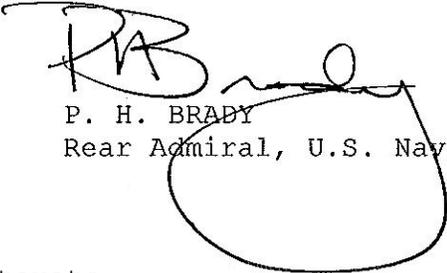
4. Policy. SPAWAR personnel must be diligent to ensure services are acquired using the proper processes and in accordance with applicable procurement laws, regulations and policies, including the Competition in Contracting Act (CICA), Organizational Conflicts of Interest, the Procurement Integrity Act, the Anti-Deficiency Act, Personal Services and Joint Ethics Regulations. Lack of awareness of applicable law, regulation, or policy does not relieve accountability for the organization's actions.

5. Action. SPAWAR shall report tripwires as they occur to the appropriate levels as identified in enclosure (1). It is anticipated that a SARRB will be held at least annually; subsequent guidance will follow. Prior to the SARRB, your organization shall use the tripwires in developing your presentation material. When a wire is tripped, the organization must explain the reason in detail at the review board, including whether the cause is systemic, specific to a certain set of circumstances, or a one-time occurrence. If the issue is systemic or due to a certain set of circumstances, provide explanations or solutions, such that all issues are fully understood or resolved in a period of time commensurate with the issue.

6. Responsibility. The SPAWAR Tier 1 National Competency Leads are responsible for implementing any related policy issued and working collaboratively together. SPAWAR 2.0 is the point of contact for service acquisition related questions and the issuance of collaborative policy.

7. Cancellation. This notice will be cancelled upon formalization of a governing SPAWAR instruction.

8. Forms and Reports. As applicable.

  
P. H. BRADY  
Rear Admiral, U.S. Navy

Distribution:  
SPAWAR Tier 1 National Leads  
Director, Fleet Readiness Directorate  
PEO C4I  
PEO EIS  
PEO SS  
SPAWARSYSCEN Pacific  
SPAWARSYSCEN Atlantic  
SPAWAR Space Field Activity

## SPAWAR Service Contract Tripwires

Service Contract Definition: Federal Acquisition Regulation (FAR) Subpart 37.103 and DoD Instruction 5000.02 define a service contract as "a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply." Services can be knowledge-based services, electronic and communication services, equipment related services, medical services, facility-related services, transportation services, and research and development services.

1. Acquisition Plans. The principal purpose of acquisition planning is to ensure that the Government meets its needs in the most effective, economical and timely manner. SPAWAR's written acquisition plans achieve these objectives by focusing on competition and the acquisition of products and services. Therefore, the following tripwire shall be implemented for all service contracts and task orders:

a. In accordance with reference (c), written Acquisition Plans are required for all contract actions expected to exceed \$50M. This threshold is decreased to \$25M for service contract actions. Service contract actions with an estimated total value of \$25M to \$50M, will be required to submit an Abbreviated Acquisition Plan (AAP) to SPAWAR 2.3.1 for review and submission to SPAWAR 2.0 for approval.

b. A Task Order Acquisition Plan is not required for Seaport-e Task Orders. A Task Order Acquisition Strategy in conjunction with the overarching SeaPort Program AP suffices for acquisition planning documentation. A Seaport-e Task Order with an estimated total value of over \$25M will be required to submit a Task Order Acquisition Strategy to SPAWAR 2.3.1 for review and submission to SPAWAR 2.0 for approval.

2. Bridge Contracting Actions. Bridges are defined as sole source actions entered into with the incumbent contractor in order to maintain support when competitive procurement cannot be processed in time to meet the required award date. All sole source actions are exceptions to the Competition in Contracting Act and require a written Justification & Approval (J&A). Often bridges are the result of poor planning and are more costly due to a lack of competitive pricing. Therefore, the following tripwires shall be implemented for all service contracts and task orders:

a. J&As for all bridge contracting actions, regardless of value, will include the PEO/Director/Field Activity Commanding Officer/Technical Director signature under Requirements Cognizance in addition to the Program Manager/Department Head as Technical Cognizance. Bridge J&As will also include a schedule for award of follow-on competition within Section 8 "Actions to Remove Barriers to Competition". Bridge J&As shall also include a description of who used the ceiling of the original contract and whether or not these users were anticipated in the approved Acquisition Plan.

b. J&As for all bridge contracting actions and task orders greater than \$12.5M and/or greater than six (6) month period of performance, excluding Seaport Task Orders, will be forwarded to SPAWAR 2.0 for approval.

c. J&As for any subsequent bridge contracting action and task orders (i.e. 2nd, 3rd bridge), excluding Seaport Task Orders, regardless of value or period of performance, will be forwarded to SPAWAR 2.0 for approval. This J&A must include rationale as to why the schedule in the initial bridge J&A was not achieved.

d. NO bridge contracting actions, regardless of value or length of performance, will be issued under Seaport-e Task Orders.

e. Any increase in ceiling of an Indefinite Delivery, Indefinite Quantity (IDIQ) contract, greater than \$12.5M will require submission of a J&A to SPAWAR 2.0 for approval.

3. Best Value Source Selection Premiums. In a Best Value competition, the Government may be willing to pay a cost/price premium in order to obtain a higher rated level of support; however, the premium still must represent a good business decision for the Government. Being able to afford something does not necessarily mean it is in the best interest of the Government to do so. Best Value is a function of technical quality and cost trade-offs among competing proposals. Best Value determinations are not made through mechanical calculations. As technical proposals approach equality, cost becomes a more significant factor. The "greater than 10%" tripwire described below does not suggest there is anything impermissible with respect to paying a greater than 10% premium, only that an additional analysis as to the value and higher level reviews are required. Therefore, the following tripwire shall be implemented for all service contracts and task orders:

a. After collaboration with the requiring organization's Source Selection Authority (SSA)<sup>1</sup> or Technical Evaluation Board (TEB) Chairperson/equivalent; the Procuring Contracting Officer (PCO), prior to award, will forward the Business Clearance Memorandum or Price Negotiation Memorandum for all service contracts and task orders to SPAWAR 2.0/2.0A for review of any Best Value source selection where the cost/price dollar premium is greater than 10% over the lowest acceptable offeror's Total Evaluated Cost/Price.

4. Other Direct Costs (ODCs). While a services contract is appropriate when the primary purpose is to perform an identifiable task, materials are often required to perform these services. It may be appropriate for a services contractor to procure materials under a services contract; however, there are a number of considerations that enter into developing an appropriate strategy to meet any requirement. Other Direct Costs (ODCs) are intended to include travel and incidental miscellaneous materials required in performance of the service. They are not intended to hide expensive consultants or subcontractors, or for the Government to purchase material by circumventing existing policies and procedures. DASN memorandum issued on 15 May 2007, emphasizes "the need to ensure that service contracts are not improperly used to acquire products or facilities not required for, or incidental to, performance of those services." Therefore, the following tripwires shall be implemented for all service contracts and task orders:

a. Prior To Award: If ODCs are estimated greater than 10% of the total labor value or exceed \$3M (whichever is lower) for any given contract year, the Program Manager (or equivalent), shall document the rationale for the ODC requirements and provide the rationale to the PCO. The methods for monitoring these ODCs shall be documented in the applicable Quality Assurance Surveillance Plan (QASP).

b. Post Award: The Contracting Officer's Representative (COR) will monitor on a monthly basis the use of ODCs. If the COR requests that ODCs be increased more than 10% of original ODC total (cumulative per contract or task order), then the rationale shall be documented in a Memorandum signed by the Program Manager (or equivalent), and provided to the PCO.

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<sup>1</sup> The PCO may be the SSA.

5. Labor Rates and Performance. For all cost-type, Time and Material (T&M), and Labor-Hour services contracts and task orders, the following tripwires shall be implemented:

a. Prior to Award: When proposed fully burdened labor rates are in excess of \$250k/year in any labor category, then the PCO shall ensure the Source Selection Authority (SSA)<sup>2</sup> is aware. The SSA shall address these rates with the cost and technical source selection teams and document analysis of this issue within the Best Value Determination. The PCO will forward the Business Clearance Memorandum or Price Negotiation Memorandum for all service contracts and task orders, to SPAWAR 2.0/2.0A for review prior to award, when proposed fully burdened labor rates are in excess of \$250k/year in any labor category.

b. Post Award:

(1)(a) The COR will monitor monthly average actual rates and will notify the PCO and Program Manager(or equivalent), via signed written communication, of all fully burdened labor charges in ANY labor category in excess of \$250K per year which were not originally specified in the contractor's proposal at award. The COR will also document this in the applicable monthly report.

(1)(b) The COR will monitor monthly average actual labor rates compared to average negotiated labor rates. Any variation of actual-to-negotiated labor rate averages greater than 15% requires notification via signed written communication to the PCO and Program Manager (or equivalent). Averages greater than 20% for more than three consecutive months will be elevated to SPAWAR 2.0 or the Field Activity Director of Contracts where applicable. The COR will also document this in the applicable monthly report.

c. Any exercise of options earlier than the time specified in the original contract shall be documented and forwarded to SPAWAR 2.0 for review. The documentation shall state the rationale for the early exercise of the option.

6. Subcontractors. Post award due diligence is required to monitor any proposed addition of subcontractors beyond those included and evaluated as part of the initial award. The

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<sup>2</sup> The PCO may be the SSA

Government cannot be perceived as exerting improper influence on the prime contractor to contract with specific subcontractors in order to circumvent the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. 2304. The Government does not have privity of contract with the subcontractor; only with the prime. It is the prime's responsibility to propose a team to accomplish the requirements, and it is the prime's responsibility to select additional subcontractors if it becomes necessary to supplement the team. Therefore, the following tripwires shall be implemented for all service contracts and task orders:

a. Each additional subcontractor must be reviewed by the PCO to ensure the contractor has provided the required documentation (FAR Part 44.201) and that the information clearly supports that the proposed subcontract(s) is appropriate for the risk(s) involved and consistent with current policy and sound business judgment. If the PCO, with the assistance of the COR, determines that proposed addition is appropriate, the PCO may pass the request on to the COR for Program Office concurrence.

b. If forwarded by the PCO, the COR must then receive written concurrence signed by the Program Manager (or equivalent) to include the additional subcontractor(s).

c. If Program Manager's (or equivalent) written concurrence is received, the final approval of the additional subcontractor will be at one level above the PCO. If approved, the PCO will document the official contract file accordingly.

7. One Bids. Effective competition is one of the most powerful tools the Government has to affect real efficiency and do more with less. Single offers, or "one bids," can be the result of several factors: inadequate time to prepare a proposal, poorly described requirements, or evaluation factors that appear to favor an incumbent. In accordance with reference (a), if only one offer is received, the PCO shall re-solicit or enter into negotiations with the single offeror and document the results in a Business Clearance Memorandum (BCM). If a solicitation was open for less than 30 days and only one offer was received, the PCO shall re-solicit for a minimum of an additional 30 days, unless a waiver is obtained from SPAWAR 2.0/2.0A. The following tripwires shall also be implemented for all service contracts and task orders:

a. "One bids" received under a competitive solicitation will be reported by the SPAWAR HQ PCO to SPAWAR 2.0; and field activities shall report to the Chief of the Contracting Office.

b. BCM approval for all "one bid" procurements greater than \$10M will be elevated to SPAWAR 2.0 for approval.

8. SeaPort-e Usage. SeaPort-e is the Navy's electronic platform for acquiring support services. All Navy System Commands are able to participate in this standardized and efficient tool to reach a vast population of diverse industry service providers. Through SeaPort-e ordering, competition is guaranteed as all task orders are competitively solicited. In addition, it is reported that nearly 85% of its contract-holders are small businesses. All service requirements contracted by SPAWAR HQ should utilize the SeaPort-e vehicle. If the requirement results in an end product, the requiring activity may give further consideration to the procurement method it plans to use and what Product or Service Code (PSC) is assigned.

9. Outgoing Funds Identification (OFI). This tripwire is still under development and will be promulgated at a later date.

Note: The tripwires mentioned in this document do not encompass all the areas of services acquisition which require oversight and risk management. However, it is intended to raise awareness and accountability across both the requirements and acquisition communities and initiate vigorous implementation of actions to improve government oversight, efficiencies and effectiveness. SPAWAR leadership is required to ensure services requirements are properly scoped, acquisitions are properly planned, and that the Government receives proper value for its dollar. Action is necessary to maintain the public's trust and execute the mission in the face of current budget cuts.