



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

30 DEC 2002

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (COMPTROLLER) SERVICE ACQUISITION EXECUTIVES DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Guidance on public-private business arrangements per 10 USC 2536

The National Defense Authorization Act for Fiscal Year 2002, Section 343 (Public Law 107- 107) changed 10 U.S.C. 2563, entitled "Articles and services of industrial facilities: sale to persons outside the Department of Defense." Specifically, 10 U.S.C. 2563(c)(1)(B) previously required non-Government purchasers of articles and services from working capital funded industrial facilities of the armed forces to agree to hold the Government harmless from claims for damages or injury arising out of the contract (except for willful misconduct or gross negligence). The change now permits working capital funded activities' sales contracts to allow damage claims for Government failure to "comply with quality, schedule or cost performance requirements" of contracts. This change applies to all contracts established after the date of enactment of this law, December 28, 2001.


The net effect of this change is to allow the Government's commercial customers to make claims for damages caused by the Government's poor contract performance, the same as with other commercial vendors of goods and services. The working capital activity's contracting officer should negotiate appropriate contractual remedies as part of the contract between the government and the commercial customer. This is an important step in the government-industry partnership and will result in better products and services from Government working capital funded industrial facilities by making us accountable to the same standards we expect from industry.

A working group was established with members from USD(AT&L), USD(Comptroller) and the Military Departments to determine implementing guidance due to the revised statute. As a result of the working group's recommendations, I request that the USD(Comptroller) update the DoD Financial Management Regulation (DoDFMR), to include appropriate references to 10 USC 2563. Financial management guidance on the accounting and funding of claims arising from a working capital fund activity's failure to comply with quality, schedule or cost performance requirements of a contract should also be included in the DoDFMR.



Acquisition Executives and Defense Agencies should determine whether additional guidance is needed in their own publications to assist the acquisition, technology and logistics workforce in its implementation.

My point of contact for this matter is Ms. Barbara Brygider at (703)697-9352.



E. C. Aldridge, Jr.