DEPARTMENT OF THE NAVY
NAVAL AIR SYSTEMS COMMAND
NAVAL AIR SYSTEMS COMMAND HEADQUARTERS
WASHINGTON, DC 20361 -0001

IN REPLY REFER TO

NAVAIRINST 4200.26B
AIR-710
8 Dec 88

NAVAIR INSTRUCTION 4200.26B

From: Commander, Naval Air Systems Command

Subj: CONTRACTOR SUPPORT SERVICES

Ref: (a) SECNAVINST 4200.31B, Contractor Support Services
(b) Federal Acquisition Regulation (FAR) and supplements
(c) SECNAVINST 4200.27A, Proper Use of Contractor Personnel
(d) NAVAIRINST 4200.30, Procurement Request Preparation under the FAR
(e) OPNAVINST 5000.37A, The Management and Conduct of Studies and Analysis

Encl: (1) Procedures for Review and Approval of Headquarters CSS Requirements
(2) CSS Approval Authorities for Field Activity Requirements

1. Purpose. To establish policies on the use of contractor support services (CSS) and to provide guidelines and procedures for obtaining CSS.

2. Cancellation. This instruction supersedes NAVAIR Instruction 4200.26A of 27 September 1982. Since this is a major revision, changes are not indicated.

3. Background

a. Reference (a) contains definitions, criteria for use, and broad policies and procedures for using CSS.

b. The use of contractor support is often a legitimate and economical way to accomplish our mission. The proper use of contractor support requires care to ensure against contractor performance of inherently governmental functions and the susceptibility of CSS to the problems of personal versus nonpersonal services contracting. CSS typically require close and coordinated effort between Government and non-Government personnel which increases the opportunity for inadvertently creating an improper personal services situation. Personal services are prohibited by reference (b) unless specifically authorized by Congress. Reference (c) provides additional guidance relative to personal/nonpersonal services. Personal services contracting can occur either through the written terms of the contract or the manner in which the contract is administered. Personal services occur where the government exercises such supervision or control over contractor employees or allows the contractor such discretion and authority to act for the Government that they become, for all intents and purposes, employees of the Government. Care must be taken both in the creation and in the administration of CSS contracts that personal services are avoided, and that we do not contract for the services of individuals who receive their assignments from us, work directly under our supervision, or whose relationship to us is no

different from that of a civil servant. Division directors and program managers, air (PMA's) are responsible for ensuring, on an annual basis, that all personnel involved with CSS contracts are familiar with the contents of reference (c), enclosure (1).

c. Use of contractor support in the procurement process has received great scrutiny because of concerns that contractors may be improperly influencing what the Navy buys and how it is bought. The Under Secretary of the Navy has mandated that government maintain organic resources to perform basic governmental functions, including activities of a policy making, decisionmaking or managerial nature. Additionally, this mandate called for minimal reliance on contractor support in the sensitive stages of the procurement process, which include but are not limited to requirements definition, acquisition planning, preparation of justification and approvals, procurement requests, requests for proposals and the source selection process itself. Access of contractor personnel to sensitive information must be strictly limited, both in terms of the information and the number of personnel required access to such information.

4. Scope

a. This instruction provides policy and guidelines pertaining to the procurement of: individual experts and consultants; studies, analyses and evaluations; management support services; engineering and technical services; information technology systems; systems engineering; and federally funded research and development centers supporting the Naval Air Systems Command (NAVAIR).

b. Preparation of a procurement request shall be in accordance with reference (d).

c. Contract efforts within the categories identified in reference (a), paragraph 5c are not considered to be CSS and are excluded from the scope of this instruction. Also excluded are all SE efforts properly charged to Research, Development, Test and Evaluation, Navy (RDT&E,N) appropriation funds and those SE efforts financed under procurement and RDT&E,N accounts that are inseparable from the hardware developmental or prime weapon system contract.

5. Policy

a. NAVAIR will maintain organic resources to perform its basic governmental functions. Basic governmental functions include but are not limited to

(1) policy development, interpretation and enforcement;

(2) program and budgetary review, analysis, and decisionmaking;

(3) financial accountability;

Q3351 2

(4) military, business, and acquisition strategy;

(5) assignment and evaluation of an organization's responsibilities;

(6) establishment of performance goals, priorities, and schedule;

(7) contract negotiation and award;

(8) liaison with or representing departmental activities before other activities, government agencies, or commercial concerns;

(9) internal audit and inspection;

(10) internal security clearance/program functions;

(11) proposal evaluation and source selection;

(12) personnel management; and

(13) planning.

b. CSS will not

(1) be used in any circumstances to aid in influencing or enacting legislation;

(2) be awarded on a preferential basis to former government employees;

(3) be used to bypass or undermine personnel ceilings, pay limitations or competitive employment procedures; and

(4) be used to perform work of a policy/decisionmaking or managerial nature.

c. In efforts relating to the procurement process, contractors will not be used to prepare documents or other materials for briefings, minutes or recommendations to the procurement review board (PRB), the source selection evaluation board (SSEB), the source selection advisory counsel (SSAC) or the source selection authority, or to attend PRB, SSEB or SSAC meetings without the express prior approval of the chairperson.

d. Conflicts of interest, where the contractor or an affiliate has a collateral interest in the result of the contract, will be avoided. Clauses to prevent such conflict of interest will be included in all solicitations and contracts. Contractor employees performing under NAVAIR contracts will be required to sign disclosure statements following established procedures set by Naval Air Systems Command Headquarters (NAVAIRHQ), Assistant Commander for Contracts (AIR-02). Specifically, contracts and solicitations for support services will include provisions addressing organizational conflicts of

03351 3

interest and nondisclosure obligations. Prospective support contractors must describe in proposals their programs for ensuring that all employees and subcontractors understand and agree to nondisclosure obligations. All contractor personnel supporting a source selection will sign the same nondisclosure statement and financial interest statement as required of government personnel.

e. Prior to release of a solicitation, contractor personnel may not have access to the source selection plan or sections M or L of the solicitation in any capacity, nor may they participate in any way in the formulation of these. Once a solicitation is released, contractor involvement is not permitted in the source selection process unless: (1) for formal source selections it has been specifically justified to the SSEB chairperson and approved by the SSAC chairperson, or (2) for other source selections it has been approved by the source selection authority. The solication must identify all contractors who will have access to offerors' proposals so that offerors' advance consent to this disclosure can be obtained. CSS contractors supporting the process may not have any conflicting interests, and access to proposals will be limited to the specific areas for which the CSS contractor's support is required.

f. Contracts for support services will be awarded through the use of full and open competition, to include small business set asides. Noncompetitive contracts will be awarded only when the conditions and approvals in reference (b) for noncompetitive awards are met. Contracts for CSS over $25,000 based on unsolicited proposals will not be awarded noncompetitively unless approved by the Commander, Naval Air Systems Command (AIR-00), per reference (b), section 15.507.

g. CSS will be identified in the planning, programming and budgeting system via Budget Exhibit PB-27 following guidance provided by the NAVAIRHQ Comptroller (AIR-08).

h. Requirements for CSS will be identified, documented and submitted early in the acquisition process, to allow sufficient lead time for the contracting process. Under no circumstances will a contractor be encouraged to commence performance prior to contract award. Requirements will reflect only the minimum skill levels and number of man-hours.

i. CSS will be obtained on an intermittent or temporary basis, as required. Repeated or extended arrangements will not be entered into except under extraordinary circumstances.

j. Basic and option periods of CSS contracts will not exceed a total of 5 years when awarded on a competitive basis or under the authority of the Small Business Act, section 8(a). Total of basic and option periods of CSS contracts will not exceed 2 years when awarded on a noncompetitive basis.

03351 4

k. Contracts will be administered in a manner to ensure that contract terms and conditions are followed and that improper employer-employee relationships are not created. The NAVAIR Inspector General (AIR-09G) is charged with ensuring, by yearly review, that NAVAIR personnel are in compliance with reference (c).

l. Subcontracting arrangements will not be allowed to circumvent the policies of this instruction. Prohibitions that apply to CSS contractors apply equally to their subcontractors.

m. CSS in support of NAVAIRHQ elements will be contracted by NAVAIRHQ and will not be passed to field activities solely for contracting action. Field activities will not be used to contract for services in support of effort to be provided to NAVAIRHQ elements, nor to circumvent CSS or manpower ceilings. Exceptions to this policy will be considered on a case-by-case basis with final approval authority by NAVAIRHQ Commander (AIR-00) or the Deputy Commander (AIR-07).

n. Furnishing office space to employees of contractors is contrary to NAVAIR policy unless it is impractical to perform the work elsewhere. For a contractor to occupy NAVAIR space, advance written approval by the NAVAIRHQ Vice Commander (AIR-09) or Deputy Commander (AIR-07), or heads of field activities, as applicable, is required. If it is considered essential that contractor personnel occupy NAVAIR spaces, a request will be forwarded to the NAVAIRHQ Vice Commander (AIR-09), via the appropriate deputy/assistant commander and the NAVAIR Inspector General. As a minimum, the request will contain the following information: name, company, physical location, work being performed, justification, type/degree of clearance/by what activity, contract number/for what activity, and expiration date of contract. Conversely, contractor controlled conference rooms or other spaces may not be used when source selection sensitive information will be evaluated or discussed.

o. In addition to approval by the COMNAVAIR, all CSS requirements which include studies and analyses, regardless of the dollar value, will be reviewed and approved by the Director of CSS for the Department of the Navy (DON), as addressed in reference (e). Such reviews will be accomplished well before initiation of any contracting action. Studies and analyses are defined in reference (a).

p. Funding of and accounting for CSS contracts will be under established budget/appropriation policies as issued by the NAVAIRHQ Comptroller (AIR-08).

q. Where possible and to avoid the appearance of collusion, the following should be different persons: the requirement initiator, the ordering or contracting official, and the receiving, inspecting, and accepting official.

r. Contracts for CSS usually require the appointment of a contracting officer's technical representative (COTR). COTR's are appointed by the

03351 5

procuring contracting officer (PCO) based on nominations made by the requiring code. Individuals must obtain appropriate training before appointment as a COTR. COTR nominations, appointments and responsibilities will be per NAVAIRHQ, AIR-02 established guidance and policies.

6. Action

a. NAVAIRHQ

(1) The requiring originator will:

(a) Clearly identify the requirement as CSS, ensuring the requirement is properly reflected in the PB-27 submission, or if an emergent requirement, authorized by the cognizant Deputy/Assistant Commander.

(b) Ensure the specifications and statement of work (SOW) reflect minimum needs and do not require the contractor to perform any of NAVAIR's basic management functions.

(c) Clearly describe the need for and justify the use of CSS, obtaining approvals as described in enclosure (1). Approvals should be obtained early, to permit orderly sequencing of contracting procedures.

(d) Ensure that funds for CSS are obligated for the purpose originally budgeted for, testified to, and described in the justification submitted to the congressional authorization and appropriation committees.

(e) Supply the required documentation for all CSS requirements having an aggregate value over $50,000 following established AIR-02 guidance, which will be provided under separate correspondence.

(f) Participate in contract administration, when appropriate;

(g) Within 60 days prior to contract completion or not less than 60 days prior to the contract option exercise date, submit to NAVAIRHQ Contracts (AIR-216), a written evaluation of the performance of the contractor and a statement as to the uses made of any deliverables. (Reference (a), paragraph 7g applies.)

(2) AIR-02 will:

(a) In conjunction with AIR-08, determine whether a requested requirement, regardless of the dollar value or appropriation involved, is for CSS as defined in reference (a). Any such request not meeting the documentation and approval requirements of reference (a) and this instruction will be rejected.

03351 6

(b) Ensure that:

(1) Competition is obtained to the maximum practical extent.

(2) The total length of performance under a single award does not exceed a total of 5 years, including basic and option periods, when awarded on a competitive basis.

(3) Proposed awards for any CSS effort in excess of $25,000 to be made on the basis of an unsolicited proposal are approved per reference (b).

(c) Justify all noncompetitive requirements aggregating between $100,000 and $10 million per reference (b), paragraph 6.304, and reference (d).

(d) Prior to contract award, and with the advice of counsel, resolve any potential conflict of interest disclosed by a potential contractor.

(e) Make a determination of nonpersonal services per reference (a) and reference (b), section 37.103(90) based on the information provided by the requiring originator.

(f) Review the evaluation documentation submitted per paragraph 6a(1)(g) above and submit instances of apparent misuse of contractor support to the inspector general of the contracting activity and, if different, the originating activity.

(g) Synopsize all requirements for CSS.

(h) Insert a "Marking of Reports" clause in all CSS contracts similar to that set forth in reference (b), subsection 37.103(91).

(i) Publish written guidance concerning the training, duties, appointment and responsibilities of individuals appointed by the contracting officer to aid in monitoring CSS contracts.

(3) The AIR-09G is responsible for reviewing information required by paragraphs 6a(1)(g) and 6a(2)(f) above and reporting findings and recommendations to COMNAVAIR.

(4) Office of Counsel (AIR-00C) will review determinations of CSS requirements for conformance with applicable laws and regulations.

(5) AIR-08:

(a) Review the SOW to ensure appropriation cognizance/ responsibility;

03351 7

(b) Ensure the proposed CSS funding has been included in the PB-27 submission or, if an emergent requirement, has been authorized by the cognizant Deputy/Assistant Commander;

(c) Has final responsibility for determining if efforts are classified as CSS per reference (a); and

(d) Issue guidance for CSS accounting purposes.

(6) PSO's will be responsible for the development of standardized CSS reporting and processing procedures for NAVAIR field activities per this instruction and existing command policies as may be identified elsewhere.

(7) The NAVAIRHQ approval authority or organization will follow the procedures in enclosure (1) for processing CSS requirements.

(8) Individual NAVAIRHQ groups will be responsible for issuing additional instructions and/or guidance, as required, relating to their specific areas of expertise and control which are not covered by this instruction. The NAVAIRHQ Resources and Management Division (AIR-712) will be provided a copy of all such instructions/guidance that are issued.

b. NAVAIR Field Activities:

(1) The actions outlined in paragraph 6 of this instruction are applicable to all activities and should be applied accordingly as individual organizational structures allow.

(2) Internal requirements determination and approval processes should be developed and implemented to ensure adequate controls and accountability of activity CSS. These processes should be structured similar to those for NAVAIRHQ, as addressed in paragraph 6 of this instruction.

(3) Within 120 days after the effective date of this instruction, NAVAIR field activities exercising approval responsibilities must issue written procedures for processing CSS requirements. A copy of these procedures will be provided to the NAVAIRHQ PSO, with an information copy to NAVAIRHQ, AIR-710.

(4) Those activities having approval authority will approve requirements following the guidelines in enclosure (1). Activities with authority to approve CSS requirements under $50,000 only, will forward supporting documentation to the NAVAIRHQ PSO for approval of requirements of $50,000 or more.

7. Delegation of Authority. Approval authority is delegated to:

a. Flag officers/Senior Executive Service (SES) officials in each functional group.

03351 8

b. Deputy Acquisition Executive for Operations (AIR-01A) for NAVAIR Acquisition Executive and Deputy Commander for Operations (AIR-01) division/staff office requirements.

c. Program Directors, Air (PDA's) for their respective PMA requirements.

d. AIR-09 for AIR-00/09 staff requirements.

e. AIR-07 for AIR-07 staff requirements.

f. Field activity heads as specified in enclosure (2). Approval authority is delegated to O-6's in the following situations:

(1) If the O-6 is occupying a flag officer billet.

(2) If a member of the SES is subordinate to the O-6, and the O-6 is designated as a commanding officer.

(3) Commanding Officer, Naval Aviation Depot Operations Center.

R. V. Johnson

R. V. JOHNSON
Deputy Commander

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03351 9/10B

PROCEDURES FOR REVIEW AND APPROVAL OF HEADQUARTERS CSS REQUIREMENTS

1. Before initiating any action for a new contract, an order under a basic ordering agreement, exercising an option or a modification which extends effort under an existing contract, the originator will analyze the requirement and available resources, and then determine:

a. Whether the requirement is covered under existing policy.

b. Whether the requirement can be met with in-house resources. CSS may be used in those cases where the task to be performed involves the application of skills not possessed in-house and which would not be economical or feasible to develop. CSS related to a NAVAIR functional group's technical management/ support responsibilities will be implemented by or through the appropriate functional/technical manager. Consideration must be given to the functional organization's capability to meet cost, performance or schedule requirements of the requiring office. PMA's using CSS related to the functional code's responsibilities must provide special justification.

c. Whether the requirement can be met by the use of other Navy or Department of Defense resources such as NAVAIR field activities or Navy laboratories. CSS to be provided to NAVAIRHQ elements will not be passed to field activities solely for contracting action. CSS related to the organizational responsibilities of NAVAIR field activities, Navy laboratories or other government organizations will be obtained only after the field activity, etc., determines that they do not have internal resources to meet the requirements of the project office. Support related to the organizational responsibility of a field activity should not be contracted for by NAVAIRHQ.

d. That the Navy's basic management and control responsibilities will not be compromised or weakened.

2. Prepare CSS documentation per procedures established and issued by AIR-02.

03351 11/12B

CSS APPROVAL AUTHORITIES FOR FIELD ACTIVITY REQUIREMENTS

$ Amount	Competitive	Noncompetitive
Less than $50K	Field Activity Head	Field Activity Head
$50K and less than $1M	*Field activity flag officer/SES official or NAVAIRHQ PSO	*Field activity flag officer/SES or NAVAIRHQ PSO and per reference (b), part 6.
$1M and over	*Field activity flag officer/SES official or NAVAIRHQ PSO	DON Director of CSS (Deputy Comptroller of the Navy) and per reference (b), part 6.

*Exceptions are specified in paragraph 7b of this instruction.

03351 13/14B