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

MAY 25 2004

ACQ FYI 04-016

MEMORANDUM FOR DISTRIBUTION

Subj: ELIMINATION OF UNRELIABLE SOURCES OF DEFENSE ITEMS AND COMPONENTS

Encl: (1) DPAP memo dated March 31, 2004

Enclosure (1) is forwarded for immediate implementation and action. The Director of Defense Procurement and Acquisition Policy (DPAP) issued enclosure (1) to address the requirements of Section 821 of the National Defense Authorization Act for Fiscal Year 2004. Section 821 requires the Secretary of Defense to identify and list countries that restrict the provision or sale of military goods or services to the United States because of United States counterterrorism or military operations. In addition, it prohibits procuring any items or components contained in military systems if the items, or components, or the systems, are manufactured in any foreign country that has been identified and placed on the list. Currently, no countries have been identified and, as a result, a list does not yet exist.

The requirements of Section 821 apply to contracts in existence on or after November 24, 2003. Therefore, if any Navy personnel become aware of a country that restricts the sale of military goods or services because of our counterterrorism or military operations, this office should immediately be notified. We will advise DPAP accordingly.

Please ensure that acquisition personnel under your cognizance are aware of this statutory requirement. The DASN(ACQ) point of contact is Mr. Clarence Belton, 703-693-4006; clarence.belton@navy.mil.

M. F. Jaggard
Chief of Staff/Policy
for DASN(ACQ)

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OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

March 31, 2004

MEMORANDUM FOR DIRECTORS, DEFENSE AGENCIES
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA(ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION MANAGEMENT), ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DEPUTY DIRECTOR FOR LOGISTICS OPERATIONS (DLA)
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, ARMY CONTRACTING AGENCY

SUBJECT: Elimination of Unreliable Sources of Defense Items and Components

Section 821 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136), requires the Secretary of Defense, in coordination with the Secretary of State, to identify and list foreign countries that restrict the provision or sale of military goods or services to the United States because of United States counterterrorism or military operations. The list is to be reviewed and updated as appropriate.

Section 821 further states that the Secretary of Defense may not procure any items or components contained in military systems if the items or components, or the systems, are manufactured in any foreign country that has been identified and placed on the list of unreliable sources. The Secretary may waive this limitation if he determines in writing and notifies Congress that the Department's need for the item is of such an unusual and compelling urgency that the Department would be unable to meet national security objectives. Section 821 applies to contracts in existence on November 24, 2003. The Department must ensure that such contracts are in compliance with subsection (b) not later than October, 2005. A copy of section 821 is attached for your review.

To date, no countries have been identified and a list therefore does not yet exist. Please ensure your contracting officers are familiar with the requirements of Section 821. I also request you establish a notification process which the contracting officers would use to notify you if a country decides to restrict the delivery or sale of military goods or services to the U.S. This notification should then be forwarded to me for appropriate action.

ENCLOSURE(1)

Please provide me with the status of your implementation and notification process within sixty days of the date of this memorandum. If you or your staff has any questions on this matter, my point of contact is Ms. Susan Hildner, (703) 695-4258, susan.hildner@osd.mil.

Deidre A. Lee
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

Part II—Requirements Relating to Specific Items

10 USC 2534 note.

SEC. 821. ELIMINATION OF UNRELIABLE SOURCES OF DEFENSE ITEMS AND COMPONENTS.

(a) IDENTIFICATION OF CERTAIN COUNTRIES.—The Secretary of Defense, in coordination with the Secretary of State, shall identify and list foreign countries that restrict the provision or sale of military goods or services to the United States because of United States counterterrorism or military operations after the date of the enactment of this Act. The Secretary shall review and update the list as appropriate. The Secretary may remove a country from the list, if the Secretary determines that doing so would be in the interest of national defense.

(b) PROHIBITION ON PROCUREMENT OF ITEMS FROM IDENTIFIED COUNTRIES.—The Secretary of Defense may not procure any items or components contained in military systems if the items or components, or the systems, are manufactured in any foreign country identified under subsection (a).

(c) WAIVER AUTHORITY.—The Secretary of Defense may waive the limitation in subsection (b) if the Secretary determines in writing and notifies Congress that the Department of Defense's need for the item is of such an unusual and compelling urgency that the Department would be unable to meet national security objectives.

Applicability.

(d) EFFECTIVE DATE.—(1) Subject to paragraph (2), subsection (b) applies to contracts in existence on the date of the enactment of this Act or entered into after such date.

Deadline.

(2) With respect to contracts in existence on the date of the enactment of this Act, the Secretary of Defense shall take such action as is necessary to ensure that such contracts are in compliance with subsection (b) not later than 24 months after such date.

SEC. 822. INCENTIVE PROGRAM FOR MAJOR DEFENSE ACQUISITION PROGRAMS TO USE MACHINE TOOLS AND OTHER CAPITAL ASSETS PRODUCED WITHIN THE UNITED STATES.

(a) IN GENERAL.—(1) Chapter 144 of title 10, United States Code, is amended by inserting after section 2435 the following new section:

"§ 2436. Major defense acquisition programs: incentive program for contractors to purchase capital assets manufactured in United States

"(a) ESTABLISHMENT OF INCENTIVE PROGRAM.—The Secretary of Defense shall plan and establish an incentive program in accordance with this section for contractors to purchase capital assets manufactured in the United States in part with funds available to the Department of Defense.

"(b) DEFENSE INDUSTRIAL CAPABILITIES FUND MAY BE USED.—The Secretary of Defense may use the Defense Industrial Capabilities Fund, established under section 814 of the National Defense Authorization Act for Fiscal Year 2004, for incentive payments under the program established under this section.

"(c) APPLICABILITY TO MAJOR DEFENSE ACQUISITION PROGRAM CONTRACTS.—The incentive program shall apply to contracts for the procurement of a major defense acquisition program.

"(d) CONSIDERATION.—The Secretary of Defense shall provide consideration in source selection in any request for proposals for