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OFFICE OF THE ASSISTANT SECRETARY
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MEMORANDUM FOR DISTRIBUTION

Subj: STATUTORY RESTRICTIONS ON AWARD OF OTHER TRANSACTIONS FOR
PROTOTYPE PROJECTS

Encl: (1) Section 803 of the National Defense Authorization Act
for Fiscal Year 2001


The National Defense Authorization Act for Fiscal Year 2001, which was signed on October 30, 2000, prohibits entering into an other transaction for a prototype project unless:

- 1) There is at least one nontraditional defense contractor participating to a significant extent in the prototype project; or
- 2) No nontraditional defense contractor is participating to a significant extent in the prototype project but:

At least one third of the total cost of the prototype project is paid out of funds provided by other than the Federal Government; or

The senior procurement executive for the agency determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract.

Enclosure (1) contains the statutory language. Please ensure that all agreements officers are aware of these statutory prohibitions.


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Management

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(See next page)

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ENACTMENT OF PROVISIONS OF H.R. 5408, THE FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001

SEC. 803. CLARIFICATION AND EXTENSION OF AUTHORITY TO CARRY OUT CERTAIN PROTOTYPE PROJECTS.

(a) **AMENDMENTS TO AUTHORITY-** Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C. 2371 note) is amended--

(1) by redesignating subsection (d) as subsection (f); and

(2) by inserting after subsection (c) the following new subsections:

(d) APPROPRIATE USE OF AUTHORITY- (1) The Secretary of Defense shall ensure that no official of an agency enters into a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section unless--

(A) there is at least one nontraditional defense contractor participating to a significant extent in the prototype project; or

(B) no nontraditional defense contractor is participating to a significant extent in the prototype project, but at least one of the following circumstances exists:

(i) At least one third of the total cost of the prototype project is to be paid out of funds provided by parties to the transaction other than the Federal Government.

(ii) The senior procurement executive for the agency (as designated for the purposes of section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) determines in writing that exceptional circumstances justify the use of a transaction that provides for innovative business arrangements or structures that would not be feasible or appropriate under a contract.

(2)(A) Except as provided in subparagraph (B), the amounts counted for the purposes of this subsection as being provided, or to be provided, by a party to a transaction with respect to a prototype project that is entered into under this section other than the Federal Government do not include costs that were incurred before the date on which the transaction becomes effective.

(B) Costs that were incurred for a prototype project by a party after the beginning of negotiations resulting in a transaction (other than a contract, grant, or cooperative agreement) with respect to the project before the date on which the transaction becomes effective may be counted for purposes of this subsection as being provided, or to be provided, by the party to the transaction if and to the extent that the official responsible for entering into the transaction determines in writing that--

(i) the party incurred the costs in anticipation of entering into the transaction; and

(ii) it was appropriate for the party to incur the costs before the transaction became effective in order to ensure the successful implementation of the transaction.

(e) NONTRADITIONAL DEFENSE CONTRACTOR DEFINED- In this section, the term 'nontraditional defense contractor' means an entity that has not, for a period of at least one year prior to the date that a transaction (other than a contract, grant, or cooperative agreement) for a prototype project under the authority of this section is entered into, entered into or performed with respect to--

(1) any contract that is subject to full coverage under the cost accounting standards prescribed pursuant to section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 422) and the regulations implementing such section; or

(2) any other contract in excess of \$500,000 to carry out prototype projects or to perform basic, applied, or advanced research projects for a Federal agency, that is subject to the Federal Acquisition Regulation.

(b) **EXTENSION OF AUTHORITY-** Subsection (f) of such section, as redesignated by subsection (a)(1), is amended by striking 'September 30, 2001' and inserting 'September 30, 2004'.