

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

MAY 22 2002

MEMORANDUM FOR DISTRIBUTION

Subj: SECTION 806 OF THE STROM THURMOND NATIONAL DEFENSE
AUTHORIZATION ACT FOR FISCAL YEAR 1999

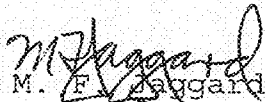
Encl: (1) USD(AT&L) memo dated April 5, 2002

Ref: (a) ABM memo dated March 28, 2001; same subject
(b) USD(AT&L) memo dated November 20, 2000
(c) DFARS 207.103(h)

Reference (a) forwarded reference (b), which required all DoD components to submit acquisition plans or strategies for purchases of conventional ammunition, as defined in DoDD 5160.65, to the Deputy for Ammunition, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology), for review and concurrence. The USD(AT&L) policy direction in reference (b) was issued as a result of Section 806 of the FY 1999 DoD Authorization Act. Subsequently, reference (c) implemented the requirements of Section 806 and reference (b).

By enclosure (1), USD(AT&L) reiterated the DoD implementing policy. Moreover, Army records have recently been reviewed to assess compliance with the Section 806 requirements. Based on this review, USD(AT&L) has concluded that the small number of acquisition plans submitted by the Military Departments since promulgation of the DoD policy in November 2000 is an indication that the statute has not been fully implemented.

Accordingly, it is requested that cognizant acquisition personnel be reminded of the importance of complying with the statutory requirements of Section 806 and the DoD implementing policy.


M. F. Jaggard
Executive Director
Acquisition and Business
Management

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ACQUISITION,
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THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON
WASHINGTON, DC 20301-3010

10 5 APR 2002

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
ATTN: SERVICE ACQUISITION EXECUTIVES

SUBJECT: Section 806 of the Strom Thurmond National Defense Authorization
Act for Fiscal Year 1999

The purpose of this memorandum is to invite addressees' attention to the full implementation of section 806 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (PL105-261).

Section 806 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 states that the official designated as the single manager for conventional ammunition (SMCA) in the Department of Defense shall limit a specific procurement of ammunition to sources within the national technology and industrial base in accordance with section 2304(c)(3) of title 10, United States Code (U.S.C.), if that manager determines that such limitation is necessary to maintain a facility, producer, manufacturer, or other supplier available for furnishing an essential item of ammunition or ammunition component in cases of national emergency or to achieve industrial mobilization. This encompasses all procurements for conventional ammunition including those Army procurements that the SMCA does not manage and procurements by other Military Departments and defense agencies. Section 806 specifies that the term conventional ammunition has the meaning given that term in Department of Defense Directive (DoDD) 5160.65, dated March 8, 1995, and includes missiles, torpedoes, naval mines, and other Service-unique ammunition. Section 806 does not change the criteria set out in 10 U.S.C. 2304, for using other than competitive procedures.

A recent review of Army records to assess compliance with section 806 requirements shows that only 5 of 106 acquisition plans were submitted, to the SMCA, by the Navy and Air Force since promulgation of the DoD implementing policy in November 2000. Although data has not been collected to quantify the total number of munitions procurements within DoD over this 15-month period, the paucity of Navy and Air Force submittals is a clear indication that the law has not been fully implemented. In this light, I am restating the Department's policy direction with respect to section 806 and the procurement of conventional ammunition, as follows:



ENCLOSURE(1)

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(AL&T)), will publish annually a Conventional Ammunition End Item/Component-at-Risk List. This list will identify ammunition or components that potentially qualify for restricted competition. While this list is indicative of ammunition or components for which restrictions may be determined to be applicable, the ASA(AL&T) is not constrained to this list and may identify other conventional ammunition for which restrictions are necessary at any time.

Acquisition plans or strategies for all procurements of conventional ammunition, by all Military Services and defense agencies, will be submitted to the ASA(AL&T) for review and concurrence regardless of the acquisition category. New procurements of conventional ammunition covered by previously approved acquisition plans must also be submitted to the ASA(AL&T) in order to comply with the requirements of section 806.

The ASA(AL&T) will review the procurement approach to determine if the plan or strategy is consistent with retaining those national technology and industrial base capabilities required in accordance with section 806 and 10 U.S.C 2304(c)(3), considering all risk factors.

If the ASA(AL&T) concurs with the acquisition plan/strategy, he will provide his decision to that effect in writing to the Military Department or defense agency involved, and that Military Department or defense agency may proceed with the procurement. If the ASA(AL&T) disagrees with the acquisition plan or strategy, the Military Department or defense agency involved will be notified. The ASA(AL&T), with assistance from the Army Office of the Executive Director for Conventional Ammunition, will attempt to resolve the disagreement with the Military Department. If no agreement is reached, the ASA(AL&T) will make the final determination on the appropriate acquisition approach.

Justifications and Approvals (J&As) for section 806 related exceptions to competition will be processed following established regulations and policies. The Deputy Under Secretary of Defense (Industrial Policy) will monitor the implementation and execution of the section 806 process.

Please ensure that this policy receives the broadest possible dissemination throughout the munitions acquisition community. I appreciate your cooperation on this matter.



E. C. Aldridge, Jr.

Attachment:
As stated

the head of the procuring activity granting the waiver determines that the requirement under that paragraph should be waived in the case of such subcontracts and justifies in writing the reasons for the determination."

10 USC 2304
note.

SEC. 806. PROCUREMENT OF CONVENTIONAL AMMUNITION.

(a) **AUTHORITY.**—The official in the Department of Defense designated as the single manager for conventional ammunition in the Department shall have the authority to restrict the procurement of conventional ammunition to sources within the national technology and industrial base in accordance with the authority in section 2304(c) of title 10, United States Code.

(b) **REQUIREMENT.**—The official in the Department of Defense designated as the single manager for conventional ammunition in the Department of Defense shall limit a specific procurement of ammunition to sources within the national technology and industrial base in accordance with section 2304(c)(3) of title 10, United States Code, in any case in which that manager determines that such limitation is necessary to maintain a facility, producer, manufacturer, or other supplier available for furnishing an essential item of ammunition or ammunition component in cases of national emergency or to achieve industrial mobilization.

(c) **CONVENTIONAL AMMUNITION DEFINED.**—For purposes of this section, the term "conventional ammunition" has the meaning given that term in Department of Defense Directive 5160.65, dated March 8, 1995.

SEC. 807. PARA-ARAMID FIBERS AND YARNS.

(a) **AUTHORITY.**—The Secretary of Defense may procure articles containing para-aramid fibers and yarns manufactured in a foreign country referred to in subsection (d) if the Secretary determines that—

(1) procuring articles that contain only para-aramid fibers and yarns manufactured from suppliers within the national technology and industrial base would result in sole-source contracts or subcontracts for the supply of such para-aramid fibers and yarns; and

(2) such sole-source contracts or subcontracts would not be in the best interests of the Government or consistent with the objectives of section 2304 of title 10, United States Code.

(b) **SUBMISSION TO CONGRESS.**—Not later than 30 days after making a determination under subsection (a), the Secretary shall submit to Congress a copy of the determination.

(c) **APPLICABILITY TO SUBCONTRACTS.**—The authority under subsection (a) applies with respect to subcontracts under Department of Defense contracts as well as to such contracts.

Applicability.

(d) **FOREIGN COUNTRIES COVERED.**—The authority under subsection (a) applies with respect to a foreign country that—

(1) is a party to a defense memorandum of understanding entered into under section 2531 of this title; and

(2) permits United States firms that manufacture para-aramid fibers and yarns to compete with foreign firms for the sale of para-aramid fibers and yarns in that country, as determined by the Secretary of Defense.

(e) **DEFINITION.**—In this section, the term "national technology and industrial base" has the meaning given that term in section 2500 of title 10, United States Code.

The conferees agree that the term "exceptional circumstances" requires more than the belief that it may be possible to determine the contract price to be fair and reasonable without the submission of certified cost and pricing data. For example, a waiver may be appropriate in circumstances where it is possible to determine price reasonableness without cost or pricing data and the contracting officer determines that it would not be possible to enter into a contract with a particular contractor in the absence of a waiver. The conferees direct the Department of Defense to work with the appropriate executive branch officials to clarify the situations in which an exceptional circumstances waiver may be granted.

Procurement of conventional ammunition (sec. 805)

The House bill contained a provision (sec. 801) that would require that ammunition or ammunition components procured by the Department of Defense (DOD) be acquired from domestic sources pursuant to section 2534 of title 10, United States Code.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would assign to the single manager for conventional ammunition in the DOD the authority to restrict the procurement of conventional ammunition to the national technology and industrial base. The amendment would also require the single manager for conventional ammunition to limit specific procurements, in accordance with section 2304(c)(3) of title 10, United States Code, in cases where it is determined that doing so is necessary to maintain a facility, producer, manufacturer, or other supplier available for furnishing an essential item of ammunition or ammunition component in cases of national emergency or to achieve industrial mobilization.

This provision supersedes existing guidance issued by the DOD as it relates to the procurement of ammunition from domestic sources. The conferees direct the Department of the Army to issue new guidance to replace the DOD guidance superseded by this provision. The conferees intend that the determination specified in the provision be conducted within the Department of the Army using procedures prescribed by the Secretary of the Army.

Para-aramid fibers and yarns (sec. 807)

The Senate amendment contained a provision (sec. 801) that would authorize the Secretary of Defense to procure articles containing para-aramid fibers and yarns manufactured in a foreign country that is a party to defense memorandum of understanding, if such country allows U.S. manufacturers of that product to compete for sales to that foreign country.

The House bill contained no similar provisions.

The House recedes with an amendment that would allow the Secretary of Defense to procure articles containing yarns and fibers manufactured in a country with whom the United States has a defense memorandum of understanding upon making a determination described in the provision.