

MARCORLOGBASESO 4200.4F

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30 May01

MARINE CORPS LOGISTICS BASES ORDER 4200.4F

From To: Commander

Subj: Distribution List

COMMUNICATIONS WITH CONTRACTORS

Ref : (a) FAR (NOTAL)
(b) DFARS (NOTAL
(c) NAPS (NOTAL)
(d) NAPS 5201.602-3
(e) FAR 1.602-3

1. Purpose. To ensure that proper procedures are observed in communications with contractors and that only duly authorized personnel. Obligate the government in obtaining supply and service requirements from contractors in accordance with the references.

2. Cancellation. BO 4200.4E and BO 4200 .17

3. Background

a. Historically, the Department of the Navy has been the target of a large number of claims levied by commercial establishments. Many of these claims are attributable to directives, statements, or conduct by representatives of the government who may appear to have authority to act for the government. References (a) through (c) govern the acquisition of supplies and services and emphatically state that only Contracting Officers are authorized to obligate the government in dealings with commercial

firms. (This includes government purchase cardholders performing micro-purchase procurements and personnel who are delegated specific authority to effect transactions under existing contracts). Contracting Officers are appointed by name in writing by the Chiefs of the Contracting Offices at the Marine Corps Logistics Bases. They are the only personnel, except in travel, transportation, and training matters conducted by the appropriate officials, who are authorized to effect the contractual acquisition of supplies and services on behalf of the government using appropriated funds.

b. It is important for the government to maintain cooperative, non-adversarial relationships with industry. Therefore, it is not the intent of this Order to preclude all discussions with potential government contractors. It is understood that contractors must be given some information to better understand the current needs of the government and what products or services they may offer the government on a future competitive basis. However, caution must be observed in such discussion and exchange of information. Only contractor publications and catalogs covering product/service information and associated general cost data that is available at no cost to the public should be accepted. Acceptance of any contractor samples or demonstration models must be approached with great care. Contractors must clearly understand that no contractual arrangement is being offered, that the Government employee accepting such a sample or demonstration model is not authorized to obligate the Government, and that the Government will incur no obligation by acceptance of the offered sample or demonstration model. Discussions of specific prices, availability, delivery terms, or other factors that might be construed as leading to a request for or promise

to deliver supplies (including samples or demonstration models) will not be conducted except by authorized contracting personnel. This Order is not intended to inhibit appropriate consultations between the Business Opportunity Center (Code 155) or designated Command Marketing elements and private industry representatives.

c. Further, it is not the intent of this Order to inhibit proper communications between government personnel and contractor representatives during performance of an existing contract. It is important to communicate with supporting contractors after contract award in a manner that encourages effective performance. However, it is imperative that all personnel are cautious not to make statements that might be construed by the contractor as authority to alter the terms and conditions of the existing contract or as a promise for a follow-on or new contract.

d. It should be noted by all personnel that regulations provide for claims for such items discussed in this Order possibly being assigned as a personal liability against the individual whose conduct gave rise to the claim. In addition, various administration sanctions may be imposed. Under other provisions, depending on the circumstances, civil and criminal penalties may be imposed in the matter of claims and improper disclosure of procurement sensitive information.

e. The following are some examples of circumstances that could lead to a claim and, consequently, should be avoided by all noncontracting personnel.

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(1) Returning a malfunctioning item to a vendor or manufacturer without the appropriate Contracting Officer's or the Marine Corps warranty administrator's authorization.

(2) Requesting a contractor to tear down and estimate repairs to an item.

(3) Requesting or accepting samples or demonstration models, even temporarily.

(4) Discussing with a vendor the specific price and availability or delivery of supplies or services.

(5) Calling a contractor to service office equipment.

(6) Attempting to procure supplies or services with a purchase card that exceed the assigned single purchase limit.

f. The foregoing list is not to be considered all-inclusive, but is provided to prompt the thinking of all personnel when anticipating similar or other actions that could obligate the Government. Additionally, such actions may result in unauthorized commitments. Unauthorized commitments occur when the action of an individual without procurement authority results in a contractor providing supplies or services without proper contractual coverage. As stated in reference (d), unauthorized commitments may be ratified by the Chief of the Contracting Office (CCO) provided a legitimate need existed for the supply or service, the government received a

benefit, and funds were available. Reference (e) prescribes the documentation required and procedures to be followed for such a ratification. Depending upon the circumstances surrounding the unauthorized commitments, endorsement of a request for ratification may be required from higher management up to and including the Commander.

4. Action

a. Except for personnel granted specific procurement authority to obligate the government by utilizing the government purchase card for micro-purchase procurements or issuing orders under existing contracts, all communications with commercial concerns to effect the purchase of supplies or services with appropriated funds will be made by personnel in the Contracting Offices.

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b. Personnel participating in discussions, meetings, conferences, site visits, or any other forms of communication with contractor personnel should avoid discussing the following issues with contractor representatives:
recl;:uiting/business opportunities; specific government requirements; attitudinal issues (i.e. How would you feel if); opinions concerning

contractor support; or any information that potentially could give the contractor an unfair competitive advantage for an emerging competitive requirement. Procurement sensitive information involving the processing of a competitive action to include proposals under evaluation must be carefully safeguarded and any release of such information is to be made only by the cognizant Contracting Officer. Additionally, personnel should advise contractor representatives that they have neither the intention nor authority to obligate the Government, change any contract terms, and if the government does desire to issue changes, it will only be done by the Contracting officer in writing as prescribed in the contract.

c. Personnel. Contemplating communications with contractors are encouraged to first contact the Contracting Office for guidance or referral to the appropriate authorized individual. When in doubt concerning communication of particular information to a contractor, personnel should contact not only the Contracting Office but also Command Counsel, due to the potential liability that could result from unauthorized disclosure of privileged information.

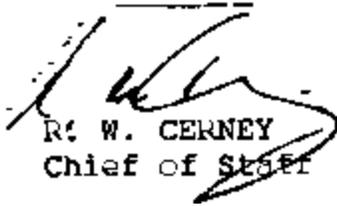
d. At Marine Corps Logistics Base Albany, industry representatives desiring to meet with Command personnel to discuss potential opportunities should be directed to the Business Opportunity Center (Code 155), Building 3700, 3rd Floor, Door 331, prior to proceeding to their appointed meeting. Additionally, any request by contractors to provide a briefing of their capabilities to Command personnel should be coordinated through Code 155.

e. Centers/Directorates/Departments/Divisions requiring contractor personnel to come aboard base to perform work will ensure that a copy of

the applicable contract and a list of contractor personnel is available for the Provost Marshall Office in order that contractor badges can be issued.

5. Applicability. This Order is applicable to the Marine Corps Logistics Bases. Individual Command supplemental guidance is limited by the basic policy established within this Order and its references.

DISTRIBUTION:



R. W. CERNEY
Chief of Staff

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