



# Partnering through Direct Sales

## An Introduction to Public-Private Partnering and the Direct Sales Process at JMC.



**SEP 2015**



# What is Public-Private Partnering (P3)?

Unclassified



- **Contractual agreement between a Government-Owned Government-Operated (GOGO) facility and one or more private industry to perform work or utilize the Army's facilities and/or equipment**
- **Includes one or more of the following:**
  - Articles or services to industry
  - Industry leasing equipment or facilities to perform work for public or private sector



# Formalizing Partnerships

Unclassified



- **For Contractor or other Private Sector Work**
  - Direct Sales Contract
  - Contract package staffed for JMC CG approval
  - Payment by check at contract signing before work can begin
  - MIPR of funds onto LMP projects (PRONS) at start of work





# Direct Sales Statutes

Unclassified



- **10 USC 2474**
  - Used to designate Centers of Industrial and Technical Excellence (CITE)
  - Partnerships under the core competency of the CITE are processed with this statute
- **10 USC 4543 and 10 USC 4544**
  - Used to provide articles, services, and/or use of facilities or equipment to private companies





# Direct Sales Contracts

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- **Simplified – not a Federal Acquisition Regulation (FAR) based contract**
- **Flexible – changes in quantity, cost, and/or application are handled through contract modifications**
- **Allows for scheduled payments**
- **Long Term – generally no expiration date**
- **Approved by JMC Commander**



# Direct Sales Package Standard Requirements



- **Checklist**
  - Who, What, When, Why, How Much,...
- **Buyer's Request**
- **Statement of Commercial Non-Availability**
  - Cannot be done commercially in required time, quantity, or quality.
- **Statement of Work\***
- **Government Cost Estimate**
- **Contractor's Acceptance of Cost Estimate**
  - Not a purchase order.
- **Installation Commander's Authorization\***
- **Record of Environmental Consideration (REC)\***
- **Depot and Customer Signatures**
  - Shows coordination has been completed at local level.
  - Provides customer contact information.

\* Not required for sales of stock.



# Direct Sales Package Unique Requirements



- **Buyer's Alcohol, Tobacco & Firearms (ATF) License**
  - Only required for sales of items containing energetic materials.
- **Buyer's Export License**
  - Only required for work in support of a direct foreign sale.
- **End Use Certificate**
  - Only required for work in support of a direct foreign sale.





# Success Stories

Unclassified







# PBA Success Stories

Unclassified



- **Four Basic Ordering Agreements (BOAs) signed this FY**
  - Allows for quick modifications for delivery orders instead of starting from scratch





Unclassified



# Questions?

**usarmy.RIA.jmc.mbx.p3@mail.mil**



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# BACK-UP SLIDES



# Back-up—Statutes—10 USC 2474

Unclassified



**(a) Designation.—**

(1)The Secretary concerned, or the Secretary of Defense in the case of a Defense Agency, shall designate each depot-level activity or military arsenal facility of the military departments and the Defense Agencies (other than facilities approved for closure or major realignment under the Defense Base Closure and Realignment Act of 1990) as a Center of Industrial and Technical Excellence in the recognized core competencies of the designee.

(2)The Secretary of Defense shall establish a policy to encourage the Secretary of each military department and the head of each Defense Agency to reengineer industrial processes and adopt best business practices at their Centers of Industrial and Technical Excellence in connection with their core competency requirements, so as to serve as recognized leaders in their core competencies throughout the Department of Defense and in the national technology and industrial base.

(3)The Secretary of a military department may conduct a pilot program, consistent with applicable requirements of law, to test any practices referred to in paragraph (2) that the Secretary determines could improve the efficiency and effectiveness of operations at Centers of Industrial and Technical Excellence, improve the support provided by the Centers for the armed forces user of the services of the Centers, and enhance readiness by reducing the time that it takes to repair equipment.

**(b) Public-Private Partnerships.—**

(1)To achieve one or more objectives set forth in paragraph (2), the Secretary designating a Center of Industrial and Technical Excellence under subsection (a) may authorize and encourage the head of the Center to enter into public-private cooperative arrangements (in this section referred to as a “public private partnership”) to provide for any of the following:

(A)For employees of the Center, private industry, or other entities outside the Department of Defense to perform (under contract, subcontract, or otherwise) work related to the core competencies of the Center, including any depot-level maintenance and repair work that involves one or more core competencies of the Center.

(B)For private industry or other entities outside the Department of Defense to use, for any period of time determined to be consistent with the needs of the Department of Defense, any facilities or equipment of the Center that are not fully utilized for a military department’s own production or maintenance requirements.

(2)The objectives for exercising the authority provided in paragraph (1) are as follows:

(A)To maximize the utilization of the capacity of a Center of Industrial and Technical Excellence.

(B)To reduce or eliminate the cost of ownership of a Center by the Department of Defense in such areas of responsibility as operations and maintenance and environmental remediation.

(C)To reduce the cost of products of the Department of Defense produced or maintained at a Center.

(D)To leverage private sector investment in—

(i)such efforts as plant and equipment recapitalization for a Center; and

(ii)the promotion of the undertaking of commercial business ventures at a Center.

(E)To foster cooperation between the armed forces and private industry.

(3)If the Secretary concerned, or the Secretary of Defense in the case of a Defense Agency, authorizes the use of public-private partnerships under this subsection, the Secretary shall submit to Congress a report evaluating the need for loan guarantee authority, similar to the ARMS Initiative loan guarantee program under section 4555 of this title, to facilitate the establishment of public private partnerships and the achievement of the objectives set forth in paragraph (2).



# Back-up—Statutes—10 USC 2474 cont.

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**(c) Private Sector Use of Excess Capacity.**— Any facilities or equipment of a Center of Industrial and Technical Excellence made available to private industry may be used to perform maintenance or to produce goods in order to make more efficient and economical use of Government-owned industrial plants and encourage the creation and preservation of jobs to ensure the availability of a workforce with the necessary manufacturing and maintenance skills to meet the needs of the armed forces.

**(d) Crediting of Amounts for Performance.**— Amounts received by a Center for work performed under a public-private partnership shall be credited to the appropriation or fund, including a working-capital fund, that incurs the cost of performing the work. Consideration in the form of rental payments or in other forms may be accepted for a use of property accountable under a contract performed pursuant to this section. Notwithstanding section 2667 of this title, revenues generated pursuant to this section shall be available for facility operations, maintenance, and environmental restoration at the Center where the leased property is located.

**(e) Availability of Excess Equipment to Private-Sector Partners.**— Equipment or facilities of a Center of Industrial and Technical Excellence may be made available for use by a private-sector entity under this section only if—

**(1)**the use of the equipment or facilities will not have a significant adverse effect on the readiness of the armed forces, as determined by the Secretary concerned or, in the case of a Center in a Defense Agency, by the Secretary of Defense; and

**(2)**the private-sector entity agrees—

**(A)**to reimburse the Department of Defense for the direct and indirect costs (including any rental costs) that are attributable to the entity's use of the equipment or facilities, as determined by that Secretary; and

**(B)**to hold harmless and indemnify the United States from—

**(i)**any claim for damages or injury to any person or property arising out of the use of the equipment or facilities, except under the circumstances described in section 2563 of this title; and

**(ii)**any liability or claim for damages or injury to any person or property arising out of a decision by the Secretary concerned or the Secretary of Defense to suspend or terminate that use of equipment or facilities during a war or national emergency.

**(f) Exclusion of Certain Expenditures From Percentage Limitation.**— Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at a Center of Industrial and Technical Excellence under any contract shall not be counted for purposes of applying the percentage limitation in section 2466 of this title if the personnel are provided by private industry or other entities outside the Department of Defense pursuant to a public-private partnership.

**(g) Construction of Provision.**— Nothing in this section may be construed to authorize a change, otherwise prohibited by law, from the performance of work at a Center of Industrial and Technical Excellence by Department of Defense personnel to performance by a contractor.



# Back-up—Statutes—10 USC 4543

Unclassified



**(a) AUTHORITY TO SELL OUTSIDE DOD.**—Regulations under section 2208(h) of this title shall authorize a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof to sell manufactured articles or services to a person outside the Department of Defense if—

**(1)** in the case of an article, the article is sold to a United States manufacturer, assembler, developer, or other concern—

**(A)** for use in developing new products;

**(B)** for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States;

**(C)** for incorporation into items to be sold to, or to be used in a contract with, or to be used for purposes of soliciting a contract with, a friendly foreign government; or

**(D)** for use in commercial products;

**(2)** in the case of an article, the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

**(3)** the sale is to be made on a basis that does not interfere with performance of work by the facility for the Department of Defense or for a contractor of the Department of Defense;

**(4)** in the case of services, the services are related to an article authorized to be sold under this section and are to be performed in the United States for the purchaser;

**(5)** the Secretary of the Army determines that the articles or services are not available from a commercial source located in the United States;

**(6)** the purchaser of an article or service agrees to hold harmless and indemnify the United States, except in a case of willful misconduct or gross negligence, from any claim for damages or injury to any person or property arising out of the article or service;

**(7)** the article to be sold can be manufactured, or the service to be sold can be substantially performed, by the industrial facility with only incidental subcontracting;

**(8)** it is in the public interest to manufacture such article or perform such service; and

**(9)** The sale will not interfere with performance of the military mission of the industrial facility.

**(b) ADDITIONAL REQUIREMENTS.**—The regulations shall also—

**(1)** require that the authority to sell articles or services under the regulations be exercised at the level of the commander of the major subordinate command of the Army with responsibility over the facility concerned;

**(2)** authorize a purchaser of articles or services to use advance incremental funding to pay for the articles or services; and

**(3)** in the case of a sale of commercial articles or commercial services in accordance with subsection (a) by a facility that manufactures large caliber cannons, gun mounts, or recoil mechanisms, or components thereof, authorize such facility—

**(A)** to charge the buyer, at a minimum, the variable costs that are associated with the commercial articles or commercial services sold;

**(B)** to enter into a firm, fixed-price contract or, if agreed by the buyer, a cost reimbursement contract for the sale; and





# Back-up—Statutes—10 USC 4543 cont.



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(C) to develop and maintain (from sources other than appropriated funds) working capital to be available for paying design costs, planning costs, procurement costs, and other costs associated with the commercial articles or commercial services sold.

**(c) RELATIONSHIP TO ARMS EXPORT CONTROL ACT.—**

Nothing in this section shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act (22 U.S.C. 2778) to items which incorporate or are produced through the use of an article sold under this section.

**(d) DEFINITIONS.—**In this section:

(1) The term “commercial article” means an article that is usable for a nondefense purpose.

(2) The term “commercial service” means a service that is usable for a nondefense purpose.

(3) The term “advance incremental funding”, with respect to a sale of articles or services, means a series of partial payments for the articles or services that includes—

(A) one or more partial payments before the commencement of work or the incurring of costs in connection with the production of the articles or the performance of the services, as the case may be; and

(B) subsequent progress payments that result in full payment being completed as the required work is being completed.

(4) The term “variable costs”, with respect to sales of articles or services, means the costs that are expected to fluctuate directly with the volume of sales and—

(A) in the case of articles, the volume of production necessary to satisfy the sales orders; or

(B) in the case of services, the extent of the services sold.



# Back-up—Statutes—10 USC 4544

## Unclassified



**(a) Cooperative Arrangements Authorized.**— A working-capital funded Army industrial facility may enter into a contract or other cooperative arrangement with a non-Army entity to carry out with the non-Army entity a military or commercial project described in subsection (b), subject to the conditions prescribed in subsection (c).

**(b) Authorized Activities.**— A cooperative arrangement entered into by an Army industrial facility under subsection (a) may provide for any of the following activities:

- (1) The sale of articles manufactured by the facility or services performed by the facility to persons outside the Department of the Army.
- (2) The performance of work by a non-Army entity at the facility.
- (3) The performance of work by the facility for a non-Army entity.
- (4) The sharing of work by the facility and a non-Army entity.
- (5) The leasing, or use under a facilities use contract or otherwise, of the facility (including excess capacity) or equipment (including excess equipment) of the facility by a non-Army entity.

(6) The preparation and submission of joint offers by the facility and a non-Army entity for competitive procurements entered into with Federal agency.

**(c) Conditions.**— An activity authorized by subsection (b) may be carried out at an Army industrial facility under a cooperative arrangement entered into under subsection (a) only under the following conditions:

- (1) In the case of an article to be manufactured or services to be performed by the facility, the articles can be substantially manufactured, or the services can be substantially performed, by the facility without subcontracting for more than incidental performance.
- (2) The activity does not interfere with performance of—
  - (A) work by the facility for the Department of Defense; or
  - (B) a military mission of the facility.
- (3) The activity meets one of the following objectives:
  - (A) Maximized utilization of the capacity of the facility.
  - (B) Reduction or elimination of the cost of ownership of the facility.
  - (C) Reduction in the cost of manufacturing or maintaining Department of Defense products at the facility.
  - (D) Preservation of skills or equipment related to a core competency of the facility.
- (4) The non-Army entity agrees to hold harmless and indemnify the United States from any liability or claim for damages or injury to any person or property arising out of the activity, including any damages or injury arising out of a decision by the Secretary of the Army or the Secretary of Defense to suspend or terminate an activity, or any portion thereof, during a war or national emergency or to require the facility to perform other work or provide other services on a priority basis, except—



# Back-up—Statutes—10 USC 4544 cont.

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(A) in any case of willful misconduct or gross negligence; and

(B) in the case of a claim by a purchaser of articles or services under this section that damages or injury arose from the failure of the United States to comply with quality, schedule, or cost performance requirements in the contract to carry out the activity.

**(d) Arrangement Methods and Authorities.**— To establish a cooperative arrangement under subsection (a) with a non-Army entity, the approval authority described in subsection (f) for an Army industrial facility may—

(1) enter into a firm, fixed-price contract (or, if agreed to by the non-Army entity, a cost reimbursement contract) for a sale of articles or services or use of equipment or facilities;

(2) enter into a multiyear contract for a period not to exceed five years, unless a longer period is specifically authorized by law;

(3) charge the non-Army entity the amounts necessary to recover the full costs of the articles or services provided, including capital improvement costs, and equipment depreciation costs associated with providing the articles, services, equipment, or facilities;

(4) authorize the non-Army entity to use incremental funding to pay for the articles, services, or use of equipment or facilities; and

(5) accept payment-in-kind.

**(e) Proceeds Credited to Working Capital Fund.**— The proceeds received from the sale of an article or service pursuant to a contract or other cooperative arrangement under this section shall be credited to the working capital fund that incurs the cost of manufacturing the article or performing the service.

**(f) Approval Authority.**— The authority of an Army industrial facility to enter into a cooperative arrangement under subsection (a) shall be exercised at the level of the commander of the major subordinate command of the Army that has responsibility for the facility. The commander may approve such an arrangement on a case-by-case basis or a class basis.

**(g) Commercial Sales.**— Except in the case of work performed for the Department of Defense, for a contract of the Department of Defense, for foreign military sales, or for authorized foreign direct commercial sales (defense articles or defense services sold to a foreign government or international organization under export controls), a sale of articles or services may be made under this section only if the approval authority described in subsection (f) determines that the articles or services are not available from a commercial source located in the United States in the required quantity or quality, or within the time required.

**(h) Exclusion From Depot-Level Maintenance and Repair Percentage Limitation.**— Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at an Army industrial facility shall not be counted for purposes of applying the percentage limitation in section 2466 of this title if the personnel are provided by a non-Army entity pursuant to a cooperative arrangement entered into under subsection (a).

**(i) Relationship to Other Laws.**— Nothing in this section shall be construed to affect the application of—

(1) foreign military sales and the export controls provided for in sections 30 and 38 of the Arms Export Control Act to activities of a cooperative arrangement entered into under subsection (a); and

(2) section 2667 of this title to leases of non-excess property in the administration of such an arrangement.



# Back-up—Statutes—10 USC 4544 cont.

Unclassified



**(j) Definitions.**— In this section:

**(1)**The term “Army industrial facility” includes an ammunition plant, an arsenal, a depot, and a manufacturing plant.

**(2)**The term “non-Army entity” includes the following:

**(A)**A Federal agency (other than the Department of the Army).

**(B)**An entity in industry or commercial sales.

**(C)**A State or political subdivision of a State.

**(D)**An institution of higher education or vocational training institution.

**(3)**The term “incremental funding” means a series of partial payments that—

**(A)**are made as the work on manufacture or articles is being performed or services are being performed or equipment or facilities are used, as the case may be; and

**(B)**result in full payment being completed as the required work is being completed.

**(4)**The term “full costs”, with respect to articles or services provided under a cooperative arrangement entered into under subsection (a), means the variable costs and the fixed costs that are directly related to the production of the articles or the provision of the services.

**(5)**The term “variable costs” means the costs that are expected to fluctuate directly with the volume of sales or services provided or the use of equipment or facilities.