

MEMORANDUM OF UNDERSTANDING
BETWEEN THE DEPARTMENT OF DEFENSE AND
THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
REGARDING DOD ACQUISITION SUPPORT
MOU NUMBER 042021

I. PARTIES: The Parties to this memorandum of understanding (MOU) are the Department of Health and Human Services (HHS) and the Department of Defense (DoD).

II. REFERENCES:

- A. The Economy Act, 31 U.S.C. § 1535-1536
- B. Memorandum of Understanding between HHS, ASPR, BARDA and JPEO-CBRND for Cooperation on Chemical, Biological, and Radiological Countermeasures Research and Development Programs, January 26, 2017
- C. Interagency Agreement between HHS, ASPR, BARDA and JPEO-CBRND for acquisition of potential coronavirus countermeasures, June 6, 2020
- D. Memorandum of Understanding between HHS and DoD Regarding DoD Acquisition Support, November 6, 2020, hereby rescinded and replaced
- E. Memorandum of Understanding between HHS and DoD to Pursue the Coronavirus Disease 2019 Vaccine and Therapeutics Research, Development, Production, and Distribution, April 21, 2021
- F. 48 C.F.R. 17.502-2(c), The Economy Act
- G. The Defense Production Act of 1950, 50 U.S.C. § 4558 (Pub. L. 81-774)

III. PURPOSE: The purpose of this MOU is to establish the terms and conditions for DoD acquisition assistance support to HHS activities in response to the coronavirus disease 2019 (COVID-19) pandemic public health emergency and future national emergencies. Consistent with previous memoranda between DoD and HHS, DoD will continue to provide acquisition assistance to HHS on a fully reimbursable basis, until such time, as agreed upon by both parties in this MOU, where acquisition oversight and support can be provided organically by HHS. This MOU will further establish the roles and responsibilities of the two Parties as DoD transitions back to core defense roles, and rescinds and replaces reference (D).

IV. BACKGROUND: HHS is working with other Federal departments and agencies to respond to the COVID-19 public health emergency crisis. In anticipation of supporting requests from other Federal departments and agencies for assisted acquisition related to the COVID-19 response, the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) previously established the Joint Acquisition Task Force (JATF). On April 23, 2020, the HHS Assistant Secretary for Preparedness and Response (ASPR) and the USD(A&S) signed an MOU that enabled the ASPR to request DoD assisted acquisition services. These services included support for the acquisition of supplies, durable goods, and other services, including personal protective equipment, hygiene and infection-control products, portable mechanical ventilators,

and testing supplies required to support Federal, State, local, territorial, and tribal governments requirements for the COVID-19 response.

On October 13, 2020, the USD(A&S) transitioned the JATF assisted acquisition support to an enduring policy and oversight office, the Defense Assisted Acquisition Cell (DA2), nested within the Joint Rapid Acquisition Cell (JRAC) and under the leadership of the Executive Director, JRAC, to continue providing DoD assisted acquisition support related to the COVID-19 pandemic and for future national emergencies. The DA2 will ensure proper oversight, accountability, and transparency for deliberate and timely DoD support for emergent interagency requirements. The DA2 will serve as the entry point to DoD for all assisted acquisition requests from HHS. The DA2 will then determine whether interagency support will be provided and, if so, which acquisition authorities and resources of the Military Departments and/or DoD Components are best suited to support HHS requests.

This MOU establishes the framework under which DoD will continue to support HHS in ongoing assisted acquisition activities and any future assisted acquisition interagency support requests to expand domestic industrial capacity, and to procure diagnostics, therapeutics, vaccines, and supplies/enablers (e.g., needles, syringes, vials).

V. INTERAGENCY ASSISTANCE: HHS may request Defense acquisition assistance to support U.S. Government national emergency responses. All requests for assisted acquisition will be requested through the Executive Director, JRAC. As HHS/ASPR determines the need to procure COVID-19-related health resources (*e.g.*, diagnostics, therapeutics, vaccines, personal protective equipment, drugs, biological products, medical devices, materials, facilities, health supplies, services and equipment required to diagnose, mitigate, or prevent the impairment of, improve, treat, cure, or restore the physical or mental health conditions of the population), to develop new technologies and products that can be used to provide lifesaving care, and/or to expand the medical industrial base, the HHS/ASPR will place reimbursable orders with DoD Components identified by the Executive Director, JRAC. The orders will be made pursuant to the authority of reference (A), the Economy Act, 31 U.S.C. §§ 1535-1536, and use, as appropriate, criteria at reference (F), 48 C.F.R. 17.502-2(c), and United States Government Order Form, FS Forms 7600A and 7600B. This MOU also applies to assisted acquisitions under the Economy Act and in execution of HHS Defense Production Act account funds in which HHS requirements may involve both procurement of supplies as well as construction, alteration, or renovation of non-Federally owned facilities for the production of vaccines, therapeutics, and diagnostics.

Within 90-days of signature of this MOU, HHS and DoD will jointly develop a plan (with milestones) to incorporate lessons learned and enhance the long-term posture of HHS to manage acquisition activities in support of the COVID-19 response. This plan will be used to guide the incremental reduction of DoD responsibilities under this MOU as the management capacity of HHS or another appropriate Federal department or agency increases. Once published, this

framework will be reviewed bi-monthly by HHS-DoD leadership to ensure that milestones enabling seamless and effective transfer of responsibilities are achieved. Key transition criteria will include at a minimum:

- A. A cross-walk plan that details the transfer of any ongoing acquisition efforts or activities supported by DoD under this MOU that will transfer to HHS.
- B. An identified not later than date for the conclusion of new COVID-19 acquisition assistance requests from HHS to DoD.
- C. Identification of key milestones that must be achieved in order to ensure a successful assumption by HHS of all future acquisition activities (without loss of the capabilities required to achieve the national strategic goals for the COVID-19 response) and long-term public health crisis readiness and preparedness.
- D. Identification of any contracts/actions for which DoD will continue to provide management, administration, and/or support, the projected timeline for completion of each activity, and any HHS support to DoD required for the duration of the contracts/actions.
- E. Synchronize transition planning of all COVID-19 assisted acquisition activities to ensure uninterrupted support, communication, and timely decision-making.

VI. RESPONSIBILITIES:

- A. To carry out the purposes of this MOU, the Parties agree to the following:
 - 1. The Parties will designate personnel to meet periodically, but at least monthly, on the status of implementing this MOU, and who will report implementation status progress to their respective leadership.
 - 2. The Parties will enter into necessary implementing arrangements as supplements to this MOU, or other appropriate arrangements, as are necessary to advance HHS acquisition and industrial base expansion (IBx) goals.
 - 3. The Parties will establish processes that will enable DoD to make adjustments on behalf of HHS regarding the scope, funding, and/or requirements of purchase orders, contracts, and other transitions.
 - 4. The Parties will ensure all Defense acquisition assistance under this MOU and reference (E) is linked to and supported by approved HHS requirements, and each Defense acquisition effort has a dedicated HHS requirement owner. The Parties will confirm, during all new assisted acquisition requests, which contract instruments awarded by DoD on behalf of HHS will be maintained and administered by DoD or will be transferred to HHS, subject to HHS funding DoD contract management and administration.

5. Personnel of each Party will remain under the authority, direction, and control of that Party, and only authorized personnel of a Party may exercise that Party's authorities.

B. Pursuant to this MOU, HHS will perform the following:

1. Designate an HHS official and supporting personnel to lead each acquisition requirement. This will include providing personnel with the appropriate technical expertise, not resident in the acquiring activity, to participate in and provide timely support for technical evaluations of source selections. This will also include assistance with all phases of contract/agreement administration.
2. Request all acquisition assistance, under this MOU and/or reference (E) through the Executive Director, JRAC, as needed to execute assisted acquisition, including, but not limited to, expanding domestic industrial capacity, and the procurement of supplies, diagnostics, therapeutics, and vaccines.
3. As necessary, provide workspace to, and meet other administrative requirements of, DoD personnel supporting HHS with acquisition assistance.
4. Define, document, review, and identify funding for any and all HHS requirements that require acquisition assistance from DoD, including funding for all reimbursable costs associated with the development, execution and lifecycle management of each assisted acquisition.
5. Document requirements for assisted acquisitions, requested under this MOU and/or reference (E), in a manner and with sufficient detail to enable the DA2 to determine if DoD has the authorities and resources to fulfill the assisted acquisition request.
6. Involve DA2 early in the requirements development process and allow DA2 an opportunity to consult on draft requests for acquisition support to ensure a legally-sufficient delivery of support.
7. Provide a rough order of magnitude description to DA2 for all new purchase order, contract, and other transactions actions.
8. Use United States Government Order Form, FS Form 7600B to transfer funds for the procurement of fully-funded and validated requirements and support including subject matter expertise, program management, market research, pre-award activities, and contract management.

C. Pursuant to this MOU, DoD will perform the following:

1. Designate a lead DoD official and supporting personnel to assist in HHS-requested assisted acquisition and IBx efforts.

2. In certain situations in response to HHS-identified requirements, involving emergency or time-critical national requirements to combat the ongoing COVID-19 pandemic, DoD will support the Coordinator of White House Coronavirus Response and supporting HHS officials within the Countermeasures Acceleration Group by providing direct and expeditious liaison with the Director, JPEO-CBRND, in order to fully understand the historic acquisition efforts and expeditiously to develop realistic national acquisition requirements. Upon notification of an emergency or time-critical national requirement under this paragraph, the Executive Director, JRAC will be notified, and DoD's coordination and response to HHS will occur within 24 hours with DoD providing, on a reimbursable basis, the rough order of magnitude cost required to support the HHS requirement fully.
3. Upon receipt of a request for Defense-assisted acquisition, that does not fall under subparagraph VI.C.2, DoD will respond within 10 business days with DoD providing, on a reimbursable basis, the rough order of magnitude cost required to support the HHS requirement fully, including the cost for all pre-award activities and continued contract administration, if it is determined DoD will retain the contract administration.
4. Execute requests from HHS upon acceptance of a fully authorized FS Form 7600B order, including pre-award activities, contract administration, program management, preparing a fully vetted requirements package, and identification of a long-term requirement owner to pair with a DoD contracting agency if DoD is going to retain the contract administration through the period of performance.
5. Upon request by HHS, DoD may distribute to State, territorial, local, and tribal governments and to private organizations items DoD has purchased on behalf of HHS for the Strategic National Stockpile for the COVID-19 Pandemic response or other future national emergency.
6. Provide technical assistance, recommendations, and analysis to HHS requirement owners based on the specified program management, industrial base analysis, and supply chain needs of HHS.
7. Provide technical assistance and recommendations on the evaluation of requirements at HHS to manage, award, and administer domestic IBx contract instruments, and make recommendations on either how to develop that capability within HHS or to obtain that capability by leveraging support from other Federal departments and agencies.

VII. COMMUNICATIONS: To provide for consistent and effective communication between HHS and DoD, each Party will appoint a Principal Representative to serve as the point of contact on matters relating to this MOU.

A. POINTS OF CONTACT.

1. Assistant Secretary for Preparedness and Response
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201
Phone: (202) 205-2882
2. Executive Director, JRAC
Department of Defense
2600 Defense Pentagon, RM 3C889A
Washington, DC 203012-2600
Phone: (b)(6)

B. CORRESPONDENCE. All correspondence to be sent and notices to be given pursuant to this MOU will be addressed, if to the HHS, to—

1. Department of Health and Human Services Executive Secretariat 200 Independence Avenue, S.W. Room 603-H Washington, D.C. 20201 HHSExecSec@hhs.gov (202) 690-5627

and, if to DOD, to—

2. Department of Defense Executive Secretary, 1030 Defense Pentagon RM 3E880, Washington, D.C. 20301-1030; ExecSECMA2@sd.mil; (703) 692-7000,

VIII. TERMINATION, CANCELLATION, DISPUTES, AND PROTESTS CLAUSE: If a contract or order award pursuant to this MOU is terminated or cancelled or a dispute or protest arises from specifications, solicitation, award, performance, or termination of such a contract or order, appropriate action will be taken in accordance with the terms of the contract or order and applicable laws and regulations. HHS will be responsible for all costs associated with termination, disputes, and protests, including settlement costs. HHS will consult with DoD before agreeing to a settlement or payments to ensure that DoD has adequate time in which to raise or address any fiscal or budgetary concerns arising from the proposed payment or settlement.

IX. FUTURE MODIFICATIONS OR AMENDMENTS AND TERMINATION: Any amendments to the terms and conditions in this MOU will be made in writing and signed by both DoD, as the Servicing Agency, and HHS, as the Requesting Agency. This MOU may be terminated by either Party via written notice to the other Party following 30 days from the receipt of such written notice.

X. NON-BINDING: This MOU does not document or provide for the obligation or exchange of funds between the Parties nor does it make any commitment of funds or resources.

All obligations resulting from this MOU will be accomplished through future interagency agreements.

XI. DISPUTES: The parties will make their best efforts to resolve amicably disputes that may arise under this MOU.

XII. EFFECTIVE DATE: This MOU takes effect beginning on the day after the last Party signs. This MOU will be reviewed no less often than the mid-point, June 2022, from the agreement effective date and the expiration date.

XIII. EXPIRATION DATE: This MOU expires September 30, 2023.

XIV. SIGNATURE AND DATE:

For the Department of Defense:

(b)(6)

Kathleen H. Hicks
Deputy Secretary of Defense

Date: MAY 20 2021

For the Department of Health and Human

(b)(6)

Andrea Palm
Deputy Secretary of Health and Human
Services

Date: MAY 20 2021