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MEMORANDUM FOR DISTRIBUTION

Subj: AUTHORITY TO AWARD SEVERABLE SERVICE CONTRACTS THAT CROSS FISCAL YEARS

FAR 37.106 states that contracts for services that are funded by annual appropriations may not extend beyond the end of the fiscal year of that appropriation, except when authorized by law. Similarly, FAR 32.703-3(a) provides that a contract funded by an annual appropriations may not cross fiscal years, except in accordance with statutory authorization.

Section 801 of the FY 1998 Defense Authorization Act recently revised 10 U.S.C. 2410a to provide that the Secretary of Defense and the Secretaries of the Military Departments may enter into contracts for procurement of severable services for a period that begins in one fiscal year and ends in the next, using funds made available for one year, if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

Appropriate revisions to the FAR are in process to implement Section 801. These revisions will identify 10 U.S.C. 2410a as one of the statutory authorities allowing a contract funded by an annual appropriation to cross fiscal years. Although the revisions implementing Section 801 are not currently incorporated in the FAR, you may begin using the new statutory authority. As noted above, the FAR already states that contracts may cross fiscal years when statutory authority exists for them to do so, and Section 801 provides such authority even though it is not yet cited in the FAR.

Revisions to the DFARS to require annual reporting (at least for FYs 1998 and 1999) concerning contracts awarded using the Section 801 authority are also in process. Please ensure your activities have appropriate mechanisms in place for capturing and reporting this information if they make awards using the Section 801 authority.

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