MEMORANDUM FOR: CHIEF, OL/R&SB

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SHARON

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FORM 5-75 101 USE PREVIOUS EDITIONS

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INSTRUCTION NO.
LI 7-4

LI 7-4
MANAGEMENT
18 September 1980

SUBJECT: Delegation of Authority to Approve Covert Procurement

REFERENCE: Executive Order 12036, dated 26 January 1978, "United States Intelligence Activities"

1. PURPOSE

Pursuant to procedures implementing Section 2-303 of Executive Order 12036, the Deputy Director of Central Intelligence has approved generic categories of covert procurement. On 2 July 1979, the DDCI delegated to the Director of Logistics the authority to approve covert procurement actions in the categories listed in attachment 2. This instruction provides a further delegation to Logistics division and branch managers and chiefs of U.S. Logistics depots and their branch chiefs who engage in these activities, and requires that each office establish procedures which can be audited for compliance with the Executive Order and procedures approved by the Office of Attorney General of the United States. [redacted] 25X

2. POLICY

Covert procurement may only be initiated when it is in compliance with the Attorney General's approved procedures, attachment 1, and meets the criteria established in covert procurement categories 10 and 11, attachment 2. [redacted] 25X

3. DELEGATION OF AUTHORITY

The Logistics managers listed below are authorized by the undersigned to approve covert procurement transactions. This delegation of authority is not to be confused with delegable procurement authority exercised by the Director of Logistics on behalf of the Director of Central Intelligence as authorized under [redacted]

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25X1 [redacted] [redacted] 25X

Approved For Release 2003/08/20 : CIA-RDP83-00957R000100020001-5

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Deputy Director of Logistics
Executive Officer
Chief, Procurement Management Staff/OL
Chief, Procurement Management Staff/DDS&T
Chief, Contract Management Branch, OTS/DDS&T
Chief, Contracts Staff, ORD/DDS&T
Chief, Contract Team, NFAC
Chief, Contracts and Procurement Staff, OSO/DDS&T
Chief, Contracts Staff, OD&E/DDS&T
Chief, [redacted] 25X1
Chief, Procurement Division
[redacted] 25X1
Chief, ADP & Engineering Branch
Chief, General Procurement Branch
Chief, Production & Services Contracts Branch
Contracting Officer, [redacted] 25X1
Chief, Real Estate and Construction Division
Chief, Real Estate Branch
Chief, Supply Division
Chief, Interdepartmental Support Branch
25X1 [redacted]

This delegation may not be redelegated. Deputy chiefs of divisions, branches, and staffs may only exercise approving authority when acting in the position of the chief. [redacted] 25X1

4. RECORDKEEPING

The Attorney General requires that covert procurement be auditable. Since the activities of OL components are procedurally different, each component is required to develop its own system for audit and review which will provide the basic information required, i.e., justification for covert procurement, category of covert procurement, and the signature of the approving official for each transaction. The procedures are to be written, and a copy kept current and on file in the Plans and Programs Staff. [redacted] 25X1
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[redacted]

for James H. McDonald
Director of Logistics

Attachments

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Approved For Release 2003/08/20 : CIA-RDP83-00957R000100020001-5

Approved For Release 2003/08/20 : CIA-RDP83-00957R000100020001-5

ATTACHMENT 1
LI 7-4
18 September 1980

PROCEDURES RELATING TO COVERT PROCUREMENT

For the purposes of implementing Section 2-303 of Executive Order 12036, the Director of Central Intelligence (DCI) has established and the Attorney General has approved the following procedures relating to the procurement by the Central Intelligence Agency (CIA) and the Office of the DCI of goods and services from private companies or institutions in the United States without disclosure of CIA sponsorship to appropriate officials of the company or institution. (Such procurement is referred to in these procedures as "covert procurement.")

PROHIBITIONS

1. CIA will not contract or otherwise arrange for the provision of goods or services with an academic institution in the United States unless CIA sponsorship is known to the appropriate officials of the academic institution. This restriction and these procedures do not apply to the registration or attendance at an academic institution by a CIA employee, who is not publicly acknowledged as such. That subject is governed by the Attorney General-approved procedures relating to undisclosed participation in domestic organizations.

2. CIA will not contract or otherwise arrange for the provision of goods or services with a private company or institution in the United States unless:

a. CIA sponsorship is revealed to appropriate officials of the company or organization; or

b. Concealment of CIA's sponsorship is determined by the DCI or Deputy Director of Central Intelligence (DDCI) to be necessary to maintain essential cover (including cover used to protect the fact or extent of CIA interest or expertise in particular technologies or foreign intelligence matters) or proprietary arrangements for authorized intelligence purposes.

That prohibition does not, however, require a disclosure that a procurement is for CIA if the transaction is such that an individual making the same procurement in a private capacity would not be expected to disclose a principal for whom such individual was acting.

Approved For Release 2003/08/20 : CIA-RDP83-00957R000100020001-5

Approved For Release 2003/08/20 : CIA-RDP83-00957R000100020001-5

3. CIA will not request or otherwise encourage, directly or indirectly, any person, organization or government agency to undertake any activity forbidden under these procedures.

PERMITTED ACTIVITIES

4. Covert procurement is lawful and permissible if it is determined by the DCI or DDCI to be necessary to maintain the cover* or proprietary arrangements of CIA employees, activities, programs or facilities which are not publicly acknowledged as such by the United States Government.

5. In determining whether covert procurement is necessary, the DCI or DDCI will take into account the following considerations:

a. The importance of the procurement activity;

b. whether the purpose could be served if CIA sponsorship were disclosed;

c. whether the cover of CIA employees, activities, programs or facilities would be compromised or jeopardized if CIA sponsorship were disclosed;

d. whether CIA's level of interest or expertise in a particular field would be revealed if CIA sponsorship were disclosed, but only to the extent that these are valid reasons for concealing such information;

e. whether CIA's interest in and capabilities concerning specific foreign intelligence or counterintelligence objectives would be jeopardized or disclosed; and

f. whether, if CIA undertook a covert procurement and CIA's sponsorship were subsequently disclosed, the party with which CIA undertook the procurement would suffer any adverse consequences including embarrassment and whether such consequences outweigh the importance of the procurement.

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*Activities associated with CIA's reimbursement of expenses incurred by its employees in undercover activities is solely governed by the Attorney General-approved procedures governing undisclosed participation in domestic organizations to the extent such activities relate to domestic organizations.

"Cover" includes cover used to protect the fact or extent of CIA interest or expertise in particular technologies or foreign intelligence subject matters.

Approved For Release 2003/08/20 : CIA-RDP83-00957R000100020001-5

Approved For Release 2003/08/20 : CIA-RDP83-00957R000100020001-5

APPROVAL PROCEDURES FOR PERMITTED ACTIVITIES

6. Recommendations to the DCI or DDCI for his approval of covert procurement need not be made on an individual case-by-case basis. Such recommendations may cover classes or categories of cases. Each such recommendation will contain a statement of the facts and circumstances relied upon to support a determination by the DCI or DDCI that the covert procurement is necessary for one or more of the authorized intelligence purposes noted in paragraph 4 above, in light of the considerations noted in paragraph 5 above. The DCI or DDCI may delegate to subordinates the authority for approval of specific individual procurements within the scope of the classes or categories.

7. All recommendations to the DCI or DDCI for his determination that a covert procurement or any class or category of covert procurement is necessary for authorized intelligence purposes shall be forwarded through the General Counsel, CIA.

EXCEPTIONS AND GENERAL MATTERS

8. Where necessary due to press of time, a recommendation to the DCI or the DDCI may be oral, and authorization may also be oral, but in these circumstances both the recommendation and the authorization will otherwise be in conformance with these procedures and will be confirmed as promptly as possible in writing.

9. Nothing in these procedures shall prohibit the retention and dissemination of information necessary for the purpose of determining or assuring that the requirements of these procedures are satisfied.

10. Nothing in these procedures shall prohibit CIA from participating with any other Federal department or agency in joint procurement. If the item being purchased is a stock item of the supplier being purchased for routine use of government agencies including CIA, there is no necessity for disclosing CIA's involvement. In all other cases CIA's participation in joint procurement shall be disclosed unless nondisclosure is approved in accordance with these procedures.

Approved For Release 2003/08/20 : CIA-RDP83-00957R000100020001-5

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11. Nothing in these procedures shall prohibit CIA from procuring goods or services for other government departments or agencies or other individuals without disclosing the interest of such department, agency or individual as long as the disclosure of that interest is not required by law or procedures of that department or agency.

12. Nothing in these procedures shall preclude a component of CIA from contracting or otherwise arranging, in its own name, for the provision of goods or services as long as there has been official acknowledgment that such component is a part of CIA.

13. Nothing in these procedures shall preclude CIA from and CIA is hereby authorized to contact potential contractors to obtain information relating to possible procurement of goods or services without disclosing that CIA is the agency interested in the information.

14. No contract shall be void or voidable for failure to comply with these procedures.

INTERPRETATION

15. All questions as to the coverage and interpretation of these procedures will be resolved by the General Counsel, in consultation where there is a significant new legal question with the Department of Justice. The DCI may modify these procedures upon the express approval of the Attorney General.

DEFINITIONS

16. For the purposes of these procedures the term:

a. "Academic institution" means any United States college, university or other institution of higher learning that conducts classes for credit and confers degrees.

b. "Appropriate officials of the academic institution" means any official of the institution reasonably believed to be authorized to act on the institution's behalf in relation to the activity in question.

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c. "Appropriate officials of the company or organization" means any official of the company or organization reasonably believed to be authorized to act on behalf of the company or organization in relation to the activity in question.

d. "Proprietary" means a sole proprietorship, partnership, corporation, other business entity, or a closely related group of such entities controlled by a single holding company, which are created, owned or legally controlled by CIA, in furtherance of its assigned activities, but created, owned or legally controlled in such a way as to disguise any relationship between the entity and the U.S. Government.

e. "Employee" means a person employed by, assigned to, or acting for the CIA or the Office of the DCI.

f. "Foreign intelligence" means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

g. "Counterintelligence" means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities or assassination conducted for or on behalf of foreign powers, organizations or persons, but not including personnel, physical, document or communications security programs.

h. "United States," when used to describe a place, includes the territories of the United States.

i. "Director of Central Intelligence" and "DCI" include the Acting Director of Central Intelligence.

j. "Deputy Director of Central Intelligence" and "DDCI" include the Acting Deputy Director of Central Intelligence.

Approved For Release 2003/08/20 : CIA-RDP83-00957R000100020001-5

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EFFECTIVE DATE

17. These procedures shall become effective 30 days from the date they are approved by the Attorney General.

13 April 1979
Date

Director of Central Intelligence

I approve the foregoing procedures in accordance with subsection 2-303 of Executive Order 12036. In my opinion covert procurement by CIA conducted pursuant to and in accordance with these procedures is lawful. Based on the authorities of the Constitution, the statutes of the United States, and Executive Order 12036, it is my opinion that these procedures form the exclusive authority by which CIA may enter into a contract or arrangement for the provision of goods or services with private companies or institutions within the United States without disclosing CIA sponsorship.

June 2, 1979
Date

Griffin B. Bell
Attorney General

Approved For Release 2003/08/20 : CIA-RDP83-00957R000100020001-5

25X1

Approved For Release 2003/08/20 : CIA-RDP83-00957R000100020001-5

Next 3 Page(s) In Document Exempt

Approved For Release 2003/08/20 : CIA-RDP83-00957R000100020001-5