

# CHAPTER 6:



# INTERAGENCY ACQUISITIONS

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## **CHAPTER 6**

### **INTERAGENCY ACQUISITIONS**

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## CHAPTER 6

### INTERAGENCY ACQUISITIONS<sup>1</sup>

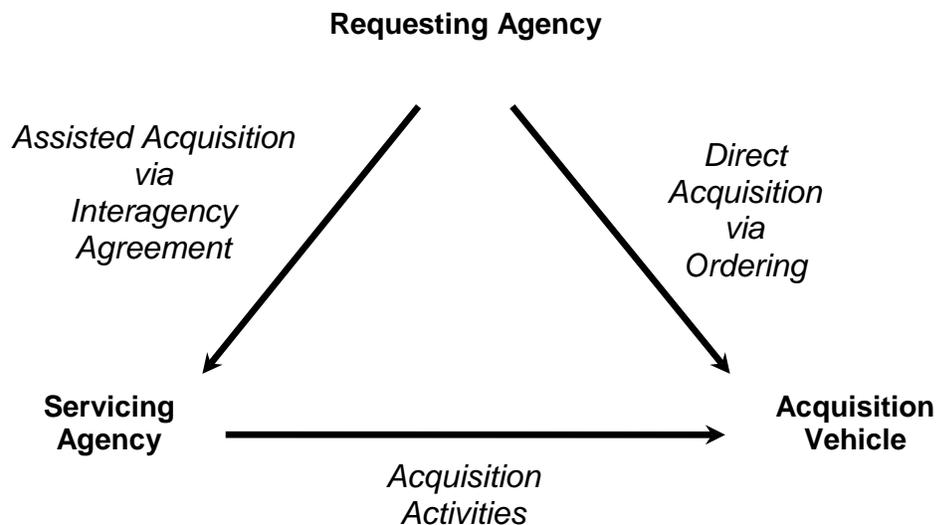
#### I. INTRODUCTION.

A. Interagency Acquisition: the procedure by which an agency needing supplies or services (the *requesting agency*) obtains them through another federal government agency (the *servicing agency*).

1. Types of Interagency Acquisitions.

a. Direct Acquisitions: the requesting agency places an order directly against a servicing agency's contract.

b. Assisted Acquisitions: the servicing agency and requesting agency enter into an interagency agreement pursuant to which the servicing agency performs acquisition activities on behalf of the requesting agency, such as awarding a contract or issuing a task or delivery order, to satisfy the requirements of the requesting agency.



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<sup>1</sup> References to the Federal Acquisition Regulation (FAR) in this chapter are current as of 24 February 2014. Numerous changes were made to FAR 17.5 per FAC 2005-55, effective 2 Feb 2012. FAC 2005-62, effective 20 Nov 2012 made additional changes to FAR 17.5 and also added a new section, FAR 17.7 which provides guidance regarding acquisitions made by non-DoD agencies on behalf of DoD agencies. These changes may not appear in commercially printed copies of the FAR with effective dates of Jan 2012 or earlier. See the current on-line version of the FAR available at <https://www.acquisition.gov/far/>. Additionally, a DPAP memo of 2 Jan 2013 called for a DoD-wide review of Interagency Acquisition policy. Practitioners should review the most current policy updates available at [http://www.acq.osd.mil/dpap/cpic/cp/interagency\\_acquisition.html](http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html).

2. Determination of Best Procurement Approach. For all direct acquisitions and assisted acquisitions subject to the Federal Acquisition Regulation (FAR)<sup>2</sup>, a determination must be made that an interagency acquisition is the best procurement approach.
  - a. Assisted Acquisitions. Prior to requesting that another agency conduct an acquisition on its behalf, the requesting agency shall make a determination that the use of an interagency acquisition represents the best procurement approach. This requires the requesting agency's contracting office to concur that using the acquisition services of another agency— (i) Satisfies the requesting agency's schedule, performance, and delivery requirements; (ii) Is cost effective (taking into account the reasonableness of the servicing agency's fees); and (iii) Will result in the use of funds in accordance with appropriation limitations and compliance with the requesting agency's laws and policies. FAR 17.502-1(a)(1).
  - b. Direct acquisitions. Prior to placing an order directly against another agency's indefinite-delivery vehicle, the requesting agency shall make a determination that use of another agency's contract vehicle is the best procurement approach. This requires the requesting agency's contracting office to consider numerous factors such as: (i) The suitability of the contract vehicle; (ii) The value of using the contract vehicle, including administrative cost savings from using an existing contract, prices, the number of vendors, and reasonable vehicle access fees; and (iii) the expertise of the requesting agency to place orders and administer them against the selected contract vehicle throughout the acquisition lifecycle. FAR 17.502-1(a)(2).
  - c. Interagency Agreements.
    - i) Assisted Acquisition. Prior to the issuance of a solicitation under an *assisted acquisition*, the servicing and requesting agencies shall sign a written interagency agreement that establishes the general terms and conditions governing the relationship between the parties. The agreement should cover roles and responsibilities for acquisition planning, contract execution, and contract administration. It should also include any

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<sup>2</sup> FAR 17.5 does not apply to interagency reimbursable work (other than acquisition assistance); interagency activities where contracting is incidental to the purpose of the transaction; or orders of \$500,000 or less issued against Federal Supply Schedules (FAR 17.500(c)).

unique terms and conditions<sup>3</sup> of the requesting agency that must be incorporated into the order or contract awarded by the assisting agency. If there are no unique terms or conditions, the agreement should so state. A copy of the interagency agreement, prepared in accordance with current OFPP guidance,<sup>4</sup> must be included in the files of both the servicing and requesting agencies. FAR 17.502-1(b).

- ii) Direct Acquisitions. Since the requesting agency administers its own order under a *direct acquisition*, and interagency agreement is not required. FAR 17.502-1(b)(2).

B. Contract Vehicles: Interagency acquisitions are often made using indefinite delivery/indefinite quantity (ID/IQ) contracts under FAR Subpart 16.5 that permit the issuance of task or delivery orders during the term of the contract. Contract vehicles used most frequently to support interagency acquisitions are the General Services Administration (GSA) Schedules (also referred to as Multiple Award Schedules and Federal Supply Schedules), government-wide acquisition contracts (a GWAC is a multi-agency task or delivery order contract, typically for information technology, established by one agency for governmentwide use under authority other than the Economy Act), and multi-agency contracts (a MAC is a task or delivery order contract established by one agency for use by other Government agencies consistent with the Economy Act). In addition to the best procurement determinations discussed above, in order to establish new multi-agency or governmentwide acquisition contracts, a business-case analysis must be prepared and approved in accordance with current Office of Federal Procurement Policy (OFPP) guidance. See FAR 17.502-1(c)<sup>5</sup> for additional guidance.

C. Fiscal Policy: unless authorized by Congress, interagency transactions are generally prohibited.

- 1. Under 31 U.S.C. § 1301 (the “purpose statute”) a federal agency must use its appropriated funds for the purposes for which the appropriations were made. Therefore, unless authorized by Congress, funds appropriated for

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<sup>3</sup> FAR Subpart 17.7 outlines many of the unique terms and conditions that apply when a nondefense agency procures supplies and services on behalf of a defense agency.

<sup>4</sup> For current Interagency Agreement drafting guidance and templates see [http://www.whitehouse.gov/omb/assets/procurement/iac\\_revised.pdf](http://www.whitehouse.gov/omb/assets/procurement/iac_revised.pdf).

<sup>5</sup> See also, OMB memo, “Development, Review and Approval of Business Cases for Certain Interagency and Agency-Specific Acquisitions,” dtd 29 Sep 2011, available at <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/development-review-and-approval-of-business-cases-for-certain-interagency-and-agency-specific-acquisitions-memo.pdf>

the needs of one federal agency may not be used to fund goods and services for the use of another federal agency.

- a. From the standpoint of the requesting agency, receiving goods or services funded by another agency's appropriations without reimbursing the servicing agency would constitute an improper augmentation of the requesting agency's funds.
  - b. Funds sent by the requesting agency to the servicing agency as reimbursement for goods or services provided could not be retained and spent by the servicing agency, but instead would have to be turned over to the Treasury under 31 U.S.C. § 3302(b) (the Miscellaneous Receipts Statute).
2. Congress has provided several statutory authorities for interagency acquisitions, allowing agencies to avoid these fiscal law limitations.
- a. The Economy Act: 31 U.S.C. §§1535-1536. This is the general authority for interagency acquisitions, but is used only when more specific authority does not apply (see below).
  - b. The Project Order Statute: 41 U.S.C. § 23.
  - c. Other Non-Economy Act Authorities: Government Employees Training Act (GETA), Federal Supply Schedules (FSS), Government Wide Acquisition Contracts (GWAC), and other required sources.
  - d. These other, more specific "non-Economy Act" authorities, must be used instead of the Economy Act where applicable. (FAR 17.502-2(b)).

## **II. THE ECONOMY ACT (31 U.S.C. §§ 1535-1536).**

- A. Purpose: Provides authority for federal agencies to order goods and services from other federal agencies, or with a major organizational unit within the same agency, if:<sup>6</sup>
1. Funds are available;
  2. The head of the ordering agency or unit decides the order is in the best interests of the government;

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<sup>6</sup> 31 U.S.C. §1535(a); DoD FMR, vol. 11A, ch. 3, para. 030102 and 030103. The Economy Act was passed in 1932 as an effort to obtain economies of scale and eliminate overlapping activities within the federal government.

3. The agency or unit filling the order can provide or get by contract the goods or services; **and**
4. The head of the agency decides that the ordered goods or services cannot be provided as conveniently or cheaply by a commercial enterprise.<sup>7</sup>

B. Authorized Uses.

1. Inter-service Support: orders placed between DoD activities, including those: (1) between military departments; or (2) between military departments and other defense agencies.<sup>8</sup> Also referred to as “intra-agency support.”
2. Intra-governmental Support: orders placed with non-DoD federal agencies.<sup>9</sup> Also referred to as “Interagency.”
3. The Economy Act applies only in the absence of a more specific acquisition authority. FAR 17.502-2(b).<sup>10</sup>

C. Determinations and Findings (D&F) Requirements (FAR Subpart 17.502-2(c)).

1. Basic Determinations. All Economy Act orders must be supported with a written D&F by the requesting agency stating that:
  - a. The use of an interagency acquisition is in the best interest of the government (FAR 17.502-2(c)(1)(i));
  - b. The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source (FAR 17.502-2(c)(1)(ii)); *see also*, DoD FMR, vol. 11A, ch. 3, para. 030302); **and**
  - c. A statement that at least one of the three following circumstances apply:
    - 1) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of

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<sup>7</sup> See *Dictaphone Corp.*, B-244691.2, 92-2 Comp. Gen. Proc. Dec. ¶ 380 (Nov. 25, 1992). See also, DoD FMR, vol. 11a, ch. 3, para. 030104.A (March 2012).

<sup>8</sup> See FAR 2.101 (defining executive agencies as including military departments); *Obligation of Funds under Military Interdepartmental Purchase Requests*, B-196404, 59 Comp. Gen. 563 (1980); DoD FMR, vol. 11A, ch. 3, para. 030103.

<sup>9</sup> See also FAR 17.7, Acquisitions by Nondefense Agencies on Behalf of the Department of Defense.

<sup>10</sup> See also, *An Interagency Agreement—Admin. Office of the U.S. Courts*, B-186535, 55 Comp. Gen. 1497 (1976).

the servicing agency for the same or similar supplies or services;

- 2) The servicing agency has the capability/expertise to contract for the supplies or services, which capability is not available within the requesting agency; or
- 3) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies. FAR 17.502-2(c)(1)(iii). See also, DoD FMR, vol. 11A, ch. 3, para. 030302.B.<sup>11</sup>

d. NOTE: In Economy Act transactions between DoD activities, DoDI 4000.19 and DoD FMR vol. 11A, ch. 3, para. 030303 indicate that if the transaction is documented on a DD Form 1144 support agreement signed by the head of the requiring and supplying activities (O6 or GS-15), then no further written determinations are required.<sup>12</sup> If there is no support agreement, the D&F is required.

2. D&F Approval Authority. (FAR 17.502-2(c)(2)).

- a. The D&F must be approved by a contracting officer of the requesting agency with the authority to contract for the supplies or services ordered (or by another official designated by the agency head).
- b. If the servicing agency is not covered by the FAR, then the D&F must be approved by the requesting agency's Senior Procurement Executive.
- c. DoD-specific approval authority rules.
  - 1) Interagency Support. The D&F for an order with a non-DoD servicing agency (i.e. "Interagency Support") shall be approved by the head of the major organizational unit ordering the support. This authority may be delegated, but at a level no lower than a Senior Executive Service

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<sup>11</sup> Prior to the effective date of FAC 2005-55, FAR 17.503(b) required one of these three statements *only* if the Economy Act transaction required the servicing activity to take some contracting action. The current version of the FAR (FAR 17.502-2(c)) does not make the same distinction. The current version of DoD FMR, vol. 11A, ch. 3, para. 030302.B (March 2012) parallels the prior version of the FAR, specifying that one of these statements would need to be included in a D&F *if* the transaction requires a contract action by a non-DoD servicing agency. Despite this inconsistency, the best practice is to include these statements in all D&Fs regardless of whether the Economy Act transaction requires a contract action.

<sup>12</sup> *But see*, note 13 *infra*.

(SES)/flag/general officer. DoD FMR, vol. 11A, ch. 3, para. 030304. If the servicing agency is not covered by the FAR, then the D&F must be approved by the requesting agency's Senior Procurement Executive.

- 2) Intra-Agency Support. If the support requested is between DoD activities (i.e. Intra-Agency or Inter-Service support), then the agreement may be approved provided the head of the major organizational unit ordering the support determines that it is in the best interest of the U.S. Government, and the head of the servicing activity determines that capability exists to provide support without jeopardizing assigned missions. These determinations are accomplished by signing a Support Agreement (DD1144). No further written determinations<sup>13</sup> are generally required for agreements between DoD Activities. DoD FMR, vol. 11A, ch. 3, para. 030303.

D. Additional Determinations by DoD Policy.<sup>14</sup> (See section V.B., *infra* discussing requirements for Non-Economy Act orders).

1. Use of a non-DoD contract to procure goods or services in excess of the simplified acquisition threshold (currently \$150,000) requires determinations in addition to the D&F. See FAR 17.7.<sup>15</sup>
  - a. A DoD acquisition official may place an order, make a purchase, or otherwise acquire supplies or services for DoD in excess of the simplified acquisition threshold through a non-DoD agency **only** if the head of the non-DoD agency has certified that the non-DoD agency will comply with defense procurement requirements for the

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<sup>13</sup> While the DoD FMR and DoDI 4000.19 indicate that “no further written determinations are required,” neither reference take priority over the FAR, which still requires a D&F pursuant to FAR 17.502-2(c). The FAR makes no exception to the D&F requirement for inter-service or intra-DoD transactions made pursuant to the Economy Act. Further, DFARS 217.503(a) requires “a copy of the executed D&F required by FAR 17.502-2” be furnished to the servicing agency, which suggests at least, that a complete file for an Economy Act transaction includes a D&F executed per the guidance in FAR 17.502-2. Since the FAR has broader reach than DoD-level regulations (*see* FAR 1.3), its requirements may trump the more streamlined approach outlined in the DoDI and DoD FMR. A separate Interagency Support Agreement (*see* discussion at V.D *infra*) may not be required if the DD1144 covers the roles, responsibilities, and unique terms and conditions outlined in FAR 17.502-1(b)(1), or if the transaction is a direct acquisition (FAR 17.502-1(b)(2)).

<sup>14</sup> All Economy Act orders must comply with FAR Subpart 17.502-2; DFARS Subparts 217.5 and 217.78, and DoDI 4000.19.

<sup>15</sup> *See also* Appendix A, which provides a collection of memoranda applicable to use of non-DoD contracts under both Economy Act and non-Economy Act authorities. These and other applicable memoranda related to interagency acquisitions can be found on the Defense Procurement and Acquisition Policy (DPAP) webpage under “Interagency Acquisition” available at [http://www.acq.osd.mil/dpap/cpic/cp/interagency\\_acquisition.html](http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html).

fiscal year to include applicable DoD financial management regulations. FAR 17.703(a) and DFARS 217.7802 (a). Non-DoD agency certifications and additional information are available at [http://www.acq.osd.mil/dpap/cpic/cp/interagency\\_acquisition.html](http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html).

- b. With some slight differences between the military departments (*see* DFARS 217.7802(b) and your individual service policy in the Appendix), current policies generally require additional statements including:
  - 1) The order is in the best interest of the military department considering the factors of ability to satisfy customer requirements, delivery schedule, availability of a suitable DoD contract vehicle, cost effectiveness, contract administration (including ability to provide contract oversight), socioeconomic opportunities, and any other applicable considerations;
  - 2) The supplies or services to be provided are within the scope of the non-DoD contract;
  - 3) The proposed funding is appropriate for the procurement and is being used in a manner consistent with any fiscal limitations; and
  - 4) The servicing agency has been informed of applicable DoD-unique terms or requirements that must be incorporated into the contract or order to ensure compliance with applicable procurement statutes, regulations, and directives.
- c. The officials with authority to make these determinations are designated by agency policy (e.g., Army policy requires that these written certifications be executed by the head of the requiring activity (O-6/GS-15 level or higher)).

E. Fiscal Matters.

- 1. Economy Act orders are funded either on a reimbursable basis or by a direct fund citation basis. The ordering agency must pay the actual costs of the goods or services provided (31 U.S.C. § 1535(b); DoD FMR, vol. 11A, ch. 3, para. 0305 and 0306).<sup>16</sup>

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<sup>16</sup> See *Use of Agencies' Appropriations to Purchase Computer Hardware for Dep't of Labor's Executive Computer Network*, B-238024, 70 Comp. Gen. 592 (1991) (concluding that payment in excess of actual costs not only violated the Economy Act, but also the Purpose Statute. Accordingly, the actual cost limitation is **applicable to both Economy Act and non-Economy Act** transactions).

- a. Actual costs include:
  - 1) All direct costs attributable to providing the goods or services, regardless of whether the performing agency's expenditures are increased. (DoD FMR, vol. 11A, ch. 3, para. 030601 and vol. 11A, ch. 1, para. 010203);<sup>17</sup> and
  - 2) Indirect costs, to the extent they are funded out of currently available appropriations, bear a significant relationship to providing the goods or services, and benefit the ordering agency. (DoD FMR, vol. 11A, ch. 3, para. 030601).<sup>18</sup>
  - 3) DoD activities not funded by working capital funds normally do not charge indirect costs to other DoD activities. (DoD FMR, vol. 11A, ch. 3, para. 030601).<sup>19</sup>
- b. When providing goods or services via a contract, the servicing agency may not require payment of a fee or charge which exceeds the actual cost of entering into and administering the contract. (FAR 17.502-2(d)(4); DoD FMR, vol. 11A, ch. 3, para. 030601).
- c. Payments by the requesting agency are credited to the appropriation or fund that the servicing agency used to fill the order (31 U.S.C. § 1536; 10 U.S.C. § 2205).
- d. Economy Act orders may **NOT** be used to circumvent the fiscal principles of purpose, time, and amount for appropriations. It is the responsibility of the requesting agency to certify that the funds used are proper for the purpose of the order and for a bona fide need in the fiscal year for which the appropriation is available.<sup>20</sup>

## 2. Obligation and Deobligation of Funds.

- a. Obligation.

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<sup>17</sup> See *Washington Nat'l Airport; Fed. Aviation Admin.*, B-136318, 57 Comp. Gen. 674 (1978). See *GSA Recovery of SLUC Costs for Storage of IRS Records*, B-211953, Dec. 7, 1984 (unpub.) (storage costs); *David P. Holmes*, B-250377, Jan. 28, 1993 (unpub.) (inventory, transportation, and labor costs).

<sup>18</sup> See *Washington Nat'l Airport*, *supra* (depreciation and interest); *Obligation of Funds Under Mil. Interdep'tal Purchase Requests*, B-196404, 59 Comp. Gen. 563 (1980) (supervisory and administrative expenses).

<sup>19</sup> DoD Instruction 4000.19, *Interservice and Intragovernmental Support*, para. 4.6 (Aug. 9, 1995). A DoD Working Capital Fund is a revolving, reimbursable operations fund established by 10 U.S.C. § 2208 to sell support goods and services to DoD and other users with the intent to be zero-profit. See DoD FMR vol. 11B, chp 1-2.

<sup>20</sup> DoD FMR vol. 11A, ch. 3, para. 030105. See also, FAR 17.501(b).

- 1) Reimbursable Order: the requesting agency obligates funds current when the performing activity accepts the reimbursable order. (31 U.S.C. § 1535(d); DoD FMR, vol. 11A, ch. 3, para. 030404.A).
- 2) Direct Citation Order: the servicing agency will provide a copy of the contract or other obligating document to the requesting agency. This will provide the documentation required to record the obligation. DFAS-IN Reg. 37-1, para. 081207.A.7.e.

b. Deobligation.

- 1) At the end of the period of availability of the requesting agency's appropriation, funds must be deobligated to the extent that the servicing agency has not itself incurred obligations by: (1) providing the goods or services; or (2) by entering into an authorized contract with another entity to provide the requested goods or services. 31 U.S.C. § 1535(d); DoD FMR, vol. 11A, ch. 3, para. 030404.B.<sup>21</sup>
- 2) This deobligation requirement is intended to prevent attempts to use the Economy Act to "park" funds with another agency in order to extend the life of an appropriation.

F. Ordering Procedures.<sup>22</sup>

1. An Economy Act order may be placed on any form that is acceptable to both the requesting and servicing agencies. (FAR 17.503(b)).
  - a. DoD ordering activities typically use DD Form 448, Military Interdepartmental Purchase Request (MIPR), to place Economy Act orders. If the ordering activity uses a MIPR, the performing activity accepts the order by issuing a DD Form 448-2, Acceptance of MIPR.
  - b. If the MIPR is not used, the terms of the supporting interagency agreement should specify the method of acceptance. (DoD FMR, vol. 11A, ch. 3, para. 030501).

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<sup>21</sup> See GAO Redbook, vol. III, ch. 12 (3rd Ed.), pp. 12-43 to 12-50.

<sup>22</sup> See FAR 17.503; DoD FMR, vol. 11A, ch. 3. In addition, individual agencies will have their own policies for ordering.

2. Orders must be specific, definite, and certain both as to the work encompassed by the order and the terms of the order itself. (DoD FMR, vol. 11A, ch. 3, para. 030401). Minimum order requirements under FAR 17.503(b) and DoD FMR, vol. 11A, ch. 3, para. 030501 include:
  - a. Specific description of the supplies or services required;
  - b. Delivery requirements,
  - c. Fund citation (either direct or reimbursable);
  - d. Payment provision; and
  - e. Acquisition authority as may be appropriate.
3. The requesting agency shall furnish a copy of the required D&F to the servicing agency with the request for order. FAR 17.502-2(c)(3). When the requesting agency is within DoD, a copy of the executed D&F shall also be furnished to the servicing agency as an attachment to the order. When a DoD contracting office is acting as the servicing agency, a copy of the executed D&F shall be obtained from the requesting agency and placed in the contract file for the Economy Act order. DFARS 217.503(d).
4. The work to be performed under Economy Act orders shall be expected to begin within a reasonable time after its acceptance by the servicing agency. (DoD FMR, vol. 11A, ch. 3, para. 030405). The requesting agency should therefore ensure in advance of placing an order that such capability exists.
5. Although the servicing activity may require advance payment for all or part of the estimated cost of the supplies or services,<sup>23</sup> DoD policy generally prohibits the practice of advance payment unless the DoD components are specifically authorized by law, legislative action, or Presidential authorization.<sup>24</sup>

G. Other Economy Act Applications.

1. Recurring Interagency Support.
  - a. From a fiscal standpoint, the Economy Act may form the basis for interagency agreements that involve recurring interagency support.

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<sup>23</sup> 31 U.S.C. § 1535(d); FAR 17.502-2(d); DoD FMR, vol. 11A, ch. 3, para. 030502.

<sup>24</sup> Under Secretary of Defense (Comptroller) memorandum, subject: Advance Payments to Non-Department of Defense Federal Agencies for Interagency Acquisitions, dated March 1, 2007 (Appendix B).

- b. In DoD, recurring interagency support that requires reimbursement should be documented on a DD Form 1144, Support Agreement, or similar format that contains all the information required on the form. (DoDI 4000.19, Enc.3.2.(a)(1)).
- c. Support is reimbursable to the extent that it increases the support supplier's direct costs. Costs associated with common use infrastructure are non-reimbursable, unless provided solely for the use of one or more tenants. Suppliers of inter-service and intra-governmental support are permitted to waive low cost reimbursements<sup>25</sup> when the costs of billing and collecting the reimbursement would exceed the minor increase in the support suppliers costs (DoDI 4000.19, Enc.3.4(c)).

2. Interagency Details of Personnel.

- a. General Rule: Details of employees from one agency to another must be done under the authority of the Economy Act on a reimbursable basis.<sup>26</sup>
- b. Exception: Details of employees may be made on a nonreimbursable basis when: (1) specifically authorized by law; (2) the detail involves a matter similar or related to matters ordinarily handled by the detailing agency and will aid the detailing agency's mission; or (3) the detail is for a brief period and entails minimal cost.<sup>27</sup> For this exception to apply, the statute must not only authorize the transfer, but also the nonreimbursement. *Matter of: Nonreimbursable Transfer of Administrative Law Judges*, B-221585, 65 Comp. Gen. 635 (June 9, 1986).

H. Limitations.

- 1. Funding Limitations. As discussed above, an agency shall not use an interagency acquisition to circumvent conditions and limitations imposed on the use of funds. FAR 17.501(b).
- 2. Disputes. No formal method for dispute resolution exists for Economy Act transactions. The requesting and servicing agencies "should agree" to

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<sup>25</sup> *But see* DoD FMR, vol. 11A, ch. 3, para. 030503.A. (explaining that DoD working capital funds, the Corps of Engineers Civil Works revolving fund, and other DoD revolving funds, may not waive reimbursement of any amount).

<sup>26</sup> The detail must be on a reimbursable basis in order to avoid a violation of the Purpose Statute and an improper augmentation of the appropriations of the agency making use of the detailed employees.

<sup>27</sup> *See Department of Health & Human Servs. Detail of Office of Community Servs. Employees*, B-211373, 64 Comp. Gen. 370 (1985).

procedures for the resolution of disagreements that may arise under interagency acquisitions, including, in appropriate circumstances, the use of a third party forum. FAR 17.503(c). The dispute resolution mechanism should be contained in the written interagency agreement. Within DoD, disputes shall be elevated for resolution through each DoD activity's chain of command. (DoDI 4000.19, Enc.3.2(b)(1)).

3. Compliance with CICA. The requesting agency may not procure from a servicing agency that fails to comply with the Competition in Contracting Act (CICA) when contracting for a requirement. 10 U.S.C. § 2304(f)(5); 41 U.S.C. § 253(f)(5); *Valenzuela Eng'g, Inc.*, B-277979, 98-1 Comp. Gen. Proc. Dec. ¶ 51 (Jan. 26, 1998).

### **III. THE PROJECT ORDER STATUTE (41 U.S.C. § 6307).<sup>28</sup>**

- A. Purpose: provides DoD with authority to order goods and nonseverable services from DoD-owned and operated activities, separate and distinct from the Economy Act.
  1. Allows DoD to place orders or contracts pertaining to “approved projects” with Government-owned establishments. These orders are considered to be obligations “in the same manner as provided for similar orders or contracts placed with...private contractors.”
    - a. The term “approved projects” in the statute simply refers to projects approved by officials having legal authority to do so. (DoD FMR, vol. 11A, ch. 2, para. 020103).
    - b. A “project order” is a specific, definite, and certain order issued under the Project Order Statute. (DoD FMR, vol 11A, ch.2, para 020301).
  2. Within DoD, regulatory guidance on project orders is found at DoD FMR, vol. 11A, ch. 2, and DFAS-IN Regulation 37-1, ch. 12, para. 1208.<sup>29</sup>
- B. Applicability.
  1. DoD-Owned Establishment. Although the language of the statute refers broadly to “Government-owned establishments,” it applies only to transactions between military departments and government-owned, government-operated (GOGO) establishments within DoD. (DoD FMR, vol. 11A, ch. 2, para. 020303).

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<sup>28</sup> Numerous sections of Title 41 were renumbered by Pub. L. 111-350, Jan. 4, 2011. The Project Order Statute was previously identified as 41 U.S.C. § 23.

<sup>29</sup> The Coast Guard has similar project order authority, at 14 U.S.C. § 151.

2. GOGO establishments include:
  - a. Equipment overhaul or maintenance shops, manufacturing or processing plants or shops, research and development laboratories, computer software design activities, testing facilities, proving grounds, and engineering and construction activities. (DoD FMR, vol. 11A, ch. 2, para. 020303).
  - b. GAO decisions have also “found arsenals, factories, and shipyards owned by the military to be GOGOs.” *Matter of John J. Kominski*, B-246773, 72 Comp. Gen. 172 (1993).
3. Government-Operated.
  - a. The DoD-owned establishment must substantially do the work in-house.
  - b. While the DoD-owned establishment may contract for incidental goods or services pursuant to a project order, it must itself incur costs of not less than 51% of the total costs attributable to performing the work. (DoD FMR, vol. 11A, ch. 2, para. 020515).
4. Nonseverable Work Only.
  - a. Under DoD FMR, vol. 11A, ch. 2, para. 020509, activities may use project orders only for nonseverable or “entire” efforts that call for a single or unified outcome or product, such as:
    - 1) Manufacture, production, assembly, rebuild, reconditioning, overhaul, alteration, or modification of:
      - a) Ships, aircraft, and vehicles of all kinds;
      - b) Guided missiles and other weapon systems;
      - c) Ammunition;
      - d) Clothing;
      - e) Machinery and equipment for use in such operations;  
and
      - f) Other military and operating supplies and equipment (including components and spare parts);
    - 2) Construction or conversion of buildings and other structures, utility and communication systems, and other public works;

- 3) Development of software programs and automated systems when the purpose of the order is to acquire a specific end-product;
  - 4) Production of engineering and construction related products and services.
- b. Activities may **not** use project orders for:
- 1) Severable services, such as custodial, security, fire protection, or refuse collection;
  - 2) Routine maintenance in general, such as grounds maintenance, heat and air conditioning maintenance, or other real property maintenance;
  - 3) Services such as education, training, subsistence, storage, printing, laundry, welfare, transportation, travel, utilities, or communications; or
  - 4) Efforts where the stated or primary purpose of the order is to acquire a level of effort (e.g., 100 hours, or one year) rather than a specific, definite, and certain end-product.

C. Fiscal Matters.

1. Obligation of Funds.

- a. A project order is a valid and recordable obligation of the requesting agency when the order is issued and accepted. (DoD FMR, vol. 11A, ch. 2, para. 020301.A).<sup>30</sup>
- b. The project order must serve a valid *bona fide need* that exists in the fiscal year in which the project order is issued. (DoD FMR, vol. 11A, ch. 2, para. 020508).

2. Deobligation of Funds.

- a. Unlike orders under the Economy Act, there is no general requirement to deobligate the funds if the servicing agency has not performed before the expiration of the funds' period of availability. (41 U.S.C. § 6307).
- b. At the time of acceptance, evidence must exist that the work will be commenced without delay (usually within 90 days) and that the

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<sup>30</sup> Providing the obligation otherwise meets the criteria for recordation of an obligation contained in 31 U.S.C. § 1501(a) (the "Recording Statute").

work will be completed within the normal production period for the specific work ordered. (DoD FMR, vol. 11A, ch. 2, para. 020510.A).

- c. If that evidence existed at the time of acceptance and is documented in the file, then there are no consequences if the servicing agency subsequently fails to begin work within the 90 days unless that delay extends beyond 1 January of the following calendar year.
  - 1) If work on a project order does not begin, or is not expected to begin, by January 1 of the following calendar year, then the project order must be returned for cancellation and the funds deobligated.
  - 2) If it is documented that the delay is unavoidable and could not have been foreseen at the time of project order acceptance, and that documentation is retained for audit review, then the project order can be retained and executed. (DoD FMR, vol. 11A, ch. 2, para. 020510.B).

D. Ordering Procedures.

- 1. Project orders are analogous to contracts placed with commercial vendors and, similar to such contracts, must be specific, definite, and certain both as to the work and the terms of the order itself. (DoD FMR, vol. 11A, ch. 2, para. 020506).
- 2. Project orders shall be issued on a reimbursable basis only (no direct cite orders). (DoD FMR, vol. 11A, ch. 2, para. 020519). The project order may be on a fixed-price or costs-incurred (cost-reimbursement) basis. (*Id.*, at para. 020701).
- 3. The MIPR is normally used for issuance and acceptance of project orders.
  - a. The DoD FMR states that although “the use of a specific project order form is not prescribed,” activities shall use the “Universal Order Format” described in DoD FMR, vol.11A, ch. 1, whenever practicable. DoD FMR, vol. 11A, ch. 2, para. 020302.
  - b. The Army, however, requires that project orders be issued on a MIPR (DD Form 448). DFAS-IN Reg. 37-1, para. 120803.A.
- 4. At the time of acceptance, evidence must exist that the work will be commenced without delay (usually within 90 days) and that the work will be completed within the normal production period for the specific work ordered. DoD FMR, vol. 11A, ch. 2, para. 020510.A.

5. Because project orders are not made under the authority of the Economy Act, there is no requirement for determinations and findings (D&F).<sup>31</sup>

#### **IV. OTHER NON-ECONOMY ACT AUTHORITIES.**

- A. Purpose: specific statutory authority for interagency acquisitions for DoD to obtain goods and services from a non-DoD agency outside of the Economy Act. When any of these more-specific non-Economy Act authorities apply, they must be used instead of the Economy Act.
- B. Fiscal Matters.
  1. Obligation of Funds. The requesting agency records an obligation upon meeting all the following criteria:<sup>32</sup>
    - a. A binding agreement, in writing, between the agencies;
    - b. For a purpose authorized by law;
    - c. Serve a bona fide need of the fiscal year or years in which the funds are available for new obligations;<sup>33</sup>
    - d. Executed before the end of the period of availability of the appropriation used; and
    - e. Provides for specific goods to be delivered or specific services to be supplied.
  2. Deobligation of Funds.
    - a. General Rule: the order is generally treated like a contract with a private vendor in that requesting agency does not have to deobligate its funds if the servicing agency has not performed or incurred obligations at the end of the funds' period of availability.<sup>34</sup>

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<sup>31</sup> See FAR 17.500(c), which excludes interagency reimbursable work performed by federal employees from the requirements of FAR 17.5.

<sup>32</sup> DoD FMR vol. 11A, ch. 18, para. 180301.

<sup>33</sup> While *bona fide need* is generally a determination of the requesting agency and not that of the servicing agency, a servicing agency can refuse to accept a non-Economy Act order if it is obvious that the order does not serve a need existing in the fiscal year for which the appropriation is available. (DoD FMR, vol. 11A, ch. 18, para. 180208).

<sup>34</sup> *Expired Funds and Interagency Agreements between GovWorks and the Department of Defense*, B-308944, 2007 Comp. Gen. Proc. Dec. ¶ 157

- b. DoD Policy: In response to several GAO and DoD Inspector General audits indicating contracting and fiscal abuses with DoD agencies' use of interagency acquisitions, the DoD has issued policy that severely restricts the flexibility that these non-Economy Act authorities provide and now applies a deobligation requirement similar to that of the Economy Act. (DoD FMR, vol. 11A, ch. 18, para. 180302).<sup>35</sup>
- 1) General: Expired funds must be returned by the servicing agency and deobligated by the requesting agency to the extent that the servicing agency has not:
    - i) Provided the goods or services (or incurred actual expenses in providing the goods or services); or
    - ii) Entered into a contract with another entity to provide the goods or services before the funds expired, subject to the bona fides need rule.
  - 2) Non-Severable Services: the contract must be funded entirely with funds available for new obligations at the time the contract was awarded, even though performance may extend across fiscal years. (DoD FMR, vol. 11A, ch. 18, para. 180302.C).
  - 3) Severable Services: one-year funds may be used to fund up to twelve months of continuous severable services beginning in the fiscal year of award and crossing fiscal years under the authority of 10 U.S.C. § 2410a. (DoD FMR, vol. 11A, ch. 18, para. 180302.B).<sup>36</sup>
  - 4) Goods: if the contract is for goods that were not delivered within the funds period of availability, the funds must be deobligated and current funds used, unless the goods could not be delivered because of delivery, production or manufacturing lead time, or unforeseen delays that are out of the control and not previously contemplated by the

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<sup>35</sup> Office of the Under Secretary of Defense (Comptroller) memorandum, Subject: Non-Economy Act Orders, dated October 16, 2006. (Appendix C).

<sup>36</sup> **NOTE:** The 12 months does not start upon obligation of the funds by the servicing agency, but upon obligation of the funds by the requesting agency. See DoD FMR, vol. 11A, ch. 18, para. 180203.F (requiring a statement on the funding document that states: “all funds not placed on contract this fiscal year shall be returned promptly to the ordering activity, but *no later than one year after the acceptance of the order, or upon completion of the order, which ever is earlier.*”)(emphasis added). Therefore, a DoD requesting activity can still “lose” funds if the servicing agency does not award a contract promptly after acceptance of the order.

contracting parties at the time of contracting. DoD FMR, vol. 11A, ch. 18, para. 180302.A.

3. Advance Payment.<sup>37</sup>
  - a. DoD agencies are prohibited from making advance payments to non-DoD agencies unless specifically authorized by law. (DoD FMR, vol. 11A, ch. 18, para. 180209).
  - b. For those few exceptions where DoD is specifically authorized to advance funds, the specific appropriation or law authorizing the advance must be cited on the obligating and/or interagency agreement documents and orders, and any unused amounts of the advance must be collected from the servicing agency immediately and returned to the fund from which originally made. (DoD FMR, vol. 11A, ch. 18, para. 180209).

C. DoD Policy for non-DoD orders.<sup>38</sup> (See section V.B., *infra*).

1. If the non-Economy Act order is over the Simplified Acquisition Threshold (SAT; currently \$150K), comply with your Military Department's policy requirements for use of non-DoD contracts over the SAT, in addition to the requirements below.<sup>39</sup> (See *supra* part II.D., discussing determinations for Economy Act orders).
2. Non-Economy Act orders may be placed with a non-DoD agency for goods or services if:<sup>40</sup>
  - a. Proper funds are available;
  - b. The non-Economy Act order does not conflict with another agency's designated responsibilities (*e.g.*, real properly lease agreements with GSA);
  - c. The requesting agency determines the order is in the best interest of the Department; and
  - d. The servicing agency is able and authorized to provide the ordered goods or services.

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<sup>37</sup> Under Secretary of Defense (Comptroller) memorandum, subject: Advance Payments to Non-Department of Defense Federal Agencies for Interagency Acquisitions, dated March 1, 2007 (Appendix B).

<sup>38</sup> See generally, DoD FMR, vol. 11A, ch. 18. See also FAR 17.7.

<sup>39</sup> See Appendix A.

<sup>40</sup> DoD FMR, vol. 11A, ch. 18, para. 180202

3. Best Interest Determination.
  - a. Each requirement must be evaluated to ensure that non-Economy Act orders are in the best interest of DoD. Factors to consider include: satisfying customer requirements; schedule, performance, and delivery requirements; cost effectiveness, taking into account the discounts and fees; and contract administration, to include oversight. (DoD FMR, vol. 11A, ch. 18, para. 180204; *see also* FAR 17.502-1(a) requiring a determination of best procurement approach and consideration of similar factors).
  - b. If the order is in excess of the SAT, then the best interest determination must be documented in accordance with individual Military Department policy.

D. Content of Orders. (DoD FMR, vol. 11A, ch. 18, para. 180203).

1. A firm, clear, specific, and complete description of the goods or services ordered;
2. Specific performance or delivery requirements;
3. A proper fund citation;
4. Payment terms and conditions;
5. The specific non-Economy Act statutory authority used;
6. *For severable services:* “These funds are available for severable service requirements crossing fiscal years for a period not to exceed one year, where the period of any resultant contract for services commences this fiscal year. All funds not placed on contract this fiscal year shall be returned promptly to the ordering activity, but no later than one year after the acceptance of the order or upon completion of the order, which ever is earlier.”
7. *For goods and non-severable services:* “I certify that the goods or non-severable services to be acquired under this agreement are a necessary expense of the appropriation charged, and represent a bona fide need of the fiscal year in which these funds are obligated.”
8. The requesting agency’s DoD Activity Address Code (DODAAC).
9. Contracting Officer Review. If the non-Economy Act order is in excess of \$500,000, it must be reviewed by a DoD warranted contracting officer prior to sending the order to the funds certifier or issuing the MIPR. (DoD FMR, vol. 11A, ch. 18, para. 180206).

E. Commonly used non-Economy Act transaction authorities.

1. Government Employees Training Act (GETA). (5 U.S.C. § 4104).
  - a. Purpose: permits agencies to provide training to employees of other federal agencies on a reimbursable basis.
    - 1) Servicing agency is authorized to collect and to retain a fee to offset the costs associated with training the employees of other agencies.
    - 2) Reimbursement is NOT authorized for training of other agency employees if funds are already provided for interagency training in its appropriation.<sup>41</sup>
  - b. Federal agencies must provide for training, insofar as practicable, by, in, and through government facilities under the jurisdiction or control of the particular agency.
  - c. Limitation: Non-government personnel.
    - 1) This authority applies only to transactions between federal government agencies; therefore, it does not authorize the provision of training to non-government personnel.
    - 2) The Comptroller General has not objected to federal agencies providing training to non-government personnel on a space-available basis incidental to the necessary and authorized training of government personnel, but the non-government personnel must reimburse the government for the costs of that training, and the agency providing the training must deposit the fees collected in the Treasury as miscellaneous receipts.<sup>42</sup>
2. Federal Supply Schedules (FSS). (41 U.S.C. § 251 *et seq* -- The Federal Property and Administrative Services Act of 1949; 40 U.S.C. § 501; FAR Subpart 8.4).
  - a. Purpose: authorizes the General Services Administration (GSA) to enter into contracts for government-wide use outside of the restrictions of the Economy Act.

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<sup>41</sup> OFFICE OF PERSONNEL MANAGEMENT, TRAINING POLICY HANDBOOK: AUTHORITIES AND GUIDELINES 26, May 11, 2007.

<sup>42</sup> *Army Corps of Engineers - Disposition of Fees Received from Private Sector Participants in Training Courses*, B-271894, 1997 U.S. Comp. Gen. LEXIS 252; *To the Secretary of Commerce*, B-151540, 42 Comp. Gen. 673 (1963).

- 1) The FSS program (also known as the GSA Schedules Program or the Multiple Award Schedule Program) provides federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying.
  - 2) The GSA negotiates with vendors for the best prices afforded their preferred customers for the same or similar items or services, and awards thousands of government-wide ID/IQ contracts for over 11 million commercial items and services.
  - 3) Agencies place orders or establish blanket purchasing agreements against these Schedule contracts.
- b. The procedures of FAR 17.5 do not apply to orders of \$500,000 or less issued against Federal Supply Schedules. FAR 17.500(c)(2).
  - c. Ordering Guidelines: FAR Subpart 8.4 provides detailed guidance on the use of FSS, including ordering procedures for services requiring or not requiring a statement of work, establishing blanket purchase agreements under an FSS contract, and the limited “competition” requirements for FSS orders (*see also* DFARS 208.405-70, for competition requirements for DoD orders exceeding \$150,000).
  - d. DoD Policy: contracting officers must: (1) consider labor rates as well as labor hours and labor mixes when establishing a fair and reasonable price for an order; (2) evaluate proposed prices for both services and products when awarding combination orders; (3) seek discounts and explain why if they were not obtained; and (4) solicit as many contractors as practicable.<sup>43</sup>
3. Committee for Purchase From People Who Are Blind or Severely Disabled. (41 U.S.C. §§ 46-48c – The Javits-Wagner-O’Day Act (JWOD Act); 41 C.F.R. Part 51; FAR Subpart 8.7).
    - a. Purpose: provides authority to orchestrate agencies’ purchase of goods and services provided by nonprofit agencies employing people who are blind or severely disabled.
    - b. Program Oversight: the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) oversees the AbilityOne program (formerly known as the JWOD Program).

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<sup>43</sup> Office of the Under Secretary of Defense (AT&L) memorandum, Subject: Use of Federal Supply Schedules and Market Research, dated January 28, 2005 (Appendix D).

- c. Ordering Requirements:
  - 1) The JWOD Act requires agencies to purchase supplies or services on the Procurement List (this list may be accessed at <http://www.abilityone.gov>) maintained by the Committee,<sup>44</sup> at prices established by the Committee, from AbilityOne nonprofit agencies if they are available within the period required.
  - 2) These supplies or services may be purchased from commercial sources only if specifically authorized by the applicable central nonprofit agency or the Committee.
- 4. Federal Prison Industries, Inc. (FPI or UNICOR). (18 U.S.C. §§ 4121-4128; FAR Subpart 8.6).
  - a. Originally required federal departments and agencies to purchase products of FPI that met requirements and were available at market price or less, unless FPI granted a waiver for purchase of the supplies from another source. (10 U.S.C. § 2410n).<sup>45</sup>
  - b. Current Requirements:
    - 1) The law has changed in recent years, minimizing the “mandatory source” nature of FPI.<sup>46</sup>
    - 2) When acquiring an item for which FPI has a significant market share<sup>47</sup> DoD must use competitive procedures or fair opportunity procedures under the FAR to procure the product. DFARS 208.602-70.
    - 3) If FPI does not have a significant market share, comply with procedures under FAR 8.602.

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<sup>44</sup> The decision to place an item or service on the procurement list is subject to review. See Systems Application Technologies v. United States, (No. 12-526C, Fed. Cl. 2012) (concluding that the Committee’s decision to place Army live-fire range operation and maintenance services on the Procurement List was arbitrary and capricious).

<sup>45</sup> FPI products are listed in the FPI Schedule, at <http://www.unicor.gov>. FPI also offers services, though agencies have never been required to procure services from FPI.

<sup>46</sup> National Defense Authorization Act for FY2002, Pub. L. No. 107-107; Bob Stump National Defense Authorization Act for FY2003, Pub. L. No. 107-314; Consolidated Appropriations Act of 2004, Pub. L. No. 108-199.

<sup>47</sup> Significant market share is defined as “FPI share of the Department of Defense market is greater than five percent.” See Appendix E, Office of the Under Secretary of Defense (AT&L) Policy Memorandum, Subject: Competition Requirements for Purchases from Federal Prison Industries, dated 28 March 2008.

- i) Before purchasing products from FPI, agencies must conduct market research to determine whether the FPI item is comparable to supplies available from the private sector in terms of price, quality, and time of delivery. This is a unilateral determination of the contracting officer that is not subject to review by FPI. (FAR 8.602)
- ii) If the FPI item is determined not to be comparable, then agencies should acquire the items using normal contracting (i.e., competitive) procedures, and no waiver from FPI is required.
- iii) If the FPI item is comparable, then the agency must obtain a waiver to purchase the item from other sources, except when:
  - a) Public exigency requires immediate delivery or performance;
  - b) Used or excess supplies are available;
  - c) The supplies are acquired and used outside the United States;
  - d) Acquiring supplies totaling \$3,000 or less; or
  - e) Acquiring services.

5. The Clinger-Cohen Act of 1996. (40 U.S.C. § 11302).

- a. Purpose: required the Director, Office of Management and Budget (OMB) to improve the way the federal government acquires and manages information technology by designating one or more heads of executive agencies as executive agent for Government-wide acquisitions of information technology.
  - 1) Government-wide Acquisition Contracts (GWACs) are multiple award task order or delivery order contracts used by other agencies to procure information technology products and services outside of the Economy Act. (FAR 2.101; see also discussion and references at section I.B *supra* regarding business-case analysis for new or renewed GWACs ).
  - 2) To use GWACs, agencies may either obtain a delegation of authority from the GWAC Center or work through a

procurement support operation such as GSA's Office of Assisted Acquisition Services.

- b. Presently, five agencies serve as executive agents to award and administer GWACs pursuant to OMB designation: GSA, Department of Commerce, NASA, the National Institutes of Health, and the Environmental Protection Agency. These agencies operate approximately 13 GWACs. A list of current GWACs is provided below.

### Government-wide Acquisition Contracts (GWACs)<sup>48</sup>

Managing Agency	Vehicle	Available Information Technology Products and Services	Agency website address for more information
1. Commerce	Commerce Information Technology Solutions (COMMITTS) NexGen	Wide range of services from small businesses	<a href="http://oam.ocs.doc.gov/commits/index.html">http://oam.ocs.doc.gov/commits/index.html</a>
2. EPA	Recycling Electronics and Asset Disposition (READ) Services	Services associated with recycling of electronic equipment and disposal of excess or obsolete electronic equipment in an environmentally responsible manner	<a href="http://www.epa.gov/oam/read/">http://www.epa.gov/oam/read/</a>
3. GSA	Applications and Support for Widely-diverse End User Requirements (ANSWER)	Full-service support	<a href="http://www.gsa.gov/gwacs">www.gsa.gov/gwacs</a>
4. GSA	HUBZone	Services from historically underutilized business zone (HUBZone) contractors	<a href="http://www.gsa.gov/gwacs">www.gsa.gov/gwacs</a>
5. GSA	Information Technology Omnibus Procurement (ITOP II)	Information systems engineering and security support; systems operations and management	<a href="http://www.gsa.gov/gwacs">www.gsa.gov/gwacs</a>
6. GSA	Millennia	Services to support large systems integration and software development projects	<a href="http://www.gsa.gov/gwacs">www.gsa.gov/gwacs</a>
7. GSA	Millennia Lite	Planning, studies, and assessment; high end services; mission support; legacy systems migration; new enterprise systems development	<a href="http://www.gsa.gov/gwacs">www.gsa.gov/gwacs</a>
8. GSA	STARS	Services from disadvantaged small businesses	<a href="http://www.gsa.gov/gwacs">www.gsa.gov/gwacs</a>
9. GSA	Veterans Technology Services	Information systems engineering and systems operations and maintenance from service-disabled veteran-owned small businesses.	<a href="http://www.gsa.gov/gwacs">www.gsa.gov/gwacs</a>
10. HHS- NIH	Chief Information Officer Solutions & Partners 2 Innovations (CIO-SP2i)	Hardware; software development; systems integration; technical support services	<a href="http://olao.od.nih.gov/Acquisitions/MultipleVehicleContracts/GWACs/">http://olao.od.nih.gov/Acquisitions/MultipleVehicleContracts/GWACs/</a>
11. HHS- NIH	Electronic Commodities Store	Commercial-off-the-shelf products; software; maintenance; peripherals	<a href="http://olao.od.nih.gov/Acquisitions/MultipleVehicleContracts/GWACs/">http://olao.od.nih.gov/Acquisitions/MultipleVehicleContracts/GWACs/</a>

<sup>48</sup> [http://www.whitehouse.gov/omb/procurement/interagency\\_acq/gwac\\_list.pdf](http://www.whitehouse.gov/omb/procurement/interagency_acq/gwac_list.pdf)

	(ECS III)		
12. HHS- NIH	Image World2 <i>New Dimensions</i> (IW2nd)	Imaging and document management services	<a href="http://olao.od.nih.gov/Acquisitions/MultipleVehicleContracts/GWACs/">http://olao.od.nih.gov/Acquisitions/MultipleVehicleContracts/GWACs/</a>
13. NASA	Scientific Engineering Workstation Procurement (SEWP)	High-end scientific and engineering products	<a href="http://www.sewp.nasa.gov/">http://www.sewp.nasa.gov/</a>

6. Franchise Funds. (The Government Management Reform Act of 1994, Pub. L. No. 103-356, Title IV, § 403, 103 Stat. 3413 (Oct. 13, 1994)).

- a. Purpose: authorized the Director of OMB to establish six franchise fund pilot programs to provide common administrative support services on a competitive and fee basis.
  - 1) OMB designated pilots at Department of Interior, Department of Treasury, Department of Commerce, Environmental Protection Agency, Veterans Affairs, and Department of Health and Human Services.
  - 2) Of these, the DoD most frequently uses GovWorks,<sup>49</sup> run by the Department of the Interior, and FedSource, run by the Department of the Treasury.
- b. Operating Details:
  - 1) Franchise funds are revolving, self-supporting businesslike enterprises that provide a variety of common administrative services, such as payroll processing, information technology support, employee assistance programs, and contracting services.
  - 2) To cover their costs, the franchise funds charge fees for services. Unlike other revolving funds, the laws authorizing each franchise fund allow them to charge for a reasonable operating reserve and to retain up to 4 percent of total annual income for acquisition of capital equipment and financial management improvements.
- c. Recent Change: although these pilots were to expire at the end of fiscal year 1999, they have been extended several times.

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<sup>49</sup> A previous DoD-wide prohibition on purchases in excess of \$100,000 through GovWorks imposed on June 14, 2007, has since been rescinded. *See* Office of the Under Secretary of Defense (Acquisition, Technology and Logistics) memorandum, subject: Revision to DoD Prohibition to Order, Purchase, or Otherwise Procure Property or Services through the Acquisition Services directorate of the Department of Interior's National Business Center locations, Herndon, Virginia (formerly known as GovWorks and now known as AQD-Herndon) and Sierra Vista, Arizona (formerly known as Southwest Branch and now known as ACQ-Sierra Vista), dated March 28, 2008. However, this memo imposed a new restriction on acquisition of furniture.

- 1) Recently, the termination provision at section 403(f) was amended to be limited to the DHS Working Capital Fund. (Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, Title VII, § 730, 121 Stat. 1844 (Dec. 26, 2007)).
  - 2) Because the termination provision no longer applies to the other franchise fund pilot programs, the others are now apparently permanent.
- d. NOTE: while the deobligation requirements of the Economy Act do not apply, various audits have identified contracting and fiscal abuses with DoD's use of franchise funds.<sup>50</sup> Accordingly, the deobligation policies described in section IV.B *supra*, would apply here as well.

## V. DOD POLICY ON USE OF NON-DOD CONTRACTS.<sup>51</sup>

- A. General Policy: “use of non-DoD contracts and the services of assisting agencies to meet DoD requirements, when it is done properly, is in the best interest of the Department, and necessary to meet our needs.”<sup>52</sup>
- B. Requirements For Use of Non-DoD Contracts Over the Simplified Acquisition Threshold (currently \$150,000).<sup>53</sup>
  1. The policies of the Military Departments require certain written determinations or certifications prior to using a non-DoD contract for goods or services over \$150,000 (under the Economy Act or under any non-Economy Act authority, to include orders against GSA's FSS).
  2. The officials with authority to make these determinations/certifications are designated by agency policy (e.g., Army policy requires that these written certifications be executed by the head of the requiring activity (O-6/GS-15 level or higher)).

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<sup>50</sup> See, e.g., GOVERNMENT ACCOUNTABILITY OFFICE, INTERAGENCY CONTRACTING: FRANCHISE FUNDS PROVIDE CONVENIENCE, BUT VALUE TO DOD IS NOT DEMONSTRATED, GAO-05-456 (July 2005); *Expired Funds and Interagency Agreements between GovWorks and the Department of Defense*, B-308944, 2007 Comp. Gen. Proc. Dec. ¶ 157.

<sup>51</sup> Common policy applicable for Economy Act and non-Economy Act transactions.

<sup>52</sup> Office of the Under Secretary of Defense (Acquisition, Technology and Logistics) memorandum, Subject: Interagency Acquisition, dated January 18, 2008 (Appendix F).

<sup>53</sup> See policies of each of the Military Departments (Appendix A), which implement Section 854 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Pub. L. No. 108-375, 118 Stat. 1811 (Oct. 28, 2004) and the requirements of Office of the Secretary of Defense (OSD) memorandum, Subject: Proper Use of Non-DoD Contracts, dated October 29, 2004.

3. This requirement is separate and distinct from the D&F required for Economy Act transactions, but may be combined with the D&F for approval by an official with authority to make all determinations and issue all approvals.
4. With some slight differences between the Military Departments (see your individual service policy, contained in the Appendices to this chapter), these policies generally require statements<sup>54</sup> including:
  - a. The order is in the best interest of the Military Department considering the factors of ability to satisfy customer requirements, delivery schedule, availability of a suitable DoD contract vehicle, cost effectiveness, contract administration (including ability to provide contract oversight), socioeconomic opportunities, and any other applicable considerations;
  - b. The supplies or services to be provided are within the scope of the non-DoD contract;
  - c. The proposed funding is appropriate for the procurement and is being used in a manner consistent with any fiscal limitations; and
  - d. The servicing agency has been informed of applicable DoD-unique terms or requirements that must be incorporated into the contract or order to ensure compliance with applicable statutes, regulations, and directives.
5. Of the Military Departments, the Army's policy is the most stringent, requiring enhanced coordination prior to making the orders.
  - a. For all non-DoD orders over the Simplified Acquisition Threshold, the required written certification must be prepared with the assistance (and written coordination) of the Army contracting officer and the fund certifying official.
  - b. For direct acquisitions of services, the requiring activity must also obtain written concurrence from the non-DoD contracting officer at the servicing agency that the services are within the scope of the contract (unless the Army contracting office has access to the non-DoD contract document), and the Army contracting officer must obtain written coordination from supporting legal counsel.
  - c. For assisted acquisitions of both supplies and services:

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<sup>54</sup> These considerations are also outlined in DFARS 217.78, Contracts or Delivery Orders Issued by a Non-DoD Agency.

- 1) The requiring activity must first consult with the Army contracting office, which will advise regarding the various DoD contractual options available to obtain the goods or services, and which will provide any unique terms, conditions and requirements that must be incorporated into the resultant non-DoD order to comply with DoD rules.
- 2) The fund authorizing official must annotate the MIPR with the following statement: “This requirement has been processed in accordance with Section 854 of the Ronald W. Reagan National Defense Authorization Act for Fiscal year 2005 (Public Law 108-375) and the Army Policy memorandum on Proper Use of Non-Department of Defense contracts, dated July 12, 2005. The order is properly funded (correct appropriation and year), and it is in compliance with Army procedures for placement of orders on the Army’s behalf by a non-DoD organization.”
- 3) The head of the requiring activity shall obtain written coordination from supporting legal counsel prior to sending the order to the servicing agency.
- 4) The requiring activity must also provide a copy of the certification to the non-DoD contracting officer.

C. Certifications. Under DFARS 217.7802(a) and FAR 17.7, the requesting agency may not procure from a non-DoD servicing agency that fails to comply with DoD procurement laws and regulations unless the Under Secretary of Defense determines in writing that “it is necessary in the interest of the Department of Defense to continue to procure property and services through the non-defense agency during such fiscal year.” (Pub. L. No. 110-181 (2008 National Defense Authorization Act, § 801)).<sup>55</sup> Certifications from non-DoD agencies indicating that they will comply with defense procurement and financial management regulations are maintained at [http://www.acq.osd.mil/dpap/cpic/cp/interagency\\_acquisition.html](http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html).

D. Interagency Agreements. Prior to the issuance of a solicitation arising from an assisted acquisition,<sup>56</sup> the servicing agency and the requesting agency shall both

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<sup>55</sup> See Office of the Under Secretary of Defense (AT&L) memorandum, Subject: Delegation of Authority under Section 801 of the National Defense Authorization Act for Fiscal Year 2008, dated July 19, 2008. See also Office of the Under Secretary of Defense (AT&L) memorandum, Subject: National Defense Authorization Act for Fiscal Year 2008 (Pub. L. No. 110-181, Section 801, *Internal Controls for Procurements on Behalf of the Department of Defense by Certain Non-Defense Agencies, Requests for “Waiver,”* dated September 18, 2009. (Appendix G). Waiver procedures are also addressed in FAR 17.703(e) and (f).

<sup>56</sup> Since the requesting agency administers an order in a direct acquisition themselves, there is generally no need for a written interagency agreement outlining roles and responsibilities as there is in an assisted acquisition. See FAR 17.502-1(b)(2).

sign a written interagency agreement that establishes the general terms and conditions governing the relationship between the parties. FAR 17.502-1(b). An interagency agreement should cover roles and responsibilities related to acquisition planning, contract execution, and contract administration. It should also cover procedures for resolution of disputes that may arise.<sup>57</sup> DoD agencies are specifically required to use an Interagency Agreement for all assisted interagency acquisitions regardless of dollar value. Additionally, DoD agencies must include specific enumerated elements or utilize a model agreement per Office of Federal Procurement Policy Memo (OFPP).<sup>58</sup> Service specific<sup>59</sup> directives should also be consulted for additional guidance on preparation, content, and approval of interagency agreements.

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<sup>57</sup> FAR 17.503(c).

<sup>58</sup> See Office of the Under Secretary of Defense (AT&L) memorandum, Subject: Meeting Department of Defense Requirements Through Interagency Acquisition, dated October 31, 2008. This memo does not eliminate requirements under FAR 17.5 or DFARS 217.78, which take precedence in any conflict with OFPP guidance. (Appendix H).

<sup>59</sup> In preparing interagency agreements to support assisted acquisitions, agencies should review the Office of Federal Procurement Policy guidance, Interagency Acquisitions, available at [http://www.whitehouse.gov/omb/assets/procurement/iac\\_revised.pdf](http://www.whitehouse.gov/omb/assets/procurement/iac_revised.pdf).

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## APPENDIX A



UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON DC 20301-1100



SEP 25 2003

COMPTROLLER

MEMORANDUM FOR CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
ASSISTANT SECRETARY OF THE ARMY (FINANCIAL  
MANAGEMENT AND COMPTROLLER)  
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL  
MANAGEMENT AND COMPTROLLER)  
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL  
MANAGEMENT AND COMPTROLLER)  
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Fiscal Principals and Interagency Agreements

Recent media attention has focused on the impropriety of using interagency agreements to “bank” funds that would otherwise expire at the end of the fiscal year. For Economy Act agreements, this is expressly forbidden. The Economy Act requires servicing agencies to return unobligated funds to requesting agencies before the funds would expire.

However, some Federal agencies have separate legal authority to provide services—including contracting services—without the need to return unobligated funds at year’s end. The Department of Interior’s GovWorks and the General Services Administration’s Federal Technology Service (FTS) are just two examples. These programs provide legitimate and useful services, but they are not intended solely to extend an appropriation’s period of availability.

Every order under an interagency agreement must be based upon a legitimate, specific and adequately documented requirement representing a *bona fide* need of the year in which the order is made. As always, adequate funds of the appropriate type (procurement, O&M, *etc.*) must be available. If these basic conditions are met, these servicing agencies may retain and promptly obligate the funds in the *following* fiscal year. On the other hand, an interagency agreement may not be used in the last days of the fiscal year solely to prevent funds from expiring or to keep them available for a requirement arising in the following fiscal year.

As we close out each fiscal year, contracting officials and accountable officers must resist the misguided desire to bank government funds through improper use of interagency agreements. Misuse of interagency agreements may result in disciplinary action, adverse media attention, and additional congressional limitations and oversight Department-wide.

  
Dov S. Zakheim

cc: ODGC(F)





## OFFICE OF THE SECRETARY OF DEFENSE

1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000



OCT 29 2004

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Proper Use of Non-DoD Contracts

Each year billions of Department of Defense (DoD) dollars are spent using non-DoD contracts to procure supplies and services. In many cases this represents an effective way to accomplish acquisitions in support of DoD's mission. For this reason, the use of non-DoD contracts is encouraged when it is the best method of procurement to meet DoD requirements. However, recent DoD and General Services Administration Inspector General reports identified several issues associated with the Department's use of non-DoD contracts for the acquisition of certain supplies and services. Non-DoD contracts may not be used to circumvent conditions and limitations imposed on the use of funds, nor are they a substitute for poor acquisition planning.

Military Departments and Defense Agencies must establish procedures for reviewing and approving the use of non-DoD contract vehicles when procuring supplies and services on or after January 1, 2005, for amounts greater than the simplified acquisition threshold. This requirement applies to both direct (*i.e.* orders placed by DoD) and assisted acquisitions (*i.e.* contracts awarded or orders placed by non-DoD entities, including franchise funds, on behalf of DoD), using DoD funds. These procedures must include:

- evaluating whether using a non-DoD contract for such actions is in the best interest of the DoD. Factors to be considered include:
  - satisfying customer requirements;
  - schedule;
  - cost effectiveness (taking into account discounts and fees); and
  - contract administration (including oversight);
- determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;
- reviewing funding to ensure it is used in accordance with appropriation limitations;
- providing unique terms, conditions and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives and other requirements, (*e.g.* the requirement that all clothing procured with DoD funding be of domestic origin); and
- collecting data on the use of assisted acquisitions for analysis.

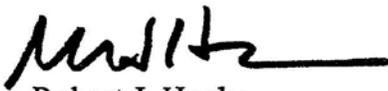


This new policy satisfies the requirements of Section 2330(b)(1)(C)(ii) of Title 10, United States Code as amended by Section 801 of the National Defense Authorization Act for Fiscal Year 2002. Section 801 requires advance approval to buy services via use of a "contract entered into or a task order issued, by an official of the United States outside of the DoD." Although Section 801 applies only to the procurement of services, we are applying this requirement to supplies in order to achieve consistency and discipline in the DoD acquisition process. The Defense Acquisition Regulation Council will issue coverage for the Defense Federal Acquisition Regulation Supplement that is consistent with the requirements of this memorandum.

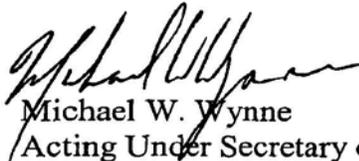
The use of multiple award contracts must be consistent with the requirements of Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Competition Requirements for Purchase of Services Pursuant to Multiple Award Contracts); Federal Acquisition Regulation (FAR) Part 8.002 (Priorities for Use of Government Supply Sources); FAR Part 17.5 (Interagency Acquisitions under the Economy Act); FAR Part 7 (Acquisition Planning); and DoD Instruction 4000.19 (Interservice and Intragovernmental Support).

While the Program Manager or requirements official has primary responsibility to ensure compliance with this policy, success will not be achieved without a team approach and specific support from the financial management and contracting communities. For example, the financial management community shall: (1) ensure the program manager or other appropriate individual has certified that the procedures established by the Military Department or Defense Agency have been followed and (2) ensure that funds are available and appropriate for the procurement action.

Please ensure widest dissemination of this memorandum and the procedures you establish. It is imperative that when non-DoD contracts are utilized to meet DoD requirements, they are utilized properly. The point of contact on this matter is Mr. Michael Canales. He can be reached at (703) 695-8571 or via email at michael.canales@osd.mil.



Robert J. Henke  
Principal Deputy Under Secretary  
of Defense (Comptroller)



Michael W. Wynne  
Acting Under Secretary of Defense  
(Acquisition, Technology, and Logistics)



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY  
ACQUISITION LOGISTICS AND TECHNOLOGY  
103 ARMY PENTAGON  
WASHINGTON DC 20310-0103

JUL 12 2005

SAAL-PP

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Proper Use of Non-Department of Defense (Non-DoD) Contracts

This memorandum establishes Army policy for reviewing and approving the use of non-DoD contract vehicles when procuring supplies or services on or after January 1, 2005, for amounts greater than the simplified acquisition threshold (SAT) (the generally applicable SAT currently is \$100,000). These procedures implement Section 854 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375) and the associated requirements of the Office of the Secretary of Defense (OSD) policy memorandum, subject: Proper Use of Non-DoD Contracts, dated October 29, 2004 (Enclosure One).

Ensuring the proper use of non-DoD contract vehicles requires an emphasis on market research, acquisition planning and early involvement in the procurement process by requiring activity, contracting, and financial management personnel. Although the requirements community has the primary responsibility to ensure compliance with this policy, all must work closely together to develop an acquisition strategy (that complies with the procedures contained in this memorandum) and to ensure that use of a non-DoD contract is in the best interest of the Army.

This memorandum applies to both direct acquisitions (i.e., orders placed by an Army contracting or ordering officer against a non-DoD contract) and assisted acquisitions (i.e., contracts awarded or orders placed by non-DoD organizations using Army funds) for supplies and services. Except as expressly noted herein, this memorandum applies to all non-DoD contract vehicles, to include orders placed by Army personnel against the General Services Administration's Federal Supply Schedules.

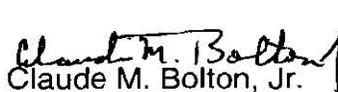
Defense Federal Acquisition Regulation Supplement (DFARS), Army Federal Acquisition Regulation Supplement (AFARS), and DoD Financial Management Regulation changes will be forthcoming as a result of this policy. In the interim, addressees shall use the procedures set forth in Enclosure Two, which have an effective date of January 1, 2005.

The Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology) points of contact are Ms. Barbara Binney at (703) 604-7113, and Mr. Ed Cornett at (703) 604-7142, office symbol SAAL-PP. The Office of the Assistant Secretary of the Army (Financial Management and Comptroller) point of contact is Mr. Joseph Hemphill at (703) 692-7487, office symbol BUC-E.

This memorandum also rescinds the Deputy Assistant Secretary of the Army (Policy and Procurement) memorandums, subject: Military Interdepartmental Purchase Requests (MIPRs), dated March 4, 2002 and March 8, 2002.



Valerie L. Baldwin  
Assistant Secretary of the Army  
(Financial Management and Comptroller)



Claude M. Bolton, Jr.  
Assistant Secretary of the Army  
(Acquisition, Logistics and Technology)

Enclosures:

1. OSD Memorandum, Proper Use of Non-DoD Contracts, October 29, 2004
2. Army Policy for Proper Use of Non-DoD Contracts

DISTRIBUTION:

ADMINISTRATIVE ASSISTANT TO THE SECRETARY OF THE ARMY  
ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS  
ASSISTANT SECRETARY OF THE ARMY FOR INSTALLATIONS AND ENVIRONMENT  
ASSISTANT SECRETARY OF THE ARMY FOR MANPOWER AND RESERVE AFFAIRS  
DEPUTY UNDER SECRETARY OF THE ARMY (OPERATIONS RESEARCH)  
DEPUTY CHIEF OF STAFF FOR PERSONNEL, UNITED STATES ARMY  
DEPUTY CHIEF OF STAFF FOR INTELLIGENCE, UNITED STATES ARMY  
DEPUTY CHIEF OF STAFF FOR OPERATIONS & PLANS, UNITED STATES ARMY  
DEPUTY CHIEF OF STAFF FOR LOGISTICS, UNITED STATES ARMY  
CHIEF INFORMATION OFFICER, OFFICE OF THE SECRETARY OF THE ARMY  
DEPUTY CHIEF OF STAFF FOR PROGRAMS  
CHIEF OF ENGINEERS, UNITED STATES ARMY CORPS OF ENGINEERS  
THE SURGEON GENERAL, OFFICE OF THE SURGEON GENERAL, UNITED STATES ARMY  
THE JUDGE ADVOCATE GENERAL, UNITED STATES ARMY  
ASSISTANT CHIEF OF STAFF FOR INSTALLATION MANAGEMENT, UNITED STATES ARMY  
THE INSPECTOR GENERAL

**Army Policy**  
**Proper Use of Non-Department of Defense (Non-DoD) Contracts**

1. Definitions: For purposes of this policy –

a. Assisted acquisition means a contract awarded or a task or delivery order placed on the behalf of DoD by a non-DoD agency.

b. Designated contracting office means the Army/DoD contracting office that is responsible for providing primary contracting support to a particular requiring activity.

- In a situation where a requiring activity does not have a designated contracting office, the requiring activity shall contact the Office of Procurement Policy and Support under the Deputy Assistant Secretary of the Army (Policy and Procurement) (e-mail PSStaff@hqda.army.mil or PSStaff@saalt.army.mil) for assignment of an Army contracting office to perform the functions set forth in this policy.

c. Direct acquisition means a task or delivery order placed by a DoD official under contract awarded by a non-DoD agency. The term includes an order placed against the General Services Administration Federal Supply Schedules (GSA FSS).

d. Fund authorizing official means the individual who executes the funds authorization portion of a Military Interdepartmental Purchase Request (MIPR) (DD Form 448, blocks 14-17) or other equivalent form used to provide funding to a non-DoD organization in support of an order for supplies or services, certifying that funds for the procurement are properly chargeable to the allotment(s) provided and that the available balances are sufficient to cover the estimated price of the order.

e. Fund certifying official means the individual who executes the fund certification portion of the commitment document (e.g., Purchase Request and Commitment, DA Form 3953 (blocks 19-22) or other equivalent form) certifying that the supplies or services being requested are properly chargeable to the allotment(s) provided, that available balances are sufficient to cover the cost thereof, and that funds have been committed.

f. Requiring activity means the Army organization that has a requirement for goods or services and requests the initiation of, and provides funding for, an assisted or direct acquisition to fulfill that requirement.

g. Assisted acquisition report means the annual report (per fiscal year) that shall be submitted by the requiring activity to report the use of assisted acquisitions.

**Army Policy**  
**Proper Use of Non-Department of Defense (Non-DoD) Contracts**

2. Applicability:

a. Except as noted herein, this policy shall apply to the use of non-DoD contract vehicles for all procurements of supplies or services above the simplified acquisition threshold (SAT). The generally applicable SAT currently is \$100,000 (41 U.S.C. 403(11)). For procurements in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States, the SAT currently is \$250,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and \$1,000,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States (41 U.S.C. 428a). See also, 41 U.S.C. 259(d)(1) and Federal Acquisition Regulation (FAR) Subpart 2.101. Future changes to the foregoing statutory thresholds shall be incorporated automatically into this policy.

b. This policy shall not apply to procurements of the following services:

(1) Printing, binding or blank-book work to which 44 U.S.C. 502 applies;

(2) Services available under programs pursuant to 2 U.S.C. 182c (section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106-481)).

3. Procedures:

a. Direct acquisition of supplies and services –

(1) Prior to the placement of a direct acquisition order, the head of the requiring activity (O6/GS-15 level or higher) must execute a written certification that:

- The order is in the best interest of the Army considering the factors of availability of a suitable DoD contract vehicle, ability to satisfy customer requirements, delivery schedule, cost effectiveness and price (including any discounts and fees), contract administration (including ability to provide contract oversight), socio-economic opportunities, the comparative costs of using a DoD, as opposed to non-DoD, contractual instrument – to include administrative fees charged by the non-DoD activity, and any other applicable considerations;
- The supplies or services to be provided are within the scope of the non-DoD contract;
- The proposed funding is appropriate for the procurement and is being used in a manner consistent with any appropriation limitations;
- All unique terms, conditions and requirements will be incorporated into the order or contract, as appropriate, to comply with all applicable

**Army Policy**  
**Proper Use of Non-Department of Defense (Non-DoD) Contracts**

DoD-unique statutes, regulations, directives and other requirements(e.g., compliance with 10 U.S.C. 2533a – Requirement to buy certain articles from American sources; exceptions (“Berry Amendment”)); and

- The review and approval procedures set forth in paragraph 4, Management Review and Approval Requirements, of this policy memorandum have been completed.

(2) The requiring activity shall prepare this certification with the assistance of the contracting officer in the designated contracting office and the fund certifying official, and shall obtain these individuals’ written coordination upon the certification.

(3) Additional requirements for direct acquisitions of services: Unless the contracting office has access to the servicing organization’s contract (including the statement of work), the requiring activity shall obtain written concurrence from the non-DoD contracting officer at the servicing organization that the services to be provided are within the scope of the servicing organization’s contract. The contracting officer in the designated contracting office also shall obtain written coordination from supporting legal counsel prior to placement of the order; legal review of orders for supplies shall be in accordance with contracting activity procedures.

(4) The contracting officer in the designated contracting office shall maintain a copy of the above certification and all accompanying reviews and coordination records in the contract file established for the direct acquisition.

(5) Army personnel are reminded that specific guidance regarding the use of MIPRs is available in the Federal Acquisition Regulation (FAR) subpart 17.5 and the Defense Federal Acquisition Regulation Supplement subpart 217.5 – “Interagency Acquisitions Under the Economy Act, ” DoD Instruction 4000.19 – “Interservice and Intragovernmental Support,” and DoD 7000.14R – DoD Financial Management Regulations (FMR), Volume 11A, Chapter 3 – “Economy Act Orders”. These regulations should be consulted prior to placement of an order with a non-Army contracting office within the DoD.

**b. Assisted acquisition of supplies and services –**

(1) Prior to the transmittal of an assisted acquisition request to a non-DoD organization, the requiring activity shall consult with its designated contracting office (if there is no designated contracting office, see paragraph 1.b.), which will advise regarding the various DoD contractual options available to obtain the supplies and services, and which will provide any unique terms, conditions and requirements that must be incorporated into the resultant non-DoD order or contract to comply with all applicable DoD-unique statutes, regulations, directives and other requirements.

**Army Policy**  
**Proper Use of Non-Department of Defense (Non-DoD) Contracts**

(2) Also prior to the transmittal of an assisted acquisition request to a non-DoD organization, the head of the requiring activity (O6/GS-15 level or higher) must execute a written certification that:

- The use of a non-DoD contract vehicle is in the best interest of the Army considering the factors of availability of a suitable DoD contract vehicle, ability to satisfy customer requirements, delivery schedule, cost effectiveness and price (including any discounts and fees), contract administration (including ability to provide contract oversight), socio-economic opportunities, the comparative costs of using a DoD, as opposed to non-DoD, contractual instrument – to include administrative fees charged by the non-DoD activity, and any other applicable considerations;
- The supplies or services to be provided are within the scope of the non-DoD contract;
- The proposed funding is appropriate for the procurement and is being used in a manner consistent with any appropriation limitations;
- All unique terms, conditions and requirements will be incorporated into the order or contract, as appropriate, to comply with all applicable DoD-unique statutes, regulations, directives and other requirements (e.g., compliance with 10 U.S.C. 2533a – Requirement to buy certain articles from American sources; exceptions (“Berry Amendment”)); and
- The review and approval procedures set forth in paragraph 4, Management Review and Approval Requirements, of this policy memorandum have been completed.

(3) The requiring activity shall prepare this certification with the assistance of the contracting officer in the designated contracting office and the fund authorizing official, and shall obtain these individuals’ written coordination upon the certification. The requiring activity shall also obtain written concurrence from the non-DoD contracting officer at the servicing organization that the supplies or services to be provided are within the scope of the non-DoD contract. The fund authorizing official shall annotate the MIPR or other equivalent form used to transmit funding to the servicing organization with the following statement: “This requirement has been processed in accordance with Section 854 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375) and the Army Policy memorandum on Proper Use of Non-Department of Defense contracts, dated July 12, 2005. The order is properly funded (correct appropriation and year), and it is in compliance with Army procedures for placement of orders on the Army’s behalf by a non-DoD organization. Reference <https://webportal.saalt.army.mil/saal-zp/armypolicyuseofnon-dodcontracts.pdf>. The head of the requiring activity also shall

**Army Policy**  
**Proper Use of Non-Department of Defense (Non-DoD) Contracts**

obtain written coordination from supporting legal counsel prior to transmittal of the order to the servicing agency.

(4) The requiring activity and fund authorizing official shall maintain a copy of the above certification and all accompanying reviews and coordination records in a file established for the non-DoD transaction. The requiring activity shall provide a copy of this certification to the non-DoD contracting officer at the servicing organization.

(5) The requiring activity shall request the servicing organization contracting officer to provide it with a copy of the Federal Procurement Data System report submitted in connection with the procurement action.

(6) For assisted acquisitions that are subject to the Economy Act, 31 U.S.C. 1535, the requiring activity also shall comply with the requirements of FAR Subpart 17.5 (including the determination and findings requirements at FAR 17.503) and Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 217.5. DoD Instruction 4000.19, Interservice and Intragovernmental Support, and the DoD Financial Management Regulation, DoD 7000.14-R, Vol. 11A, also apply to these transactions.

**4. Management Review and Approval Requirements:**

a. The review and approval procedures for acquisition of services set forth at DFARS Subpart 237.170-3(b), Army Federal Acquisition Regulation Supplement (AFARS) 5137.170-3(b) and AFARS 5137.5-3 apply to direct and assisted acquisitions. In accordance with these provisions, requiring activities shall obtain advance approval of direct and assisted acquisitions of services as follows:

(1) For a total planned dollar value of \$500M or more, or identified by the Assistant Secretary of the Army (Acquisition, Logistics and Technology (ASA(ALT))) as special interest, obtain Deputy Assistant Secretary of the Army (Policy & Procurement) (DASA (P&P)) approval.

(2) For a total planned dollar value greater than \$100M and less than \$500M, obtain approval of the cognizant Program Executive Officer (PEO), Direct Reporting Program Manager (DRPM), or Head of Contracting Activity (HCA) (at HCA's discretion, delegable to a level no lower than the Principal Assistant Responsible for Contracting (PARC)) unless the acquisition is already covered in an acquisition strategy approved by the cognizant official; obtain PEO/DRPM/HCA approval of all acquisitions designated as special interest.

(3) For a total planned dollar value less than \$100M, follow Major Command (MACOM) and the Army Contracting Agency (ACA) procedures.

(4) For a total planned dollar value less than \$100M where the requiring activity does not fall under a MACOM or the ACA, follow procedures established by the

**Army Policy**  
**Proper Use of Non-Department of Defense (Non-DoD) Contracts**

head of the requiring activity; such procedures should be commensurate with the acquisition's risk and operational impact.

b. Requiring activities shall obtain advance approval of direct and assisted acquisitions of supplies as follows:

(1) For a total planned dollar value of \$500M or more, obtain the approval of the DASA(P&P).

(2) For a total planned dollar value greater than \$100M and less than \$500M, obtain the approval of the PEO, DRPM or requiring activity head who is a General Officer (GO) or a member of the Senior Executive Service (SES).

(3) For a total planned dollar value less than \$100M, follow procedures established by the head of the requiring activity; such procedures should be commensurate with the acquisition's risk and operational impact.

5. Data Collection and Reporting Requirements for Assisted Acquisitions:

a. MACOM Commanders and PEOs/DRPMs shall ensure that requiring activities within their organizations collect data on their use of assisted acquisitions for purposes of analysis. No later than November 1st of each year, MACOM Commanders and PEOs/DRPMs shall submit the enclosed Army Assisted Acquisition Summary Report. A central report per Department of Defense Activity Address Code (DODAAC) from the MACOM Commanders and PEOs/DRPMs is required. To facilitate the collection of this data, the enclosed Assisted Acquisition Individual Report will be completed by the requiring activity for each funding document, which will be part of the documentation described in paragraph 3.b. above. The Army Assisted Acquisition Summary Report is available in a downloadable Excel spreadsheet format found at the ASA(ALT) website at:

<https://webportal.saalt.army.mil/saal-zp/armyreportforassistedacquisition.xls>

Download this report to enter the data and then electronically submit this report to PSStaff@hqda.army.mil or PSStaff@saalt.army.mil to the Office of Procurement Policy and Support (SAAL-PP). Negative reports are required in the event that no reportable assisted acquisitions were conducted. Requiring activities that do not fall under a MACOM or PEO/DRPM shall consolidate and submit the summary report directly to SAAL-PP.

b. To the maximum extent possible, the Federal Procurement Data System-Next Generation (FPDS-NG), the acquisition data system to be used by all federal agencies, will be relied upon to provide contract award data for analysis on non-DoD assisted acquisitions. The FPDS-NG is currently scheduled for implementation in fiscal year 2006. A change is being requested to add assisted acquisition to this report. However,

**Army Policy**  
**Proper Use of Non-Department of Defense (Non-DoD) Contracts**

until that revision is made to the regulations, the requiring activity will maintain a centrally managed report and consolidate with the PEO/DRPM, the MACOM, or other requiring activity. Once the FPDS-NG system is automated to capture assisted acquisition reports, then the PM or the requiring activity will ask the non-DoD contracting office for a copy of the FPDS report for their assisted acquisition(s) and maintain a copy in the applicable file.



DEPARTMENT OF THE AIR FORCE  
WASHINGTON DC

6 DEC 2004

OFFICE OF THE ASSISTANT SECRETARY

MEMORANDUM FOR ALMAJCOM-FOA-DRU/CV/LG/FM/PK

SUBJECT: Proper Use of Non-DoD Contracts

This memo establishes Air Force policy for reviewing and approving the use of non-DoD contract vehicles when procuring supplies and services on or after January 1, 2005, for amounts greater than the simplified acquisition threshold (\$100K). These procedures are being implemented to comply with Section 854 of the FY05 National Defense Authorization Act and an OSD memo on Proper Use of Non-DoD Contracts, dated 29 OCT 04.

Ensuring the proper use of non-DoD contracts requires an emphasis on market research, acquisition planning and early involvement by contracting and financial management personnel in the acquisition process. Acquisition program managers and requirements personnel, financial management personnel and contracting officers must work closely together to ensure the selected acquisition strategy complies with the requirements and procedures contained in this policy memo and to ensure use of a non-DoD contract is in the best interest of the Air Force.

This memo addresses both direct acquisitions (i.e. orders placed by Air Force Contracting Officers against non-DoD contracts) and assisted acquisitions (i.e. contracts awarded or orders placed by non-DoD organizations using Air Force funds) for supplies and services.

DFARS, AFFARS and financial management regulation changes as a result of this policy will be forthcoming. In the interim, see the attachment for Air Force procedures that are effective as of January 1, 2005.

Please direct any questions to Lt Col Rich Unis, SAF/AQCP, DSN 425-7030 or (703) 588-7030, [Richard.Unis@pentagon.af.mil](mailto:Richard.Unis@pentagon.af.mil) or Ms. Judith Oliva, SAF/FMBMM, DSN 425-8250 or (703) 697-8250, [Judith.Oliva2@pentagon.af.mil](mailto:Judith.Oliva2@pentagon.af.mil).

MARVIN R. SAMBUR  
Assistant Secretary of the Air Force  
(Acquisition)

MICHAEL MONTELONGO  
Assistant Secretary of the Air Force  
(Financial Management and Comptroller)

Attachment:  
Air Force Policy for Proper Use of Non-DoD Contracts

## Air Force Policy Proper Use of Non-DoD Contracts

### 1) Applicability and Definitions:

This policy applies to the use of non-DoD contract vehicles for all acquisitions of supplies or services above the Simplified Acquisition Threshold (SAT), other than procurements of the following services:

(1) Printing, binding or blank-book work to which 44 U.S.C. 502 applies; and

(2) Services available under programs pursuant to 2 U.S.C. 182c (section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106-481)).

**Direct Acquisition** - a task or delivery order placed by an Air Force official against a contract vehicle established outside the DoD.

**Assisted Acquisition** - a contract awarded or task or delivery order placed on behalf of DoD by an official of the United States outside DoD.

2) Direct Acquisition of Supplies - For all direct acquisition orders of supplies placed against non-DoD contracts (including GSA Federal Supply Schedule (FSS) Orders), and for each Blanket Purchase Agreement issued against a GSA FSS, the Program Manager, Project Manager (for Medical Treatment Facilities (MTFs), the Medical Logistics Flight Commander), requirement initiator (as appropriate) or the Contracting Officer must document the contract file to reflect:

a) Order is in the best interest of the Air Force. Consider such factors as satisfying customer requirements, cost effectiveness and price, delivery schedule, non-availability of a suitable contract within DoD, contract administration, small business opportunities and any other factors as applicable.

b) Supplies to be provided are within the scope of the basic contract.

c) Funding is available and appropriate for the acquisition. The financial management organization shall validate that the funds are appropriate for the acquisition.

d) Any terms, conditions and/or requirements unique to DoD or the Air Force are incorporated into the order to comply with applicable statutes, regulations and directives (e.g. the requirement that the items listed in DFARS 225.7002-1 and procured with DoD funds be of domestic origin, unique identification requirements, etc.)

e) Certify that procedures contained in this policy memo have been followed.

3) Assisted Acquisition of Supplies - The requiring organization (for the Air Force medical service at local level the Medical Logistics Flight Commander, and at Airstaff level, the Chief,

Procurement Services at the Air Force Medical Logistics Office) shall coordinate with their servicing Air Force contracting and financial management office on all supplies requirements proposed for award by non-DoD organizations using Air Force funds. The contracting organization shall advise the requiring organization as to the various contractual options available to obtain the supplies and any DoD terms and conditions that must be incorporated into the resultant order or contract. The requiring organization shall document the following:

- a) Use of a non-DoD contract is in the best interest of the Air Force considering the factors of satisfying customer requirements, cost effectiveness and price, delivery schedule, non-availability of a suitable contract within DoD, contract administration, small business opportunities and any other factors as applicable.
- b) The supplies to be provided are within the scope of the contract to be used. Coordinate with the non-DoD Contracting Officer to verify the requirement is within the scope of the assisting agency's selected contract.
- c) Funding appropriation is legal and proper for the acquisition and used in accordance with any appropriation limitations. The financial management organization shall validate that the funds are appropriate for the acquisition.
- d) Any terms, conditions and/or requirements unique to DoD or the Air Force that must be incorporated into the resultant order or contract to comply with applicable statutes, regulations and directives (e.g. the requirement that the items listed in DFARS 225.7002-1 and procured with DoD funds be of domestic origin, unique identification requirements, etc.)
- e) Certify that procedures contained in this policy memo have been followed.

For interagency acquisitions subject to the Economy Act (31 U.S.C. 1535), comply with the D&F requirements at FAR 17.503. A sample D&F template for Economy Act transactions is contained at AFFARS Informational Guidance 5317.5. Note - Assisted acquisitions by GSA are generally authorized by other statutes, e.g. Federal Property and Administrative Services Act, Clinger-Cohen Act, etc, and are not subject to the Economy Act, so no Economy Act D&F is needed. Similarly, health care supplies and equipment purchased under sharing agreements between the Air Force and the Veterans Administration pursuant to 38 U.S.C. 8111 are not subject to the Economy Act and no Economy Act D&F is needed (although other procurement laws and regulations still apply).

- 4) Direct Acquisition of Services - The Contracting Officer must ensure compliance with AFFARS 5337.170-3, Approval Requirements, for all orders of services placed against non-DoD contracts. The Program Manager, Project Manager (for Medical Treatment Facilities (MTFs), the Medical Logistics Flight Commander), requirement initiator (as appropriate) or the Contracting Officer must document the contract file to reflect:

- a) Order is in the best interest of the Air Force. Consider such factors as satisfying customer requirements, cost effectiveness and price, delivery schedule, non-availability of a suitable contract within DoD, contract administration, small business opportunities and any other factors as applicable.

- b) The services to be provided are within the scope of the basic contract.
  - c) Funding is available and appropriate for the acquisition. The financial management organization shall validate that the funds are appropriate for the acquisition.
  - d) Any terms, conditions and/or requirements unique to DoD or the Air Force are incorporated into the order to comply with applicable statutes, regulations and directives (e.g. the requirement that the items listed in DFARS 225.7002-1 and procured with DoD funds be of domestic origin, unique identification requirements, etc.)
  - e) Certify that procedures contained in this policy memo have been followed.
- 5) Assisted Acquisition of Services - Ensure compliance with AFFARS 5337.170-3, Approval Requirements, for all services requirements that are proposed for award by non-DoD organizations using Air Force funds. The requiring organization shall document the following:
- a) Use of a non-DoD contract is in the best interest of the Air Force considering the factors of satisfying customer requirements, cost effectiveness and price, delivery schedule, non-availability of a contract within DoD, contract administration, and any other factors as applicable.
  - b) The services to be provided are within the scope of the contract to be used. Coordinate with the non-DoD Contracting Officer to verify the requirement is within the scope of the assisting agency's selected contract.
  - c) Funding appropriation is proper for the acquisition and used in accordance with any appropriation limitations. The financial management organization shall validate that the funds are appropriate for the acquisition.
  - d) Any terms, conditions and/or requirements unique to DoD or the Air Force that must be incorporated into the resultant order or contract to comply with applicable statutes, regulations and directives (e.g. the requirement that the items listed in DFARS 225.7002-1 and procured with DoD funds be of domestic origin, unique identification requirements, etc.)
  - e) Certify that procedures contained in this policy memo have been followed.

For interagency acquisitions subject to the Economy Act (31 U.S.C. 1535), comply with the D&F requirements at FAR 17.503. A sample Economy Act D&F template is contained at AFFARS Informational Guidance 5317.5. Note - Assisted acquisitions by GSA are generally authorized by other statutes, e.g. Federal Property and Administrative Services Act, Clinger-Cohen Act, etc, and are not subject to the Economy Act, so no Economy Act D&F is needed. Similarly, health care supplies and equipment purchased under sharing agreements between the Air Force and the Veterans Administration pursuant to 38 U.S.C. 8111 are not subject to the Economy Act and no Economy Act D&F is needed (although other procurement laws and regulations still apply).

For assisted acquisitions of supplies and services, the Federal Procurement Data System - Next Generation (FPDS-NG), the acquisition data system to be used by all non-DoD agencies, will be relied upon to provide data for analysis on assisted acquisitions. FPDS-NG is currently scheduled for implementation in early calendar year 2005.



DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
1000 NAVY PENTAGON  
WASHINGTON DC 20350-1000

DEC 20 2004

MEMORANDUM FOR DISTRIBUTION

Subj: PROPER USE OF NON-DOD CONTRACTS

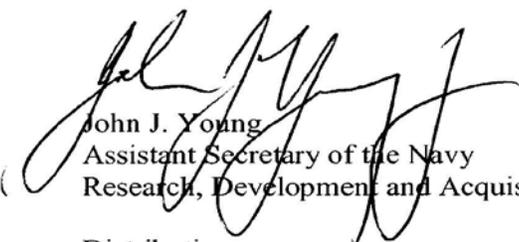
Ref: (a) Federal Acquisition Regulation (FAR) 2.101

Encl: (1) National Defense Authorization Act for FY 2005, Section 854  
(2) OSD memorandum of October 29, 2004  
(3) DoN Guidelines for Proper Use of Non-DoD Contracts of December 14, 2004

Recent Department of Defense (DoD) and other non-DoD Inspector General audits noted that DoD encountered a variety of problems using contracts awarded by non-DoD agencies. Congress and the Office of the Secretary of Defense (OSD) reacted to these findings by requiring specific approvals for use of non-DoD contracts (enclosures (1) and (2) respectively).

Addressees are required to establish procedures for reviewing and approving the use of non-DoD contract vehicles for supplies or services in excess of the simplified acquisition threshold (reference (a)) on or after January 1, 2005. Procedures must be consistent with financial management and acquisition regulations and conform to the guidelines of enclosure (3). Ensuring the proper use of non-DoD contracts requires collaboration of the DoN program management, financial management, legal and contracting communities. Program and other requiring managers must seek early involvement of appropriate financial management and contracting personnel to ensure that the resultant acquisition strategy is in the best interests of DoD in terms of meeting requirements, schedule, cost effectiveness, oversight and administration, and availability of a contract vehicle within DoD.

Within ten days from the date of this memorandum, please provide contact information for the individual(s) within your Command responsible for developing these procedures. Submit the contact information, and address questions/comments to Bob Johnson at [ROBERT.F.JOHNSON@NAVY.MIL](mailto:ROBERT.F.JOHNSON@NAVY.MIL) or 703-693-2936.

  
John J. Young  
Assistant Secretary of the Navy  
Research, Development and Acquisition

  
Richard Greco, Jr.  
Assistant Secretary of the Navy  
Financial Management and Comptroller

Distribution:  
Page 2

Subj: PROPER USE OF NON-DOD CONTRACTS

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PEO for Carriers

PEO for Air ASW, Assault & Special Mission Programs

PEO for Strike Weapons and Unmanned Aviation

PEO for Joint Strike Fighter

PEO for Integrated Warfare Systems

PEO for Ships

PEO for Submarines

PEO for Littoral and Mine Warfare

PEO for Tactical Air Programs

PEO for Information Technology

PEO for C4I

PEO for Space Systems

DRPM for Strategic Systems Programs

DRPM for Expeditionary Fighting Vehicle

DRPM for NMCI

DRPM for ERP

Copy to: Page 3

## **DoN Guidelines for Proper Use of Non-DoD Contracts**

### **1. Definitions:**

“Assisting Activity” means the department/agency/activity outside of DoD with contracting responsibility for a DoD requirement.

“Assisted Acquisition” means a contract awarded or a task or delivery order placed on behalf of the DoD by an official of the United States outside of the DoD.

“Direct Acquisition” means a task or delivery order placed by DoN against a contract vehicle established outside of the DoD.

“Non-DoD contracts” means contracts awarded by an official outside the DoD. These include Federal Supply Schedules, Blanket Purchase Agreements issued against Federal Supply Schedules, and other contracts/schedules awarded outside DoD.

“Requiring Individual” means the individual in the organization responsible for identifying and fulfilling the requirement.

“Requiring Activity Supporting Contracting Office” means the DoN contracting activity normally providing contracting support to the requiring organization.

### **2. Applicability:**

These guidelines apply to the use of non-DoD contract vehicles for acquisition of supplies and/or services at or above the Simplified Acquisition Threshold identified in Section 2.101 of the Federal Acquisition Regulation.

### **3. General**

Use of non-DoD contract vehicles is encouraged when it is the best method of procurement to meet DoD requirements. Non-DoD contract vehicles shall not be used to ‘bank’ funds. Nor is use of non-DoD contract vehicles a substitute for poor planning.

The primary responsibility to ensure that proper procedures are followed lies with the requiring organization. Requiring individuals must seek early involvement of their legal, financial management and Requiring Activity Supporting Contracting Office personnel to ensure that the acquisition strategy is in the best interests of DoD in terms of meeting requirements, schedule, cost effectiveness, oversight and administration, and availability of a contract vehicle within

ENCLOSURE (3)

DoD. For direct acquisitions, the DoN contracting officer can make the within scope determination and ensure that required DoD-unique terms and conditions are incorporated into the specific contract action.

Legal, financial management and Requiring Activity Supporting Contracting Office personnel shall advise the requiring individuals of DoD-unique terms and conditions based on the specifics of the proposed acquisition. These are DoD unique terms/conditions that are required by statute/directive/etc. to apply to DoD acquisition, regardless of who places the award. DoN legal, financial management and Requiring Activity Supporting Contracting Office personnel shall work with the requiring individuals to ensure that the assisting activity understands and incorporates such DoD unique terms and conditions.

#### **4. Assisted Acquisitions**

##### **4.1 Decision Authority**

ASN(RDA) is the decision authority for assisted acquisitions exceeding \$500,000,000. DASN(ACQ) is the decision authority for acquisitions exceeding \$50,000,000. The Requiring Organization Commander/Commanding Officer is the decision authority for requirements at or below \$50,000,000. This authority may be delegated, but for requirements above \$5,000,000, decision authority may only be delegated to an official in the Requiring Organization who is a Flag or General Officer; a member of the Senior Executive Service; or, for a requirement arising from a claimant activity without local Flag/General Officer/SES, the commanding officer of that activity.

##### **4.2 Assisted Acquisition of Supplies**

Requiring individuals coordinate with legal, financial management and Requiring Activity Supporting Contracting Office personnel early in the acquisition process for identification of DoD-unique terms/conditions and availability of suitable contracts within DoD.

For assisted acquisitions of supplies at or above the Simplified Acquisition Threshold placed against non-DoD contracts, requiring individuals must document for the record the following:

- (a) The action is in the best interests of DoD in terms of satisfying customer requirements, cost effectiveness, delivery schedule, availability/non-availability of suitable contracts within DoD, contract administration and any other applicable considerations.
- (b) DoD/DoN unique terms and conditions that are provided to the assisting activity and to be included in the contract award.
- (c) Funding is available and appropriate for the acquisition.
- (d) Supplies to be provided are within the scope of the basic contract; and
- (e) Procedures for assisted acquisition of supplies have been followed.

### **4.3 Assisted Acquisition of Services**

Requiring individuals coordinate with legal, financial management and Requiring Activity Supporting Contracting Office personnel early in the requirements development phase for identification of DoD-unique terms/conditions and availability of suitable contracts within DoD.

For assisted acquisition of services at or above the Simplified Acquisition Threshold placed against non-DoD contracts, requiring individuals must document for the record the following:

- (a) The action is in the best interests of DoD in terms of satisfying customer requirements, cost effectiveness, delivery schedule, availability/non-availability of suitable contracts within DoD, contract administration and any other applicable considerations.
- (b) Approvals required by Navy-Marine Corps Acquisition Regulation Supplement 5237.170-3(b) have been obtained.
- (c) DoD/DoN unique terms and conditions were provided to the assisting activity and will be included in the contract award.
- (d) Funding is available and appropriate for the acquisition.
- (e) Services being ordered are within the scope of the basic contract; and
- (f) Procedures for assisted acquisition of services have been followed.

### **4.4 Economy Act**

31 U.S.C. 1535 permits ordering supplies/services from another Federal agency when there is no other specific authority to do so. Interagency acquisitions subject to the Economy Act must comply with the requirements of Federal Acquisition Regulation 17.503 and Navy-Marine Corps Acquisition Regulation Supplement 5217.503. The Economy Act determination and findings may be used to document compliance with the procedures herein, provided that the determination addresses application of DoD-unique terms and conditions.

Assisted acquisitions by non-DoD activities are frequently covered by other statutory authorization and not covered by the Economy Act. Requiring individuals are responsible for ensuring there is adequate documentation to demonstrate that these assisted acquisitions comply with the OSD and DoN policies and procedures set forth herein.

## **5. Direct Acquisitions**

### **5.1 Decision Authority**

The decision authority for direct acquisitions is the business clearance approval official.

### **5.2 Direct Acquisition of Supplies**

For direct acquisition of supplies at or above the Simplified Acquisition Threshold placed against non-DoD contracts, the contracting officer must document for the record the following:

- (a) The action is in the best interests of DoD in terms of satisfying customer requirements, cost effectiveness, delivery schedule, availability/non-availability of suitable contracts within DoD, contract administration and any other applicable considerations.
- (b) Funding is available and appropriate for the acquisition.
- (c) Terms, conditions and/or requirements unique to DoD or DoN are incorporated into the action to comply with applicable statutes, regulations and directives.
- (d) Supplies being ordered are within the scope of the basic contracts; and
- (e) Procedures for direct acquisition of supplies have been followed.

### **5.3 Direct Acquisition of Services**

For direct acquisition of services at or above the Simplified Acquisition Threshold placed against non-DoD contracts, requiring individuals or the contracting officer must document for the record the following:

- (a) Compliance with the approval requirements at Navy-Marine Corps Acquisition Regulation Supplement 5237.170-3.
- (b) The action is in the best interests of DoD in terms of Satisfying customer requirements, cost effectiveness, delivery schedule, non-availability of a suitable contracts within DoD, contract administration and any other applicable considerations.
- (c) Funding is available and appropriate for the acquisition.
- (d) Terms, conditions and/or requirements unique to DoD or DoN are incorporated into the action to comply with applicable statutes, regulations and directives.
- (e) Services being ordered are within the scope of the basic contracts; and
- (f) Procedures for direct acquisition of services have been followed.

### **6. Record Data**

At a minimum, the Requiring Organization shall establish procedures to record and report the data identified in Attachment (1) [NOTE: to the extent practicable, it is recommended that records be retained in electronic format to facilitate reporting and in anticipation of specific reporting requirements from OSD.]. Data records should be retained for at least two years following completion of the resultant contract/order.

Specific reporting requirements will be provided by separate correspondence.

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## APPENDIX B



COMPTROLLER

**UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1100**

MAR 1 2007

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
COMMANDERS OF THE COMBATANT COMMANDS  
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING  
COMMANDER, U.S. SPECIAL OPERATIONS COMMAND  
COMMANDER, U.S. TRANSPORTATION COMMAND  
ASSISTANT SECRETARIES OF DEFENSE  
DIRECTOR, OPERATIONAL TEST AND EVALUATION  
INSPECTOR GENERAL OF THE DEPARTMENT  
OF DEFENSE  
ASSISTANTS TO THE SECRETARY OF DEFENSE  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF DOD FIELD ACTIVITIES

**SUBJECT: Advance Payments to Non-Department of Defense (DoD) Federal Agencies  
for Interagency Acquisitions**

In accordance with current DoD policy, all DoD Components are directed to stop the practice of advancing funds to non-DoD federal entities unless the DoD Components are specifically authorized by law, legislative action, or Presidential authorization. This includes the practice of permitting advance billings without the receipt of goods or services. All existing advancements retained by a non-DoD federal agency must be returned.

Components requesting goods or services from a non-DoD federal agency must be fully aware of the outside agency's billing practices and take appropriate action to ensure DoD funds are not disbursed in advance of contract performance. In addition, Components must work with their servicing disbursement sites to revise trading partner agreements to restrict other federal agencies' ability to withdraw funds prior to the delivery of goods or services performed.

The Department's legal authority to make advances is contained in Title 31, United States Code, Section 3324 and the Department of Defense Financial Management Regulation ("DoDFMR"), Volume 4, Chapter 5, which states that an advance of public money may be made only if it is authorized by:

a. a specific appropriation or other law; or

b. the President to be made to—

(1) a disbursing official if the President decides the advance is necessary to carry out--

(a) the duties of the official promptly and faithfully; and

(b) an obligation of the Government; or

(2) an individual serving in the armed forces at a distant station if the President decides the advance is necessary to disburse regularly pay and allowances.”

The specific appropriation or law authorizing the advance must be cited on the obligating and/or interagency agreement documents for those few exceptions where advances are authorized in a specific appropriation or law authorizing DoD to advance funds.

My point of contact is Ms. Kathryn Gillis, who can be reached at (703) 697-6875 or by e-mail at [kathryn.gillis@osd.mil](mailto:kathryn.gillis@osd.mil).



Tina W. Jonas

## APPENDIX C



COMPTROLLER

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1100

MAR 24 2005

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (FINANCIAL  
MANAGEMENT AND COMPTROLLER)  
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL  
MANAGEMENT AND COMPTROLLER)  
ASSISTANT SECRETARY OF THE AIR FORCE  
(FINANCIAL MANAGEMENT AND COMPTROLLER)  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Proper Use of Interagency Agreements for Non-Department of Defense  
Contracts Under Authorities Other Than the Economy Act

Billions of dollars have been provided by Department of Defense (DoD)  
Components to the General Services Administration (GSA) Federal Technology Service  
and other Federal agencies, by agreement, to acquire a wide variety of supplies and  
services.

Based on recent work by the DoD Office of Inspector General (OIG), it appears  
that some interagency agreements continue to be used in an attempt to keep funds available  
for new work after the period of availability for those funds has expired. This was the  
subject of the DoD Comptroller memorandum dated September 25, 2003, subject: "Fiscal  
Principles and Interagency Agreements" (Attachment 1). This memo, in conjunction with  
DoD Comptroller and DoD Acquisition, Technology and Logistics memorandum dated  
October 29, 2004, subject: "Proper Use of Non-DoD Contracts" (Attachment 2),  
establishes DoD policy that includes assisted acquisitions.

To ensure interagency agreements (under other than the Economy Act) for non-  
DoD contracts are used in accordance with existing laws and DoD policy, and to save  
Government resources, the following actions should be completed by June 1, 2005:

- Completed agreements. All interagency agreements shall be reviewed to  
determine if they are complete. Completed agreements shall be closed out, and  
the financial accounts shall be adjusted to ensure the return of any funds held  
by servicing agencies, irrespective of whether the funds have expired.
- Services. Funds provided to a servicing agency that are now past their period  
of availability ("expired funds") shall, in the case of services, be deobligated  
and returned from the servicing agency unless all of the following criteria are met--
  - o the order was made during the period of availability of the funds;
  - o the order was specific, definite and certain, with specificity similar to  
that found in contractual orders; **and**

- o in the case of severable services, the performance period does not exceed one year.
- Goods. Funds provided to a servicing agency that are now expired shall, in the case of ordered goods, be deobligated and returned from the servicing agency unless the request for goods was:
  - o made during the period of availability of the funds; **and**
  - o for an item that, solely because of delivery, production lead time, or unforeseen delays, could not be delivered within the period of availability of those funds.
- Limitation on Work. Expired funds shall not be available for work outside the original interagency agreement.
- Performance.
  - o DoD expired funds may be used by a servicing agency to enter into a non-severable service contract, provided the interagency agreement was properly executed while the funds were available and with the good faith intent that the servicing agency commence work and perform without unnecessary delay.
  - o DoD expired funds may *not* be used by a servicing agency to enter into a severable services contract. However, DoD expired funds may *continue* to be used for a severable services contract, properly entered into by the servicing agency *before* the funds expire, provided the period of contract performance does not exceed one year.
- Oversight. Interagency agreements in excess of the simplified acquisition threshold shall comply with the DoD policy memorandum, "Proper Use of Non-DoD Contracts," (Attachment 2); the DoD Components' procedures for proper use of non-DoD contracts; the procedures found in the Federal Acquisition Regulation Part 7, "Acquisition Planning" and Part 17.5, "Interagency Acquisitions Under the Economy Act," and DoD Instruction 4000.19, "Interservice and Intragovernmental Support."

The GSA provided a summary of unobligated funds by DoD Component and fiscal year as of December 30, 2004 (Attachment 3). You are to immediately initiate needed actions to review these unobligated balances, coordinate with GSA to return unobligated balances to your respective offices, and coordinate with your servicing accounting office to ensure that appropriate adjustments to the accounting records are recorded before June 1, 2005. You are to certify to my office, no later than June 30, 2005, that you have completed these actions in accordance with the DoDFMR, Volume 3, Chapter 8, Section 6804, "Tri-Annual Review of Commitments and Obligations." In addition, all potential violations of the Antideficiency Act detected during this review shall be processed promptly in accordance with the Department of Defense Financial Management Regulation (DoDFMR), Volume 14.

My point of contact for this matter is Ms. Carol Phillips at 703-693-6503, or e-mail at carol.phillips@osd.mil. My point of contact for tri-annual reviews is Mr. Oscar Covell at 703-697-6149, or e-mail at oscar.covell@osd.mil.

  
Teresa McKay  
Deputy Chief Financial Officer

Attachments:  
As stated

cc:  
USD (AT&L)



OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

SEP 20 2005

ACQUISITION  
TECHNOLOGY  
AND LOGISTICS

MEMORANDUM FOR: SEE DISTRIBUTION

Subject: Interagency Acquisition: A Shared Responsibility

On July 29, 2005, the United State Government Accountability Office (GAO) issued a report entitled "Interagency Contracting: Franchise Funds Provide Convenience, but Value to DoD is Not Demonstrated (GAO Report GAO-05-546)" which, among other things, emphasized to both the Department of Defense (DoD) and the assisting agencies the importance of understanding shared responsibilities in the interagency acquisition process. The report can be found at <http://www.acq.osd.mil/dpap/specificpolicy/index.htm>.

Teamwork and communication are critical to the success of interagency acquisitions. Although the Federal Acquisition Regulations state that it is ultimately the contracting officer's responsibility to determine if a procurement package is sufficient for use in a solicitation, order, or contract, it is incumbent upon the DoD customer to provide the assisting agency with sufficient detail concerning the requirement. When using an assisting agency to issue a solicitation, place an order, or issue a contract on our behalf, DoD customers must ensure that their requirements are clearly defined, and include measurable outcomes desired. Similarly, all parties to an interagency acquisition must ensure that the duties and responsibilities of contract administration and oversight are clearly assigned and correctly performed.

The decision to meet DoD mission needs via an interagency acquisition is a business decision. DoD and the assisting agencies have a shared responsibility when an interagency acquisition is determined to be the right approach to meet DoD requirements. This shared responsibility begins with acquisition planning and does not end until contract close-out. The DoD policy on the "Proper Use of Non-DoD Contracts" can be found at <http://www.acq.osd.mil/dpap/specificpolicy/index.htm>. My point of contact is Mike Canales. He can be reached at 703-695-8571 or via e-mail at [michael.canales@osd.mil](mailto:michael.canales@osd.mil).

Domenic C. Cipicchio  
Acting Director, Defense Procurement  
and Acquisition Policy





COMPTROLLER

UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1100

MAR 27 2006

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
COMMANDERS OF THE COMBATANT COMMANDS  
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING  
COMMANDER, U.S. SPECIAL OPERATIONS COMMAND  
COMMANDER, U.S. TRANSPORTATION COMMAND  
ASSISTANT SECRETARIES OF DEFENSE  
DIRECTOR, OPERATIONAL TEST AND EVALUATION  
INSPECTOR GENERAL OF THE DEPARTMENT  
OF DEFENSE  
ASSISTANTS TO THE SECRETARY OF DEFENSE  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF DOD FIELD ACTIVITIES

SUBJECT: Proper Use of Interagency Agreements with Non-Department of Defense  
Entities Under Authorities Other Than the Economy Act

Despite guidance issued jointly by the Under Secretary of Defense (Comptroller) and the Under Secretary of Defense (Acquisition, Technology and Logistics) on October 29, 2004, and additional guidance issued by the Deputy Chief Financial Officer on March 24, 2005, the Department of Defense's (DoD) practices for the use and control of DoD funds under interagency agreements require improvement. DoD purchases made through non-DoD entities continue to violate these policies and existing regulations.

I am directing you to commence the following corrective actions immediately. Failure to complete these actions may result in a revocation of your authority to transfer funds to non-DoD entities executing interagency agreements.

- Review all interagency agreements to determine their status. Close out all completed agreements and coordinate with the outside entity to return all funds remaining on completed agreements no later than June 30, 2006.
- Funds that were provided to a servicing agency for services or goods where the funds are now past their period of availability ("expired funds") shall be deobligated no later than June 30, 2006 unless they meet the criteria identified in the attached memorandum, "Proper Use of Interagency Agreements for Non-Department of Defense Contracts Under Authorities Other Than the Economy Act," dated March 24, 2005. Under no circumstances should any existing order

for severable services using Operations and Maintenance funds extend beyond one year from the date the funds were accepted by the servicing agency.

- Insert the following statement on all future interagency agreement funding documents for severable services: "These funds are available for services for a period not to exceed one year from the date of obligation and acceptance of this order. All unobligated funds shall be returned to the ordering activity no later than one year after the acceptance of the order or upon completion of the order, which ever is earlier."
- Place the following statement on all future interagency agreement funding documents for goods: "I certify that the goods acquired under this agreement are legitimate, specific requirements representing a bona fide need of the fiscal year in which these funds are obligated."
- Include a specific attestation on your triannual review certification that all existing interagency agreements are consistent with DoD policy.
- Provide my office with a report on the amounts reviewed and deobligated no later than July 15, 2006.

My point of contact is Mr. Dave Patterson. He can be reached at (703) 697-6142 or by e-mail at [jack.patterson@osd.mil](mailto:jack.patterson@osd.mil).



Tina W. Jonas

Attachment:  
As stated



COMPTROLLER

UNDER SECRETARY OF DEFENSE  
1100 DEFENSE PENTAGON  
WASHINGTON DC 20301-1100



OCT 16 2006

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
COMMANDERS OF THE COMBATANT COMMANDS  
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING  
COMMANDER, U.S. SPECIAL OPERATIONS COMMAND  
COMMANDER, U.S. TRANSPORTATION COMMAND  
ASSISTANT SECRETARIES OF DEFENSE  
DIRECTOR, OPERATIONAL TEST AND EVALUATION  
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE  
ASSISTANTS TO THE SECRETARY OF DEFENSE  
DIRECTORS OF DEFENSE AGENCIES  
DIRECTORS DOD FIELD ACTIVITIES

SUBJECT: Non-Economy Act Orders

Attached is the Department's revised financial management policy for Non-Economy Act orders. This policy should be implemented immediately throughout your respective organization. It will be included in the next update to the "DoD Financial Management Regulation," scheduled for first quarter of fiscal year 2007.

My point of contact is Ms. Kathryn Gillis. She can be contacted by telephone at (703) 697-6875 or e-mail at Kathryn.gillis@osd.mil.

Robert McNamara  
Acting Deputy Chief Financial Officer

Attachments:  
As stated



## NON-ECONOMY ACT ORDERS

A. Purpose. Prescribe policy and procedures applicable to Department of Defense (DoD) procurement of goods and services from Non-DoD agencies under statutory authorities other than the Economy Act.

B. Overview. Non-Economy Act orders are for intra-governmental support, where a DoD activity needing goods and services (requesting DoD agency/customer) obtains them from a Non-DoD agency (assisting/servicing agency/performer). Specific statutory authority is required to place an order with a Non-DoD agency for goods or services, and to pay the associated cost. If specific statutory authority does not exist, the default will be the Economy Act, 31 U.S.C. 1535 which is discussed in volume 11A, Chapter 3 of the "DoD Financial Management Regulations" ("DoDFMR"). The more commonly used Non-Economy Act authorities include, but are not limited to, the following.

- Acquisition Services Fund. The Acquisition Service Fund was established by the General Service Administration Modernization Act that merged the General Supply Fund and the Information Technology Fund to carry out functions related to the uses of the Acquisition Services Fund including any functions previously carried out by the Federal Supply Service and the Federal Technology Service managed by General Service Administration.
- Franchise Funds. Franchise Funds were first established by P.L. 103-356, Title IV, Sec 403 to provide common administrative support services on a competitive and fee basis. Franchise fund programs originated within the Environmental Protection Agency (EPA), Department of Commerce, Department of Veterans Affairs (VA), Department of Health and Human Services (HHS), Department of Interior, and Department of the Treasury.

C. Initiating a Non Economy Act Order. Non-Economy Act orders in excess of the simplified acquisition threshold shall comply with Federal Acquisition Regulation (FAR) Part 7, "Acquisition Planning," and DoD Components' procedures for the "Proper Use of Non-DoD Contracts."

1. Justification. Non-Economy Act orders may be placed with another agency for goods or services if:

- Proper funds are available;
- The Non-Economy Act order does not conflict with another agency's designated responsibilities (*e.g.*, real property lease agreements with GSA).

- The requesting agency or unit determines the order is in the best interest of the Department; and
- The performing agency is able and authorized to provide the ordered goods or services.

2. Order. Non-Economy Act orders for work and services outside the Department of Defense (DoD) should be executed by issuance of a DD Form 448, “Military Interdepartmental Purchase Request (MIPR)” and accepted using DD Form 448-2, “Acceptance of MIPR.” If an alternative execution document is used, it must provide information consistent with the MIPR to include the purchase request number and the Activity Address Code (DODAAC). A Non-Economy Act order shall comply with the documentation standards in Volume 11A, Chapter 1 of the “DoDFMR,” and supported with the items identified in Figure 1. Non-Economy Act orders must include:

- A firm, clear, specific, and complete description of the goods or services ordered. The use of generic descriptions is not acceptable;
- Specific performance or delivery requirements;
- A proper fund citation;
- Payment terms and conditions (*e.g.*, direct cite or reimbursement, and provisions of advanced payments); and
- Specific Non-Economy Act statutory authority such as those referenced in paragraph B above.
- DoD Activity Address Code (DODAAC)

3. Best Interest Determination. Each requirement must be evaluated in accordance with DoD Components’ procedures to ensure that Non-Economy Act orders are in the best interest of DoD. Factors to consider include:

- Satisfying the requirements;
- Schedule, performance, and delivery requirements;
- Cost effectiveness, taking into account the discounts and fees; and
- Contract administration, to include oversight.

4. Specific, Definite and Certain. For Non-Economy Act orders in excess of the simplified acquisition threshold, the requesting official must provide:

- Evidence of market research and acquisition planning;
- A statement of work that is specific, definite, and certain both as to the work encompassed by the order and the terms of the order itself.
- Unique terms, conditions, and requirements to comply with applicable DoD-unique statutes, regulations, directives and other requirements.

5. Contracting Officer Review. All Non-Economy Act orders greater than \$500,000 shall be reviewed by a DoD warranted contracting officer prior to sending the order to the funds certifier or issuing the MIPR to the Non-DoD activity. In addition to the review of the contracting officer, the requesting official shall further review the acquisition package to ensure compliance with the FAR part 7, and the DoD Components' procedures.

6. Certification of Funds. Non-Economy Act orders are subject to the same fiscal limitations that are contained within the appropriation from which they are funded. Because the performing entity may not be aware of all the appropriation limitations, the DoD certifying official must certify that the funds cited on the order are available, meet time limitations, and are for the purpose designated by the appropriation.

7. Bona Fide Need. Non-Economy Act orders citing an annual or multiyear appropriation must serve a bona fide need arising, or existing, in the fiscal year (or years) for which the appropriation is available for new obligations.

D. Fiscal Policy.

1. Obligation. The provisions of 31 U.S.C. 1501 govern the recording of the obligation. An amount shall be recorded as an obligation only when supported by documentary evidence of an order required by law to be placed with an agency or upon meeting all the following criteria:

- Binding agreement (funding vehicle) between an agency and another person (including an agency);
- Agreement is in writing;
- For a purpose authorized by law;

- Serves a bona fide need arising, or existing, in the fiscal year or years for which the appropriation is available for obligation;
- Executed before the end of the period of availability for new obligation of the appropriation or fund used; and
- Provides for specific goods to be delivered, real property to be bought or leased, or specific services to be supplied.

2. Deobligation. Funding under Non-Economy Act orders shall be deobligated as outlined below.

a. Goods. Funds provided to a performing agency for ordered goods where the funds period of availability thereafter has expired shall be deobligated and returned by the performing agency unless the request for goods was made during the period of availability of the funds **and** the item(s) could not be delivered within the funds period of availability solely because of delivery, production or manufacturing lead time, or unforeseen delays that are out of the control and not previously contemplated by the contracting parties at the time of contracting. Thus, where materials cannot be obtained in the same fiscal year in which they are needed and contracted for, provisions for delivery in the subsequent fiscal year do not violate the bona fide need rule as long as the time intervening between contracting and delivery is not excessive and the procurement is not for standard commercial off the shelf (COTS) items readily available from other sources. The delivery of goods may not be specified to occur in the year subsequent to funds availability.

b. Severable Services. An agreement for severable services that are continuing and recurring in nature and provide the Department a benefit each time the service is performed (e.g., maintenance and repair services, scientific, engineering, and technical services) is based on statutory authority other than the Economy Act, 10 U.S.C. 2410a permits the performance of severable services to begin in one fiscal year and end in the next provided the period of performance does not exceed one year. Thus, the performance of severable services may begin during funds period of availability and may not exceed one year. Therefore, annual appropriations provided to a performing agency that have expired shall be deobligated unless the performance of the services requested began during the funds period of availability and the period of performance does not exceed one year. The annual appropriation from the earlier fiscal year may be used to fund the entire cost of the one-year period of performance; however, an annual appropriations may not be used to enter into a severable services agreement where the period of performance for services requested is entirely in the following fiscal year. In no instance may the period of performance extend beyond September 30 of the subsequent year for services funded with annual appropriations.

c. Non-Severable Services. Non-severable services contracts must be funded entirely with appropriations available for new obligations at the time the contract is awarded, and the period of performance may extend across fiscal years. Funds provided to a performing agency that become excess shall be deobligated as identified.

d. Excess or Expired Funds. Activities shall reconcile all obligations and remaining funds available for orders. The purpose of this reconciliation is to ensure the proper use of funds and to identify and coordinate the return of expired or excess funds. Excess or expired funds must be returned by the performing agency and deobligated by the requesting agency to the extent that the performing agency or unit filling the order has not (1) provided the goods or services (or incurred actual expenses in providing the goods or services), or (2) entered into a contract with another entity to provide the requested goods or services. Expired funds shall not be available for new obligations.

3. Prohibitions. Non-Economy Act orders may not be used to violate provisions of law, nor may they be used to circumvent conditions and limitations imposed on the use of funds to include extending the period of availability of the cited funds.

E. Non-Economy Act Follow Up Procedures.

1. Non-Economy Act Order Oversight. The requesting official must establish quality surveillance plans for Non-Economy Act orders in excess of the simplified acquisition threshold to facilitate the oversight of the goods provided or services performed by the performing agency. The plan should include:

- a. Contract administration oversight in accordance with the surveillance plan;
- b. Process for receipt and review of receiving reports and invoices from the performing agency;
- c. Reconciliation of receiving reports and invoices; and
- d. Requirements for documenting acceptance of the goods received or services performed.

2. Monitor Fund Status. The requesting official must monitor fund status to:

- a. Monitor balances with the performing agency;
- b. Conduct tri-annual reviews of Non-Economy Act orders in accordance with the Financial Management Regulation, Volume 3,

Chapter 8, Section 0804, “Tri-Annual Review of Commitments and Obligations;”

- c. Confirm open balances with the performing agency;
- d. Coordinate the return of funds from the Non-DoD performing agency in accordance with paragraph D2 above; and
- e. Coordinate with the accounting office to ensure timely deobligation of funds.

3. Payment Procedures. Payment shall be made promptly upon the written request (or billing) of the performing agency. Under specific conditions, payment may be made in advance or upon delivery of the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the performing agency.

a. The requesting official must be cognizant of the performing agency’s payment method. Should the performing agency elect to receive advances or conduct advance billing prior to providing goods or services, the requesting official must comply with the requirements related to advances of public money outlined in Volume 4, Chapter 5 of the “DoD Financial Management Regulation” which implements the general prohibition of advance payments in Title 31, U.S.C. Section 3324 and Title 10, U.S.C. Section 2307. When the conditions under which the advance was made are satisfied, the specific appropriation or law authorizing the advance must be cited on the order and any unused amounts of the advance shall be collected from the performing agency immediately and returned to the fund from which originally made.

b. Payments made for services rendered or goods furnished may be credited to the appropriation or fund of the agency performing the reimbursable work.

4. Non Economy Act Order Close Out. All Non-Economy Act orders shall be reviewed by the requesting official to determine if they are complete. Completed orders shall be fiscally closed out. The requesting official shall reconcile funds and coordinate the return of excess or expired funds held by the performing agency. This review will include:

- a. Identify and determine if there are outstanding invoices;
- b. Identify and determine existence of excess or expired funds;
- c. Coordinate the return of funds from the Non-DoD performing agency in accordance with paragraph D2 above; and
- d. Coordinate with the accounting office to ensure the deobligation of funds.

NON-ECONOMY ACT  
ACQUISITION PACKAGE CHECKLIST

1. Documented evidence of market research and acquisition planning performed.
2. Package includes a specific, definite, and concise statement of work documenting a bona fide need in the fiscal year that the funds are available for new obligations.
3. Package includes specific performance and/or delivery requirements.
4. Package identifies the statutory authority permitting the performing agency to support the DoD Component for the goods/services required.
5. Package includes the purchase request number and the Activity Address Code (DODAAC).
6. Package includes written justification for the Non Economy Act order in accordance with DFARS Part 217.78 and the DoD Components' procedures.
7. Package documents review of fees/surcharges/contract administration/discounts to ensure the cost is reasonable and consistent with task to be accomplished by performing agency.
8. Package includes specific statutory authority authorizing advance payment or billing.
9. Package documents evidence that DoD competition requirements were followed in accordance with DFARS.
10. Order identifies DoD unique terms & conditions to the performing agency.
11. Order identifies unique reporting requirements not otherwise specified to the performing agency.

## REQUESTING OFFICIAL RESPONSIBILITIES

1. Market Research
2. Acquisition Planning
3. Independent Government Cost Estimate (IGCE)
4. Statement of Work (SOW) to include evaluation criteria.
5. Ensure receipt and compliance of MIPR acceptance.
6. Assist in Technical Evaluation
7. Quality Assurance Plan
  - a. COR, COTR (Receiving Reports/Invoices - Inspection & Acceptance)
  - b. CDRL Procedural/Required Reports/Deliverables Report/Contract Performance
  - c. Property/Equipment Management
  - d. Perform Contract Oversight
8. Funds Management/Record Keeping
  - a. Draw Down
  - b. Contract Reconciliation
  - c. Initiate Deobligation
  - e. Oversight of Billing/Reporting
9. Update all POCs as necessary throughout acquisition.

Figure 1

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## APPENDIX D



ACQUISITION  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

JAN 28 2005

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (ACQUISITION,  
LOGISTICS AND TECHNOLOGY)  
ASSISTANT SECRETARY OF THE NAVY (RESEARCH,  
DEVELOPMENT AND ACQUISITION)  
ASSISTANT SECRETARY OF THE AIR FORCE  
(ACQUISITION)  
DIRECTORS OF DEFENSE AGENCIES

SUBJECT: Use of Federal Supply Schedules and Market Research

The Department of Defense utilizes the Federal Supply Schedules of the General Services Administration to meet a significant number of our requirements. The "Use of Federal Supply Schedules" is governed by the requirements in FAR 8.404. FAR 8.404 says in part, "by placing an order against a schedule contract using the procedures in FAR 8.405 – "Ordering Procedures for Federal Supply Schedules" the ordering activity has concluded that the order represents the best value (as defined in FAR 2.101) and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs." In response to recent recommendations of the Department of Defense Inspector General (DoDIG) and in support of the recently released policy on the "Proper Use of Non-DoD Contracts" (29 October 2004) the following guidance and clarification is provided when utilizing Federal Supply Schedules:

- Although GSA has already determined rates for services offered at hourly rates under schedule contracts to be fair and reasonable (FAR 8.404(d)), Contracting Officers must not only consider labor rates but also labor hours and labor mixes when establishing a fair and reasonable price for an order.
- Contracting Officers are required to consider the proposed prices for both the services and products when awarding orders for a combination of products and services.
- Contracting Officers are reminded to seek discounts for orders exceeding the maximum order threshold. In cases where a discount is not obtained, explain why in the contract file. When discounts are obtained, explain in the contract file how the discount was determined to be fair and reasonable.

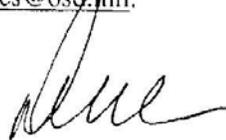


- Contracting Officers are encouraged to solicit as many contractors as practicable when using Federal Supply Schedules. On those occasions where this is not possible, explain why in the contract file.

For all procurements above the simplified acquisition threshold, Military Departments and Defense Agencies are reminded that "Market Research" (FAR Part 10) plays a key role in identifying potential sources of supply and helps identify the best acquisition approach to meet our requirements. Contracting Officers should document the contract file on the market research efforts conducted in support of each acquisition.

As part of the recommendations included in audit report title, the DoDIG recommended that the nine contracting activities visited during their audit (attached) should be "monitored". I agree with the DoDIG recommendation that greater management attention be focused on the quality of price reasonableness determinations and request that you ensure that the adequacy of contracting officer price reasonableness determinations be made a part of Procurement Management Reviews (PMRs) or any other relevant internal review. For the activities listed on the attached, please provide me a list of all completed or planned PMRs, or other internal reviews, that have been completed since March 21, 2002, and identify whether or not the quality of price reasonableness determinations were addressed in the review. This information should be provided to Michael Canales of my staff by March 15, 2005. Please ensure that this requirement is addressed in all future PMRs.

Questions or comments may be referred to Mr. Michael Canales, DPAP/Policy, (703) 695-8571 or e-mail: [Michael.Canales@osd.mil](mailto:Michael.Canales@osd.mil).



Deidre A. Lee  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

# APPENDIX E



ACQUISITION  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

MAR 28 2008

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(POLICY AND PROCUREMENT), ASA (ALT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION & LOGISTICS MANAGEMENT),  
ASN (RDA)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
DIRECTORS, DEFENSE AGENCIES  
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Competition Requirements for Purchases From Federal Prison Industries

Section 827 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, changes competition requirements for purchases from Federal Prison Industries, Inc. (FPI). This memorandum provides guidance with respect to implementation of section 827.

Section 827 requires DoD to use competitive procedures when procuring products for which FPI has significant market share. FPI will be treated as having significant market share for a product category if the FPI share of the Department of Defense market is greater than five percent. The Federal Supply Codes (FSC) that meet this criterion are as follows:

<u>FSC</u>	<u>FSC Description</u>
3510	Laundry and Dry Cleaning Equipment
5340	Miscellaneous Hardware
5935	Connectors, Electrical
5975	Electrical Hardware and Supplies
5995	Cable, cord, wire assemblies; comm equipment
6145	Wire and cable, Electrical
7110	Office Furniture
7210	Household Furnishings



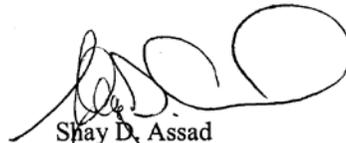
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Products for which FPI has a significant market share (FSCs listed above) must be procured using competitive (or fair opportunity) procedures. In conducting such a competition, contracting officers shall consider a timely offer from FPI in accordance with FAR 8.602(a)(4). The procedures and requirements of this memorandum will apply to solicitations (and resultant contracts/orders) issued after March 28, 2008.

If FPI does not have a significant market share for a particular product, contracting officers should follow the current process outlined in the Federal Acquisition Regulation (FAR) Subpart 8.6. Specifically, FAR 8.602 requires agencies to conduct market research and make a comparability determination. Such determinations are made at the discretion of the contracting officer. Competitive (or fair opportunity) procedures are appropriate if the FPI product is not comparable in terms of price, quality, or time of delivery. In conducting such a competition, contracting officers shall include FPI in the solicitation process and consider a timely offer from FPI. Likewise, if the procurement is made using a multiple award schedule, then FAR 8.602(a)(4)(iii) requires contracting officers to communicate the item description or specifications and evaluation criteria directly to FPI, "so that an offer from FPI can be evaluated on the same basis as the contract or schedule holder." A timely offer from FPI must then be considered.

The Defense Federal Acquisition Regulation Supplement (DFARS) will be revised to reflect the procedures outlined in this memorandum. In the event of a conflict between this memorandum and the subsequent DFARS revision, the content of the DFARS will take precedence. The FSCs listed above will be updated, as necessary, in subsequent policy memoranda.

My staff point of contact for FPI procurement policy is Ms. Susan Pollack, 703-697-8336 or [susan.pollack@osd.mil](mailto:susan.pollack@osd.mil).



Shay D. Assad  
Director, Defense Procurement,  
Acquisition Policy, and  
Strategic Sourcing



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

JAN 18 2008

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(POLICY AND PROCUREMENT), ASA (ALT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION MANAGEMENT), ASN (RDA)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
EXECUTIVE DIRECTOR, ACQUISITION, TECHNOLOGY  
AND SUPPLY DIRECTORATE (DLA)  
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Interagency Acquisition

- References: (a) "Interagency Acquisition: A Shared Responsibility" memo dated September 20, 2005 (U) (copy attached)
- (b) "Designation of Contracting Officer's Representatives on Contracts for Services in Support of Department of Defense Requirements" memo dated December 6, 2006 (U) (copy attached)
- (c) "Non-Economy Act Orders" memo dated October 16, 2006 (U) (copy attached)
- (d) "Past Performance Information" memo dated November 27, 2007 (U) (copy attached)
- (e) "Proper Use of Non-DoD Contracts" memo dated October 29, 2004 (U) (copy attached)

The purpose of this memorandum is to update the Department's policy on interagency acquisition and provide clarification of existing policy.

**Proper Use of non-DoD Contracts and non-DoD Contracting Organizations**

The Department encourages the use of non-DoD contracts and the services of assisting agencies to meet DoD requirements, when it is done properly, is in the best interest of the Department, and necessary to meet our needs. Utilizing a non-DoD contract or a non-DoD contracting organization is ultimately a business decision. As part of that process, DoD customers should be cognizant of the advantages that exist for the Department in utilizing interagency contracting, and they should be knowledgeable of



what contracting options are available to them, while considering the fees charged by the assisting agency and costs incurred by the Department. The fees that we pay should be commensurate with the task and effort provided by the assisting agency. Program managers and requirements officials must ensure that any fees paid to the assisting agencies are reasonable for the tasks they perform.

### **Roles and Responsibilities:**

Reference (a) addressed the importance of teamwork and communication in the interagency acquisition process. This requirement has not changed; however, I want to comment further on the roles and responsibilities of the program managers and requirements officials, assisting agencies and contracting officers. While the following does not encompass all roles and responsibilities, it represents a few I would like to focus on.

**Program Managers and Requirements Officials:** Program managers and requirements officials must ensure non-DoD contracting officers use competitive procedures to acquire DoD requirements to the maximum extent possible. In the case of a sole source procurement, program managers and/or requirements officials, after performing due diligence and market research, must provide the assisting agency with the written justification for the non-competitive or sole source determination/justification in accordance with FAR 6.3 or FAR 8.405-6 if using GSA's Multiple Award Schedules. When using multiple award contracts, program managers and requirements officials should assist in documenting that exceptions to the fair opportunity process, if appropriate, are necessary and meet the requirement for statutory exception (FAR 16.505). All justifications must be well supported and clearly documented in the contract file.

Program managers and requirements officials must ensure that statements of work/requirements clearly, precisely, and completely specify the item or service to be procured. Well defined and complete acquisition packages must be provided to the assisting agency. While it is the contracting officer's responsibility to ensure that contract management, oversight, and surveillance functions are clearly assigned (including the appointment of properly trained Contracting Officer Representatives (CORs) where appropriate) and correctly performed (see reference (b)), the program manager and requirements officials should be actively involved in the process.

With regard to Non-Economy Act procurements, program managers and requirements officials must ensure that the requirements detailed in Reference (c) are met, including the required review by a DoD contracting officer when the value of the action exceeds \$500,000. The "Non-Economy Act Acquisition Package Checklist" and the list of "Requesting Official Responsibilities" in Reference (c) will assist in ensuring that statute, policy, and regulation are complied with under non-Economy Act actions.

**Assisting Agencies:** It is the assisting agency's responsibility to ensure its acquisition workforce is capable, qualified, and authorized to acquire the requested supplies/and or services on behalf of DoD. Ultimately under an assisted acquisition, the assisting agency decides whether a specific action will be competed. In addition, the assisting agency must ensure that DoD requirements met via an interagency acquisition, are compliant with statute, regulation and policy, even if it is more limiting than the practices under which the assisting agency is authorized to operate.

Assisting agencies also must comply with FPDS-NG reporting requirements and ensure determinations of price reasonableness are documented for every contract or order they execute on our behalf. In addition, when an assisting agency places a contract on the Department's behalf that meets DoD thresholds for capturing past performance information (see Reference (d) Attachment A), then contractor performance should be evaluated, the information provided to the contractor for review and comment, and when finalized, the information should be captured in the automated past performance information database.

**Contracting Officer:** In accordance with Reference (c), it is Department policy that a warranted DoD contracting officer review each non-Economy Act order greater than \$500,000 to ensure it complies with statute, policy, regulation, and local component requirements and procedures.

### **Past Performance - A Shared Responsibility**

Reference (a) emphasized that "teamwork and communication" are critical to the success of interagency acquisition and that all parties to an interagency acquisition must ensure that the duties and responsibilities of contract administration and oversight are clearly assigned and correctly performed. This is especially important in performing assessments of contractor past performance (FAR 42.15). Reference (d) provides the Department's latest policy on past performance information and emphasizes that past performance information should be captured for all contracts that meet DoD thresholds. Interagency acquisitions are not exempt from this requirement.

### **Clarification**

Reference (e) provided process details for Military Departments and Defense Agencies utilizing non-DoD contracts or non-DoD contracting organizations. The procedures included "providing unique terms, conditions and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives, and other requirements, (e.g. the requirement that all clothing procured with DoD funding be of domestic origin)". This should not be interpreted as requiring non-DoD assisting agency contracting officers

to include DFARS or other agency specific clauses in their resulting contracts or orders, although this is acceptable. Alternatively, DoD officials and the civilian assisting agency contracting officer must collaboratively review the DoD requirements to ascertain whether there are non-DoD contract clauses that provide similar and sufficient coverage. If non-DoD contract clauses are insufficient, both parties shall mutually agree to include such coverage as necessary, through revision of the performance work statement, statement of work, statement of objectives, or otherwise. This process should also be followed when civilian agencies request work under DoD contracts.

Policy links, training opportunities, and other relevant information on Interagency Acquisition is available on the Defense Procurement and Acquisition Policy website at [http://www.acq.osd.mil/dpap/cpic/cp/interagency\\_acquisition.html#acquisition\\_policy\\_memos](http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html#acquisition_policy_memos) and the GSA website at <http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=13>.

Additional guidance on Non-Economy Act Orders can be found in Reference (c), which revised financial management policy for Non-Economy Act Orders. The memorandum includes important policy requirements, especially in the areas of justification, certification of funds, bona fide need and deobligation. In addition, it includes policy on severable services, non-severable services and excess or expired funds.

My POC for Interagency Acquisition is Mr. Michael Canales. He can be reached at [michael.canales@osd.mil](mailto:michael.canales@osd.mil) or at 703-695-8571.



Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

# APPENDIX G



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

JUL 19 2009

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Delegation of Authority Under Section 801 of the National Defense Authorization Act for Fiscal Year 2008

Subsection (b)(1) of section 801 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, "Internal Controls for Procurements on Behalf of the Department of Defense by Certain Non-Defense Agencies," states that "an acquisition official of the Department of Defense may place an order, make a purchase, or otherwise procure property or services for the Department of Defense in excess of the simplified acquisition threshold through a non-defense agency only if in the case of a procurement by any non-defense agency in any fiscal year, the head of the non-defense agency has certified that the agency will comply with defense procurement requirements for the fiscal year".

For the purposes of this section, a non-defense agency is compliant with defense procurement requirements if the procurement policies, procedures, and internal controls of the non-defense agency applicable to the procurement of products and services on behalf of the Department of Defense and the manner in which they are administered, are adequate to ensure the compliance of the non-defense agency with the requirements of laws and regulations (including applicable Department of Defense financial management regulations) that apply to procurements of property and services made directly by the Department of Defense. A procurement shall be treated as being made during a particular fiscal year to the extent that funds are obligated by the Department of Defense for the procurement in that fiscal year.

Subsection (b)(2) of section 801 authorizes the Under Secretary of Defense for Acquisition, Technology, and Logistics to make exceptions to the limitations imposed on a non-defense agency if determined, in writing, that "it is necessary in the interest of the Department of Defense to continue to procure property and services through the non-defense agency during such fiscal year".

I hereby delegate to the Director, Defense Procurement and Acquisition Policy, the authority to make such determinations and the authority to extend the period for which any determination is in effect. This delegation of authority is effective until September 30, 2010, unless rescinded earlier.

A handwritten signature in black ink, appearing to read "Ashton B. Carter".

Ashton B. Carter



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

SEP 18 2009

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS  
CHAIRMAN OF THE JOINT CHIEFS OF STAFF  
UNDER SECRETARIES OF DEFENSE  
DEPUTY CHIEF MANAGEMENT OFFICER  
ASSISTANT SECRETARIES OF DEFENSE  
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
DIRECTOR, OPERATIONAL TEST AND EVALUATION  
INSPECTOR GENERAL OF THE DEPARTMENT OF  
DEFENSE  
ASSISTANTS TO THE SECRETARY OF DEFENSE  
DIRECTOR, ADMINISTRATION AND MANAGEMENT  
DIRECTOR, COST ASSESSMENT AND PROGRAM  
EVALUATION  
DIRECTOR, NET ASSESSMENT  
DIRECTOR OF THE DEFENSE AGENCIES  
DIRECTOR OF THE DOD FIELD ACTIVITIES

SUBJECT: National Defense Authorization Act for Fiscal Year 2008 (Pub. Law No. 110-181), Section 801, *Internal Controls for Procurements on Behalf of the Department of Defense by Certain Non-Defense Agencies, Requests for "Waiver"*

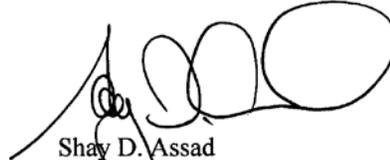
Section 801(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 authorizes an acquisition official of the Department of Defense to place an order, make a purchase, or otherwise procure property or services for DoD in excess of the simplified acquisition threshold through a non-defense agency **only if** the non-defense agency can certify that it "will comply with defense procurement requirements for the fiscal year." Absent certification, Section 801(b) authorizes the Under Secretary of Defense for Acquisition, Technology, and Logistics to waive the limitation of Section 801(b) for any category of procurements provided "it is necessary in the interest of the Department of Defense to procure property and services through the non-defense agency." Otherwise, DoD Components may not procure property or services in excess of the simplified acquisition threshold through the non-certifying, non-defense agency. Recently USD(AT&L) delegated authority (memo attached) to waive the limitation of Section 801(b) to the Director, Defense Procurement and Acquisition Policy.

To ensure minimal impact to current operations and to comply with Section 801(b), the following procedures are established to request the Director, Defense Procurement and Acquisition Policy approval of a Section 801(b) "waiver". DoD Components are requested to establish a single focal point within your organization to

review each request. Requests must be submitted to the Director, Defense Procurement and Acquisition Policy through your focal point with sufficient lead time for review and processing. The following information must be included in your request:

1. A description of the categories of procurements covered by the request. If the request is for an individual procurement a description of the individual procurement is required.
2. An assessment of why the category of the procurement or the individual request is “necessary in the interest of the Department” to obtain through the non-defense agency that has not certified compliance with Section 801(b).
3. Confirmation that all the affected contracts and supporting documents are on file and available for review or audit by the Department of Defense Inspectors General.
4. A statement by the senior acquisition executive, or senior procurement executive of your agency confirming that your agency has completed a thorough review of all applicable contracts and supporting documents and has determined it is “necessary in the interest of the Department of Defense to procure property and services through the non-defense agency.” The statement should also identify the fiscal year(s) of the requirement.

My point of contact is Mr. Michael Canales, 703-695-8571, or at [Michael.Canales@osd.mil](mailto:Michael.Canales@osd.mil)



Shay D. Assad  
Director, Defense Procurement  
and Acquisition Policy

Attachment:  
As stated

cc:  
Under Secretary of Defense for Acquisition, Technology, and Logistics

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## APPENDIX H



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

OCT 31 2008

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Meeting Department of Defense Requirements Through Interagency Acquisition

Reference: (a) Office of Federal Procurement Policy (OFPP) memo entitled "Improving the Management and Use of Interagency Acquisitions," dated June 6, 2008 (U)

By means of reference (a), the Administrator, Office of Federal Procurement Policy (OFPP), issued guidance intended to improve the effectiveness of agencies' use of interagency acquisitions ([http://www.acq.osd.mil/dpap/cpic/cp/iac\\_revised.pdf](http://www.acq.osd.mil/dpap/cpic/cp/iac_revised.pdf)). The Department participated in development of the guide and is mandating its use for Interagency Acquisitions in excess of \$500,000, subject to the additional guidance set forth below. The use of a standardized Interagency Agreement will alleviate many of the issues raised in audits conducted by various Inspectors General and the Government Accountability Office (GAO).

In accordance with the request of the Administrator, OFPP, effective no later than November 3, 2008, all components must ensure that new interagency agreements for assisted acquisitions in excess of \$500,000 contain the elements enumerated in Appendix 2 of reference (a) or follow the model agreement in Appendix 3 of reference (a). Additional information on Interagency Acquisition is available at [http://www.acq.osd.mil/dpap/cpic/cp/interagency\\_acquisition.html](http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html).

Requirements included in FAR 17.5/DFARS 217.5, Interagency Acquisitions Under the Economy Act; DFARS 217.78, Contracts or Delivery Orders Issued by a Non-DoD Agency; and the DoD Financial Management Regulation (FMR), Volume 11A, Chapters 3 and 18, are still in effect and take precedence over any conflicting provisions in the OFPP guidance. For example, notwithstanding that the guide establishes a presumption that a direct acquisition under a General Services Administration Federal Supply Services contract is in the best interest of the Government, and that a "requesting" agency only has to document why the acquisition vehicle is suitable for the agency's need, DoD activities still must evaluate the cost effectiveness of such actions as required by DFARS 217.7802(a)(3).



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Inasmuch as use of the OFPP guidance within DoD is mandated only for requirements valued over \$500K, activities also do not have to comply with requirements applicable below that threshold. Therefore, the requirement in the guide that the requiring office must notify the head of the acquisition office of a planned non-Economy Act assisted acquisition valued over \$200K does not apply within DoD. However, the requirement to obtain a contracting officer's review for non-Economy Act requirements over \$500K does apply, and is consistent with current DoD policy, as set forth in the FMR, Volume 11A, Chapter 18, and the "Interagency Acquisition" policy memorandum of Jan 18, 2008 (<http://www.acq.osd.mil/dpap/policy/policyvault/2007-0203-DPAP.pdf>).

Regardless of the dollar value, all assisted acquisitions must be supported by an Interagency Agreement (IA). In drafting IAs that are not subject to the OFPP guidance, DoD activities should use the OFPP guidance as a starting point for tailoring an agreement that addresses the specific types of information that is needed for the acquisition. At a minimum, IAs should define clearly the roles and responsibilities of the requiring and assisting activities, address procedures that will be used if problems arise, and provide information that is required to demonstrate a bona fide need and authorize the transfer and obligation of funds.

My POC for interagency acquisition matters is Mr. Michael Canales. He can be reached at 703-695-8571, or via e-mail at [michael.canales@osd.mil](mailto:michael.canales@osd.mil).



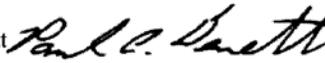
Shay D. Assad  
Director, Defense Procurement,  
Acquisition Policy, and  
Strategic Sourcing



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

June 6, 2008

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS  
SENIOR PROCUREMENT EXECUTIVES

FROM: Paul A. Denett   
Administrator

SUBJECT: Improving the Management and Use of Interagency Acquisitions

Interagency acquisitions offer important benefits to federal agencies, including economies and efficiencies and the ability to leverage resources. The attached guidance is intended to help agencies achieve the greatest value possible from interagency acquisitions.

Effective management and use of interagency acquisitions is a shared responsibility, especially for assisted acquisitions. Lack of clear lines of responsibility between agencies with requirements (requesting agencies) and the agencies which provide acquisition support and award contracts on their behalf (servicing agencies) has contributed to inadequate planning, inconsistent use of competition, weak contract management, and concerns regarding financial controls.

This document provides guidance to help agencies (1) make sound business decisions to support the use of interagency acquisitions and (2) strengthen the management of assisted acquisitions. Particular emphasis is placed on helping requesting agencies and servicing agencies manage their shared fiduciary responsibilities in assisted acquisitions. The guidance includes a checklist of roles for each responsibility in the acquisition lifecycle and a model interagency agreement to reinforce sound contracting and fiscal practices. The guidance reflects comments provided by Chief Acquisition Officers, Senior Procurement Executives, and Chief Financial Officers. The document was also shared with other interested stakeholders, including the Chief Information Officers and the Government Accountability Office (GAO), and reflects comments received from those parties as well.

Beginning on October 1, 2008, and thereafter, agencies shall ensure that decisions to use interagency acquisitions are supported by best interest determinations, as described in the attached guidance. Agencies shall further ensure that new interagency agreements for assisted acquisitions entered on or after November 3, 2008, contain the elements enumerated in Appendix 2 or follow the model agreement in Appendix 3. Agencies shall use the checklist at Appendix 1 to facilitate the clear identification of roles and responsibilities. Agencies shall also consider modifying existing long-term interagency agreements for assisted acquisitions in accordance with this guidance, as appropriate and practicable.

Providing for the sound management and use of interagency acquisitions is a key step for realizing the intended efficiencies of interagency contracts. Improving the governance structure for creating and renewing these vehicles is equally important, especially for multi-agency contracts. We have made important strides to leverage the government's vast buying power under the Federal Strategic Sourcing Initiative (FSSI) and to identify suitable executive agents that can manage government-wide acquisition contracts (GWACs) on behalf of customers across government. We must build on these efforts in order to maximize the contribution of interagency contracts to mission success. I intend to work with members of the Chief Acquisition Officers Council, including its Strategic Sourcing Working Group, to design a business case review process similar to that currently used for the designation of executive agents for GWACs and to define the structure required to support such a process.

Please have your acquisition officials work with program managers, contracting officers, technical representatives, finance officers, information technology officers, legal staff and others involved in your agency's interagency acquisitions to ensure the effective implementation of this guidance and compliance with its requirements. Questions may be referred to Mathew Blum at (202) 395-4953 or [mblum@omb.eop.gov](mailto:mblum@omb.eop.gov).

Thank you for your attention to this important subject.

Attachment

cc: Chief Financial Officers  
Chief Information Officers  
Performance Improvement Officers  
Danny Werfel, Acting Controller, Office of Federal Financial Management