

ECONOMY ACT AGREEMENTS FOR PURCHASING GOODS OR SERVICES

The Economy Act of 1932, as amended, 31 U.S.C. § 1535, permits Federal Government agencies to purchase goods or services from other Federal Government agencies or other major organizational units within the same agency. An Economy Act purchase is permitted only if: (1) amounts for the purchase are actually available, (2) the purchase is in the best interest of the Government, (3) the ordered goods or services cannot be provided by contract from a commercial enterprise, i.e., the private sector, as conveniently or cheaply as could be by the Government, and (4) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services.

The Federal Acquisition Regulations (FAR), 48 CFR 17.502-2 provides further requirements for Economy Act agreements. The FAR provides that an order cannot be placed under the Economy Act if a more specific statutory authority exists. Purchases pursuant to the Economy Act are not exempt from the requirements of 48 CFR 7.3, "Contractor Versus Government Performance." Thus, OMB Circular A-76 applies to Economy Act agreements. Economy Act agreements must achieve full cost recovery, and there is no law that permits a waiver of this full cost recovery requirement. Full cost recovery includes direct and indirect costs. Further, the Economy Act does not allow a Federal agency or unit to receive a profit when providing goods or services.

The FAR states that Economy Act orders to obtain supplies or services by **assisted acquisition** must include (1) a description of the supplies or services required; (2) delivery requirements; (3) a funds citation; (4) a payment provision; and (5) acquisition authority as may be appropriate.

WHAT IS AN ASSISTED ACQUISITION? The Commerce Acquisition Manual identifies an "assisted acquisition" as "a type of interagency acquisition where the parties enter into an interagency agreement pursuant to which the servicing agency performs acquisition activities on the requesting agency's behalf, such as awarding a contract, task order, delivery order, or blanket purchase agreement." CAM § 1.4.2. Thus, assisted acquisition agreements include contract awards as well as task and delivery orders against existing contracts.

Each Economy Act order, that involves an assisted acquisition as defined above, shall be supported by a Determination and Finding (D&F). The D&F shall state that: (1) Use of an interagency acquisition is in the best interest of the Government; and (2) the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source. The D&F shall also include a statement that at least one of the following circumstances is applicable: (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 the servicing agency for the same or similar supplies or services; (2) the servicing agency has capabilities or expertise to enter into a contract for such supplies or services which 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. The D&F must be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head, except that, if the servicing agency is not covered by the FAR, approval of the D&F may not be delegated below the senior procurement executive of the requesting agency.

NOTE: Agreements are subject to legal review and clearance in accordance with your office's policies and procedures. Agreements that involve a DOC entity transferring funds for an assisted acquisition, receive preliminary review by the Contract Law Division prior to being transmitted to the General Law Division,

Office of the Assistant General Counsel for Administration for final clearance. For advice on whether a certain transaction should be undertaken pursuant to the Economy Act or some other authority, contact the General Law Division, at (202) 482-5391.