



**Department of Energy
Acquisition Regulation**

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ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the DOE and NNSA Procurement Executives.

Subject: *Interagency Contracting*

References:

| | |
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| FAR Part 7 | Acquisition Planning |
| FAR Part 8 | Required Sources of Supplies and Services |
| FAR Part 10 | Market Research |
| FAR 17.2 | Options |
| FAR 17.5 | Interagency Acquisitions Under the Economy Act |
| FAR 37 | Service Contracting |
| FAR Part 38 | Federal Supply Schedule Contracting |
| Guide Chapter 7.1 | Acquisition Planning |
| Guide Chapter 17.1 | Interagency Agreements |
| Guide Chapter 38.1 | Task Order Contracting |
| | Strategic Acquisition Transaction Guide |
| Guide Chapter 71.1 | Headquarters Review of Contract and Financial Assistance Actions |
| DOE I 481.1C | Work for Others (Non-Department of Energy Funded Work) |
| Chapters 12 and 13 | Accounting Handbook |

Effective date of the Acquisition Letter (AL)

This AL is effective upon issuance.

AL Expiration

This AL remains in effect until superseded or canceled.

Contact for More Information

Contact Jacqueline Kniskern of the Department of Energy (DOE), Office of Procurement and Assistance Policy at (202) 287-1342, or at jacqueline.kniskern@hq.doe.gov.

Purpose of the AL

The purpose of this AL is to provide guidance on the use of external or non-DOE procurement instruments including the following: Economy Act transactions/Interagency Agreements (IAA) supported by servicing agency contracts, Government-Wide Acquisition Contracts (GWACs), Federal Supply Schedules (FSS) awarded by the General Services Administration (GSA), and contracts or orders awarded through Franchise Fund organizations. This AL applies to all DOE elements, including the National Nuclear Security Administration. For the purpose of this AL, “DOE” refers to both DOE and/or NNSA, as applicable.

The purposes of this revision are to: 1) establish a new requirement for Funds-Out Interagency Agreements with the General Services Administration (GSA); 2) provide guidance for when DOE acts as the Servicing Agency under a Funds-In Interagency Agreement and a contract is required; and 3) add a reminder under FSS and GWACs to perform price reasonableness determinations. The subject line of this AL has also been revised. The revised text is in italics.

Background

Recent events involving the misuse of one Federal Government agency’s contract by another Federal Government agency have created a need to re-emphasize the proper use of other agencies’ procurement instruments by the DOE. The DOE and NNSA Senior Procurement Executives sent memoranda to DOE Procurement Directors and the NNSA Service Center Office of Business Services, respectively, reminding contracting professionals to practice due diligence in using other agencies’ contracts (See [Policy Flash 2004-23](#) and NNSA Memorandum dated September 27, 2004). On November 1, 2004, this DOE Policy Flash was forwarded to the Heads of all DOE Program Offices with a specific request for their cooperation, as well as requesting their assistance and inviting them to participate in upcoming training.

Guidance Included in this Acquisition Letter

1. General Areas of Guidance

- A. Acquisition Planning
- B. Administration

2. Guidance on Specific Non-DOE Procurement Instruments

- A. Economy Act and Funds-Out Interagency Agreements (Rev)
- B. Economy Act and Funds-In Interagency Agreements
- C. Government-Wide Acquisition Contracts
- D. Federal Supply Schedules
- E. Franchise Fund Organizations

Guidance Included in this Acquisition Letter

1. General Areas of Guidance

A. Acquisition Planning

The use of non-DOE acquisition instruments is an additional consideration in and not a substitute for acquisition planning. The Contracting Officer must work with the requiring program officials during acquisition planning to obtain supplies or services in a manner which best meets their needs. Factors to be considered in selection of instrument type during planning include:

- Customer Requirements
- Schedule
- Cost (which should include any applicable fee or service charge for use of another agency's contract)
- Scope of Work
- Oversight/Monitoring/Reporting requirements
- Unique terms, conditions or requirements needed to comply with any DOE-specific statutes, regulations, directives and other requirements
- DOE policies on small business, performance-based contracting and competition
- DOE funding restrictions

Another agency's contract shall not be used to circumvent DOE requirements.

B. Contract Administration

When another agency's contract is used to support a DOE requirement, the DOE Contracting Officer, in conjunction with the requiring program official and the servicing agency, should determine the nature and level of contract administration support to be provided by DOE and/or the servicing agency.

DOE Contracting Officers should monitor tasks provided to the servicing agency to ensure that they are consistent with the scope of the agreement with the other agency and/or the terms of the servicing agency contract.

Areas of consideration include:

- Designation of DOE Contracting Officer Representative (COR)
- Servicing agency Contracting Officer responsibilities, including quality assurance plan
- Verification of services proposed
- Verification of receipt of deliverables

Due diligence is required by DOE Contracting Officers and their designated representative(s) during the period of performance to ensure that the contractor, as well as

the servicing agency, continues to comply with all applicable regulations, policies and practices. Review of contractor required deliverables and invoices should include items such as ensuring that services provided remain within the scope of work and that labor is provided by appropriate, and if applicable, approved labor categories.

DOE Contracting Officers should undertake the same review process when exercising options or extending a period of performance as they perform during the pre-award phase. They must ensure that an extension or option to an instrument is in the best interest of the Government before proceeding with the extension or option. They must also document this rationale in the determination and findings for the option exercise, as required by FAR 17.207, or in a memorandum to the file for an extension.

2. Guidance on Specific Acquisition Instruments

A. Economy Act and Other Funds-Out Interagency Agreements

The Economy Act (31 U.S.C. 1535), as implemented by FAR 17.5, authorizes agencies under certain circumstances and in accordance with certain requirements to enter into mutual agreements to obtain supplies or services by interagency acquisition. The Economy Act applies when more specific statutory authority does not exist to enter into an interagency acquisition (FAR 17.500). For example, it does not apply to acquisitions from required or optional sources of supply prescribed in FAR Part 8. It also does not apply to acquisitions using GWACs. An Economy Act transaction shall not be used to circumvent: (1) Federal or DOE regulations, (2) limitations on the use of appropriated funds; (3) requirements of FAR 7.3, Contractor Versus Government Performance; or (4) any other agency's authority or responsibility.

To ensure that Interagency Agreements (IAAs) issued under the authority of the Economy Act are proper, all IAAs shall be signed by a cognizant DOE Contracting Officer. In addition, Contracting Officers are instructed to undertake the following actions when DOE is the requiring agency:

- 1) If the IAA uses an existing servicing agency contract(s), the initiating DOE program official shall include a copy of the contract's statement of work and other applicable contractual documents with the Procurement Request. If the documents are not included, the DOE Contracting Officer should ensure they are obtained. The DOE Contracting Officer shall review the statement of work and other documents to determine that the supplies or services requested under the IAA are within the scope of the servicing agency's contract and confirm this determination with the servicing agency's Contracting Officer. The DOE Contracting Officer shall document this review in the written Determination and Findings discussed below. To the maximum extent practicable, the DOE Contracting Officer shall also ensure that use of the servicing agency's contract does not circumvent DOE policies with respect to competition, small business and performance-based acquisition.

2) If the servicing agency will be awarding a contract or awarding a task or delivery order under an existing contract to meet the IAA requirements, the DOE Contracting Officer shall include any special terms and conditions in the IAA to ensure that applicable DOE policies and procedures are not circumvented.

3) Prepare and sign a written Determination and Findings that:

- a) sets forth, with supporting documentation, the prerequisites found at FAR 17.503;
- b) states conformance to all DOE regulations, policies and procedures.
- c) states that the supplies or services obtained are within the authority of the servicing agency;
- d) states that any services to be contractually provided by the servicing agency are within the scope of the IAA statement of work and that any follow-on tasks will be reviewed by the DOE Contracting Officer to ensure that they are also within the scope of the IAA statement of work;
- e) states that any services to be contractually provided by the servicing agency have been determined to be within the scope of the servicing agency's contract statement of work by both the DOE and the servicing agency's cognizant Contracting Officer;
- f) includes detailed information on the supplies or services that are to be provided, performance/delivery schedules and the responsibilities of the servicing agency to ensure compliance with all contractual requirements;
- g) describes any DOE special or unique terms, conditions or requirements to be incorporated into the IAA and/or servicing agency contract/order;
- h) states it is in the best interest of DOE for satisfying customer requirements, schedule, cost and administrative requirements; and
- i) complies with the requirements of FAR 7.3.

4) Unless the cognizant DOE Contracting Officer determines it appropriate to perform the functions directly, a DOE Contracting Officer's Representative (COR) shall be designated by the cognizant DOE Contracting Officer for each IAA to monitor the agreement and any DOE requirements to be fulfilled contractually by the servicing agency. The COR, in coordination with the DOE Contracting Officer, shall also provide such information as the servicing agency may require to support the administration of their contract or order.

5) Submit IAAs with supporting file documentation to the Office of Contract Management (ME-62) for DOE, and Office of Acquisition and Supply Management (NA-63) for NNSA, when the dollar value of the IAA is over the approval threshold of the Head of Contracting Activity.

6) The GSA Administrator has requested that the following statement be included in any IAA that requests GSA to award a contract or place an order on DOE's behalf. DOE Contracting Officers shall include this statement in all IAAs with GSA.

By signing the funding document you have verified that the funds are legally available for the purpose of the acquisition activities to be performed by GSA; all unique funding and procurement requirements, including statutory or regulatory requirements applicable to the funding being provided, have been disclosed to GSA; and all internal reviews and approvals required prior to placing the order with GSA have been completed.

B. Economy Act and “Funds-In” Interagency Agreements

(This section does not apply to reimbursable work subject to DEAR 970.5217-1 Work for Others Program or DOE Order 481.1C Work for Others (Non-DOE Funded Work)).

Under the Economy Act, DOE may only provide supplies or services if the transaction has been determined to be in the best interest of the Government and the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source. In addition, if the transaction or order will require the use of a contract, one of the following three circumstances (see FAR 17.503) must 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 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.*

A Funds-In IAA is required when DOE will be the servicing agency and the use of a DOE contract is required. DOE Contracting Officers should inform the requesting agency technical and/or contracting personnel that the Funds-In IAA must include the following:

- 1) The signature of an individual within the requesting agency authorized to approve IAAs*
- 2) Billing data, such as the names and mailing addresses of the servicing and requesting parties' accounting offices*
- 3) A termination provision for the IAA*
- 4) A citation of the requesting agency's funding and appropriation data, including any special restrictions for use of the funds*
- 5) Identification of the contractor and contract number*
- 6) A statement of work and an estimated cost*

- 7) *Provisions for inspection and acceptance of the contractor's work*
- 8) *Intellectual property provisions, if applicable*
- 9) *Unique terms and conditions required by the requesting agency, if applicable*
- 10) *A copy of the requesting agency's Determination & Findings for the IAA*

The DOE Contracting Officer is responsible for compliance with all legal or regulatory requirements applicable to the contractual action required by the Funds-In IAA, including:

- 1) having adequate statutory authority for the contractual action;*
- 2) complying fully with the competition requirements of FAR Part 6; and*
- 3) complying with the requirements for small business set-asides in FAR 19.5.*

*Work requested under an on-going contract must be within the scope of the contract. Reimbursable work must be authorized under on-going contracts by the issuance of a new task assignment, task order, or other work authorization by a DOE Contracting Officer. The authority to authorize reimbursable work under on-going contracts may not be delegated to Contracting Officer's Representatives. The contractor must develop a budget before the authorization to start work and track the costs associated with the reimbursable separately. **DOE Contracting Officers shall neither award contracts nor place order under on-going contracts for other agencies that does not conform to DOE regulations, policies, and procedures.***

C. Government-Wide Acquisition Contracts (GWACs)

A GWAC is a multiple award contract issued by one agency that may be used by other agencies to procure information technology products and services. Each GWAC is operated by an executive agent designated by the Office of Management and Budget (OMB) pursuant to section 5112(e) of the Clinger-Cohen Act. OMB has designated four agencies as executive agents for GWACs: GSA, National Institutes of Health, National Aeronautics and Space Administration, and Department of Commerce. A list of GWACs is included in the Strategic Acquisition Transactions Guide.

GWACs are valuable tools for the acquisition of information technology supplies and services, but the DOE Contracting Officer must ensure that: (1) the GWAC is not used to circumvent applicable DOE policies or regulations; (2) the ordering agency properly administers all contract terms and conditions and adheres to Federal acquisition regulations and policy; (3) DOE requirements are within the scope of the master GWAC contract; and (4) subsequent task orders are under the scope of the contract.

To ensure that GWACs are used properly, DOE Contracting Officers shall undertake the following actions:

- 1) Obtain a copy of the statement of work and other applicable contractual documents and validate that the services requested are within the scope of that GWAC. Document in a memo to the file this review of the statement of work.
- 2) Place only orders that comply with all DOE regulations, policies and procedures. The Contracting Officer must pay particular attention to complying with performance-based and small business policies, and the procedures prescribed in the GWAC for providing a fair opportunity to all GWAC contractors.
- 3) Document that the order is in the best interest of DOE for satisfying customer requirements, schedule, cost and administrative requirements.
- 4) Designate a DOE COR if the servicing agency is not acting as the COR.
- 5) *Perform and document a price reasonableness determination.*

D. Federal Supply Schedules (FSS)

The General Services Administration (GSA) has statutory authority to enter into contracts for government-wide use. The primary statutory authority for the FSS program is derived from both Title III of the Administrative Services Act of 1949 (41 U.S.C. 251, et seq.) and Title 40 U.S.C., Public Buildings, Property and Works. The FSS contracts, also known as Multiple Award Schedules, are awarded by GSA for acquisition of supplies or services by all Federal Government agencies. Each schedule in FSS has specific supplies or specialized services that can be obtained by the ordering agency. **All task or delivery orders issued under FSS shall be signed by the cognizant DOE Contracting Officer.**

When placing orders against the FSS, DOE Contracting Officers must comply with the procedures in FAR Part 8. GSA has additional instructions and information for use of the schedules at www.gsa.gov. Contracting Officers may only place orders against the FSS for supplies or services listed on the vendor's schedule contract. The Contracting Officer shall not include services outside the scope of the Schedule contract in the order. If new labor rates are required for the task order, they must be negotiated and incorporated into the schedule contract by GSA before they can be included in the order.

To ensure that FSS are used properly, DOE Contracting Officers shall:

- 1) Ensure that use of FSS is not being used to circumvent DOE policy or regulation.

- 2) Review the schedule contract's statement of work and other applicable contractual documents and validate that the supplies/services requested are within the scope of that schedule. Document the review of the statement of work in a memorandum for the file.
- 3) Review follow-on task orders to ensure that they remain within the scope of the contract.
- 4) Comply with the specific requirements of the FSS, including those for competitive tasking, consistency with the scope of work, and use of the instruments for a specific, not overly broad or undefined, purpose.
- 5) Seek and document advice from the cognizant GSA Contracting Officer on proper use of the FSS whenever an issue is in doubt.
- 6) *Perform and document a price reasonableness determination.*

E. Franchise Fund Organizations

The Government Management Reform Act of 1994 authorized the Office of Management and Budget to designate franchise fund pilots. A franchise pilot is a self-supporting business-like entity that provides common administrative services on a fully reimbursable basis to other Federal agencies. These services include procurement support services.

DOE's past experience with the use of franchise fund organizations to support the acquisition of its requirements has not been positive. **Accordingly, no franchise fund organization shall be used to obtain acquisition management services unless approved by the cognizant Head of Contracting Activity, with notice to the Senior Procurement Executive.** As in the case of other non-DOE procurement instruments previously discussed, franchise fund organizations may not be used to circumvent DOE policies or regulations. All services to be provided by a franchise fund organization must be obtained through an interagency agreement that follows the requirements described in paragraph 2A above under Economy Act and Funds-Out Interagency Agreements.