

SBA

SOP 90 77

**EXTERNAL AND ECONOMY
ACT AGREEMENTS**

**U.S. Small Business
Administration**

Office of Program Review

**SMALL BUSINESS ADMINISTRATION
STANDARD OPERATING PROCEDURE**

SUBJECT: EXTERNAL AND ECONOMY ACT AGREEMENTS	S.O.P.		REV
	SECTION 90	NO. 77	

INTRODUCTION

1. **Purpose.** This SOP provides basic procedures for the utilization of external agreements and Economy Act agreements.
2. **Personnel Concerned.** All Agency personnel.
3. **Distribution.** Standard.
4. **Originator.** Office of General Counsel and Office of Program Review.

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EXTERNAL AND ECONOMY ACT AGREEMENTS

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CHAPTER 1
EXTERNAL AGREEMENTS

1. **PURPOSE.** This standard operating procedure (SOP) has been developed to provide uniform guidance for Agency personnel in the formulation and approval of agreements between SBA and external entities where other established forms or procedures are not appropriate.

This chapter provides guidelines, procedures, and specific requirements for the creation of formal, written, external agreements between SBA and other governmental entities and public and private organizations (excluding for-profit concerns) for the purpose of fulfilling some mission of SBA authorized by statute or otherwise required by law.

This chapter of the SOP does not cover the following.

- a. Federal procurement contracts subject to the Federal Acquisition Regulations (FAR).
 - b. Federal grants or cooperative agreements subject to Office of Management and Budget (OMB) directives and circulars.
 - c. Memorandums of understanding (MOU) entered into under the SBA's cosponsorship authority, in section 8(b)(1)(A) of the Small Business Act, as implemented in Standard Operating Procedure 90 75 1.
 - d. Agreements entered into by the Inspector General in accordance with the Inspector General Act of 1978.
 - e. Agreements with other Federal Government agencies for training of Federal employees, pursuant to the Government Employees Training Act, 5 U.S.C. §4104, and implementing rules and regulations at 5 C.F.R. Part 410 and Federal Personnel Manual, Chapter 410.
 - f. Economy Act agreements, which are covered in Chapter 2.
2. **AUTHORITY.** An external agreement relies upon statutory authority provided in the Small Business Act or other law and is for the purpose of fulfilling SBA's mission. An external agreement itself does not create authority for SBA activities that does not exist already under law.

3. REQUIRED ELEMENTS OF AN EXTERNAL AGREEMENT

- a. Each external agreement must contain at least the following provisions or elements.
- (1) Title--All agreements entered into pursuant to this chapter shall be titled "External Agreement." Other titles, such as "Memorandum of Understanding" or "Cooperative Agreement," shall not be used under any circumstance, in order to avoid confusion with other types of agreements which are specifically exempt from coverage by this chapter.
 - (2) Purpose--A broad statement of the purpose and goals of the agreement.
 - (3) Authority--Specific references to the statutory provisions of the Small Business Act or other law, which authorize SBA to engage in the activity contemplated by the agreement.
 - (4) Scope--A specific description of the services performed, activities conducted, or cooperative efforts contemplated under the agreement.
 - (5) Responsibilities--A description of how the agreement will be implemented, for example:
 - (a) which SBA office(s) will be responsible for implementation of the agreement, including specific staff contact persons, or
 - (b) what the specific obligations of each party to the agreement are.
 - (6) Term--A statement of how long the agreement will be in effect, and a provision regarding if and by whom the agreement may be renewed. Generally, the term should be no longer than three years.
 - (7) Termination--A provision generally should be made for SBA to terminate the agreement following notice to the other parties to the agreement.
 - (8) Signature--A signature block, to be signed by the SBA official with authority to enter into the agreement, pursuant to paragraph 4 of this SOP.
- b. Each proposed agreement should be considered carefully before processing for clearance and signature to ensure that the agreement is intended to fulfill an aspect of SBA's mission, and is realistically expected to achieve that purpose. SBA supervisors must not, under any circumstance, establish Performance Management and Appraisal System (PMAS) critical elements which require their employees to negotiate or execute a specific number of such agreements per year.

4. SBA OFFICIALS WITH AUTHORITY TO SIGN EXTERNAL AGREEMENTS

- a. Any agreement which creates, amends, or defines SBA national policy, or establishes priorities with regard to SBA national policy, shall be signed by the Administrator or his or her designee.
- b. Agreements which create Agencywide procedures, change Agencywide procedures, adapt certain Agencywide procedures to specific situations, or involve Central Office funds, may be signed by:
 - (1) the Administrator,
 - (2) the Deputy Administrator, or
 - (3) the Associate Deputy Administrator responsible for the program area to which the agreement pertains.
- c. Agreements which do not meet the criteria stated in paragraphs 4.a. or 4.b. of this SOP may be signed by:
 - (1) the Administrator,
 - (2) the Deputy Administrator,
 - (3) the Associate Deputy Administrator responsible for the program area to which the agreement pertains, or
 - (4) regional administrators.
- d. The authority to sign external agreements may not be redelegated, except by the Administrator.

5. CLEARANCE AND APPROVAL PROCESS

- a. All external agreements must be fully cleared in final draft form before being presented for signature to the SBA official authorized to execute the agreement.
- b. All external agreements also must be fully cleared in final draft form by the other party to the agreement before being presented for signature to the SBA official authorized to execute the agreement.
- c. Each agreement submitted for clearance and approval shall have attached thereto an internal memorandum, which must include the following information.
 - (1) A brief summary of the agreement and its purpose.

- (2) An estimate of the current and future costs which are expected to be incurred in fulfilling the purposes of the agreement, including expenditures of SBA appropriated funds for such things as travel costs and postage, and an estimate of staff time. This information will be used only for internal programmatic review by the appropriate management official.
 - (3) Any background information explaining the need for the agreement.
 - (4) For agreements to be signed by the Administrator or Deputy Administrator, a recommendation for approval with signature of the appropriate Management Board Member.
- d. All agreements must receive clearance by legal counsel.
- (1) Agreements executed at the Central Office level must be cleared by the Office of General Counsel.
 - (2) Agreements executed at the regional office level must be cleared by Regional Counsel.
- e. An external agreement must not state any specific sum of SBA funds expected to be used to fulfill the purpose of the agreement. An external agreement shall not be a legal obligation of SBA funds (over and above staff time). An external agreement also shall not be an internal budgetary commitment of SBA funds. Any commitment and obligation of funds for specific activities pursuant to the external agreement must be accomplished by the usual procedures; through an SBA Form 2, "Requisition for Supplies, Services & Federal Assistance," and a corresponding legal obligating document, for example, a procurement contract. See SOP 00 11, "Small Purchases, Contracts, Grants, and Cooperative Agreements."
- f. An external agreement cannot create authority for SBA activities that does not exist already under law.

6. ENFORCEMENT OF SBA POLICY WITH RESPECT TO EXTERNAL AGREEMENTS

- a. The Office of Program Review in Central Office is responsible for monitoring compliance with the policies set forth in this chapter.
- b. One copy of each external agreement executed by SBA, either at the regional office level or the Central Office level, shall be sent to the Office of Program Review in Central Office. That Office will maintain a central repository for all active external agreements.
- c. One copy of any external agreements which are expected to involve SBA funds, shall be sent to the Office of the Comptroller or to the regional budget officer, as appropriate, upon execution.

CHAPTER 2

ECONOMY ACT AGREEMENTS

7. **PURPOSE.** This chapter provides specific requirements and procedures for the creation of **Economy Act agreements**, through which SBA may order goods or services from another Federal agency, or provide goods or services to another Federal agency.
8. **AUTHORITY.** Economy Act agreements are authorized by the Economy Act, 31 U.S.C. §§ 1535-1537.
9. **STATUTORY REQUIREMENTS**
 - a. **Where SBA places an order.**
 - (1) The Administrator, or head of a major organizational unit within SBA, may place an order under the Economy Act with another agency for goods or services if:
 - (a) funds are available;
 - (b) the Administrator, or head of the ordering unit, decides the order is in the best interests of the United States;
 - (c) the agency or unit to fill the order is able to provide the goods or services; and
 - (d) the Administrator or his or her designee decides that ordered goods or services cannot be provided as conveniently or cheaply by a commercial enterprise.
 - (2) Such an order may not be placed with an entity funded by non-appropriated funds, for example, the Graduate School of the Department of Agriculture. Economy Act agreements are not the appropriate vehicle for transactions between governmental agencies and non-appropriated fund instrumentalities.
 - (3) An order which SBA places under the Economy Act obligates appropriated funds of SBA or its ordering unit. SBA may deobligate an amount obligated to an Economy Act agreement, to the extent that the agency or unit filling the order has not, by the end of the fiscal year or other period of availability of the appropriation, incurred obligations either in providing the requested goods or services or by making contracts to do so.

- (4) SBA shall make payment promptly by check, On-line Payment and Collection (OPAC) payment, wire transfer, or other payment mechanism on the written request of the agency or unit filling the order for SBA, and when evidence of fulfillment of the duties and responsibilities under the agreement are so certified by the responsible SBA officer.

b. Where SBA fills an order.

- (1) SBA may fill an order placed by another agency for goods or services either:
 - (a) by providing the ordered goods or services itself, or
 - (b) by making an authorized contract with another person to provide the requested goods or services.
- (2) When SBA receives payment (either upon its written request or in advance) for providing goods or services under an Economy Act agreement, SBA may expend those funds either:
 - (a) to provide the goods or services, or
 - (b) for a purpose specified for the appropriation fund credited.
- (3) When SBA provides goods from stocks on hand, the amount SBA receives in payment for those goods is to be credited so as to be available to replace the goods, unless:
 - (a) another law allows the amount to be credited to some other appropriation, or
 - (b) SBA decides that replacement is not necessary, in which case the amount received shall be deposited in the Treasury as miscellaneous receipts.
- (4) When SBA receives payment in advance of providing goods or services requested by another agency, SBA is to specifically identify these funds to assure they are utilized in support of their intended purpose.
- (5) SBA may determine whether to bill an ordering agency for all or any part of the estimated or actual cost of providing the goods or services requested by that agency.

10. REQUIRED ELEMENTS OF AN ECONOMY ACT AGREEMENT

- a. Each Economy Act agreement must contain at least the following provisions or elements.
 - (1) Title--All agreements entered into pursuant to this chapter shall be titled "Economy Act Agreement." Other titles, such as "Memorandum of Understanding" or "Cooperative Agreement," shall not be used under any circumstance, in order to avoid confusion with other types of agreements which are specifically exempted from coverage of this SOP.
 - (2) Purpose--A broad statement of the purpose and goals of the agreement.
 - (3) Authority--Specific references to the statutory authority of the Economy Act.
 - (4) Scope--A specific description of the goods or services ordered.
 - (5) Responsibilities--A description of how the agreement will be implemented, for example:
 - (a) which SBA office(s) will be responsible for implementation of the agreement, including specific staff contact persons, or
 - (b) what the specific obligations of each party to the agreement are.
 - (6) Term--A statement of how long the agreement will remain effective, and a provision regarding if and by whom the agreement may be renewed. The term normally should be restricted to a fiscal year or portion thereof, due to limitations on the use of appropriated funds across fiscal years.
 - (7) Termination--A provision generally should be made for SBA to terminate the agreement following notice to the other parties to the agreement.
 - (8) Signature--A signature block to be signed by the SBA official with authority to enter into the agreement, pursuant to paragraph 11 of this SOP.
- b. Each proposed agreement should be considered carefully before processing for clearance and signature, to ensure that the agreement is intended to fulfill an essential need of SBA.

11. SBA OFFICIALS WITH AUTHORITY TO SIGN ECONOMY ACT AGREEMENTS

- a. The following SBA officials have the authority to execute any Economy Act agreement:
 - (1) the Administrator, or
 - (2) the Deputy Administrator.

- b. For the purposes of Economy Act agreements, the following SBA officials are deemed to be the head of a major organizational unit within SBA with authority to execute Economy Act agreements, either to place an order for goods or services with another agency, or to fill such an order, but only to the extent of the functions of the unit managed by that official:
 - (1) the Associate Deputy Administrator with responsibility for the program area to which the agreement pertains,
 - (2) regional administrators,
 - (3) the Inspector General, or
 - (4) the Chief Counsel for Advocacy.

12. CLEARANCE AND APPROVAL PROCESS

- a. All Economy Act agreements must be fully cleared in final draft form before being presented for signature to the SBA official authorized to execute the agreement.
- b. All Economy Act agreements also must be fully cleared in final draft form by the other party to the agreement before being presented for signature to the SBA official authorized to execute the agreement.
- c. Each agreement submitted for clearance and approval shall have attached thereto an internal memorandum, which must include the following information.
 - (1) A brief summary of the agreement and its purpose.
 - (2) An estimate of the amount of appropriated funds which will be obligated by the agreement where SBA is the agency placing the order. Where SBA is the agency filling the order, an estimate of the amount of funds, if any, which will be expended in filling the order, and an estimate of the funds SBA is expected to receive from the ordering agency.
 - (3) Any background information explaining the need for the agreement.
 - (4) If SBA is the agency placing the order, an explanation of why the goods or services to be ordered under the agreement cannot be provided as conveniently or cheaply by a commercial enterprise. Include specific information regarding market research, price quotes from commercial sources, etc.
 - (5) If SBA is the agency placing the order, an explanation of why the agreement is in the best interests of the U.S. Government.

- (6) For agreements to be signed by the Administrator or Deputy Administrator, a recommendation for approval with signature of the appropriate Management Board Member.
- d. All agreements must receive clearance by legal counsel.
 - (1) Agreements executed at the Central Office level must be cleared by the Office of General Counsel.
 - (2) Agreements executed at the regional office level must be cleared by Regional Counsel.
 - (3) Agreements executed by the Inspector General must be cleared by the Counsel for the Inspector General.
- e. Clearance is required by SBA budget officers.
 - (1) Agreements which impact Central Office funds must be cleared by the Office of the Comptroller.
 - (2) Agreements executed at the regional office level must be cleared by the regional budget manager.
 - (3) Agreements executed by the Inspector General must be cleared by the Assistant Inspector General for Management and Policy.
- f. Before any agreement is executed where SBA is the agency placing an order under the authority of the Economy Act, the statute requires that the Administrator or his or her designee determine that the ordered goods and services cannot be provided as conveniently or cheaply by a commercial enterprise. The Inspector General is designated to make this determination with regard to Economy Act agreements to be executed by the Inspector General.

13. ENFORCEMENT OF SBA POLICY WITH RESPECT TO ECONOMY ACT AGREEMENTS

- a. The Office of Program Review in Central Office is responsible for monitoring compliance with the policies set forth in this chapter.
- b. One copy of each Economy Act agreement executed by SBA, either at the regional office level or the Central Office level, shall be sent to the Office of Program Review in Central Office. That Office will maintain a central repository for all active Economy Act agreements.
- c. One copy of all Economy Act agreements shall be sent, by the originating office, to the Office of the Comptroller or to the regional budget officer, as appropriate, when executed.

APPENDIX 1
INDEX TO FORMS AND REPORTS

[RESERVED]

APPENDIX 2**DEFINITIONS**

External agreement is any written agreement that creates a formal relationship between SBA and other governmental entities and public and private organizations (but excluding for-profit concerns), for the purpose of fulfilling some mission of SBA authorized by statute or otherwise required by law.

Economy Act agreement is any agreement entered into pursuant to the authority of the Economy Act, 31 U.S.C. §§ 1535-1537, under which SBA may order goods and services from another Federal agency, or provide goods and services to another Federal agency.