



Department of Energy

Washington, DC 20585

AUG 06 2004

MEMORANDUM FOR DISTRIBUTION

FROM: RICHARD H. HOPF, DIRECTOR
OFFICE OF PROCUREMENT
AND ASSISTANCE MANAGEMENT

SUBJECT: Proper Use of Other Agencies' Contracts

The proper use of acquisition vehicles placed by other agencies, but available for use by DOE as an ordering agency, is a current issue in contract oversight. We have all read of recent events concerning the discovery of improper procurement practices by the General Services Administration's (GSA) Contracting Officers, questions concerning the propriety of orders placed by the Department of Defense against GSA acquisition vehicles, and the 10-day suspension of GSA's designation as an executive agent for Government-wide acquisition contracts (GWACs). These occurrences illuminate the need for DOE's contracting professionals to practice due diligence in using other agencies' contracts.

Therefore, you are reminded of the following:

ECONOMY ACT Compliance with the Economy Act (31 U.S.C. 1535) is mandatory. Guidance applying to interagency acquisitions is found at Federal Acquisition Regulation (FAR) Subpart 17.5. The Economy Act applies when more specific statutory authority does not. It does not, for example, apply to acquisitions from required or optional sources of supplies prescribed in FAR Part 8, which have their own separate statutory authority. Nor does it apply to acquisitions using GWACs.

While the Economy Act authorizes agencies to obtain supplies or services by interagency acquisition, it may not be used to circumvent: (1) Federal or DOE regulations, for example, to avoid competition requirements; (2) limitations on the use of funds; (3) requirements of FAR Subpart 7.3, Contractor Versus Government Performance; or (4) any other agency's authority or responsibility.

When using the Economy Act, pay particular attention to compliance with all aspects of FAR, Department of Energy Acquisition Regulation (DEAR), applicable statutes, regulations, policies, and agency specific requirements -- regardless of whether DOE is the requiring or servicing agency.



GWAC

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. The Office of Management and Budget (OMB) has designated four agencies as executive agents for GWACs: GSA, National Institutes of Health, National Aeronautics and Space Administration, and Department of Commerce.

GWACs are valuable tools for the acquisition of information technology supplies and services, but diligence is required to ensure that orders placed: (1) comply with all applicable DOE regulations, policies, and procedures; (2) fall within the scope of the master GWAC contract; and (3) conform to any other Federal regulation or unique requirement associated with the acquisition. When using GWACS, pay particular attention to compliance with the specific requirements of the awarding agency, to include those for competitive tasking, consistency with the scope of work, and use for a specific purpose.

FSS

GSA has the authority to enter into other acquisition vehicles for Government-wide use. The Federal Supply Schedules (FSS) are one example. Contracting officers must comply with the procedures in FAR Part 8 when using FSS. They may only place orders against the FSS for supplies or services listed on a vendor's schedule contract. Contracting Officers must comply with the specific requirements of the awarding agency, including those for competitive tasking, consistency with the scope of work, and use of the vehicles for a specific, not overly broad or undefined, purpose.

FRANCHISES

When obtaining acquisition assistance from "Franchise" procurement organizations (e.g., GovWorks), the assistance may not be used to circumvent DOE acquisition policies or procedures. The franchise organization should be coordinating with, and work at the direction of, the local DOE contracting office.

The DOE Acquisition Guide is currently being updated with additional information on GWACs, FSS, and Economy Act transactions. Training programs for DOE contracting officers and contracting officer's representatives are being reviewed to determine the adequacy of existing training. Existing procedures and policies on the use of these vehicles are under review. Additional safeguards may be forthcoming. In the meantime, we can ensure that non-DOE acquisition vehicles are properly used by adhering to the rules and principles outlined above.

If you have any questions on this subject, please contact Ms. Jacqueline Kniskern of my staff at (202) 287-1342.

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