

**ECONOMY ACT AGREEMENTS
FOR
PROVIDING GOODS OR SERVICES**

1. Description and Requirements.

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 17.5 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 agreement must achieve full cost recovery, and there is no law 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 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.

Further, each Economy Act order 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. If the Economy Act order requires contracting action by the servicing agency, 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.

OMB Rules for Intragovernmental Transactions; Economy Act Agreements

In November, 2006, OMB issued rules on what needs to be in agreements involving the transfer of funds between agencies. These rules require that certain financial info be included, as well as special provisions addressing termination costs and dispute resolution.

All Economy Act agreements must now include the following financial data for both agencies in an intragovernmental transaction:

Treasury Account Symbol (TAS), also referred to as the appropriation code

Business Partner Network (BPN) No. (DUNS# should be used. The DUNS # is necessary in order to register the BPN.)

Business Event Type Code - (BETC) - Generally the codes used will be DISB (for gross disbursement) or COLL (for offsetting collection) depending on whether you are the requesting or servicing agency. This link contains information on the BETC:
http://www.fms.treas.gov/gwa/factsheet_betc.html

In addition, OMB is requiring new cancellation and dispute resolution provisions, which must be incorporated into the agreement; *see* sections 8 and 9.

2. Model Economy Act Agreement.

MEMORANDUM OF UNDERSTANDING

PURSUANT TO
THE ECONOMY ACT

THROUGH WHICH
[name of other agency]

IS PURCHASING
[state what they are purchasing]

FROM

[name of your operating unit]
U.S. DEPARTMENT OF COMMERCE

Agreement No. ____

[Note: This format is for use only when another Federal Agency or DOC Operating Unit is paying your DOC operating unit for goods or services, i.e., when you are the “servicing agency.” The other Federal Agency may use its own format provided it complies with all of the requirements set forth in the Federal Acquisition Regulations. This format has been designed to ensure compliance with the Economy Act and FAR. Accordingly, if the other party does not have a standard format that is in compliance with the FAR requirements, providing this model agreement most likely will alleviate the need to have the agreement revised and, therefore, will help to shorten the time needed to have the agreement approved.]

1. PARTIES AND PURPOSE

This Memorandum of Understanding (MOU) establishes an agreement between the *[name of other agency]* and *[name of DOC office]*, U.S. Department of Commerce (DOC), through which *[name of other agency]* will pay *[name of DOC office]* for *[provide a general description of the good/service for which the other party is paying]*.

2. BACKGROUND

[Provide background information which addresses why the other party is requesting the goods/services.]

3. AUTHORITY

The authorities for *[name of other agency]* and DOC to enter into this agreement are:

- (1) the Economy Act, 31 U.S.C. § 1535, which provides that an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if:
 - (A) amounts are available;
 - (B) the ordering agency decides the order is in the best interest of the United States Government;
 - (C) the agency to fill the order is able to provide or get by contract the ordered goods or services; and
 - (D) the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise (payments must be made on the basis of the actual cost of goods or services provided); and
- (2) *[set forth the other party's legal authority under which it is making the purchase for goods/or services, i.e., the programmatic authority to which the purchase is related].*

4. ECONOMY ACT FINDINGS

As set forth in the attached "Determinations and Findings Pursuant to 48 CFR 17.503," *[name of other party]* warrants that sufficient funding amounts are available, that this agreement is in the best interest of the United States Government, and that the services requested cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

[Pursuant to 48 CFR 17.503, if the Economy Act order requires contracting action by the servicing agency, there also must be a determination 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.

Accordingly, if the order requires such contract action, the agreement also must include a statement such as: “[Name of other party] warrants [choose one of the above 3 situations which applies].”]

[Name of DOC office] warrants that it is able to provide or get by contract the requested services. [If the agreement requires contracting action by DOC, the agreement must also include the following sentence: [Name of DOC office] warrants that it has adequate statutory authority for the contractual action and will comply fully with the competition requirements of part 6 of the Federal Acquisition Regulations as well as all other legal or regulatory requirements applicable to the contract.]

5. TERMS AND CONDITIONS

[State the terms and conditions of the agreement, i.e., what it is specifically that the other party is purchasing, delivery requirements, and the amount that your office will receive as payment.] [Name of you office] will achieve full cost recovery for the goods and services it is providing under this agreement.

[Orders that would divide the costs of goods or services among agencies participating in events such as conferences, etc., on a basis other than each agency paying only for what it receives are not appropriate. You should discuss such an arrangement with the General Law Division (202-482-5391) prior to drafting an agreement.]

6. TRANSFER OF FUNDS

[Explain the details of how the other party will pay for the goods/services, e.g., whether payments will be monthly, quarterly, in advance, etc.]

The appropriation out of which *[name of other party]* will pay for these services is:
_____. These funds expire on *[state the date on which the funds expire].*¹

This amount will be deobligated to the extent that the servicing agency has not incurred obligations before the end of the period of availability of that appropriation. *[NOTE: your office may ask for advance payment for all of part of the estimated costs of furnishing the supplies or services, or payment may be made after the supplies and services have been furnished. Under no circumstances will the amount paid be more than the actual costs of the goods or*

¹ However, if the funds are “no year” funds, state that “no year” funds are being used for the purchase.

services.]

[NOTE: Include the appropriation code and all appropriate codes and numbers as described above in the introductory notes.]

7. CONTACTS

The contacts of each party to this agreement are:

[Name of DOC contact]
[title of DOC contact]
[Address of DOC contact person]
 phone:*[phone number of DOC contact person]*
 fax : *[fax number of DOC contact person]*
 E-mail: *[E-mail address of DOC contact person]*

[Name of other party's contact person]
[title of other party's contact person]
[address of other party's contact person]
 phone:*[phone number of other party's contact person]*
 fax : *[fax number of other party's contact person]*
 E-mail: *[E-mail address of other party's contact person]*

The parties agree that if there is a change regarding the information in this section, the party making the change will notify the other party in writing of such change.

8. DURATION OF AGREEMENT, AMENDMENTS AND MODIFICATIONS

This agreement will become effective when signed by all parties. The agreement will terminate on *[date]*, but may be amended at any time by mutual consent of the parties. ***[NOTE: If the agreement will last longer than 3 years, the following sentence should be included in the agreement: "The parties will review this agreement at least once every three years to determine whether it should be revised, renewed, or canceled."]***

Any party may terminate this agreement by providing ___ days written notice to the other party. This agreement is subject to the availability of funds.

[Add Cancellation Provision per OMB Requirements:]

"If [buyer] cancels the order, [seller] is authorized to collect costs incurred prior to cancellation of the order plus any termination costs, up to the total payment amount provided for under this agreement."

9. RESOLUTION OF DISAGREEMENTS

Nothing herein is intended to conflict with current DOC or *[name of other agency]* directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished either by an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

[Add Dispute Resolution Provision per OMB Requirements:]

"Disputes shall be resolved pursuant to applicable provisions of the Business Rules for Intragovernmental Transactions delineated in the Treasury Financial Manual, Vol. 1, Bulletin 2007-03, Section VII (Resolving Intragovernmental Disputes and Major Differences)."

*[signature of person who has authority to make
the Economy Act purchase]*

[typed name]

[typed title]

[typed name of other agency]

[typed address of other agency]

[date]

*[signature--must be an official with
authority to sign Economy Act
Agreements for incoming funds]*

[typed name]

[typed title]

[typed office at DOC]

U.S. Department of Commerce

[typed address]

[date]

Attachment

*DETERMINATIONS AND FINDINGS
PURSUANT TO 48 CFR 17.503*

[Name of other party] warrants:

- _____ that sufficient funding amounts are available;
- _____ that this agreement is in the best interest of the United States Government; and
- _____ that the services requested cannot be provided by contract as conveniently or cheaply by a commercial enterprise. ***[NOTE: place a check in each space for each finding to indicate it has been substantiated.]***

It has been determined that this Economy Act order:

- _____ does not require contracting action by the servicing agency; or
- _____ does require contracting action by the servicing agency and that one of the following circumstances exists:
 - _____ 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;
 - _____ 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
 - _____ the servicing agency is specifically authorized by law or regulation, *i.e.*, ***[set forth the citation for the law or regulation]***, to purchase such supplies or services on behalf of other agencies. ***[NOTE: place a check in each space above that applies.]***

***[name of official of the other party who
has authority to sign this D&F, i.e., either a contracting
officer or other official designated by the
agency to sign the D&F]
[title and office]
[name of agency]***

Date: _____