

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

_____x

In re:

Order Delegating Authority to Clerk
With Respect to Interagency Agreements

GENERAL ORDER
M-282

_____x

Until further order of this court, the Clerk is delegated the authority to enter into mutual, interagency agreements with other federal agencies.

The delegation of authority as contained in this order empowers the Clerk with the authority to procure products and/or services through interagency acquisition only with other federal agencies pursuant to 31 U.S.C. § 1535 of the Economy Act (the “Act”). As set forth in the Act, the procedural guidelines, annexed hereto, are to be adhered to and cost for products and/or service shall not exceed \$25,000.

NOW, THEREFORE, IT IS ORDERED, that the Clerk is delegated the authority to enter into interagency agreements.

Dated: New York, New York
March 13, 2003

/s/ Stuart M. Bernstein
Honorable Stuart M. Bernstein
Chief Bankruptcy Judge

**Delegation of Authority to Obtain
Products or Services from Other Federal Agencies
through Interagency Agreements
Under the Economy Act**

Economy Act Transactions

Title 31 U.S.C. § 1535, Economy Act, authorizes federal agencies to enter into mutual agreements to obtain or provide products or services through interagency acquisition with other federal agencies; within the context of this statute, the Judiciary is considered a “federal agency.”

The Economy Act can be used only if other statutory authority does not apply. For example, Reimbursable Work Authorizations (RWAs) with the General Services Administration are covered under Title 40, U.S.C. § 490(a)(6), “Property Act,” and are not, therefore, covered by the Economy Act.

There are four types of Economy Act transactions into which a court or Federal Public Defender Organization (FPDO) may enter.

- 1) A court or FPDO enters into an interagency agreement with a federal agency for work to be performed or services to be provided by the agency on behalf of the court or FPDO.
- 2) A court or FPDO enters into an interagency agreement with a federal agency that will contract with a vendor to provide products or services on the court’s or FPDO’s behalf.
- 3) A court or FPDO enters into an interagency agreement with a federal agency for work to be performed under an existing contract held by the agency.
- 4) A court or FPDO issues a task or delivery order directly to a federal agency’s contractor following the procedures contained in the Judiciary Procurement Program Procedures (JP3) Chapter 3, Part 3.1.6, Other Federal Agency Contracts. The task or delivery order must be issued by an employee with a Level 3 Contracting Officers Certification Program (COCP) delegated procurement authority. The authority to use other Federal Agencies contracts under the Economy Act was delegated to Chief Judges and federal public defenders in the revision to Volume I, Chapter VIII, Judiciary Procurement Program, to the Guide to Judiciary Policies and Procedures that was issued on January 14, 2003.

The first three types of transactions require an interagency agreement and the court or FPDO provides funding to the providing agency directly. Under the fourth type of transaction, multi-agency contracts, the court or FPDO provides funding directly to the contractor. This type of transaction may or may not require an interagency agreement with the agency holding the contract; check with the providing agency's contracting officer to determine if an interagency agreement is required. If an agreement is required, follow the procedures outlined in this memorandum to establish the agreement.

Limitations

Interagency agreements can be made only with a federal agency--the Economy Act does not provide authority to enter into these transactions with state or local agencies.

Chief judges, federal public defenders, or their designees may approve interagency agreements for obtaining products or services from another federal agency subject to the following limitations:

- The agreement does not exceed \$25,000.
- Signature authority for interagency agreements under the Economy Act will rest with the chief judge or federal public defender or his/her designee *and* the court unit's or FPDO's Procurement Liaison Officer. *Notice must be provided by the court unit's or FPDO's Procurement Liaison Officer to the chief judge or federal public defender for any new or renewed interagency agreement.* All other procurement policies and procedures that apply to any court/FPDO contract also will apply to those arising from interagency agreements.
- Courts and FPDOs must adhere to any applicable statutory and/or regulatory requirements, including appropriations law. This means, for example, that courts or FPDOs may not enter into agreements that obligate funds prior to or beyond the current fiscal year. Courts/FPDOs may, however, include option years in their agreements.
- Authority is *not* delegated:
 - A. for the courts or federal public defender organizations to be the **providers** of products or services;
 - B. for the detail of personnel between the courts and another federal agency, whether paid or unpaid;
 - C. agreements exceeding \$25,000.

These agreements must be forwarded to the Assistant Director, OFB, for authorization (see step D of Procedures section).

Internal Controls

An internal control procedure must be established to ensure that re-delegation designations are in writing, are documented as part of the court's internal controls manual, and that appropriate segregation of duties are followed. Courts should review their Court Budget Organization Plans so that all delegations are properly noted. In concert with the Office of Finance and Budget, the Office of Audit will establish audit steps for these procedures to be included in site visits.

Procedures

The procedures below must be followed when obtaining products and services through interagency agreements under the Economy Act.

- A. Determine if use of the interagency agreement is in the best interests of the government by:
 - (1) analyzing the total cost of obtaining the products or services from the providing agency;
 - (2) determining if there are any pricing advantages to using an interagency agreement;
 - (3) considering intangibles, such as ease of use, time savings, etc.;
 - (4) comparing the expenditure of effort and associated costs with placing an order or contract under other procedures; and
 - (5) identifying other restrictions, such as length of time during which the agreement will remain in force and effect, or in the procedures imposed by the other agency as a condition of the agreement.

- B. If, after considering the factors described above, it is decided to obtain the products or services through an interagency agreement, the Economy Act action must be supported by the following written determination and finding statements, with supporting rationale attached:
 - (1) use of an interagency acquisition, pursuant to the Economy Act, 31 U.S.C. § 1535, is in the best interest of the government; and,
 - (2) the products or services cannot be obtained as conveniently or economically by contracting directly with a private source.

The statements shown in (1) and (2), above, must also contain the approval signature of the chief judge, federal public defender, or his/her designee.

- C. A form, along with completion instructions, is attached and an automated version of the Interagency Agreement form (AO 368) is available on the J-Net for your use in documenting the financial accounting aspects and the approvals for the agreement. The

form can be found at the following address:

<http://156.119.80.10/library/aoforms/contents.html>

Interagency agreements involving an exchange of funds constitute an obligation of the government and should be recorded as an obligation in the local financial system. Payments to other federal agencies under the Economy Act may be made in advance or upon receipt of the products or services; therefore, if advance payment is made, amounts in excess of actual costs must be returned to the ordering agency. Please also note that courts are not authorized to pay more than the cost of entering into and administering the contract for products or services.

Courts and FPDOs should be aware that most federal agencies now generally require that payment be made via the Department of Treasury's Intra-Governmental Payment and Collection (IPAC) system. Because the courts/FPDOs cannot transact payments using IPAC, discussions with the agency for transfer of payments to or from the court should be carried out prior to signing the agreement.

- D. Agreements that must be forwarded to the AO for authorization should be addressed to the Chief, Budget Division, Office of Finance and Budget, One Columbus Circle, NE, Suite 5-450, Washington, DC 20544. Please include a cover memorandum (see attached sample) and a copy of the AO 368 form.

On transactions where the court or FPDO is approving the agreement, forward a copy of the AO 368 form to the Chief, Budget Division, but marked as "Information Only".

Interagency Agreement

PARTIES TO THE AGREEMENT

① PROVIDING AGENCY

② RECEIVING AGENCY

Agency Location Code: Phone:

Agency Name:

Contact:

Address:

City: State: Zip:

Agency Location Code: Phone:

Agency Name:

Contact:

Address:

City: State: Zip:

③ PERIOD OF DURATION

This Agreement shall be effective: From: To:

④ DESCRIPTION OF PRODUCTS OR SERVICES TO BE PERFORMED

Brief explanation of work or services, costs, and explanation of how costs were determined:

<i>Actual or Est. Amount \$</i>

⑤ PROVIDING AGENCY ACCOUNTING INFORMATION

Providing agency will indicate the full accounting classification. Federal agencies will be billed by IPAC, unless otherwise noted. If using IPAC, be sure to include the agency location code as part of the accounting classification.

⑥ RECEIVING AGENCY ACCOUNTING INFORMATION

Receiving agency will indicate the full accounting classification. Federal agencies will be billed by IPAC, unless otherwise noted. If using IPAC,

APPROVALS

⑦ PROVIDING AGENCY

⑧ RECEIVING AGENCY

Authorizing Official's Name:

Signature:

Title: Date:

Authorizing Official's Name:

Signature:

Title: Date:

⑨ Concurrence, Procurement Liaison Officer:	Date:

INSTRUCTIONS FOR COMPLETION OF THE INTERAGENCY AGREEMENT FORM

This form should be completed for all Interagency Agreements and after all signatures have been obtained, kept with the interagency agreement files. When the court or FPDO signs the agreement, a copy of this form should be submitted to the Chief, Budget Division, Office of Finance and Budget (OFB), marked "Information Only." When the agreement must be authorized by the AO, the original of this form should be submitted to the Chief, Budget Division, OFB, along with a cover memo.

1. **Providing Agency Information:** The agency providing the products or services should complete this section with the agency name, contact name, address and phone number. For agencies that can perform electronic funds transfer through Treasury (IPAC), the agency location code is an 8-digit code used to identify the individual court unit or the AO (for example, 00-00-4600). **Note that the agency location code will only be used by the AO; courts and FPDOs do not have access to IPAC.**
2. **Receiving Agency Information:** The agency receiving the products or services should complete this section with the agency, name, contact name, address and phone number, and agency location code (see above).
3. **Period of Duration:** Provide the period of duration of the agreement.
4. **Description of Products or Services to be Performed:** Provide a description of the products to be received or the services to be performed. Also provide the cost, as well as an explanation for how the costs were determined.
5. **Providing Agency Accounting Information:** Provide the full accounting classification for the providing agency.
6. **Receiving Agency Accounting Information:** Provide the full accounting classification for the receiving agency.
7. **Providing Agency Authorization:** When the judiciary is the providing agency, forward the form to the Chief, Budget Division, OFB, for processing. When another federal agency is the provider, have that agency complete the providing agency information and sign the form.
8. **Receiving Agency Authorization:** Receiving agency authorizations are dependent upon the nature of the agreement and whether the judiciary office is providing or receiving the goods or services.
 - a. When the court or FPDO is the receiving agency and the amount is under \$25,000, the Chief Judge, Federal Public Defender, or their designees will sign as the authorizing official and the Procurement Liaison will concur.
 - b. When the court or FPDO interagency agreement exceeds \$25,000, the Assistant Director, Office of Finance and Budget, will sign as authorizing official for the receiving agency. The Director of the AO will approve on the cover memo.
 - c. When the AO is the receiving agency the Assistant Director, OFB, will sign as the authorizing official. The Director of the AO will approve on the cover memo.
9. **Procurement Liaison Officer's Concurrence:** All court or FPDO interagency agreements must be signed by the Procurement Liaison Officer.

SAMPLE

MEMORANDUM TO: BRUCE JOHNSON
Chief, Budget Division

SUBJECT: FY 200X Interagency Agreement with the U.S. Attorney's Office

Administrative Office approval is requested for the establishment of a new Interagency Agreement with the U.S. Attorney's Office at a total estimated reimbursable cost of \$20,000 for FY 200X. The District Court pays for telephone services to which the U.S. Attorney's Office has been given access. This agreement calls for reimbursement of these telephone services costs to the District Court by the U.S. Attorney's Office based on a per user/per month charge (see attached form AO368 which provides a description of how the costs were determined).

As required by the Economy Act, the attached Interagency Agreement includes facts which demonstrate that (1) amounts are available to meet the proposed cost; (2) the order is in the best interest of the government; (3) the agency to fill the order is able to provide the ordered goods and services; (4) the goods or services cannot be provided as conveniently or cheaply as a commercial enterprise.

If you have any questions concerning this request, please contact John Doe, Procurement Liaison, on (555) 222-5555.

Unit Executive

Attachment