

**VOLUME 11A, CHAPTER 18: “NON-ECONOMY ACT ORDERS”**

**SUMMARY OF MAJOR CHANGES**

All changes are denoted by **blue font**.

Substantive revisions are denoted by an \* symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by **bold, italic, blue and underlined font**.

The previous version dated August 2008 is archived.

<b>PARAGRAPH</b>	<b>EXPLANATION OF CHANGE/REVISION</b>	<b>PURPOSE</b>
Page 18-2	Add page numbers for primary paragraphs at the 4-digit level.	Update
180101	Reference statute 31 U.S.C. §1535 for Economy Act.	Add
180203F	Modify and italicize text to add emphasis on quoted text required on funding documents for severable services.	Update
180203G	Modify and italicize text to add emphasis on quoted text required on funding documents for goods.	Update
180208	Insert language to emphasize that Non-Economy Act reimbursable orders are subject to obligational standards used for Economy Act reimbursable orders	Add
180302B	DoD organizations placing orders with a non-DoD agency may use fiscal year appropriations for requirements for non-severable services under the limits set forth in 10 U.S.C. §2410(a).	Update
Figure 2	Change the word “Contract (POC)” to “Contact (POC)”	Correction
Multiple	Establish hyperlinks throughout.	Update

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## CHAPTER 18

## NON-ECONOMY ACT ORDERS

## 1801 GENERAL

## \*180101. Purpose

This chapter prescribes policies and procedures applicable to transactions where goods or services are procured from Non-Department of Defense (DoD) agencies under statutory authorities other than the Economy Act [31 U.S.C. §1535](#). Chapter 1 shall be referenced for overall guidance and discussion of [General Reimbursement Procedures and Supporting Documentation](#).

## 180102. Overview

Non-Economy Act orders are for intra-governmental support, where a DoD activity needing goods and services (requesting DoD agency/customer) obtains them from a Non-DoD agency (assisting/servicing agency/performer). Specific statutory authority is required to place an order with a Non-DoD agency for goods or services, and to pay the associated cost. If specific statutory authority does not exist, the default will be the Economy Act which is discussed in Volume 11A Chapter 3. The more commonly used non-Economy Act authorities include, but are not limited to:

A. [Acquisition Services Fund](#). The Acquisition Service Fund was established by the [General Service Administration Modernization Act](#) that merged the General Supply Fund and the Information Technology Fund to carry out functions related to the uses of the Acquisition Services Fund including any functions previously carried out by the Federal Supply Service and the Federal Technology Service managed by the General Service Administration.

\*B. [Franchise Funds](#). Franchise Funds were first established by the [Government Management Reform Act of 1994](#) to provide common administrative support services on a competitive and fee basis. Franchise fund programs originated within the Environmental Protection Agency, Department of Commerce, Department of Veterans Affairs, Department of Health and Human Services, Department of Interior, and Department of the Treasury.

## 1802 INITIATING A NON-ECONOMY ACT ORDER

## 180201. Simplified Acquisition Threshold

Non-Economy Act orders in excess of the simplified acquisition threshold shall comply with [Federal Acquisition Regulation \(FAR\) Part 7](#), “Acquisition Planning,” and DoD Components’ procedures for the “Proper Use of Non-DoD Contracts.” Use of the “Non-Economy Act Acquisition Package Checklist” at Figure 1 and the list of “Requesting Official

Responsibilities” at Figure 2 will assist in ensuring that statute, policy, and regulation are complied with under non-Economy Act orders.

\*180202. Justification

Non-Economy Act orders may be placed with a non-DoD agency for goods or services if:

- A. Proper funds are available;
- B. The order does not conflict with another agency’s designated responsibilities (e.g., real property lease agreements with GSA);
- C. The requesting agency or unit determines the order is in the best interest of the Department; and
- D. The performing agency is able and authorized to provide the ordered goods or services.

180203. Order

Non-Economy Act orders for work and services outside the DoD should be executed by issuance of a [DD Form 448](#), “Military Interdepartmental Purchase Request (MIPR)” and accepted using [DD Form 448-2](#), “Acceptance of MIPR.” If an alternative execution document is used, it must provide information consistent with the MIPR to include the purchase request number and the DoD Activity Address Code (DODAAC). A non-Economy Act order shall comply with the documentation standards in Volume 11A Chapter 1, and supported with the items identified in Figure 1. Non-Economy Act orders must include:

- A. A firm, clear, specific, and complete description of the goods or services ordered. The use of generic descriptions is not acceptable;
- B. Specific performance or delivery requirements;
- C. A proper fund citation;
- D. Payment terms and conditions (e.g., direct cite or reimbursement, and specific appropriation or law authorizing advanced payments);
- E. A specific non-Economy Act statutory authority citation such as those referenced in paragraph 180102;

\* F. The following statement on funding documents for severable services: “These funds are available for severable service requirements crossing fiscal years for a period not to exceed one year, where the period of any resultant contract for services commences this fiscal year. All funds not placed on contract this fiscal year shall be returned promptly to the

ordering activity, but no later than one year after the acceptance of the order or upon completion of the order, which ever is earlier.”;

\* G. The following statement on funding documents for goods or non-severable services: “I certify that the goods or non-severable services to be acquired under this agreement are necessary expense of the appropriation charged, and represent a bona fide need of the fiscal year in which these funds are obligated.”; and

H. DoD Activity Address Code (DODAAC).

180204. Best Interest Determination

Each requirement must be evaluated in accordance with DoD Components’ procedures to ensure that non-Economy Act orders are in the best interest of DoD. Factors to consider include:

- A. Satisfying customer requirements;
- B. Schedule, performance, and delivery requirements;
- C. Cost effectiveness, taking into account the discounts and fees; and
- D. Contract administration, to include oversight.

180205. Specific, Definite and Certain

For non-Economy Act orders in excess of the simplified acquisition threshold, the requesting official must provide:

- A. Evidence of market research and acquisition planning;
- B. A statement of work that is specific, definite, and certain both as to the work encompassed by the order and the terms of the order itself; and
- C. Unique terms, conditions, and requirements to comply with applicable DoD-unique statues, regulations, directives, and other requirements.

180206. Contracting Officer Review

All non-Economy Act orders greater than \$500,000 shall be reviewed by a DoD warranted contracting officer prior to sending the order to the funds certifier or issuing the MIPR to the Non-DoD activity. In addition to the review by the contracting officer, the requesting official shall further review the acquisition package to ensure compliance with the FAR Part 7, and the DoD Component’s procedures.

## 180207. Certification of Funds.

Non-Economy Act orders are subject to the same fiscal limitations that are contained within the appropriation from which they are funded. Because the performing entity may not be aware of all the appropriation limitations, the DoD certifying official must certify that the funds cited on the order are available, meet time limitations, and are for the purpose designated by the appropriation.

## \*180208. Bona Fide Need

The bona-fide needs rule [31 U.S.C. §1502](#) provides that an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability. Non-Economy Act reimbursable orders of DoD Components for supplies, material, services or equipment placed with non-DoD agencies are subject to policies that, in practical effect, make them subject to obligational standards used for Economy Act reimbursable orders. Non-Economy Act orders citing an annual or multiyear appropriation must serve a bona fide need arising, or existing, in the fiscal year (or years) for which the appropriation is available for new obligations. Otherwise, a valid obligation is not accomplished. An interagency agreement may not be used in the last days of the fiscal year solely to prevent funds from expiring or to keep them available for a requirement arising in the following fiscal year. Bona fide need generally is a determination of the requesting activity and not that of the servicing activity. A servicing activity can, however, refuse to accept a non-Economy Act order if it is obvious that the order does not serve a need existing in the fiscal year for which the appropriation is available.

## 180209. Payment Procedures

Payment shall be made promptly upon the written request (or billing) of the performing agency. [The payment due date shall not be more than 30 calendar days from the date of the invoice.](#) Unless the DoD Component is specifically authorized by law, legislative action or Presidential authorization, funds are not to be advanced to non-DoD federal entities, or be used to pay for advance billings without the receipt of goods or services. Volume 4 Chapter 5 covers the conditions and requirements related to advances and prepayments. For those few exceptions where DoD is specifically authorized by a specific appropriation or law to advance funds, the specific appropriation or law authorizing the advance must be cited on the obligating and/or interagency agreement documents and orders, and any unused amounts of the advance shall be collected from the performing agency immediately and returned to the fund from which originally made.

\*A. The requesting official must be fully aware of the non-DoD federal agency's billing practices and methods. The official must also take appropriate action to ensure DoD funds are not disbursed in advance of contract performance. Additionally, Components must work with their servicing disbursement sites to ensure trading partner agreements restrict other federal agencies' ability to withdraw funds prior to the delivery of goods or performance of services. .

B. Payments made for services rendered or goods furnished may be credited to the appropriation or fund of the agency performing the reimbursable work.

#### 1803 FISCAL POLICY

##### 180301. Obligation

The provisions of 31 U.S.C. 1501 govern the recording of the obligation. An amount shall be recorded as an obligation only when supported by documentary evidence of an order required by law to be placed with an agency or upon meeting all the following criteria:

A. Binding agreement (funding vehicle) between an agency and another person (including an agency);

B. Agreement is in writing;

C. For a purpose authorized by law;

D. Serves a bona fide need arising, or existing, in the fiscal year or years for which the appropriation is available for obligation;

E. Executed before the end of the period of availability for new obligation of the appropriation or fund used; and

F. Provides for specific goods to be delivered, real property to be bought or leased, or specific services to be supplied.

##### \*180302. Deobligation

Funding under non-Economy Act orders shall be deobligated as outlined below.

A. Goods. Funds provided to a performing agency for ordered goods where the funds period of availability thereafter has expired shall be deobligated and returned by the performing agency unless the request for goods was made during the period of availability of the funds and the item(s) could not be delivered within the funds period of availability because of delivery, production or manufacturing lead time, or unforeseen delays that are out of the control and not previously contemplated by the contracting parties at the time of contracting.

1. Where materials cannot be obtained in the same fiscal year in which they are needed and contracted for, provisions for delivery in the subsequent fiscal year do not violate the bona fide need rule as long as the time intervening between contracting and delivery is not excessive and the procurement is not for standard commercial off the shelf (COTS) items readily available from other sources.

2. The delivery of goods may not be specified to occur in the year subsequent to funds availability unless delivery meets the exceptions cited above and a justifiable bona fide need exists in the year funds are available for obligation.

\* B. Severable Services. An agreement for severable services that are continuing and recurring in nature and provide the Department a benefit each time the service is performed (e.g., maintenance and repair services, scientific, engineering, and technical services) is based on statutory authority other than the Economy Act. [10 U.S.C. §2410a](#) permits the performance of severable services to begin in one fiscal year and end in the next provided the period of performance does not exceed one year. A non-DoD federal agency may rely on this authority to fill a DoD order funded with fiscal year appropriations to issue a contract for severable services that crosses fiscal years as long as the contract period commences during the period of availability of the DoD customer appropriation. Obligating funds for placing a non-Economy act order with a non-DoD federal agency, where the resultant fixed-length severable services contract awarded by the non-DoD federal agency will exceed the 1-year limit set forth in [10 U.S.C. §2410\(a\)](#), or which is not to commence until a subsequent fiscal year, may result in an Anti-Deficiency violation under [31 U.S.C § 1341](#).

1. The performance of severable services must begin during funds period of availability and may not exceed one year.

2. Annual appropriations provided to a performing agency that have expired shall be deobligated unless the performance of the services requested began during the funds period of availability and the period of performance does not exceed one year.

3. The annual appropriation from the earlier fiscal year may be used to fund the entire cost of the one-year period of performance; however, annual appropriations may not be used to enter into a severable services agreement where the period of performance for services requested is entirely in the following fiscal year.

\* 4. In no instance may the period of performance extend beyond September 30 of the subsequent year for services funded with annual appropriations.

C. Non-Severable Services. Non-severable services contracts must be funded entirely with appropriations available for new obligations at the time the contract is awarded, and the period of performance may extend across fiscal years. Funds provided to a performing agency that become excess shall be deobligated as identified.

D. Excess or Expired Funds. Activities shall reconcile all obligations and remaining funds available for orders. The purpose of this reconciliation is to ensure the proper use of funds and to identify and coordinate the return of expired or excess funds. Excess or expired funds must be returned by the performing agency and deobligated by the requesting agency to the extent that the performing agency or unit filling the order has not (1) provided the goods or services (or incurred actual expenses in providing the goods or services), or (2) entered into a contract with another entity to provide the requested goods or services. Expired funds shall not be available for new obligations.



## 180303. Prohibitions

Non-Economy Act orders may not be used to violate provisions of law, nor may they be used to circumvent conditions and limitations imposed on the use of funds to include extending the period of availability of the cited funds.

## 1804 NON-ECONOMY ACT ORDER FOLLOW-UP PROCEDURES

## 180401. Non-Economy Act Order Oversight

The requesting official must establish quality surveillance plans, for non-Economy Act orders in excess of the simplified acquisition threshold, and ensure execution that would facilitate the oversight of the goods provided or services performed by the performing agency. The plans should include:

- A. Contract administration oversight in accordance with the surveillance plan;
- B. Processes for receipt and review of receiving reports and invoices from the performing agency;
- C. Reconciliation of receiving reports and invoices; and
- D. Requirements for documenting acceptance of the goods received or services performed.

## 180402. Monitor Fund Status

The requesting official must monitor fund status to:

- A. Monitor balances with the performing agency;
- B. Conduct triannual reviews of non-Economy Act orders in accordance with the Financial Management Regulation, [Volume 3, Chapter 8, Section 0804](#), “Triannual Reviews of Commitments and Obligations” and include a specific attestation on the triannual review certification that all existing interagency agreements are consistent with DoD policy;
- C. Confirm open balances with the performing agency;
- D. Coordinate the return of funds from the Non-DoD performing agency in accordance with paragraph 180302 above; and
- E. Coordinate with the accounting office to ensure timely deobligation of funds.

## 180403. Non-Economy Act Order Close-Out

All non-Economy Act orders shall be reviewed by the requesting official to determine if they are complete. Completed orders shall be fiscally closed out. The requesting official shall reconcile funds and coordinate the return of excess or expired funds held by the performing agency. As part of this review, the requesting official will:

- A. Identify and determine if there are outstanding invoices;
- B. Identify and determine the existence of excess or expired funds;
- C. Coordinate the return of funds from the non-DoD performing agency in accordance with paragraph 180302 above; and
- D. Coordinate with the accounting office to ensure the deobligation of funds.

Figure 1: NON-ECONOMY ACT ACQUISITION PACKAGE CHECKLIST

- A. Documented evidence of market research and acquisition planning performed.
- B. Package includes a specific, definite, and concise statement of work documenting a bona fide need in the fiscal year that the funds are available for new obligations.
- C. Package includes specific performance and/or delivery requirements.
- D. Package identifies the statutory authority permitting the performing agency to support the DoD Component for the goods/services required.
- E. Package includes the purchase request number and the DoD Activity Address Code (DODAAC).
- F. Package includes written justification for the Non Economy Act order in accordance with DFARS Part 217.78 and the DoD Components' procedures.
- G. Package documents review of fees/surcharges/contract administration/discounts to ensure the cost is reasonable and consistent with task to be accomplished by performing agency.
- H. Package includes specific statutory authority authorizing advance payment or billing.
- I. Package documents evidence that DoD competition requirements were followed in accordance with DFARS.
- J. Order identifies DoD unique terms & conditions to the performing agency.
- K. Order identifies unique reporting requirements not otherwise specified to the performing agency.

Figure 2: \* REQUESTING OFFICIAL RESPONSIBILITIES

- A. Market Research
- B. Acquisition Planning
- C. Independent Government Cost Estimate (IGCE)
- D. Statement of Work (SOW) to include evaluation criteria.
- E. Ensure receipt and compliance of MIPR acceptance.
- F. Assist in Technical Evaluation.
- G. Quality Assurance Plan
  - 1. Contracting Officer Representative (COR), Contracting Officer Technical Representative (COTR) (Receiving Reports/Invoices - Inspection & Acceptance)
  - 2. Contract Data Requirements List (CDRL) Procedural/Required Reports/Deliverables Report/Contract Performance
  - 3. Property/Equipment Management
  - 4. Perform Contract Oversight
- H. Funds Management/Record Keeping
  - 1. Draw Down
  - 2. Contract Reconciliation
  - 3. Initiate Deobligation
  - 4. Oversight of Billing/Reporting
- \* I. Update all Points of **Contact** (POCs) as necessary throughout acquisition.