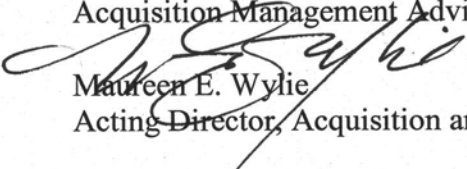




UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
ACQUISITION AND GRANTS OFFICE

1 JUL 09 2008

MEMORANDUM FOR: Assistant Administrators
Staff Office Directors
Deputy Assistant Administrators
Chief Financial/Administrative Officers
Heads of Contracting Offices
Acquisition Management Advisory Committee

FROM: 
Maureen E. Wylie
Acting Director, Acquisition and Grants Office

SUBJECT: Economy Act Determination and Findings Policy (NAHB 1317.5)

AGO POLICY NO.: AGO-POL-08-005

Attached is the Acquisition and Grants Office Final Policy on preparing, processing, and signing an Economy Act Determination and Findings (D&F) and is hereby officially issued as NOAA Acquisition Handbook (NAHB) Chapter 1317.5. The Economy Act, 31 U.S.C. § 1535, requires that a D&F document is signed by a Contracting Officer or another authorized official designated by the Agency Head. NAHB Chapter 17.2 is hereby replaced with this NAHB 1317.5, which is Interagency Acquisitions Under the Economy Act.

The policy identifies procedures for the Program Office to use to prepare a D&F and guidelines for processing and signing a D&F by a Contracting Officer.

Please ensure that this policy gets distributed widely. The policy will be posted to the AGO web site in the near future.

If you have any questions, please contact Bruce Jackson of my staff at (301) 713-0838, ext. 183.

Attachment

1317.5 PROCEDURES FOR PREPARING, PROCESSING, AND SIGNING A ECONOMY ACT DETERMINATION and FINDINGS DOCUMENT AGO-POL-08-005

Who Program Office Acquisition Personnel involved with Economy Act Interagency Agreements

What The purpose of these guidelines is to assist the Program Office in preparing adequate documentation to support the Economy Act Determination and Findings (D&F). The purpose of the D&F is to support the Economy Act Order (Interagency Agreement), placed between two federal agencies under the Economy Act. It is the responsibility of the agency transferring the funds to provide a signed D&F.

The Determination and Findings (D&F) policies and procedures are divided into two parts. Part A identifies the policies and procedures that a Program Office should follow to prepare D&F documentation for submission to a Contracting Officer for signature. Part B identifies the procedures a Contracting Officer should follow to process and sign a D&F.

AGO Contracting Officers will review and sign the D&F, if appropriate, before the Interagency Agreement is submitted to the Office of General Counsel, General Law Division for legal clearance.

When Applies when preparing and submitting a D&F for a Contracting Office's signature

Discussion

PART A – Program Office Documentation for requesting a Economy Act D&F

Objective

The procedure will eliminate the need for NOAA Acquisition and Grants Office (AGO) Acquisition Division Contracting Officers to draft, re-write, and comment on most D&Fs submitted for signature. The result will be a reduction in the amount of time required to get a D&F approved and signed by a Contracting Officer.

Procedures

Program Office should prepare a memorandum addressed to “NOAA Contracting Officer” from the Program Manager providing the information required to support the attached D&F by responding to the following.

1. Briefly explain the need for the supplies or services.
2. Describe why it is in the best interest of NOAA to partner with this federal agency (i.e., identify the essential capabilities or expertise the federal agency receiving the funds possess that NOAA does not possess).

3. Explain why the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source. A business case must be made that this action is in the best interest of NOAA.
4. If the Economy Act Order requires contract action by the federal agency receiving the funds from NOAA, include a statement explaining why at least one of the following circumstances applies:
 - a. The acquisition will be made under an existing contract of the federal agency, entered into before placement of the order. Provide contract number and vendor;
 - b. The federal agency has the capabilities or expertise to enter into a contract for such supplies or services which is not available within NOAA; or
 - c. The federal agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other federal agencies.
5. Provide a signed statement that the funds are currently available for the supplies or services, which will include the accounting code information.
6. Attach a copy of the following documents to the Determination and Finding Form (see attachment) before submission.
 - a. D&F supporting documentation (memorandum to Contracting Officer)
 - b. Interagency Agreement
7. Include a copy of the signed D&F and memorandum in the Interagency agreement package submitted to Office of General Counsel for legal clearance.
8. Provide the Contracting Officer with a copy of the Office of General Counsel's clearance memorandum for the AGO file.
9. If the Contracting Officer determines that it is not in the best interest for NOAA to enter into the Interagency Agreement to contract for such supplies or services, the Contracting Officer will notify the Program Office of this action and coordinate submission of a procurement request, as appropriate.

Note: If the purpose of the Economy Act Order is to transfer funds for financial assistance (i.e. grants or cooperative agreements). Ensure that the other federal agency has the legal authority (i.e., U.S. Code or Public Law) to provide financial assistance awards for the purpose of the funds. Cite and summarize the legal authority in the supporting D&F documentation. Seek legal counsel, if necessary. Both the requesting and servicing agencies must have legal authority to provide financial assistance for the purpose(s) for which the funds are to be used.

PART B - GUIDELINE FOR CONTRACTING OFFICER SIGNING A DETERMINATION AND FINDINGS (D&F)

Objective

The procedure will standardize the review and approval of D&Fs by Acquisition Division Contracting Officers. The result will reduce the confusion within Program Offices with field locations working with different Acquisition Divisions.

Procedure

1. Review the Interagency Agreement and supporting D&F documentation. Attached is a D&F model for use.
2. Complete and sign the D&F, if appropriate.
3. Return the Interagency Agreement and signed D&F to the Program Office.
4. Request that the Line Office provide a copy of the Office of General Counsel's clearance memorandum for the AGO file.
5. If the Contracting Officer determines that it is not in the best interest for NOAA to enter into the Interagency Agreement to contract for such supplies or services, the Contracting Officer should notify the Program Office of this action and coordinate submission of a procurement request.

SUPPORTING REFERENCES

Code of Federal Regulations, Title 48, Part 17, Subpart 17.5, Section 17.503

U.S. Code, Title 31, Section 1535 (Agency Agreements)

DOC Interim Interagency and Other Special Agreements Handbook (April 2004), Chapter 3
(Legal Authorities), page 3 (Financial Assistance)

DEFINITIONS

Economy Act Order – an order for supplies or services placed using the Economy Act (31 U.S.C. 1535) as the funding transfer authority.

Economy Act (31 U.S.C. 1535) – authorizes the head of an agency or major organizational unit within an agency to place an order with a major organizational unit within the same agency or another agency for goods or services.

Financial Assistance

(1) Grants – the transfer of funds, where the principal purpose of the relationship is to transfer money, property, services, or anything of value in order to accomplish a public purpose of support or stimulation authorized by federal statute and when no substantial involvement is anticipated between DOC and the recipient during the performance of the contemplated activity.

(2) Cooperative Agreements – the transfer of funds, where the principal purpose of the relationship is to transfer money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by federal statute and when substantial involvement (e.g., collaboration, participation, or intervention by DOC in the management of the project) is anticipated between DOC and the recipient during the performance of the contemplated activity.

Attachment

DETERMINATION AND FINDINGS (PURSUANT TO 48 CFR 17.503)

NOAA Agreement Number: _____

Name of NOAA Line Office/Corporate Office warrants that:

- _____ 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 private source.

[NOTE: NOAA Line Office/Corporate Office should place a check next to each of the appropriate findings above and substantiated in the attached supporting documentation.]

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:
- _____ that 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;
 - _____ that the servicing agency has the capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or
 - _____ that the servicing agency is specifically authorized by law or regulation, *i.e.*, **[provide the citation for the statutory authority]**, to purchase such supplies or services on behalf of other agencies.

[NOTE: Place a check in each space above that applies.]

Printed Name and Signature
Contracting Officer
Phone Number

Date