

An Economy Act Primer

This paper has been prepared for people who have the responsibility to bring business into the center; to provide services or supplies for other Armed Services or Civilian Agencies; or to acquire services and supplies from other agencies.

BACKGROUND

1. The Economy Act (The Act) is often cited and discussed, but rarely understood. The Act provides agencies the authority we use to provide services to or secure the services of another Executive agency for in house performance or performance by contract where there is no other statutory authority
2. The Act had its genesis during the great depression. Congress was looking for ways to curtail the expenses of government. It passed the Economy Act in 1932 to obtain economies by deleting duplicating and overlapping activities. Interestingly the legislative history reflects Congress belief that private industry should not be called upon to perform “what Government Agencies can do more cheaply for each other,” and the Government Agencies “especially equipped to perform the work” should be available whenever work can be performed “as expeditiously and for less money” than elsewhere. Consequently the original act did not include the authority to contract.
3. The Congress amended the Act in 1942 to allow military servicing agencies the authority to contract and extended the authority to the civilian agencies in 1982. Using another government agency to contract for your requirements is called offloading.
4. Some DOD agencies abused their authority under the Act in the early nineties by offloading to circumvent funding restrictions or limitations. Agencies became unwitting partners in violations of the Antideficiency Act. This practice was called to a halt by a directive signed by the Secretary of Defense. Now we have extensive regulation of our use of the Economy Act.
5. The Economy Act is a valuable tool that you can use to economize, if you know what it is and how to use it. The purpose of this paper is to let you know its use and its limits.

The Economy Act

1. The Economy Act (The Act) begins

The head of an agency or major organizational unit within an agency

may place an order with a major organizational unit within the same Agency or another agency for goods or services if ---

- a. we have available funds; and
- b. the order is in the best interests of the United States government; and
- c. the agency filling the order can provide, or acquire by contract, the ordered goods or services; and
- d. the ordered goods or services cannot be provided by contract as conveniently or cheaply.¹

2. Under the Act, the requiring agency must pay “promptly by check on the written request of the agency filling the order.”² Practically today the payment is made with a Military Interdepartmental Purchase Request (MIPR). This is another case where it pays to follow the advice of Jerry McGuire “Show me the money”. It is a violation of the Purpose Statute and may result in a violation of the Antideficiency Act to spend our appropriated funds for the purpose of another service or agency appropriation. Ask for the money up front. When you spend another agency’s funds, you obligate appropriated funds. You must be sure that SBCCOM receives the ordering agency’s funds.

3. We have had a case where a lab did the work and then did not get paid. Never let that happen to you. It is one way to get to meet senior officials—but they won’t be handing out awards.

4. An order does not irretrievably obligate funds.

- a. The order placed requests the supplying agency to obligate an appropriation of the requiring agency.

- b. The Act specifically provides that the “amount obligated is deobligated to the extent that the agency or unit filling the order has not incurred obligations, before the end of the period of availability of the appropriation” by either “providing the goods or services or making an authorized contract.”³ The servicing Agency must therefore proceed as if it were spending its own expiring appropriation. If it does not, the requiring agency is legally required to deobligate the funds.

¹ 31 USC 1535 (a)

² 31 USC 1535 (c)

³ 31USC 1535 (d)

c. Two duties are inherent in this statutory requirement. If you represent the requiring agency, you must monitor your MIPR. If you represent the servicing agency, an Economy Act Order MIPR does not of itself obligate funds. A MIPR is a request to obligate funds. You must expeditiously obligate the funds you receive.

d. **Example**--Several years ago a mask program sent an order to Lexington for storage of a quantity of items that it also shipped. Apparently customers overwhelmed Lexington with MIPRs at that time. It did not obligate the funds within the period of availability. It could not obligate the expired funds. The Mask program had to find current year funds to replace the expired funds.

THE REGULATIONS

1. The Economy Act is brief and easy to understand. You have often heard that the devil is in the details. Here the devil is in the procurement regulations, Federal Acquisition Regulation (FAR) 17.500 et. seq.; the Defense Federal Acquisition Regulation Supplement (DFARS) 217.500 et seq.; and the Army FAR Supplement (AFARS) 17.5 et seq. Wending your way through these regulations and related message traffic helps you understand why the Act has been the source of some confusion. Understanding the regulations is worth the effort because the Economy Act can be a valuable tool if we use it correctly. If you don't know how to use it, misuse of the Act can lead to criminal violations of the law

2. The **FAR** tells us

a. we can't use the Act to circumvent conditions and limitations on funds.⁴ What it doesn't say there is even more important. Circumventing conditions and limitations on funds can violate the Anti Deficiency Act by spending in excess of an appropriation or exceeding an apportionment or otherwise avoiding limitations on appropriated funds. You must expend appropriated funds in the amounts, for the purpose, and within the time required by an appropriation.

b. acquisitions under the Economy Act are not exempt from the requirements of OMB Circular A-76, Performance of Commercial Activities.⁵ That means you cannot avoid A-76 by the use of an Economy Act offloading order.

⁴ FAR 17-502(b)

⁵ FAR 17-502 (c)

c. we can't use the Economy Act for acquisitions that conflict with any other agency authority;⁶ for example, the Administrator of General Services under the Federal Property and Administrative Services Act.

3. The regulations require two primary documents. The first is a Determination and Findings (D&F) that establishes the Economy Act as the authority for the transaction. The second document is the Order constituting the agreement between the requiring and servicing agencies on the statement of work, payment for supplies or services, and related terms and conditions.

4. From this point on, this paper will describe these two documents by examining the FAR, DFARS, and AFARS requirements for each. Watch for the differences between orders intended to be performed in house and to be offloaded to contractors.

The Economy Act D&F

1. The FAR requires all D&Fs to contain two statements:

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- a. the use of an interagency acquisition is in the best interests of the Government; and
- b. the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source⁷

2. If the order contemplates the servicing activity will provide the supplies or services by contract, then the FAR requires one of three additional statements in the D&F;

- a. the servicing activity will place the order under a preexisting contract for the same or similar goods or services; or
- b. the servicing agency has capabilities or expertise not available within the ordering agency;
- c. the law or a regulation specifically authorizes the servicing agency to procure the supplies or services for other agencies.⁸

⁶ FAR 17-502 (d)

⁷ FAR 17.503(a)

⁸ FAR 17.503(b)

3. The Determination and Finding” (D&F)⁹ is a significant document. The first statement in the FAR ordering section also requires the D&F “Before placing an Economy Act order for supplies or services with another Government agency, the requesting agency shall make the D&F”¹⁰

4. The DFARS has only two brief paragraphs on the D&F: First “ . . .the procedures in FAR Subpart 17.5, this subpart and DODI 4000.19 apply to all purchases, except micro-purchases, made for DOD by another agency.”¹¹ (DODI 4000.19 is entitled Interservice and Intragovernmental Support). The second DFARS paragraphs states “If requested, the Contracting Officer who normally would contract for the requesting activity should advise in the determination process.”¹²

5. This “if requested” language in the DFARS is weak. The preferred course of action is to work with your normal contracting office. The instruction cited in that same DFARS section, DODI 4000.19 states as DoD policy “DoD activities that require support from other sources should first consider using support capabilities available from the activity’s host”¹³ Before you make the statement in paragraph 2. b. above, check with your supporting Contracting Officer or the office which normally contracts for the item or service you want to order to determine if the capability and capacity exist in SBCCOM to satisfy your contracting requirement.

6. The **AFARS** covers contract offloading first. It tells us that before we release Economy Act Order outside of DOD for contracting action:

- a. a written determination shall be reviewed by legal counsel and coordinated with the requiring activities supporting Army Contracting office prior to execution;¹⁴
- b. we must use a particular format for D&Fs;¹⁵
- c. authority to approve the D&F has been delegated to a level no lower than a SES/General officer who is a Commander/Director of the requesting activity;¹⁶

⁹ FAR 17.503(a)

¹⁰ FAR 17.504(a)

¹¹ DFARS 217.500(b)

¹² DFARS 217.503(c)

¹³ DODI 4000.19 para 4.1

¹⁴ AFARS 17.503(a)

¹⁵ AFARS 53.9008

¹⁶ AFARS 17.503(c)(ii)

- d. The Army Senior Procurement Executive must approve the D&F in advance of execution for an order to any agency not covered by the FAR;¹⁷ and finally,
 - e. D&Fs shall be signed and approved prior to execution of any Order
6. The AFARS also briefly speaks to D&Fs in support of orders for organic support.
- a. the determination required by the Act (see the Economy Act section of this Primer) shall be prepared by the project sponsor and approved at a level higher after coordination with legal and contracting; and
 - b. the requirements for contracting outside of DOD (see the discussion at paragraph 2 above) “shall be tailored as appropriate to the transaction recognizing that no contracting action is anticipated.
8. The DOD Far Supplement (DFARS) requires you to provide a copy of the executed D&F to any DOD servicing activity. When you are the servicing activity, the DFARS requires the contracting activity to obtain a copy of the executed D&F from the requesting Agency and place it in the contract file.
9. The Regulatory guidance for D&F gives you most of the language required, but the requiring activity must verify that the statements are true for any particular Order. The regulations provide a format for the D&F and state who has the authority to execute the document. This level of detail is required because of past abuses. A common misperception arose that once the servicing agency had the funds in a carrier account it could use them any way, any time it wanted to. An appropriation does not lose its character when a MIPR transfers funds to another agency. Before it places an Economy Act Order, the requiring agency must go on record stating that the authority provided by the Act applies to the intended transaction and clearly identify the appropriation covering the transactions and any limitations such as the date that appropriation expires.
10. In DoD the D&F is a significant Document:
- When the requesting agency is within DoD a copy of the executed D&F shall be furnished to the servicing agency as an attachment to the order. When a DoD contracting office is acting as the servicing agency, a copy of the executed D&F shall be obtained from the requesting agency and placed in the contract file for the Economy Act order.¹⁸

¹⁷ AFARS 17.503(c)(iii)

As a matter of course when you send an Economy Act Order include a copy of the D&F. It is a sign of your good faith and establishes a practice that every one of your orders is soundly based.

THE ECONOMY ACT ORDER

1. An **Economy Act Order** is the document you send or receive that initiates the transaction. It is a written agreement between the requiring and servicing agencies. The elements of that agreement required by the FAR are:

- a. a description of the supplies or services required;
- b. delivery requirements;
- c. a funds citation;
- d. a payment provision;
- e. appropriate acquisition authority;¹⁹ and
- f. a dispute resolution provision²⁰

2. The FAR provides “The Order may be placed on any form or document that is acceptable to both agencies.”²¹ Typically DoD agencies use a MIPR to serve the dual function of transferring funds and including the required terms and conditions.

3. The list in paragraph 1 is not just a list of regulatory requirements. If you represent the requiring agency, this order is your ticket to getting what you ordered on time, at a particular price, paid at a time certain, and an agreement to use a particular method to resolve any problems that might arise during the performance of the Order. These are the minimum factors a steward of public funds must take into account before he spends the taxpayers’ money. You must know and communicate this type of information to the servicing activity. If you represent the servicing activity, the Order lets you know what your obligations are when you accept the MIPR. It firmly establishes what you have to do; what amount of funds you will receive; when you will get them (remember Jerry McGuire); and how you can resolve disputes.

¹⁸ FAR 17.504(a)

¹⁹ FAR 17504 (b) (1-5)

²⁰ FAR 17.504

²¹ FAR 17504 (b)

4. You may be wondering what the appropriate acquisition authority in paragraph 1 e. is. This is where contract offloading is described. Those authorities are:

- a. a Justification and Approval (J&A) or a D&F if the law or regulations require these contractual documents to support the proposed acquisition. The servicing activity must execute the documents, but the ordering agency shall furnish any information needed.²² Your contracting folks and your lawyer can help you prepare these documents;
- b. other assistance as necessary to support your acquisition, such as particular contract terms needed to comply with funding conditions or limitations;²³

5. Note that the requiring agency is responsible for creating the J&A and the D&F and furnishing this type of information. However, the servicing agency is responsible for compliance with all other legal and regulatory requirements that apply to the contract, such as having statutory authority for the action or complying with requirements for competition.²⁴

6. The AFARS requires that contracting requirements shall be presented as a complete procurement package including at a minimum:

- a. any determinations or acquisition approvals required by regulations
- b. certified documentation in support of any request for other than full and open competition.
- c. MIPR with citation of appropriate funds and the basis of payment (reimbursable order, direct cite) and information on any limitations on the duration of the funds to be transferred,
- d. a detailed statement of work appropriate for use in a solicitation or contract; and
- e. contract administration requirements, such as required reports, acceptance criteria, and technical POC.²⁵

²² FAR 17.504(d)(1)

²³ FAR 17.504(d)(2)

²⁴ FAR 17.504 (d)(3)

²⁵ AFARS 17504 (d) (2)

7. There is another condition that is helpful to know. You may proceed normally as long as the Agency you are working with is covered by the Federal Acquisition Regulation. But if you are dealing with an Agency that is not covered by the FAR, then your Economy Act Order must be approved in advance by the Army Senior Procurement Executive in the Pentagon. The TVA and the Library of Congress are examples of agencies not covered by the FAR.

CONCLUSION

1. The Economy Act is a tool we can use to curtail expenses of Government. Normally we expect to use our internal capabilities and contracting capabilities to accomplish our mission. We can use Economy Act authority to obligate funds to satisfy our mission needs cheaply and conveniently by taking advantage of the expertise and capabilities of another agency.
2. A servicing agency must obligate funds in a timely manner by beginning work or contracting in a timely manner. Requiring agencies have a duty to monitor orders to ensure that the servicing agency honors Appropriation/Authorization Act periods of availability. Customers deserve prompt performance.
3. The Economy Act regulations require minimum documentation to ensure that the buyer and seller have a meeting of minds and understand what is expected from the order. Both parties must know the work required by the order; there is money behind the order; when it will be paid; and how they expect to resolve any unforeseen disagreements.
4. The Economy Act is not a tool for all purposes but, used properly, this authority can help you avoid expenditures; save time; and acquire services we currently do not have.