GSA Office of the Chief Acquisition Officer

JUN 13 2007

GSA Acquisition Letter V-07-04

MEMORANDUM FOR ALL GSA CONTRACTING ACTIVITIES

FROM: MOLLY WILKINSON
CHIEF ACQUISITION OFFICER (V)

SUBJECT: INTERAGENCY AGREEMENTS—ACCEPTANCE AND OBLIGATION OF FUNDS

1. Purpose: This Acquisition Letter establishes GSA policy for accepting funds under an Interagency Agreement (IA). For the purposes of this Acquisition Letter, the term "Interagency Agreement" includes Memorandum of Understanding (MOU), Memorandum of Agreement (MOA), Reimbursable Work Authorization (RWA), or any other interagency assisted acquisition service agreement (including stand-alone Military Interdepartmental Purchase Request (MIPR)).

2. Background: It is GSA's mission to help Federal agencies better accomplish their missions by providing premier acquisition services to obtain goods and services at best value. GSA must properly manage customer expectations with regard to the timely contractual obligation of funds and adherence to applicable laws, regulations, and fiscal policies. Customer agencies are required to obligate their funds during the funds' period of availability -- in the typical case of annual appropriations, by the end of the given fiscal year. Customer agencies can obligate funds via an IA with GSA for bona fide needs. GSA, in accepting the IA under its statutory authorities, must then act reasonably and expeditiously to contract for the customer agency's needs in a timely manner.

This is particularly important in certain DoD requirements because, should GSA accept an IA late in the fiscal year but fail to award a contract before the end of the funds' original availability, GSA may be required to return the unused funds to the customer agency, which likely will not be able to apply them to new obligations. For additional details, please see the Administrator's memorandum of November 21, 2006, entitled "Implementation of the DoD Policy – Non-Economy Act Orders, Dated October 16, 2006" (see section 9 for links to this document and other guidance/memoranda referenced in this Acquisition Letter).

Appendix A provides the policies for determining what is a "reasonable time" in specific cases.

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

Appendix B provides the required steps for accepting Interagency Agreements.

Appendix C provides a brief discussion of key fiscal law principles and terminology such as "bona fide needs," "obligation," "contractual obligation," "severable services," "non-severable services," "multiple year funds," and "no-year funds."

Appendix D provides the required timeframes for contractual obligation of customer funds from DoD and other civilian agencies.

3. Cancellation: This Acquisition Letter supersedes Acquisition Letter V-06-05. However, all pending 90-day reviews for requirements greater than $100,000 received prior to 2/1/2007 should proceed as required by V-06-05.

4. Effective Date: Immediately

5. Termination Date: This Acquisition Letter remains in effect until revoked or terminated.

6. Applicability: This Acquisition Letter applies to all IAs entered into between GSA and Federal agencies/departments or non-Federal entities as authorized by law for the procurement of goods and services.

This Acquisition Letter does not apply to--

a) GSA's provision of space and services for which GSA charges and collects rent pursuant to 40 U.S.C. 586;
b) Orders issued through the FED/MILSTRIP process; or
c) GSA's internal purchasing requirements.

7. Policy: It is GSA's policy to enter into an IA and accept funds solely for the "bona fide needs" (31 U.S.C. 1502(a)) of the customer agency. GSA should not, at any time during the fiscal year, accept an IA that lacks information or specificity to such a degree that it is not feasible to award or modify a contract or task/delivery order (i.e., "contractually obligate") within a "reasonable time" (see Appendix A). In addition to complying with all laws and regulations, GSA is committed to follow any policy restrictions of customer agencies (see for example, the restrictions on agreements with DoD set out in Appendix D.). This policy is particularly important during the last months of the fiscal year, when the need to obligate funds prior to their expiration date is greatest.

Further implementing guidance will be issued by each Service.

8. Fiscal Year Cut-Off Dates: The decision to accept funds near the fiscal year end must be a case-by-case determination taking into consideration the minimum time required for GSA to properly contractually obligate the funds. Each GSA Service, based on the guidance provided in Appendix D, shall devise cut-off dates that are appropriate for the organization. Consideration should be given that IAs accepted after the cut-off dates may not allow sufficient time for proper execution under normal circumstances and require special management attention.

Under no circumstances may an IA citing "expired" funds be accepted (e.g., after September 30 if the funding authority is from the previous year's annual appropriations). The accepting office must also bear in mind that multiple-year funding may have reached its year of expiration depending on the term of such funding and the year it was first appropriated.

The cut-off dates do not apply when accepting no-year funds or multiple year funds that are not expiring in the same fiscal year. However, at no time should an IA that fails to set out a bona fide need be accepted. Further, GSA must expeditiously and diligently begin work on all IAs it accepts.

9. Reference Documents: *Available at the **InSite** OCAO Acquisition Policy Library*-- under GSA InSite > Reference & Resources > Acquisition Policy Library; or http://insite.gsa.gov/acquisitionlibrary

PBS Commissioner Memorandum dated 2/13/2007, Subject: PBS Guidance on Implementing DoD Policy -- Non-Economy Act Order.

FAS Commissioner Memorandum dated 1/18/2007, Subject: Federal Acquisition Service Guidance for the Implementation of DOD Policy Regarding Non-Economy Act Orders and GSA Administrator Memorandum of November 21, 2006.

GSA Administrator Memorandum dated 11/21/2006, Subject: Implementation of the DOD Policy - Non-Economy Act Orders.

DoD Comptroller Memorandum dated 10/16/2006, Subject: Non-Economy Act Orders. http://www.acq.osd.mil/dpap/specificpolicy/

General Counsel and Chief Financial Officer's Memorandum dated 9/13/2005, Subject: GSA Authority for Interagency Transactions.

FSS Commissioner's Memorandum dated 6/3/2005, Subject: Special Order Program – Policy.

PBS' Reimbursable Work Authorization National Policy Document dated 5/4/2005.

GSA Acquisition Letter V-05-06 dated 4/27/2005, Subject: Purchases on Behalf of Other Agencies.

FTS Commissioner and Chief Financial Officer's Memorandum dated 6/7/2004, Subject: Guidance and Information Concerning Interagency Transactions and Proper Management of Reimbursable Agreements in Revolving Funds.

GSA Order OGP 2800.1 dated 1/1/2004, Subject: Acquisition Planning.

OMB Memorandum M-07-03 dated 11/13/2006, Subject: Business Rules for Intergovernmental Transactions,.

TFM Bulletin No. 2007-03, Subject: Intergovernmental Business Rules.

Appendix A:

GSA POLICIES FOR DETERMINING "REASONABLE TIME"

a) Reasonable time. "Reasonable time" refers to the acquisition lead time required for GSA to contractually obligate the accepted funds (except for a reasonable amount/balance to cover contingencies, GSA labor charges, fees, close-out costs (e.g., paying DCAA to perform audit), and other miscellaneous potential costs/liabilities) in accordance with applicable laws, regulations, and the customer agency's requirements. "Reasonable time" depends on--

- The type and complexity of requirements (e.g., supplies/services, simple/complex, commercial/non-commercial, routine/unique);
- The method of procurements (e.g., orders under Federal Supply Schedules (FSS), Government-Wide Acquisition Contracts (GWACs), Multi-Agency Contracts (MACs), or agency Indefinite Delivery/Indefinite Quantity contracts (IDIQs); open market purchases under FAR Parts 13, 14, or 15; or sole-source/competed);
- Other workload, and
- Availability of staffing resources.

For the purposes of this Acquisition Letter, GSA has defined "reasonable time" to mean the amount of acquisition lead time, based on the complexities of the requirement, mutually agreed upon and documented between the customer agency and GSA at the time of funds' acceptance, or a longer period that has been justified by executing a written justification. If no separate agreement has been made, a "reasonable time" of 90 calendar days shall be presumed (all days in this Acquisition Letter are calendar days unless stated otherwise). The date of acceptance is the date GSA acknowledges acceptance of the funding document (e.g., in the case of a DoD customer, signing DD Form 448-2, "Acceptance of MIPR"; for RWAs, date specified on GSA Form 2957, box 30B). Except for the funds that come with customer-specific fiscal policy restrictions as described in section 8(b), GSA has reasonable time to contractually obligate the accepted funds even if award occurs in a subsequent fiscal year (see Appendix D for details).

b) DoD restrictions on reasonable time. This "reasonable time" may be further restricted by customer-specific fiscal policy attached to the funds. DoD's policy on Non-Economy Act Orders, dated 10/16/2006 (see section 9 for the link to this memo), prohibits GSA from taking any contractual action with fiscal year funds after the fiscal year end. For example, regardless of when GSA accepts DoD's FY 2007 funds (or multiple year funds if FY 2007 is the last year of funding availability), GSA must contractually obligate the funds by the last day of FY 2007. This means that, for DoD funds received on or after 7/2/2007 (90 days from FY 2007 fiscal year end), GSA will NOT have the full "reasonable time" period.

This may not be a problem if the requirement is simple and a contract or task/delivery order can be awarded/modified (i.e., "contractually obligated) quickly before the fiscal year end (but see Appendix D for delivery of goods). But for complex requirements, an acquisition lead time of less than 90 days is often impractical and may seriously impair the contracting officer's ability to properly structure the acquisition and provide the best value.

For that reason, it is crucial that, prior to accepting any funds at any time, the receiving official (i.e., GSA official who accepts funds or is responsible for accepting if done electronically) determine whether contractual obligation of the funds can be made within the time period required by the fiscal law and the customer agency's restrictions governing the funds in accordance with the procedures in Appendix B.

Appendix B:

REQUIRED STEPS FOR ACCEPTING FUNDS

Incorporate the following steps when accepting funds under Interagency Agreements (IAs)--

---

Step A. Ensure that each IA clearly identifies or accompanies (i.e., either by reference to the previously executed IA or the requirements package)--

1) The type of funds to be used (i.e., annual/multiple-year/no-year), amount, and the funds' expiration date;
2) The authority for the IA (e.g., 40 U.S.C. §§ 501-506, 592(b)(2) (formerly the Property Act) or 40 U.S.C. §§ 11101-11704 (the Information Technology Management Reform Act of 1996 (ITMRA), also known as the Clinger-Cohen Act)) (The Economy Act should not be used except in rare circumstances);
3) The type of requirements (i.e., supplies, severable services, non-severable services; if the IA covers several requirements, indicate as such);
4) Specific, definite, and concise description of requirements sufficient to demonstrate the bona fide needs at the time of GSA's IA acceptance;
5) Any special customer agency restrictions attached to the funds;

Step B. Use Appendix D and the customer agency request to determine the time by which contractual obligation of the funds must be made;

Step C. Determine, in consultation with contracting personnel in the office that will be handling the requirements, if GSA can meet that time requirement. Consider other workload and availability of staffing resources.

Step D. Reject the IA if the required timeframe is unattainable.

Step E. If the decision is to accept the funds, clearly indicate the acceptance date and ensure that everyone involved is aware that the funding authority may have to be returned to the customer if a contract/modification is not awarded within the time required in Appendix D.

Appendix C:

FISCAL LAW TERMINOLOGY IN INTERAGENCY CONTRACTING

**Quoted parts below are from the GAO's Principles of Federal Appropriations Law, often referred to as the "Red Book." Emphases have been added.*

"[A]n "**obligation**" is some action that creates a legal liability or definite commitment on the part of the government, or creates a legal duty that could mature into a legal liability by virtue of an action that is beyond the control of the government." (Red Book, p. 7-3). It is a binding commitment against an appropriation that will require expenditure at some later time. In interagency contracting, funds accepted under a valid Interagency Agreement (IA) constitute an obligation on the part of the customer agency. (See 31 U.S.C. 1301, and GAO's legal opinion in Library of Congress case, B-302760 (5/17/2004)). GSA then awards or modifies contracts or task/delivery orders using the accepted funds. Obviously, this is also an obligation. However, to distinguish the two, this Acquisition Letter uses the term "**contractual obligation**" for the latter.

"If an agency fails to obligate its annual funds by the end of the fiscal year for which they were appropriated, they cease to be available for incurring and recording new obligations and are said to have "**expired**."" (Red Book, p. 5-6). Once GSA accepts funds, an obligation has occurred on the part of the customer agency and the funds remain available to liquidate the obligation following GSA's execution (i.e., contractual obligation). However, GSA's ability to contractually obligate the funds will still be subject to time restrictions set out in Appendices A and B or a customer's specific requirements such as DoD's fiscal policy (see Appendix D for details). When the accepted funds are no longer usable because of GSA's failure to timely contractually obligate, the funds will have to be returned to the customer agency to be deobligated. To provide clarity, this Acquisition Letter proposes calling this "**funds subject to deobligation**" rather than "**expired funds**," as they are commonly referred to.

"The **bona fide needs** rule is one of the fundamental principles of appropriations law: A fiscal-year appropriation may be obligated only to meet a legitimate, or *bona fide*, need arising in, or in some cases arising prior to but continuing to exist in, the fiscal year for which the appropriation was made." (Red Book, p. 5-11). The bona fide needs rule is statutory, 31 U.S.C. 1502. Because obligation occurs when GSA accepts a customer's funds, there has to be a documented bona fide need assessment at time of IA acceptance. In practice, this means there must be, at a minimum, a "**specific, definite, and concise**" description of the requirements associated with the funds at the time of IA acceptance (see "Non-Economy Act Acquisition Package Checklist" attached to DoD Comptroller 10/16/2006 Memorandum). It is important to note that, while further development of the Statement of Work (or PWS/SOO) may occur later, a sufficiently detailed requirements description must be documented in the IA to satisfy the bona fide needs rule to accept the IA and for the customer to record an obligation.

Even after the acceptance of funds, the bona fide needs established at the time of initial obligation may be questioned if GSA takes too much time executing the funds. Excessive and unreasonable delay or inaction by GSA may be viewed as an indication that there may not be a true bona fide need or that the obligation was an attempt to "park" the funds. To avoid this, once funds are accepted, GSA and the customer agency must proceed reasonably and diligently to complete the contract action.

Severable services are services that are continuing and ongoing in nature – such as help-desk support, maintenance, or janitorial services – for which benefit is received each time the service is rendered. **Non-severable services** involve work that results in a final product or end-item and for which benefit is received only when the entire project is complete, such as systems design, building construction, or environmental study.

"[T]here is a fairly simple test that is often helpful in determining whether a given service is severable or nonseverable. Suppose that a service contract is to be performed half in one fiscal year and half in the next. Suppose further that the contract is terminated at the end of the first fiscal year and is not renewed. What do you have? In the case of a window-cleaning contract, you have half of your windows clean, a ***benefit*** that is not diminished by the fact that the other half is still dirty. What you paid for the first half has not been wasted. These services are clearly severable. Now consider a contract to conduct a study and prepare a final report, as in 65 Comp. Gen. 741 (1986). If this contract is terminated halfway through, you essentially have nothing. The partial results of an incomplete study, while perhaps beneficial in some ethereal sense, do not do you very much good when what you needed was the complete study and report. Or suppose the contract is to repair a broken [widget]. If the repairs are not completed, certainly some work has been done but you still don't have an operational [widget]. The latter two examples are nonseverable." (Red Book, p. 5-28).

"**Annual appropriations** (also called fiscal-year or one-year appropriations) are made for a specified fiscal year and are available for obligation only during the fiscal year for which made. . . . All appropriations are presumed to be annual appropriations unless the appropriation act expressly provides otherwise." (Red Book, p. 5-4). Thus, **annual funds**.

"**Multiple year appropriations** are available for obligation for a definite period in excess of one fiscal year. (Red Book, p. 5-7). Thus, **multiple year funds**.

"A **no-year appropriation** is available for obligation without fiscal year limitation. . . . The standard language used to make a no-year appropriation is "to remain available until expended."" (Red Book, p. 5-7). Thus, **no-year funds**.

Appendix D:

Restrictions Applicable to Funds Accepted Under Interagency Agreements (IAs)

I. DoD Annual Funds[1] (or Multiple Year Funds That Are in the Last Year of Availability) Received on or after 10/16/2006.

TYPE OF REQUIREMENTS	TIME RESTRICTIONS	
GOODS	Contracts/orders must be awarded[2] within a reasonable time[3] but no later than fiscal year end (for example, for funds received after 7/2/2007, reasonable time is *further restricted* by 9/30/2007).	The delivery of goods may not be specified to occur in the subsequent fiscal year (see footnote below for complete instructions).[4]
SEVERABLE SERVICES		Contract or task order period of performance must begin no later than the last day of the fiscal year and may be up to 1 year.
NON-SEVERABLE SERVICES		Contract or task order period of performance may extend across fiscal years until complete. No incremental funding of contracts/orders is permitted.[5]

II. Non-DoD Fiscal Year Funds

TYPE OF REQUIREMENTS	TIME RESTRICTIONS
GOODS or NON-SEVERABLE SERVICES	Contracts/orders must be awarded within a reasonable time (even if awards occur in a subsequent fiscal year).
SEVERABLE SERVICES	Contracts/orders must be awarded within a reasonable time (even if awards occur in a subsequent fiscal year). Period of performance may be up to 1 year.

---

[1] e.g., Operation & Maintenance (O&M) funds.

[2] Refers to "contractual obligation" by GSA. "Contractual-obligation" means awards or modifications of a contract or task/delivery order (see Appendix A for explanation).

[3] Defined in Appendix A.

[4] DoD requires that the funds be returned "*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 solely 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. Thus, 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. The delivery of goods may not be specified to occur in the year subsequent to funds availability.*" (see p. 4, DoD Comptroller Memorandum, 10/16/2006; available at the OCAO Acquisition Policy Library).

[5] Period or quantity options are permitted.