

Interagency Agreement
General Terms and Conditions Section
Between
United States Department of the Army
and
National Aeronautics and Space Administration

This Interagency Agreement (IAA, or Agreement) is entered into for the purpose of establishing a mutual framework governing the respective responsibilities between the U.S. Department of the Army (DA) and the National Aeronautics and Space Administration (NASA) (hereafter the Parties) for the provision of construction management and design services.

Statutory Authority

This IAA is entered into pursuant to the Economy in Government Act (31 U.S.C. §1535) and the National Aeronautics and Space Act of 1958, as amended (51 U.S.C. §§ 20101-64).

Requesting Agency's Scope

Goods and services which the DA may provide under this IAA include engineering, design, design review, construction, construction management, commissioning, environmental, procurement, real estate, and deconstruction and demolition of NASA buildings, structures, or other facilities.

Nothing in this IAA shall be construed to require NASA to use DA or to require DA to provide goods or services to NASA, except as may be set forth in individual Support Agreements (SA).

Support Agreements and Scope

In response to requests from NASA for DA assistance under this IAA, the DA and NASA shall execute mutually agreed upon written SAs. Consistent with Federal Acquisition Regulation (FAR) Subpart 17.5 – Interagency Acquisitions, each SA shall include the following:

1. Determinations and Findings (D&F) statement, which documents the following:
 - That the use of an IAA is in the best interests of the Government;
 - The supplies or services cannot be obtained as conveniently or economically from a private source; and,

- If the SA requires contract action by the DA, the D&F must also include a statement that at least one of the following circumstances applies:
 - 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;
 - The DA has the capability or expertise to enter into a contract for such supplies or services that is not available within the requesting agency; and,
 - The DA is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.
 - The D&F shall be approved by a contracting officer of the requesting agency with authority to contract for the services to be ordered.
2. Each SA must also include:
- A detailed scope of work statement;
 - Purpose and justification;
 - Schedules;
 - Funding arrangements, including whether payment shall be in advance or by reimbursement;
 - The amount of funds required and available to accomplish the scope of work as stated above; and,
 - The NASA's fund citation and the date upon which the cited funds expire for obligation.
3. The following must be addressed in each SA:
- Identification of project managers;
 - Identification of types of contracts to be used (if known);
 - Types and frequencies of reports;
 - Identification of which party is to be responsible for government-furnished equipment; contract administration, records maintenance, rights to data, software, and intellectual property, and contract audits;
 - Procedures for amending or modifying the SA; and,
 - Such other particulars as are necessary to clearly describe the obligations of the parties with respect to the requested goods and services.

Roles and Responsibilities

To provide for consistent and effective communication between the DA and NASA, each party shall appoint a Principal Representative to serve as its central point of contact on matters relating to the IAA. Additional representatives may also be appointed to serve as points of contact on each SA.

Responsibilities of the DA

- The DA shall provide NASA with goods or services in accordance with the purpose, terms, and conditions of this IAA and with specific requirements set forth in each SA.
- The DA shall identify authorized DA representatives to sign and administer and manage SAs.
- The DA shall use its best efforts to provide goods or services either by contract or by in-house effort.
- The DA shall provide detailed periodic progress, financial and other reports to NASA as agreed to in the SA. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.
- The DA shall inform NASA of all contracts entered into under each SA.

Responsibilities of NASA

- NASA shall certify, prior to the execution of each SA under this IAA that the SA complies with the requirements of the Economy in Government Act.
- NASA shall pay all costs associated with the DA's provisions of goods or services under this IAA and shall certify, at the time of signature of an SA, the availability of funds necessary to accomplish that SA.
- NASA shall ensure that only authorized NASA officials sign SAs.
- NASA shall develop SAs to include scope of work statements.
- In addition, NASA Form 523, NASA Interagency Purchase Request, shall be completed.

Applicable Laws

This IAA and all documents and actions pursuant to it shall be governed by the applicable statutes, regulations, directives, and procedures of the United States.

Contract Claims and Disputes

All claims and disputes by contractors arising under or relating to contracts awarded by the DA shall be resolved in accordance with Federal law and the terms of the individual contract. The DA shall have dispute resolution authority for these claims.

The DA shall be responsible for handling all litigation involving disputes and appeals, including Federal Torts Claims Act claims, and for coordinating with the Department of Justice as appropriate. The DA shall notify NASA of any such litigation and afford NASA an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

Dispute Resolution

All disputes concerning questions of fact or law arising under this Agreement shall be referred in writing to the appropriate Principle Representative. The Principle Representative for NASA and DA will consult

and attempt to resolve all issues arising from the implementation of this Agreement. If they are unable to come to agreement on any issue, the dispute will be referred to the signing officials, or their designees, for joint resolution after the Parties have separately documented in writing clear reasons for the dispute. As applicable, disputes will be resolved pursuant to the provisions of the Business Rules for Intragovernmental Transactions delineated in the Treasury Financial Manual, Vol. 1, Bulletin 2007-03, Section VII (Resolving Intragovernmental Disputes and Differences).

Funding

NASA shall pay all costs associated with the DA's provision of goods or services under this IAA and any associated SAs. For SAs estimated to cost more than \$250,000 total in contracts and in-house services or \$50,000 in contracts, the DA shall bill NASA in advance and NASA shall provide the necessary funds in advance. For SAs valued at less than these amounts, NASA may reimburse the DA for the goods or services. For these lesser requirements, the DA shall bill NASA monthly for costs incurred; using Standard Form ("SF") 1080, Voucher for Transfers between Appropriations and/or Funds, and NASA shall reimburse the DA within 30 days of receipt of an SF 1080.

If the DA forecasts its actual costs under an SA to exceed the amount of funds available under that SA, it shall promptly notify NASA of the amount of additional funds necessary to complete the work under that SA. NASA shall either provide the additional funds to the DA; require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that SA.

Within 90 days of completing the work under an SA, the DA shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, the DA shall return to NASA any funds advanced in excess of the actual costs as then known, or NASA shall provide any additional funds necessary to cover the actual costs as then known. Such an accounting shall in no way limit NASA's duty in to pay for any costs, such as contract claims or other liability, which may become known after the final accounting.

Responsibility for Costs

If liability of any kind is imposed on the United States relating to the DA's provision of goods or services under this IAA, the DA will accept accountability for its actions, but NASA shall remain responsible as the program proponent for providing such funds as are necessary to discharge the liability, and all related costs. This obligation extends to all funds legally available to discharge this liability, including funds that may be made legally available through transfer, reprogramming or other means. Should NASA have insufficient funds legally available, including funds that may be made legally available through transfer, reprogramming or other means, they remain responsible for seeking additional funds from Congress for such purpose, although nothing in this IAA shall be construed to imply that Congress will appropriate funds sufficient to meet the liability.

Notwithstanding the above, this IAA does not confer any liability upon NASA for claims payable by the DA under the Federal Torts Claims Act. Nothing in this IAA is intended or will be construed to create any rights or remedies for any third party and no third party is intended to be a beneficiary of this IAA.

Notwithstanding any other provision of this Agreement, all activities under or pursuant to this Agreement are subject to the availability of funds, and no provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, Title 31 U.S.C. § 1341.

Accounting and Auditing

The DA agrees to account for all project-related expenditures that are undertaken as part of this Agreement. An accounting system that is maintained in accordance with Generally Accepted Accounting Principles (GAAP) shall be used for this Agreement. NASA's Inspector General, the U.S. Comptroller General, or their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other DA records that are pertinent to the expenditures, in order to make audits, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to DA personnel for the purpose of interviews and discussion related to such documents. The rights of access in this paragraph are not limited to any required retention period, but shall last as long as records are retained.

Public Information

Justification and explanation of NASA's programs before Congress and other agencies, departments, and offices of the Federal Executive Branch shall be the responsibility of NASA. The DA may provide, upon request, any assistance necessary to support NASA's justification or explanations of NASA's programs conducted under this IAA. In general, NASA is responsible for all public information. The DA may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. NASA and the DA shall make its best efforts to give the other party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to SAs under this IAA.

NASA or DA may, consistent with Federal law and this Agreement, release general information regarding its own participation in this Agreement as desired. Insofar as participation of the other Party is involved, NASA and the DA will seek to consult with each other prior to any releases, consistent with the Parties' respective policies.

Other Relationships or Obligations

This IAA shall not affect any pre-existing or independent relationships or obligations between NASA and the DA.

Survival

The provisions of this IAA which require performance after the expiration or termination of this IAA shall remain in force notwithstanding the expiration or termination of this IAA.

Severability

If any provision of this IAA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

Duration

This IAA shall be effective from the date of final signature through 30 September 2016. If the parties are then in agreement, the IAA will be renegotiated during the 4th quarter of fiscal year 2015 for the five-year period beginning 1 October 2015 and ending on 30 September 2020.

Amendment and Modification

This IAA may be modified or amended only by written, mutual agreement of the parties. All modifications agreed to will become effective immediately upon the signing of the modification by both parties.

Termination

Either Party may unilaterally terminate this Agreement by providing 30 calendar days written notice to the other Party. Termination will not affect any work being performed pursuant to a SA previously executed. In the event of termination, NASA shall continue to be responsible for all costs incurred by the DA under this IAA and for the costs of closing out or transferring any ongoing contracts.

Signatory Authority

Approved and Authorized on Behalf of Each Party by:



Olga M. Dominguez *SR*
Assistant Administrator for Strategic Infrastructure
National Aeronautics and Space Administration

7/18/11
Date:



Timothy Hess
Acting Chief, Interagency and International
Community of Practice
U.S. Department of the Army

7/26/11
Date:

SAMPLE DETERMINATION AND FINDINGS DOCUMENT- Remove italicized instructions and substitute appropriate facts before finalizing this document.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

(Insert Center Name)

DETERMINATION AND FINDINGS

Authority to use an Interagency Acquisition:

National Aeronautics and Space Act (51 U.S.C. 20113 et seq.)

As Implemented by NASA FAR Supplement 1817.70

FINDINGS

1. The *(enter center name)* proposes to use an interagency acquisition for *(insert description of the work)*.

The estimated value of the work is \$_____.

The period of performance is _____.

This action ___ is ___ is not a non-competitive follow-on for the same services from the same servicing agency.

2. The use of an interagency acquisition is in the best interest of the Government, and the supplies and services cannot be obtained as conveniently or economically by contracting directly with a private source.

(Explain the basis for this statement (per NFS 1817.7002(b)).

3. The below indicated statement(s) is/are applicable *(Select one or more, as appropriate)*:

The acquisition does not require the servicing agency to award a contract or request service under an existing contract in order to meet the requirements of the requesting agency.

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.

(Identify the servicing agency point of contact, telephone number and E-Mail address. Additionally, explain whether the contract was competitively awarded or the agency's basis for award.)

The servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency.

(Explain the capabilities or expertise not available within NASA.)

The servicing agency is specifically authorized by law or regulation to purchase supplies or services on behalf of other agencies.

(Cite the law or regulation that authorizes the servicing agency to purchase these supplies or services.)

Other:

(Elaborate on any other issues that support the determination below.)

DETERMINATION

Based on the above findings, I hereby determine that it is in the Government's best interest to place an order with *(enter name of agency)* for this requirement.

Contracting Officer

Date

BACKGROUND

ECONOMY ACT AGREEMENTS FOR PURCHASING GOODS OR SERVICES

The Economy Act of 1932, as amended, 31 U.S.C. § 1535, permits Federal Government agencies to purchase goods or services from other Federal Government agencies or other major organizational units within the same agency. An Economy Act purchase is permitted only if: (1) amounts for the purchase are actually available, (2) the purchase is in the best interest of the Government, (3) the ordered goods or services cannot be provided by contract from a commercial enterprise, i.e., the private sector, as conveniently or cheaply as could be by the Government, and (4) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services.

The Federal Acquisition Regulations (FAR), 48 CFR 17.5 provides further requirements for Economy Act agreements. The FAR provides that an order cannot be placed under the Economy Act if a more specific statutory authority exists. Purchases pursuant to the Economy Act are not exempt from the requirements of 48 CFR 7.3, "Contractor Versus Government Performance." Thus, OMB Circular A-76 applies to Economy Act agreements.

Economy Act agreement must achieve full cost recovery, and there is no law that permits a waiver of this full cost recovery requirement. Full cost recovery includes direct and indirect costs. Further, the Economy Act does not allow a Federal agency or unit to receive a profit when providing goods or services.

The FAR states that Economy Act orders must include (1) a description of the supplies or services required; (2) delivery requirements; (3) a funds citation; (4) a payment provision ; and (5) acquisition authority as may be appropriate.

Further, each Economy Act order shall be supported by a Determination and Finding (D&F). The D&F shall state that: (1) Use of an interagency acquisition is in the best interest of the Government; and (2) the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source. If the Economy Act order requires contracting action by the servicing agency, the D&F shall also include a statement that at least one of the following circumstances is applicable: (1) 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; (2) the servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or (3) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

The D&F must be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head, except that, if the servicing agency is not covered by the FAR, approval of the D&F may not be delegated below the senior procurement executive of the requesting agency.

Current OMB guidance and a link to relevant Intergovernmental Business Rules can be found at:

<http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2007/m07-03.pdf>