

*DEPARTMENT OF COMMERCE
INTERIM INTERAGENCY
AND OTHER SPECIAL AGREEMENTS
HANDBOOK*



April 2004

LIST OF ACRONYMS USED IN THIS HANDBOOK

AGC	Assistant General Counsel
AGC/A	Assistant General Counsel for Administration
BPN	Business Partner Network
CCR	Central Contractor Registration
CFO/ASA	Chief Financial Officer and Assistant Secretary for Administration
CFR	Code of Federal Regulations
DAO	Department Administrative Order
D&F	Determination and Finding
DOC	Department of Commerce
DUNS	Dun and Bradstreet Universal Numbering System
FAR	Federal Acquisition Regulation
GWAC	Government-wide Area Contract
IAA	Interagency Agreement(s)
OAM	Office of Acquisition Management
OGC	Office of General Counsel
OMB	Office of Management and Budget
SPE	Senior Procurement Executive (or Procurement Executive)
USC	United States Code

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(IOSA) HANDBOOK**

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CHAPTER 1. INTRODUCTION

A. Preface.

1. The Department of Commerce (DOC) has a variety of missions, such as promoting U.S. exports, developing innovative technologies, gathering and disseminating statistical data, measuring economic growth, granting patents and trademarks, promoting minority entrepreneurship, predicting the weather, and promoting economic growth. In furthering its programs, DOC may become involved with other federal agencies and non-federal organizations and individuals who have complementary missions or require exchange of information or services with DOC operating units in order to fulfill their own unique missions.

2. Interagency Agreements (IAA) can be used to formally agree to share information, provide needed services, or coordinate programs to optimize the benefits from each party's efforts. Agreements should be used whenever there is an exchange of funds, personnel, or property, services, or any type of commitment or obligation. A written IAA which clearly stipulates the responsibilities of each party can contribute to more efficient and effective results and be useful in avoiding future misunderstandings between the parties.

3. This Handbook will promote uniform implementation of IAA throughout the Department, while giving due consideration to the different individual program requirements and procedures.

4. For purposes of this handbook, we will use the term Interagency Agreements (IAA) to refer to the various types of interagency agreement or other special agreements within the Department. IAAs can include memoranda of agreement, memoranda of understanding, joint project agreements, interagency purchase orders that document both parties' acceptance, or any other document that details the terms of an agreement and the parties' acceptance. Agreements can transfer funds from one party to the other, bind one or both parties to commit funds or resources to a project, or not involve any resources

5. This Handbook is being issued as interim guidance. After it has been in effect for at least one year and evaluated based on its interim implementation, it will be issued pursuant to the authority of Department Administrative Order (DAO) 200-0, "Department of Commerce Handbooks and Manuals." This Handbook shall have the same force and effect as a DAO. Amendments (substantive changes) or revisions (corrections or updates) to the Handbook may be developed and issued by the Director, Office of Acquisition Management (OAM). Proposed amendments to this Handbook will be distributed for review and comment in accordance with procedures established in DAO 200-0. This Handbook will provide general Departmental guidance to the operating units with respect to an IAA. The operating units, in turn, are required to issue supplemental operating unit procedures. See Chapter 7, Section M, of this Handbook.

B. Purpose and Scope

1. This Handbook assigns responsibilities and establishes general policies and procedures for the preparation, review, clearance, approval, monitoring, and closing of an IAA. The Handbook is for internal use by DOC personnel and does not create any rights or liabilities with respect to the public or any third party.
2. This Handbook applies to all DOC operating units and the Office of the Secretary in their preparation, review, clearance, approval, monitoring, closing, management, and administration of an IAA. Except as specifically excluded, this Handbook covers all agreements, to include those not written and prepared by DOC officials, but which must be approved by a DOC official. The Handbook will also cover interagency agreements involving interagency acquisitions which are governed by 48 CFR 16.505 and 48 CFR 17.500.
3. This Handbook provides guidance on determining the appropriate legal instrument for executing agreements.
4. This Handbook does not apply to Financial assistance awards (grants, cooperative agreements, loans, or loan guarantees), as defined in Chapter 2, Sections C, F, and G of this Handbook.

C. Policy

1. In furthering its programs, DOC may become involved with other entities, including international organizations; foreign, federal, state, tribal, and local governments; institutions of higher education; and other public and private organizations. This cooperation is consistent with the need to carry out DOC's authorized programs effectively and efficiently.
2. An IAA should be used by parties entering into a relationship to document a formal agreement, e.g., to formally agree to share information, provide or obtain needed services, or coordinate programs to optimize the benefits from each party's efforts. Informal arrangements should not be used whenever there is an exchange of funds, personnel, services, or property. Written agreements should be properly developed, reviewed, and approved in order to formalize relationships with other parties.
3. Prior to requesting or performing work for any entity outside the operating unit, a formal relationship between parties must be properly established. For those situations where a formal relationship must be documented in an agreement between the parties, an agreement must be developed and approved under the appropriate legal and programmatic authorities with necessary reviews, coordination, and clearances. Coordination and reviews ensure that an IAA is in the proper format, reflects the appropriate authority for the specific agreement, is consistent with DOC and operating unit policies and plans, and does not violate any laws.
4. No employee or representative of DOC shall use the policies or procedures contained in

this Handbook or the specific guidelines promulgated by the operating units under the authority of this Handbook to circumvent statutory and regulatory requirements relating to the award of procurement contracts or financial assistance. Furthermore, no employee or representative of the DOC shall use any IAA covered by this Handbook as justification for the award of procurement contracts or financial assistance on a noncompetitive basis.

5. Supplemental operating unit procedures are required by this Handbook and shall at a minimum contain information as required in Chapter 7, Section M, of this Handbook. The operating unit procedures will provide the details and specific instructions for an IAA approved by authorized officials of the operating unit. Clearance for procedures and thresholds for legal review of an IAA must be obtained from OAM, Office of General Counsel (OGC), and Office of Assistant General Counsel for Administration (AGC/A) prior to the issuance and use of operating unit supplemental procedures. Once issued, a copy of the operating unit procedures must be provided in writing to OAM.. **In the event of a conflict between this Handbook and the operating unit procedures, the provisions of this Handbook will prevail unless a waiver has been obtained in accordance with Paragraph 6 immediately below** (this sentence was inadvertently missed through the editing process, and should be deleted as Paragraph 6 does not exist.)

D. Determining the Appropriate Legal Instrument for Executing an Agreement.

1. When a DOC operating unit has a requirement for supplies or services, care must be taken to select the appropriate legal instrument for the agreement.

2. The Federal Grant and Cooperative Agreement Act of 1977, as amended, (33 USC 6301-6308), requires executive agencies to distinguish procurement relationships from assistance relationships with non-federal parties and provides some general guidance on helping to make these distinctions.

a. Grants should be used whenever 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. See Chapter 2, Section G, of this Handbook.

b. Cooperative agreements should be used whenever 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. See Chapter 2, Section C, of this Handbook.

c. Procurement contracts should be used whenever the principal purpose of the relationship is to acquire, purchase, lease, or barter property or services for the direct benefit of the Federal

Government. See Chapter 2, Section Q, of this Handbook.

3. Interagency agreements should be used when an exchange of funds, resources, supplies, or services is made with another federal agency. However, if a servicing agency is a mandatory source (i.e., if it is required by law to provide the services or supplies to other federal agencies), an interagency agreement may not be the appropriate vehicle for obtaining those supplies or services.
4. Intra-agency agreements should be used when exchanging supplies, services, or funds with another DOC operating unit.
5. Other special agreements are utilized when specific authority has been granted to enter into agreements with other organizations, and when the principal purpose of the relationship is not financial assistance or procurement. See Chapter 3 of this Handbook for a discussion of Department-wide legal authorities. Authorities commonly used by operating units will be set forth in operating unit procedures.

E. Published Authorities Related to an IAA. A list of government-wide and DOC sources which are used as appropriate with an IAA includes, but is not limited to, the following:

1. Case-Zablocki Act (1 USC § 112b)
2. Clinger-Cohen Act (40 USC § 1412(e))
3. Department-wide “Special Studies” Statute (15 USC § 1525, 1st Paragraph)
4. Economy Act (31 USC § 1535)
5. Federal Technology Transfer Act (15 USC § 3701a)
6. Government-wide User Charge (31 USC § 9701)
7. Intergovernmental Cooperation Act (31 USC § 6505)
8. Joint Project Authority (15 USC § 1525, 2nd Paragraph)
9. Federal Acquisition Regulation (48 CFR 16.505 and 48 CFR 17.500)
10. Government Patent Licensing (35 USC § 207)
11. Mutual Educational and Cultural Exchange Act of 1961 (MECEA), 22 U.S.C. § 2245(f), as incorporated into specific operating unit appropriations acts
12. Government Management Reform Act (Public Law 103-356)

13. Office of Management and Budget (OMB) Circular A-25, User Charges
14. OMB Circular A-76, Performance of Commercial Activities
15. OMB Circular A-76 Revised Supplemental Handbook to the Circular (Revised March 1996)
16. OMB Circular A-97, Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Title III of the Intergovernmental and Cooperation Act of 1968
17. OMB Circular A-130, Management of Federal Information Resources, Section 8(a)(1)(k)(7)(c) and Appendix IV, Section 8(a)(7)
18. DAO 218-4, Treaties and Other International Agreements
19. Supplementary Handbook on the C-175 Process for Routine International and Technology Agreements
20. DOC Accounting Principles and Standards Handbook
21. OMB Business Rules for Intragovernmental Exchange Transactions

CHAPTER 2. DEFINITIONS

For the purposes of this Handbook, the following definitions are used:

- A. Approving Official.** The operating unit official who has authority to create a legal liability on the part of DOC to make a disbursement of funds under the terms of an IAA. The approving official is responsible for all aspects of the IAA with the authority to approve, amend, administer, close out, suspend, and/or terminate an IAA and make a related Determination and Finding (D&F). The approving official must have appropriate delegated authority to obligate federal funds.
- B. Bureau Procurement Official.** The senior career procurement official within each operating unit that has been delegated contracting authority by the Senior Procurement Executive. The Bureau Procurement Official must be a procurement professional who has both experience and training in the area of federal procurement and contracting and is designated by the Head of Operating Unit as the Bureau Procurement Official.
- C. Business Partner Network.** A web-enabled environment that serves as a single point of registration and validation of supplier data. As part of the Integrated Acquisition Environment E-Government initiative, the existing Department of Defense Central Contractor Registration (CCR) system will be expanded into a Business Partner Network (BPN) that will be used by all agencies. The BPN will include grantees, Federal entities, and companies seeking to do business with the Federal government. This expansion will require all those seeking to do business with the Federal government to register within the BPN.
- D. Business Rules for Intra-governmental Exchange Transactions.** Basic requirements for processing and recording intra-governmental transactions by all federal agencies. Standard requirements include the use of Dun and Bradstreet Universal Numbering System (DUNS) numbers as unique identifiers for business locations for federal buyer and seller agencies; the registration of DUNS numbers and related information in the Central Contractor Registration (CCR) system; and the establishment of standard business rules and data elements for intra-governmental exchange transactions.
- E. Commerce Acquisition Review Board.** A board comprised of representatives from the various offices within the Office of Chief Financial Office/Assistant Secretary for Administration, the Office of the Chief Information Officer and the Office of General Council. The Commerce Acquisition Review Board will review all acquisitions over \$5 million issued by a Department of Commerce Contracting Officer and all IAAs between the Department of Commerce and other federal agencies that transfers funds in excess of \$5 million from the Department of Commerce. The Commerce Acquisition Review Board is chaired by the Director, Office of Acquisition Management who is the Department's Senior Procurement Executive.

F. Central Contractor Registration (CCR). The single repository of vendor data for the U.S. Federal Government. The CCR collects, validates, stores and disseminates data in support of agency acquisition missions. Both current and potential government vendors are required to register in CCR in order to be awarded contracts by the government. Vendors are required to complete a one-time registration to provide basic information relevant to procurement and financial transactions. Vendors must update or renew their registration annually to maintain an active status.

G. Cooperative Agreement. A legal instrument, as defined at 31 USC § 6305, reflecting a relationship between DOC and a recipient whenever: (a) the principal purpose of the relationship is to provide financial assistance to the recipient; and, (b) substantial involvement is anticipated between DOC and the recipient during performance of the contemplated activity. A cooperative agreement is not a type of agreement covered by the provisions of this Handbook.

H. Dun & Bradstreet Universal Numbering System (DUNS) Number. Unique numbers that are assigned to individual business locations of federal buyer and seller agencies to ensure standardized government-wide reporting and accounting for intra-governmental transactions.

I. Federal Acquisition Regulation (FAR). The government-wide regulation that provides guidance and procedures for federal contracts. The FAR is codified under Title 48 of the Code of Federal Regulations (CFR). Interagency Agreements pursuant to the Economy Act are guided by Subpart 17.5, "Interagency Acquisitions under the Economy Act," of the FAR.

J. Financial Assistance. The transfer of money, property, services or anything of value to a recipient in order to accomplish a public purpose of support or stimulation that is authorized by federal statute. Financial assistance (grant, cooperative agreement, loan, or loan guarantee) is not covered by the provisions of this Handbook.

K. Grant. The legal instrument, as defined at 31 USC § 6304, reflecting a relationship between DOC and a recipient whenever: (a) the principal purpose of the relationship is to provide financial assistance to a recipient; and, (b) no substantial involvement is anticipated between DOC and the recipient during the performance of the contemplated activity. A grant is not a type of agreement covered by the provisions of this Handbook.

L. Government-wide Acquisition Contract (GWAC). Contracts for various information technology resources entered into by one federal agency but which other federal agencies can use. Some agencies with GWACs require an interagency agreement before another agency can order against the contract. Interagency agreements for the use of GWACs typically fall under the authority of the Clinger-Cohen Act. Orders placed with the GWAC as a result of an interagency agreement must follow the procedures of 48 CFR 16.505.

M. In-Kind Contributions. An in-kind contribution or amount is a contribution other than a monetary contribution, e.g., services or property, that is formally included in the IAA.

N. Intra-Governmental Transactions Exchange/Portal (IGTE/P). A project that was initiated to address long-standing problems with intra-governmental exchange transactions between federal agencies. The project has three major phases: (1) issuance of business rules to transform and standardize intra-governmental ordering and billing; (2) applying the Central Contractor Registration (CCR) concept to federal agencies; and, (3) deployment of an electronic commerce portal, known as the IGTP, that will receive and route transaction data and maintain an associated data repository.

O. Memorandum of Agreement/Understanding (MOA/U). MOA/U is a generic term that simply refers to an arrangement with DOC that is not a procurement contract, a grant, or a cooperative agreement. The term MOA/U has no reference to any designated statutory authority or financial arrangement. This is a term that is synonymous or interchangeable with the word “agreement” in general. There is no legal significance between the terms MOA and MOU. An MOA/U is not itself a type of agreement covered by the provisions of this Handbook, but is rather a non-specific description that is commonly used to refer in general to any one IAA covered by this Handbook.

P. Non-governmental. Non-governmental refers to any private sector business, international agency, foreign government, or any other organization that is not part of the Federal Government or its subdivisions, or a state or local government within the United States.

Q. Non-reimbursable IAA. A non-reimbursable IAA is one that may commit operating unit resources to another party or parties to the IAA but does not obligate cash to or from the operating unit and another party to the IAA. This is a category that could commit previously budgeted and currently available operating unit resources other than cash or could simply be used to “agree to agree.” Resources could be in the form of personnel, travel, or other in-kind types of commitments.

R. Office of General Counsel. The entire organization of the DOC OGC, including the Assistant General Counsels, the National Oceanic and Atmospheric Administration (NOAA) General Counsel, the Patent and Trademark (PTO) General Counsel and all the Chief Counsels of the operating units throughout the Department.

S. Operating Unit. An organizational entity outside the Office of the Secretary of DOC charged with carrying out specified substantive functions (i.e., programs) of the DOC. The operating units are the components of the DOC through which most of its substantive functions are carried out. Operating units are further discussed in Department Organization Order (DOO) 1-1, “Mission and Organization of the Department of Commerce.”

- T. Partner.** Generally a term for a party to a collaborative IAA, including the DOC operating unit. A “partner” does not involve purchase transactions.
- U. Payable IAA.** Payable IAA refers to an IAA where operating unit funds are obligated to another party or parties to the IAA. Under this type of agreement, the operating unit is the requesting agency and is providing its share of funds for goods or services as required to implement the agreement. The operating unit will make payments in accordance with the agreement.
- V. Procurement Contract.** The legal instrument, as defined in 31 USC § 6303, reflecting a relationship between an operating unit and another non-federal entity when: (a) the principal purpose of the relationship is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or, (b) it is determined in a specific instance that it is appropriate to use a type of procurement contract.
- W. Program/Project Officer.** The operating unit official who is responsible for the technical, scientific, or other programmatic aspects of the work to be conducted under the IAA. The program/project officer tracks and monitors the progress of work conducted under the agreement.
- X. Receivable IAA.** Receivable IAA refers to an agreement where funds are committed or obligated to the operating unit. Under this type of IAA, the operating unit is the servicing agency and is receiving its share of funds for providing goods or services as needed to implement the agreement. The operating unit will be paid in accordance with the IAA.
- Y. Reimbursable IAA.** A reimbursable IAA is one that obligates cash within or between DOC and another party to the IAA.
- Z. Requesting Agency.** The federal agency or other DOC operating unit requesting or ordering goods or services.
- AA. Senior Procurement Executive (or Procurement Executive).** The official appointed pursuant to Executive Order 12931 and the Services Acquisition Reform Act (P.L. 108-136), to carry out the responsibilities identified in both the Executive Order and the Services Acquisition Reform Act. Pursuant to DOO 20-26, Director for Acquisition Management is the Procurement Executive for the Department of Commerce.
- BB. Servicing Agency.** The federal agency or other DOC operating unit that will provide the goods or services, either directly or by contracting for the goods or services.
- CC. User Charges.** Fees charged by DOC when it conveys special benefits to individuals or organizations beyond those accruing to the general public. Chapter 11, “Fees and Revenues,” of the DOC Accounting Principles and Standards Handbook sets forth principles and standards

pertaining to fees for services and items of value provided by DOC. This chapter of the DOC Accounting Principles and Standards Handbook also prescribes policies and procedures for establishing and imposing user charges for services or products which DOC provides to non-federal recipients.

CHAPTER 3. LEGAL AUTHORITIES

A. Authorities for an IAA. DOC may not enter into an IAA with another party unless it is authorized by law. An IAA may require both a legal and programmatic authority to make that agreement legal. Because there are so many legal authorities pursuant to which DOC may enter into an IAA, all authorities are not listed below. The following is a discussion of the law as well as other pertinent information about most government-wide or DOC-wide authorities for IAAs. Authorities commonly used by operating units must be set forth in operating unit procedures. See Chapter 7, Section M, of this Handbook. Model Economy Act, Interagency Details of Employees, Intergovernmental Cooperation Act, Joint Project, and Special Studies agreements can be found at the General Law Division, Office of the AGC/A website ([www.http://www.ogc.doc.gov/ogc/admin/general.html](http://www.ogc.doc.gov/ogc/admin/general.html)).

1. Economy Act of 1932, as amended (31 USC § 1535).

a. Economy Act. The Economy Act authorizes agencies to purchase goods or services from other federal agencies and major organizational units within the same agency.

(1) An Economy Act purchase is permitted only if the following conditions apply:

(a) amounts for the purchase are actually available;

(b) the purchase is in the best interest of the government;

(c) it has been determined that ordered goods or services cannot be provided by contract from a commercial enterprise, i.e., the private sector, as conveniently or cheaply as by the government; and,

(d) the agency or operating unit to fill the order is able to provide or get by contract the ordered goods or services.

(2) For interagency agreements under the authority of the Economy Act, assure that the D&F as required by 48 CFR 17.503 is properly executed when DOC is the requesting agency or, when DOC is the servicing agency, that the Official Agreement File contains a record that the requesting agency provided assurance that the required D&F was executed.

(3) Orders for goods or services cannot be placed pursuant to the Economy Act if there is more specific legal authority that authorizes the purchase from another government entity. An example of interagency acquisitions to which the Economy Act does not apply is the acquisition from required sources of supplies prescribed in 48 CFR 8, "Required Sources of Supplies and Services" (which have separate statutory authority).

(4) Full cost recovery is required by law in all agreements entered into pursuant to the Economy Act.

(5) The Economy Act does not allow a federal agency or operating unit to receive a profit when providing goods or services.

(6) The Economy Act stipulates that the servicing agency must complete its transaction obligating the funds within the period of availability that was provided to the requesting agency when the funds were appropriated by Congress, that is, the servicing agency must either properly obligate the funds against a procurement contract (or other agreement under authority other than the Economy Act) or complete performance of the work internally before the transferred funds expire. A transfer of funds under the Economy Act does not extend the availability of funds beyond that which was provided by Congress in the applicable appropriations act.

(7) Any restrictions, limitations, or requirements on the availability of appropriations to the federal agency that transfers the funds are also binding on the federal agency that receives the funds.

(8) The federal agency that transfers the funds remains responsible and accountable to Congress for the funds.

b. FAR. Interagency agreements under the authority of the Economy Act are subject to specific requirements set forth at 48 CFR 17.5.

(1) 48 CFR 17.5 requires that each interagency agreement under the authority of the Economy Act must be supported by a D&F signed by a contracting officer or another official designated by the agency head. If the servicing agency is not covered by the FAR, approval of the D&F may not be delegated below the senior procurement executive.

(2) In accordance with 48 CFR 17.502(c), acquisitions under 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 IAAs. Requirements of OMB Circular A-76 must be followed when there is a conversion between in-house performance (performance by government personnel) and contractor performance. OMB Circular A-76 coordinators can provide additional guidance for converting between in-house and contractor performance. Conversion occurs when either of the following applies:

(a) services currently performed in-house (with government personnel) will be contracted out and performed by non-government personnel via an interagency acquisition; or,

(b) services currently performed by a contractor (non-government personnel) will be performed by government personnel of another agency via an interagency acquisition.

(3) Transactions that occur entirely within DOC are not governed by the FAR's implementation of the Economy Act. The FAR explicitly states that procedures for intra-agency

transactions are to be addressed in agency regulations. DOC has established streamlined procedures in this Handbook for intra-agency agreements between DOC operating units.

c. **Financial Assistance.** The Economy Act can also serve as authority to procure financial assistance administration services from another federal agency and to transfer the corpus of financial assistance funds if, in addition to the requirements listed in paragraphs a. and b. above, as applicable, both the requesting and servicing agencies have statutory authority to provide financial assistance for the purposes(s) for which the funds are to be used. The requesting agency remains accountable to Congress for these activities, however. In addition, the Economy Act can be used simply to purchase financial assistance administration services or other technical assistance from the servicing agency, subject to applicable requirements in paragraphs a. and b. above. The servicing agency in this instance is not required to have programmatic statutory authority to provide financial assistance because the requesting agency will execute the financial assistance awards, not the servicing agency.

2. Government-wide User Charge Authority (31 USC § 9701). This legal authority generally permits all government agencies to impose a “user charge” for an activity that conveys special benefits to recipients beyond those accruing to the general public. When operating units are performing services which are within the scope of their authorized missions, they may enter into agreements to recover their costs. These agreements generally are governed by OMB Circular A-25, “User Charges.” The DOC Accounting Principles and Standards Handbook also contains guidance on user charges. With limited exceptions, user charges must be sufficient to recover the full cost of goods, services, and resources provided by the federal agency. Charges collected under this authority cannot be retained by the DOC, but must be sent to the U.S. Treasury. Other user charge authorities exist which provide the agency the ability to retain the funds received for doing the work or providing the services. (Some examples are the Economy Act and the Department’s “Special Studies” statute, both described in this section.) Operating units should first attempt to identify a user charge authority which authorizes retention of the funds received. However, if no specific authority exists for the particular type of work contemplated, a fee may still be required to be charged, but will be deposited into the Treasury.

3. Intergovernmental Cooperation Act (31 USC § 6505). The Intergovernmental Cooperation Act permits federal agencies to provide specialized or technical services to a state or local government on a reimbursable basis. In accordance with this Act, services prescribed must be consistent with and further the policy of the U.S. Government relying on the private enterprise system to provide services reasonably and quickly through ordinary business channels. A DOC operating unit may provide services to a state or local government when the following applies:

- a. a written request is made by the state or local government; and
- b. payment of salaries and all other identifiable costs of providing the service are made to DOC by the state or local government making the request.
- c. agreements entered into pursuant to this authority must conform to OMB Circular A-97, which governs this type of agreement.

4. “Special Studies” Statute (15 USC § 1525).

a. The first paragraph of 15 USC § 1525 authorizes DOC to provide, upon the request of any person, firm, or public or private organization the following:

- (1) special studies on matters within the authority of DOC, including preparing from its records special compilations, lists, bulletins, or reports; and
- (2) transcripts or copies of its studies, compilations, and other records.

b. These services and products can be provided only upon the payment of the actual or estimated costs of such special work. Payment for work or service performed under this authority must be deposited in a separate account or accounts which may be used to pay directly the costs of work or services, to repay or make advances to appropriations or funds which do or will initially bear all or part of such costs, or to refund excess sums when necessary.

5. Joint Project Authority (15 USC §1525).

a. DOC’s Joint Project Authority is set forth in 15 USC § 1525 in the second paragraph. The principal purpose of joint projects is to engage, on an equitable basis, in collaborative projects on matters of mutual interest with non-profit, research, or public organizations or agencies, such as state and local governments. Under the Joint Project Authority, each partner may contribute funds, goods, or services toward the project provided it is done on an equitable basis. This authority is distinguishable from the Economy Act, which allows full reimbursement between federal agencies for providing goods or services. The results of joint projects must be available to all parties. Each party should have the right to publish or make use of the results of the project without obligation to other parties. Joint projects may be undertaken only under the following conditions:

- (1) the project cannot be done at all or as effectively without the participation of all parties to the project, and
- (2) the project is essential to the furtherance of DOC’s program.

b. All payments for work or services, including supplies, travel, overhead and any other expenses incurred for the Federal Government performed in conjunction with the project are to be deposited to the appropriation or fund against which the charges have been made.

c. The following information is generally required in agreements made under the Joint Project Authority:

- (1) The agreement must include an explanation that the project is of mutual interest to all parties and cannot be completed as effectively without the participation of all parties to the

agreement and the operating unit. This section should make clear the basis for mutual interest between the parties to the agreement, and the relevance to DOC program interests should be included.

(2) All partners in a joint project agreement must substantially participate in the planning and implementation of the joint project. Arrangements whereby one party does all the work and the other party or parties merely reimburse the costs incurred are not joint project agreements. Without sufficient collaboration, the agreement may legally reflect a procurement, financial assistance, or other relationship. Joint projects should not be proposed as a way to avoid the statutory or regulatory requirements of financial assistance awards.

(3) The agreement will specify the rights of each party to the results of the joint project.

(4) The agreement must contain a statement that costs for the project are apportioned equitably, that is, that each partner is making a cash or in-kind contribution of an amount that fairly and reasonably reflects the benefits that each partner is receiving under the agreement. An equitable contribution does not necessarily have to be an “equal” contribution.

(5) Joint projects are generally not to be used as a means to transfer large amounts of Department funds to private organizations. Operating units should structure joint projects in a way that each party procures its own share of supplies, equipment, or personnel resources and then contributes these assets in-kind to the project. Transfers of large amounts of funds carry the hallmarks of financial assistance awards or procurement contracts, so operating units must justify why the principal purpose of the proposed agreement is not financial assistance or procurement. For example, a transfer of funds, no matter how small, which is budgeted to pay a private partner’s personnel expenses must be justified as to why it is not a procurement of services. Similarly, a transfer of funds which is budgeted to be spent by the private partner and which appears to be disproportionate to their level of contribution of funds to the project must be justified as to why it is not financial assistance and why this is an equitable apportionment of costs. When circumstances necessitate an unavoidable transfer of funds, operating units must include agreement terms which require fiscal accountability by the private party.

(6) If joint work is expected to result in inventions, a patent rights clause should be developed. OGC may be consulted for additional information and advice.

6. Clinger-Cohen Act (40 USC § 1412(e)). This legislation is also known as the Information Technology Management Reform Act (ITMRA). The Clinger-Cohen Act grants OMB the authority to designate executive agents for government-wide acquisitions of information technology. Designated agencies have established GWACs from which other federal agencies are permitted to make acquisitions. Interagency agreements are typically required between the executive agency and the ordering agency. The acquisitions are subject to the requirements of 48 CFR 16.505(b), “Orders under Multiple Award Contracts.” All agreements issued under the authority of the Clinger-Cohen Act must be reviewed by the head of the contracting office.

7. Other Authorities or Operating Unit Special Authorities. There are numerous other legal authorities pursuant to which DOC operating units may enter into an IAA. These are usually authorities under which each operating unit has unique or specific authority. Examples of this type of authority are the Federal Technology Transfer Act, 15 USC § 3710a, and the Mutual Educational and Cultural Exchange Act, 22 USC § 2455(f), which is incorporated by reference each year into the appropriation legislation only for use by the International Trade Administration and the Bureau of Industry and Security.

B. Choosing the Correct Authority. Each proposed IAA must be carefully analyzed to assure that the correct legal instrument and authority are used. If there are questions with respect to the correct legal instrument or legal authority, OGC should be consulted. The charts in Exhibits A through F are provided to complement, not replace, the substantive provisions of this Handbook and are not intended to serve as a substitute for legal advice. The Exhibits to this Handbook provide general guidance to help determine the correct legal instrument and legal authority for an IAA. For specific information, refer to the appropriate paragraph in this chapter.

CHAPTER 4. DEVELOPING AND PROCESSING AGREEMENTS

A. Preparing an IAA. The process for developing an IAA may vary among operating units and federal agencies, as each may have its own procedures and organizational structure, processes, and requirements. However, there are some procedures that should be completed in a specific sequence or order. The following is a recommended process that can be followed to meet the individual needs of operating units and the requirements of the individual IAA being negotiated and developed. These steps should begin after initial discussions with each proposed party to the agreement and a general understanding has been reached with respect to the correct legal and programmatic authorities, the work to be accomplished, costs and budget (if applicable), and the responsibility of each party to the agreement.

1. Identify the staff/office(s) which will be needed to develop, process, and complete the IAA. This may include the finance office, budget office, contracting officer, approving official, OGC, and A-76 coordinator and grants officer when applicable. These offices and officials can also provide advice and guidance upon request. Confer and/or meet with staff from each office identified, as needed.
2. Determine the responsibilities of each office identified. For example, the budget office shall certify the availability of funds or reserve operating unit funds that are to be obligated by the IAA. The finance or other appropriate office will establish an account into which monies can be transferred from each party to the IAA, as appropriate, and serve as the financial contact for the operating unit to each party to the IAA.
3. Provide a written request for reservation of funds, if applicable, and assure that proper documentation is received and placed in the agreement file to certify the reservation of funds.
4. Refer to the DOC Accounting Principles and Standards Handbook for costing methodology if the agreement requires cost recovery. Refer to OMB's Business Rules for Intragovernmental Exchange Transactions if the IAA will be either an interagency or intra-agency agreement.
5. Establish a single point of contact for each party to the agreement. To avoid confusion and uncertainty, it is important to have a single point of contact from each party to the agreement for coordination purposes and resolution of issues.
6. Draft the IAA for management review. Refer to Chapter 5 of this Handbook for minimum required information to be included in an IAA. Also, to assist in developing the draft agreement, examples of formats for the most commonly used authorities can be found at [www.http://www.ogc.doc.gov/ogc/admin/general.html](http://www.ogc.doc.gov/ogc/admin/general.html). Formats may vary, depending upon requirements of each party to the agreement, so flexibility with respect to actual format is sometimes necessary.

7. Coordinate with the approving official, OGC, contracting officer, A-76 coordinator, and other appropriate officials as necessary to identify any performance, policy, budget, legal, or other outstanding issues and to finalize the draft agreement for DOC.
8. Coordinate as necessary with an authorized representative of each party to the agreement to discuss the draft agreement and resolve any outstanding issues.
9. Provide the unsigned IAA to the appropriate officials, including OGC for clearance.
10. Finalize the IAA for signature.

B. Information Required by the OMB Business Rules for Intra-governmental

Exchange Transactions. One of the significant problems in the intra-governmental transaction arena is the inability of the Federal government to properly account for such transactions which hinders true cost transparency and impedes the goal of a clean opinion on the U.S. Consolidated Financial Statements. Accounting for intra-governmental exchanges, i.e. transactions occurring within and between government entities that involves the receipt of payment by one government account from another government account, has also been classified as a government-wide material weakness by the General Accounting Office.

As a major step to correct this weakness, the President's Management Council E-Gov Task Force is implementing standard business rules for processing and recording intra-governmental transactions, bills and invoices. The OMB Business Rules for Intra-governmental Exchange Transactions establishes basic rules and mandatory data elements for bills and invoices when engaging in intra-governmental exchanges. These rules, along with the October 4, 2002, cover memorandum from the Director, OMB, are at the Appendix and at <http://www.whitehouse.gov/omb/memoranda/m03-01.html>. Some of the most important rules as well as the mandatory data elements are described below.

Business Rules

1. Federal agencies which acquire goods or services from, or provide goods or services to, another federal agency must obtain and use DUNS numbers as unique business location identifiers. Each agency may determine the organizational level for assignment of the DUNS numbers below the minimum assignment level, which is the major component or reporting entity. Each organizational level above the major component or reporting entity must also obtain a DUNS number for identification and consolidation purposes. Assignment at the regional locations of each major component or reporting entity is strongly encouraged.
2. Federal entities that engage in buying and/or selling with other federal agencies are required to register their DUNS number in the Business Partner Network (BPN) which is an expansion of the Central Contractor Registration (CCR) database by January 31, 2003. The purpose of registration is the information will be kept as registration record for a new system for intra-governmental transactions. This system will support the standardization and reconciliation of those transactions as described in the OMB Memorandum "Business Rules for Intra-governmental Transactions." There are two main uses for registration information. The first is a

procurement goal - the site will be searchable to other federal agencies looking for sources. Federal sellers who register in this system will be visible as potential sources. The second goal is financial. This system will provide those offices engaged in intra-governmental transactions to have better information about their trading partners. This information will eventually be attached to each intra-governmental transaction through the upcoming Intra-governmental Transaction Portal (portal).

3. Beginning on October 1, 2003, certain purchases for goods and services that equal or exceed \$100,000 per order or agreement must be transmitted via the portal. For orders that are not transmitted via the portal, agencies may continue to use existing methods and systems as long as the required data elements are associated with the order.

4. Billings for intra-governmental orders that are not transmitted via the portal will be directly processed through Treasury's IPAC system. Only the responsible billing party may initiate the IPAC transaction. Responsibility for initiating the IPAC transfer may be negotiated between the buyer and seller, and the responsible billing party must be explicitly stated on the order. If no responsible billing party is specified, the seller will be deemed the party responsible for initiating the IPAC transfer.

5. When the requesting agency (or buyer) determines that a requirement will be fulfilled by another federal agency, the requester will prepare and transmit an IAA (order) to the providing agency (or seller). Negotiations between the business partners may take place prior to the preparation of the IAA, and the seller may prepare the IAA for the buyer.

6. Among other changes, the rules require that federal agencies must collect and record specified data elements about each exchange transaction and adhere to new requirements on advance payments.

7. These rules are effective for all intra-governmental purchases of goods and services. Exceptions to these rules will be made for purchase card acquisitions, for national emergencies, and for national security considerations. The agency head (or his designee) may authorize such exceptions.

Mandatory Data Elements

A minimum set of data elements that must be included on each intra-governmental transaction order is included in Attachment A-1 and A-2 of the OMB Memorandum M03-01. At minimum, all intra-governmental transaction orders, with the exception of purchase card, national emergency and national security orders, should follow the format prescribed by the Office of General Counsel (see <http://www.ogc.doc.gov/gc/admin/general.html>) and contain the following information:

- Buyer & Seller Order Numbers
- Buyer & Seller DUNS Number
- Ordering Point of Contact (Telephone Number and E-mail Address)
- Program Activity
- Funding Organization

- Cost Center
- Standard General Ledger
- Capital Asset Indicator
- Data elements for a proper invoice

C. Information Required in an IAA. Guidelines for specific kinds of information to be included in an IAA are found in Chapter 5 of this Handbook.

D. Review and Approval Requirements for an IAA

1. The review and approval procedures specific to each operating unit are to be implemented in the supplemental operating unit procedures required by this Handbook. By the signing the IAA, the Approving Official certifies that all operating unit and Departmental clearances have been obtained.

2. Commerce Acquisition Review Board

a. All proposed IAA's that will transfer funds in excess of \$5 million from the Department of Commerce to other federal agencies shall be reviewed by the Commerce Acquisition Review Board and cleared by the Senior Procurement Executive. The Program/Project Officer and the appropriate Contracting Official shall brief the Acquisition Review Board on the proposed IAA. The proposed agreement is to be provided one week before the briefing.

b. Operating units shall notify the Director for Acquisition Management as soon as it is known that an IAA will exceed \$5 million. The Acquisition Review Board meets monthly and operating units are encouraged to provide as much notice as possible (at least 30 days) so that the Board's agenda can be established well in advance.

CHAPTER 5. AGREEMENT PROVISIONS AND FORMAT

A. Required Information in Every IAA. Requirements for IAA depend upon the financial circumstances, purpose, and appropriate programmatic and legal authorities. Information listed in Paragraphs 1 through 5 of this section is required in an IAA.

1. Identification of all Parties to the IAA. Include the name and address of each organization(s) as well as a contact person, contact person's title, and telephone number for each party to the IAA. The agreement should stipulate that changes to the contact person, the contact person's title, and telephone number for each party may be made by written notification to each party to the agreement.

2. Funding Information. If no funds are obligated through the agreement, a statement should be included which makes it clear that this IAA is not an instrument which obligates funds of any party to the agreement. If funds are to be obligated under the agreement, the financial arrangements for all parties to the agreement must be clearly stipulated. This includes a citation for a DOC accounting code for a reimbursable IAA as well as payment terms and method of payment. Where practical, the appropriations act which provides the funding may be cited.

[Suggested Language (may be used as appropriate):

There will be no exchange of funds between parties unless otherwise agreed. Each party will arrange for funding to discharge its respective responsibilities.

The ability of the parties to carry out their responsibilities under this agreement is subject to their respective funding procedures and the availability of appropriated funds. Should either party encounter budgetary problems in the course of its respective internal procedures which may affect the activities to be carried out under this agreement, that party will notify and consult with the other party or parties in a timely manner.]

3. Purpose and Scope of the IAA. Describe the purpose and objective of the IAA. The agreement must provide a comprehensive description of the work to be conducted under the agreement. Also include general introductory information about the functions of the parties involved.

4. Responsibilities of Each Party to the IAA. The division of responsibilities and commitments of each side should be defined as precisely as possible, with separate paragraphs for each party. Where applicable, the agreement should include goals, performance measures, products, and a schedule of strategic milestones.

5. Approving Official Signature. Include the signature of an official duly authorized to sign the IAA, title, address, and date of signature for each party. In order to be valid, any DOC IAA must be signed by all parties.

B. Required Information for all Intra-agency Agreements and Recommended Information in Every Other IAA with Requirement for Inclusion in File. Information listed in this section is required in all intra-agency agreements and is recommended for inclusion in every other IAA. Except for intra-agency agreements, the decision to include or omit this information in the agreement document rests with the operating unit, but the information must be included in the Official Agreement File.

1. **Operating Unit IAA Identification Number.** Each operating unit must develop a standardized agreement identification numbering system. The identification number, if not contained in the agreement, shall be included on the operating unit file copy of the agreement.
2. **Legal Authority.** The IAA will generally include the citation for legal authority to transfer funds or to commit resources.
3. **Program Authority.** The IAA should generally include the citation for programmatic authority for the objectives of the IAA. State the statutory and/or regulatory citation that authorizes the objectives of the agreement for each federal agency that is a party to the agreement (e.g., applicable Public Law, USC citations, executive orders, General Accounting Office directive(s).) Also, the agreement should cite any other pertinent references, such as DOC or operating unit directives, previous agreements, correspondence, or memoranda, etc.

C. Required Information for all Intra-agency Agreements and Recommended Information in Every Other IAA. Information listed in this section is required in all intra-agency agreements and is recommended for inclusion in every other IAA. Except for intra-agency agreements, the decision to include or omit this information in the agreement or in the Official Agreement File rests with the operating unit.

1. **Period of IAA.** In general, the IAA should include a specified start date and completion date. However, if the completion date is not known and the period of the agreement is expected to stretch over a number of years, the completion date may be listed as indefinite.
2. **Estimated Costs.** The IAA should specify the total estimated costs and, if appropriate, a budget listing for each party to the agreement. If the agreement does not contain a detailed budget, the Official Agreement File may contain a copy of the budget listing with the total estimated costs for each party to the agreement.
3. **Project or Proposal Title.** The IAA should include a title which briefly summarizes or describes the work to be performed under the agreement.

D. Payable IAA. In addition to items listed in Section A and in Sections B and C, as applicable, of this Chapter, the following information may be needed for a Payable IAA.

1. The authorizing statute for some federal programs requires agencies to obtain advance funding for projects. If required by statute, the IAA must include a provision for advance

funding. Disbursements should be consistent with and proportionate to performance. See Chapter 7, Section P, of this Handbook with respect to payments.

2. If total costs are to be recovered, the IAA must contain a statement that full cost recovery will be achieved.

E. Other Provisions. The IAA may contain applicable terms and conditions. The following items should be considered for possible inclusion, as applicable in the IAA. As not all items are appropriate for all situations, discretion and good judgment must be used when preparing an agreement. The following general information may be needed in agreements, depending upon the agreement.

1. Delegations of authority, channels and protocols for working relationships, and names, addresses, and telephone numbers of liaisons, as applicable.

2. Administrative regulations, policies, and procedures applicable to the work to be conducted under the IAA (e.g., travel or property management requirements, the Paperwork Reduction Act, or the Freedom of Information Act, etc.).

3. Guidelines for the release of technical and public information regarding the project, to include rights for data access and utilization.

4. Liability issues, if any. Liability may apply to projects under the IAA where there is any potential for damage or injury to persons or property. In addition, an agreement may also include indemnification language to protect DOC from suits. Clauses may be added to provide that if such suits are brought against DOC, the other party to the agreement will assist or cooperate in DOC's defense. No operating unit may indemnify an outside party.

5. Method for settlement of disputes.

[Suggested Language (may be used as appropriate):

RESOLUTION OF DISAGREEMENTS

Nothing herein is intended to conflict with current DOC or [name of other agency] directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished either by an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the

area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within 30 days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

6. Effective date and termination/cancellation clause. The operating unit should generally include a provision whereby each party may terminate the agreement within a specified time if written prior notice is provided to all parties.

[Suggested Language (may be used as appropriate) NOTE: The language may, as necessary, include further specifics regarding the rights and liabilities of the parties in the event termination of the agreement occurs.

This agreement will become effective on the date specified in the agreement or, absent that, when signed by all parties. The agreement will terminate on [date], but may be amended at any time by mutual consent of the parties. [NOTE: If the agreement will last longer than three years, the following sentence should be included in the agreement: "The parties will review this agreement at least once every three years to determine whether it should be revised, renewed, or cancelled."] Any party may terminate this agreement by providing [specify number of] days written notice to the other party. In the event this agreement is terminated, each party shall be solely responsible for the payment of any expenses it has incurred.

7. Provision for future modifications or amendments to the agreement.
8. Specific or general budget information, when appropriate. In such cases the total estimated costs and budget summaries for each party must be required.
9. Performance standards and review procedures. If the agreement is for an extended or indefinite period of time, it should contain a provision for review, at least every three years, to determine continuing need and whether the agreement should be revised, renewed, or canceled. Agreements entered into before the issuance of this Handbook shall be reviewed within three years.
10. It is recommended that the following "audit access clause" be included in every IAA between DOC and non-governmental entities which transfer funds or other Commerce resources such as considerable staff time. However, program managers have the discretion not to include this language if, by doing so, the non-governmental entities would be reluctant to partner with DOC.

Representatives of the Department of Commerce and its Office of Inspector General shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of any non-governmental party to this agreement that relate to the work conducted under this agreement.

11. Each agreement with a non-governmental entity should contain a provision for retention of records by the non-governmental party. Such a provision should specify what records are to be retained and for how long. Sample language is as follows:

Each non-governmental party to this agreement shall keep such records that relate to work conducted under this agreement as deemed necessary by the Department of Commerce, [name of operating unit]. Such records include [describe categories of records]. These records should be maintained until [describe length of time, consistent with the period of the agreement].

12. Any additional provisions or special conditions pertinent to the particular agreement, including additional requirements of agency specific statutes.

F. Format and Construction of an IAA.

1. The format and construction of an IAA, other than intra-agency agreements, may be dependent upon several factors, such as the type of authority for the IAA and internal operating unit procedures. In addition, another party to the agreement may require a specified format that is not identical to DOC formats. For these reasons, this Handbook does not require a specific format for interagency and other special agreements but offers recommended examples of formats for some agreements in this Handbook in the sections above.

2. The format and construction of DOC inter- and intra-agency agreements under the Economy Act have been streamlined. The D&F required by 48 CFR 17.5 has been incorporated into Form CD-572, "Department of Commerce Interagency and Other Special Agreements Form," (Exhibit F). The signatures of the authorizing officials certify as to the Economy Act requirements indicated on Form CD-572 that the order is in the best interest of the government and that the goods or services cannot be provided by contract as conveniently or cheaply as commercial enterprise. The operating unit requesting the exchange of supplies, services, or funds must document the agreement using Form CD-572, for all intra-agency agreements and must attach thereto any supporting documentation or required funding documents.

CHAPTER 6. RESPONSIBILITIES

A. Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA). The DOC CFO/ASA is responsible for developing and implementing policies, standards, and procedures for the general administration of every IAA covered by this Handbook.

B. OAM. The Director, OAM, is delegated the authority to develop, issue and oversee implementation of policies and procedures for the administration of every IAA covered by this Handbook for DOC; including the following:

1. Coordinating a review of the Department's IAA policy and procedures with the operating units. Upon completion of such review, OAM will update the Handbook as appropriate.
2. Providing guidance, interpretations, and technical assistance on Department-wide policies and procedures for the administration of IAA. OAM will coordinate with OGC and other offices as appropriate in fulfilling this function.
3. Notifying appropriate operating unit and Departmental staff of changes and revisions to these policies and procedures.
4. Conducting or participating in reviews, task force groups, or other assessments to assure compliance with Department-wide policies and procedures established for the administration of IAA.
5. Preparing, issuing, and maintaining this Handbook.

C. OGC. All agreements should receive legal review unless specifically exempted. Legal review may include clearance by two OGC offices, and operating units should provide for this in their specific supplemental procedures which are issued in accordance with this Handbook. (For example, the Office of the Chief Counsel for International Commerce must clear all ITA agreements.) Additionally, agreements entered into under the authority of the Economy Act, Intergovernmental Cooperation Act, Joint Project Authority, or Special Studies Authority must be cleared by the AGC/A prior to signature unless specifically exempted by that office. Procurements and grants must be reviewed by the AGC for Finance and Litigation unless specifically exempted by that office. The OGC is responsible for the following functions with respect to every IAA.

1. Examining for legal form and effect an IAA and amendments thereto in a timely manner. The OGC will serve as the final authority on the legal authority used to enter into an IAA. Legal review and clearance verifies that the correct legal instrument has been selected and that the IAA meets the following criteria:
 - a. Is in compliance with legal and regulatory requirements; and,

b. Has appropriate legal authority.

2. Assisting OAM with the clearance of operating unit supplemental procedures for an IAA by reviewing operating unit procedures for IAA and providing to the operating units comments and/or clearance concerning procedures and thresholds for legal review of IAA.

D. Head of the Operating Unit. The head of the operating unit is responsible for assuring that all procedures set forth in this Handbook are followed within the operating unit and that supplemental procedures are instituted in accordance with this Handbook.

E. Specific Operating Unit Responsibilities to be Assigned. The following functions must be specifically and explicitly assigned as appropriate within each operating unit. This Handbook is not prescribing the official to be responsible or that responsibilities be assigned as categorized. The operating unit may rearrange or combine the functional responsibilities in any manner that works best for the operating unit. However, each responsibility listed must be assigned to an appropriate official and specifically included in the operating unit procedures which will state the responsibilities of various offices.

1. Approval Functions.

a. Ensure that each IAA has the proper legal authority and that the file contains all necessary documentation. If it is not feasible to cite the authority in the text of the agreement, then the legal authority for the agreement must be documented in the official agreement file.

b. Ensure that all operating unit and Departmental clearances have been received and are documented in the file.

c. Determine that the IAA is in the best interest of the operating unit and the DOC.

d. Ensure that any payable IAA in which DOC is the requesting agency under the Economy Act authority has the requisite D&F as set forth at 48 CFR 17.503; and that the agreement has been cleared by the operating unit's contracting officer or other official as permitted pursuant to 48 CFR 17.505.

e. Ensure that the operating unit develops and performs adequate business reviews.

f. Ensure that costs are equitably distributed for agreements according to the Joint Project Authority. If this determination cannot be made from the information included in the agreement and/or in the Official Agreement File, a budget must be prepared and maintained in the Official Agreement File to demonstrate this fact.

g. Approve any amendment(s) to the agreement and any extension(s) to the completion date of the agreement.

h. Secure, and maintain on file, specific delegations of authority from the head of the

operating unit to approve and sign the IAA. Delegations of approval and signature authority may be limited to certain levels of operating unit officials, within certain financial limits, for certain types of agreements, or for any other administrative reason or category. Delegations of authority may be further delegated, unless the head of the operating unit specifically states otherwise. Contracting officer functions should normally remain with contracting officers.

2. Budget, Finance, and Accounting Functions.

- a. Ensure that funds are available to enter into an IAA, reserve the funds as necessary, and provide written confirmation of the reservation of funds.
- b. Ensure that an obligation is recorded in the buyer's core financial system prior to transmittal of the authorized order to the seller. If the obligation number is different from the order number, then the obligation record must include the intragovernmental order number and any interagency agreement associated with the obligation.
- c. Approve the receipt of reimbursements/advances from an ordering agency or entity.
- d. Review agreement budgets and documentation for the budgets to ensure they are consistent with DOC accounting and budget standards.
- e. Assist the program officer and approving official in developing agreement budgets as requested.
- f. Establish and maintain contact with the budget office from each party to the agreement to ensure financial responsibility; and work with each party to the agreement to amend and resolve any budget issues related to the agreement.
- g. Ensure that full costs are recovered for any receivable IAA which specifies full cost recovery.
- h. Ensure that payments are made and received according to the conditions of the agreement.
- i. Provide full accounting support and financial advice to program officers, the operating unit, and others as needed.
- j. Provide financial data and reports on agreements as requested by other federal agencies, the operating unit, or the program officer.
- k. Record the financial transactions associated with each agreement, as appropriate.
- l. Develop procedures for requesting and receiving funds from each party to the agreement.
- m. Maintain financial records for all operating unit agreements, including payout, accounts receivable and advance payments.

n. Identify any restrictions on the federal funds, e.g., one-year/no-year funds, and provide notification(s) as appropriate.

o. Ensure that only properly delegated officials obligate funds.

p. Determine overhead rates.

3. Contracting Functions.

a. Ensure that Payable IAAs made under the authority of the Economy Act contain the requisite D&F as set forth at 48 CFR 17.503, and provide clearance, as appropriate, on those agreements in accordance with 48 CFR 17.5.

b. Provide advice and guidance as requested to the program officer in the development of an adequate D&F in accordance with 48 CFR 17.5, when the agreement is a DOC intra-agency agreement using Form CD-572 (Exhibit F).

4. Coordinating/Liaison Functions.

a. Serve as the primary contact to the DOC CFO/ASA on IAA.

b. Provide required electronic information to OAM to be included in the Departmental Information System for IAA. OAM will develop applicable guidance after consultation with operating units.

c. Assure that the operating unit or major components of the operating unit establish internal review processes for IAA and have written guidance on the procedures for IAA in accordance with Chapter 7, Section M, of this Handbook.

d. Attend meetings convened by OAM on IAA and report to the appropriate official(s) in the operating unit on any issues affecting the use of IAA.

5. Programmatic/Project Functions.

a. When the IAA is prepared by DOC, develop the agreement, including writing and editing the agreement. This includes preparing any terms and conditions contained in the agreement.

b. When the agreement is not prepared by DOC, review the agreement presented to DOC, negotiate as necessary, and assure that the agreement follows the appropriate DOC and legal requirements. When possible, other parties should be encouraged to draft the agreement using the DOC models to ensure that the appropriate provisions are included in the agreement.

c. Coordinate as necessary with each party to the agreement and identify the responsibilities of each partner.

- d. Request reservation of funds for the agreement, if applicable.
- e. Ensure that the agreement is assigned an operating unit agreement identification number and that the number is displayed on agreements, amendments, correspondence, and other documentation, as appropriate.
- f. Ensure that the IAA is reviewed by the appropriate operating unit and Departmental officials.
- g. Provide a briefing to the approving official, the Commerce Acquisition Review Board and other appropriate officials as necessary.
- h. Coordinate with the budget officer and contracting or grants officer prior to approval when an IAA is expected to be the basis for a prospective procurement or financial assistance award.
- i. Prepare D&F for every payable IAA made under the authority of the Economy Act. For a receivable IAA made under the authority of the Economy Act, obtain a copy of the requesting agency's required D&F or otherwise document the requesting agency's assurance that the required D&F was properly executed.
- j. For agreements pursuant to the Joint Project Authority, prepare a budget demonstrating that costs are equitably distributed, if such a budget is required by the approving official or OGC to establish this fact.
- k. Monitor performance and progress under the agreement.
- l. Ensure that the agreement is properly administered.
- m. Maintain a complete programmatic/project file for each agreement, including all documentation related to agreements. Files should include information as required in Chapter 8, Section A, of this Handbook.
- n. Track all relevant costs, including direct labor, equipment, supplies, travel, and the proper overhead rate for an IAA, as applicable.
- o. Ensure that an IAA is properly closed out and that the file is retained in accordance with the applicable Records Retention Schedule.

CHAPTER 7. OTHER INFORMATION AND ADMINISTRATIVE REQUIREMENTS

A. A-76 Requirements. OMB Circular A-76, “Performance of Commercial Activities,” prohibits the government from starting or continuing activities to provide a commercial product or service if the commercial product or service can be procured more economically from a commercial source. Unless the transaction lies within certain exceptions specified at Part I, Chapter 1, Section C of the Supplement to OMB Circular A-76, a federal agency that wishes to procure goods or services from another federal agency must prepare and analysis of its requirements to determine that use of another agency’s resources is necessary. The Economy Act (31 USC § 1535) authorizes agencies to enter into mutual agreements to obtain goods and services by interagency acquisition but, in accordance with 48 CFR 17.502(c), does not exempt such acquisitions from the requirements of 48 CFR 7.3, “Contractor versus Government Performance,” which implement OMB Circular A-76 requirements.

The cost comparison requirements of the Supplemental Handbook also apply to potential Inter-service Support Agreements (ISSA) covering new, expanded or transferred work (Part I, Chapter 2 of the Circular A-76 Supplemental Handbook).

B. Anti-deficiency Act. The Anti-deficiency Act, 31 USC § 1341-1342, prohibits federal officials (unless they are specifically authorized by law) from: (1) obligating more funds than the agency has been appropriated by Congress and apportioned by OMB (31 USC § 1517); (2) spending funds before they are given to the agency; and (3) accepting voluntary services, unless in true emergency situations. If this Act is violated, the law requires the agency to determine which individual official is responsible for this violation. The violation then must be reported personally by the Secretary to the President and Congress, specifically naming the individual responsible. Administrative discipline is required, and any willful violations of the Act are subject to criminal prosecution, with a fine up to \$5,000, two years imprisonment, or both. Questions concerning the Anti-deficiency Act should be referred to the General Law Division, Office of the AGC/A.

C. Appropriations. An appropriation provides budget authority for the purpose(s) stated in the law. However, budget authority is not money; it is the authority to incur a legal obligation to pay a sum of money from the U.S. Treasury. These are funds (spending authority, not actual money) that are provided to federal agencies through laws passed by Congress. They are subject to limitations on purpose, time, and amount. The ability of an agency to spend appropriations is subject to the purposes set forth in various provisions contained in annual appropriations acts, as well as existing statutes unless the appropriation specifically exempts it from those statutes. See Section Q, “Purpose Statute,” of this Chapter. Once the time limitation on an appropriation lapses, funds provided pursuant to that appropriation are considered no longer available and may not be obligated by the agency. These funds will revert back to the U.S. Treasury unless otherwise authorized by statute.

D. Augmentation. An augmentation supplements funds of a federal agency from an outside source (other than through a direct appropriation from Congress). Augmentations are not legal unless authorized by a specific statute. Examples of such statutes include the Economy Act

(31 USC § 1535), DOC's Joint Project Authority (15 USC § 1525), and other legal authorities, including those that allow DOC to accept user charges.

E. Bona Fide Needs Rule. The bona fide needs rule provides that an appropriation which is limited for obligation to a definite period is available only for obligation for the legitimate needs of the agency arising during that period of availability. No-year funds are not subject to the bona fide needs rule. Questions concerning the bona fide needs rule should be referred to the General Law Division, Office of the AGC/A.

F. Conflicts of Interest. DOC officials must rigorously avoid conflicts of interest in connection with agreements. A conflict of interest exists when a person participates in a matter which is likely to have a direct and predictable effect on his or her financial interests. A conflict also exists where there is an appearance that a person's objectivity in performing his or her responsibilities is impaired. An organizational conflict exists where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice to the government. Conflicts of interest should be avoided, but if they are discovered, they should be resolved promptly through disqualification, divestiture, or other appropriate measures. The Ethics Division, Office of the AGC/A, should be contacted if there is any question about a possible conflict of interest.

G. Cost Analysis. When DOC is the requesting agency using an IAA for interagency acquisitions, it is good business practice to include in the Official Agreement File a documented cost analysis which contains the following information:

1. Specifications for the items/services to be obtained so that the requirement is clearly defined;
2. A delivery/performance schedule that is achievable, ensuring that the servicing agency is aware of the schedule; and
3. Price analyses among different providers in order to receive the best value.

H. Freedom of Information Act (FOIA). The FOIA (5 U.S.C. § 552) generally provides that any person has a right of access to federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by exemptions to the FOIA. The DOC regulations implementing the FOIA are found at 15 CFR Part 4, "Public Information," which sets forth rules for DOC and operating units to make requested materials, information, and records publicly available under FOIA. No agreement can make any assurance that all information will be withheld.

I. Gifts. Gifts are not an IAA but are another legal mechanism to work with external parties. The Secretary can accept and use gifts to aid or facilitate the work of DOC. DAO 203-9, "Gifts and Bequests," sets forth the policies and procedures for the acceptance and use of gifts by the Department. Although the manner of acceptance of gifts may require negotiation (and,

therefore, may result in an agreement over the conditions of acceptance), gifts are not a product of bargaining. Gifts cannot be accepted if the donor expects services or favors in return.

J. International Agreements. An international agreement is a descriptive term that refers to an IAA where at least one party is a foreign government or an organization outside the U.S. and its territories. The term does not refer to a category of agreement or to an authority for entering into agreements. Many international agreements are subject to the Case-Zablocki Act, (1 USC § 112b), and operating units must follow procedures in DAO 218-4, "Treaties and Other International Agreements," before international agreements are executed. Any department or agency of the U.S. Government that enters into any international agreement on behalf of the U.S. shall transmit to the Department of State the text of the agreement not later than 20 days after such agreement has been signed. The Secretary of State shall transmit to the Congress the text of any international agreement (including the text of any oral international agreement, which agreement shall be put in writing), other than a treaty, to which the U.S. is a party as soon as practicable after the agreement has entered into force with respect to the U.S. but in no event later than 60 days thereafter.

K. Monitoring of Agreements. Work under each IAA must be monitored as necessary to track payments and progress, ensure compliance with this Handbook, and, in some cases confirm the need for revising or continuing the agreement.

L. Multiple Award Schedule Contracts. Orders under a General Services Administration (GSA) Federal Supply Schedule contract are procurements. Orders placed by an executive agency with a GSA Federal Supply Schedule contractor fall under the authority of Sections 201(a) and 211(b) of the Federal Property and Administrative Services Act of 1949 (amended) and may be placed directly with the contractor by a contracting officer or other individual with delegated procurement authority.

M. Operating Unit Procedures. DOC operating units shall issue supplemental operating unit procedures which do not conflict with the provisions of this Handbook. The operating unit procedures will establish internal processes for each type of IAA. The operating unit procedures must describe programmatic and procedural requirements, including unique statutory or regulatory requirements. The heads of operating units or other appropriate officials of the operating units are required to submit proposed supplements, and any revisions thereto, to OAM for timely review and clearance by OAM and AGC/A prior to internal issuance and use. The operating unit procedures shall include at a minimum the following information:

1. Explicitly assigned responsibilities listed in Chapter 6, Section E, of this Handbook and identification of the official (by position, not name) responsible for each task.
2. The minimum path of review and approval, with thresholds (if any) for reviews and clearances.
3. Guidance concerning the specific legal office(s) from which OGC clearance must be obtained for particular types of IAA and/or authorities.

4. Procedures for any amendments, continuations, and renewals of agreements.

N. Overhead Rate. Overhead represents indirect costs or expenses of an agency which cannot be charged as belonging exclusively to any particular part of the project or service being performed by DOC personnel (rent, electricity, administrative support, general office expenses, depreciation, etc.). These rates must be used and applied as appropriate to labor costs when developing budgets for reimbursable work in order to recover the total costs of tasks DOC undertakes for other organizations. Each operating unit's CFO determines the overhead rates for their organizational units based on cost experience from prior years.

O. Paperwork Reduction Act (PRA). The PRA (44 USC 3501) and its implementing regulations at 5 CFR 1320, "Controlling Paperwork Burdens on the Public," require an agency to obtain approval from OMB before conducting or sponsoring a collection of information from ten or more persons, including companies. A collection of information includes identical questions posed to ten or more persons, either written, electronically, or verbally, and must be cleared by the DOC Chief Information Officer (CIO) or staff and through OMB. The clearance process can take 90 to 120 days. Questions concerning the PRA should be referred to the DOC's PRA officer or, for legal questions, to the General Law Division, Office of the AGC/A.

P. Payments. Payments shall be made by electronic funds transfer in accordance with the Debt Collection Improvement Act of 1996. Generally, no payment shall be made to a party to the agreement until all, or a segregable portion that can be paid separately, of the work stipulated in the agreement has been completed. Subject to statutory limitations, an exception may be allowed by the operating unit for the release of advance payments if so stated in the agreement. A copy of the written explanation for the exception must be maintained in the Official Agreement File. The Approving Official is responsible for approving advance payments.

Q. Purpose Statute. The Purpose Statute (31 USC § 1301(a)), provides that appropriations shall be applied only to the purpose for which the appropriations were made except as otherwise provided by law. The statute restricts an agency from using its funds for certain types of expenditures (e.g., personal expenses of employees like food and beverages) that are not authorized by law or DOC regulations. Before funds are obligated, an operating unit must ensure that either: (1) there is statutory authority for this expenditure, or (2) the expenditure is a necessary expense in furtherance of an authorized activity and is not otherwise prohibited. Contact the General Law Division, Office of the AGC/A. For assistance in determining whether an expense is justified under a particular appropriation or gift acceptance authority, contact the General Law Division, Office of the AGC/A.

CHAPTER 8. RECORDKEEPING

A. Official Agreement File. The operating unit responsible for managing the IAA shall maintain an official file for each IAA. This file, regardless of location(s), must contain the documents and information listed below, as applicable. The Official Agreement File does not include reference files that may be maintained by other offices, such as any files in connection with clearances of agreements.

1. A copy of the agreement and all amendments, revisions, or changes with original signatures or certified copy of original signatures by all parties to the agreement. The operating unit file copy of each of these documents shall contain the operating unit agreement identification number displayed so that it can be easily seen.
2. A copy of all appropriate correspondence generated or received by the operating unit related to the agreement. The operating unit file copy of correspondence should contain the operating unit agreement identification number displayed so that it can be easily seen. In those instances where there are many transactions and voluminous correspondence relating to one agreement, it may be necessary to file and maintain part(s) of the Official Agreement File in multiple locations, especially if some of the records are electronic.
3. For interagency agreements under the authority of the Economy Act, the Official Agreement File must include D&F information. For a payable IAA pursuant to the Economy Act, a copy of the D&F must be in the file. For a receivable IAA pursuant to the Economy Act, the file should include a copy of the approved D&F or a record that the requesting agency provided assurance that the required D&F was executed.
4. A copy of all clearance documents obtained in developing and completing the agreement.
5. A copy of the proposed budget or other basis for estimating funds to be obligated, both DOC and non-DOC funds, and estimating value of resources committed, both DOC and non-DOC resources, as applicable.
6. Financial information (billing, receivables, payables, etc), if applicable.
7. Identity and location of any pertinent IAA files that are housed in other locations.
8. Identity of the type of organization of each party to the agreement (e.g., non-profit, for-profit or commercial, institution of higher education, hospital, state government, local government, Indian tribe, or federal agency).
9. Citation for legal authority to transfer funds or commit resources.
10. Citation for programmatic authority for the objectives of the IAA.

11. Other pertinent material.

B. Retention. The official agreement file must be retained in accordance with the applicable records retention schedule. The schedule is a document approved by the National Archives and Records Administration, which provides authority for the final disposition of recurring or non-recurring records. The records can be in either paper or electronic form. In developing the schedule, consideration shall be given to the volume of the file and the different categories and value of the records that constitute the files, e.g., legal and other correspondence relating to the agreement, transactions correspondence, and electronic records. These documents may have different retention periods.

C. Recordkeeping by Non-governmental Partners. Chapter 5, Section E, Paragraph 11, contains guidance for the maintenance and retention of records by the non-governmental partners to the IAA.

Appendix A:

OMB Business Rules for
Intra-governmental Transactions

October 4, 2002

M-03-01

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Mitchell E. Daniels, Jr. *mejd*
Director

SUBJECT: Business Rules for Intragovernmental Transactions

In August 2001, President Bush announced the President's Management Agenda to "address the most apparent deficiencies where the opportunity to improve performance is greatest." One such deficiency is intragovernmental transactions, which the General Accounting Office has classified as a government-wide material weakness. Our inability to properly account for such transactions hinders true cost transparency, impedes achievement of our goal of a clean opinion on the U.S. Consolidated Financial Statements, and consumes significant resources in attempts to identify, reconcile, and resolve differences.

A major factor to the Government's inability to account for these transactions is the lack of standardization in processing and recording intragovernmental activities. As a key step toward resolving this weakness, we have established two sets of standard business rules. Attachment A contains a listing of business rules to be observed when engaging in intragovernmental exchange activity. These rules will be effective on January 1, 2003, unless otherwise specified. Attachment B contains a listing of business rules that are applicable to the recording and reconciliation of certain fiduciary transactions. The rules in Attachment B will be effective on October 1, 2003. Agencies that do not use these business rules will be downgraded on their progress score for financial management on the Executive Branch Management Scorecard.

The use of these business rules is another step towards achieving the President's vision of an electronic government. We will use these business rules to develop an electronic commerce portal that will enable the exchange of acquisition and payment data to execute an intragovernmental transaction.

Thank you for your continued leadership and commitment to carrying out the President's Management Agenda, to improving financial management, and to resolving the intragovernmental material weakness. Questions about this memorandum may be directed to Joseph L. Kull, Deputy Controller, at 202-395-3993.

Attachments

[Attachment A - Exchange Transactions](#)
[Attachment A1 - Exchange Transactions](#)
[Attachment A2 - Exchange Transactions](#)
[Attachment B - Fiduciary Transactions](#)

**Attachment A
Exchange Transactions**

Business Rules for Intragovernmental Exchange Transactions

1. Federal agencies that acquire goods or services from another federal agency and federal agencies that provide goods or services to another federal agency must obtain and use Dun & Bradstreet Universal Numbering System (DUNS) numbers as unique business location identifiers. Each agency may determine the organizational level for assignment of the DUNS numbers below the minimum assignment level, which is the major component or reporting entity. Each organizational level above the major component or reporting entity must also obtain a DUNS number for identification and consolidation purposes. Assignment at the regional location of each major component or reporting entity is strongly encouraged to facilitate reconciliation of intragovernmental activity and balances.
2. Federal agencies must register their DUNS numbers in the Central Contractor Registration (CCR) database by January 31, 2003, and must observe the requirements established by the system owner/manager, which is currently within the Department of Defense. A registration template will be provided separately.
3. Federal agencies are responsible for the accuracy of their respective CCR registration data.
4. The business process rules and data architecture are effective on January 1, 2003 on a “go-forward” basis. Augmentation of existing unfilled intragovernmental orders will not be required.
5. Beginning on October 1, 2003, certain purchases for goods and services that equal or exceed \$100,000 per order or agreement must be transmitted via the intragovernmental electronic commerce portal (portal). For orders that are not transmitted via the portal, agencies may continue to use existing methods and systems as long as the required data elements are associated with the order. Additional information on the transactions to be forwarded via the portal will be provided separately.
6. The threshold stipulated in rule #5 may be raised or lowered at a future date.
7. These rules are effective for all intragovernmental purchases of goods and services. Exceptions to these rules will be made for purchase card acquisitions, for national emergencies, and for national security considerations. The agency head (or his designee) may authorize such exceptions.
8. When the requesting agency (or buyer) determines that a requirement will be fulfilled by another federal agency, the requestor will prepare and transmit an intragovernmental order (order) to the providing agency (or seller). Negotiations between the business partners may take place prior to the preparation of the order,

and the seller may prepare the order for the buyer. In addition to the order number, an interagency agreement number may be assigned. However, the order number assigned by the buyer will serve as the document control number. An agency may not assign the same document control number to more than one order.

9. To ensure that order fulfillment and revenue can be associated with a specific intragovernmental order, the seller must capture the buyer's intragovernmental order number in the seller's order fulfillment or non-tax revenue system to associate the buyer's order number with any agreement or control number assigned by the seller's system.
10. The order must be authorized/approved in accordance with existing agency policies before transmittal to the seller. Necessary funding information/citation must be included on the order.
11. An order may, on occasion, contain consolidated or summary information. Additional information, such as a statement of work, occupancy agreements, terms and conditions, specifications, etc., may be attached to the order, if desired or necessary for order fulfillment and payment.
12. An obligation must be recorded in the buyer's core financial system prior to transmittal of the authorized order to the seller. If the obligation number is different from the order number, then the obligation record must include the intragovernmental order number and any interagency agreement associated with the obligation. An intragovernmental order will be deemed accepted when signed by both business partners, upon transmittal to the portal by the buyer, or when the order is issued in response to a quotation or proposal tendered by the seller.
13. When an accepted order is cancelled by the buyer, the seller is authorized to collect costs incurred prior to cancellation of the order plus any termination costs.
14. The standard data elements reflected in Attachment A-1 will be associated with the buyer's order record. The data elements to be transmitted to the seller via the portal will be a subset of these standard data elements and will be defined at a future date.
15. Electronic or hard copies of the order will be provided to administrative or program offices responsible for ordering, acceptance, and payment.
16. Bills must be issued according to the terms reflected in the order but not later than 10 days after delivery of the goods or services provided.
17. The standard data elements reflected at Attachment A-2 will be associated with the seller's billing record. The data elements to be transmitted via the portal will be a subset of the standard data elements and will be defined at a later date.

18. Consistent with voucher audit requirements that will be specified, bills transmitted via the portal will be “examined” for payment. Unless a dispute is initiated by the buyer within 10 business days from the bill date, constructive acceptance will be deemed to occur, and the portal will initiate the IPAC transfer automatically and route the payment transaction to Treasury’s IPAC system. Notification of this transaction will be sent to the buyer and the seller.
19. Billings for intragovernmental orders that are not transmitted via the portal will be directly processed through Treasury’s IPAC system. Only the responsible billing party may initiate the IPAC transaction. Responsibility for initiating the IPAC transfer may be negotiated between the buyer and seller, and the responsible billing party must be explicitly stated on the order. If no responsible billing party is specified, the seller will be deemed the party responsible for initiating the IPAC transfer.
20. There will be no advance payments for service orders unless explicitly required by law. Progress payments and periodic payments are permissible.
21. Advances will be permitted for orders for goods that exceed \$1,000,000. The advance may not exceed 50% of the order amount. Unless explicitly required by law, there will be no advances for orders for goods that are less than \$1,000,000.
22. Advance payments made prior to the effective date of these business rules will be subject to the rule requiring status reports.
23. For advance payments that are permitted, the buyer will record the payment as an “advance to.” The seller will record the payments as an “advance from” and will provide monthly status reports to the buyer reflecting revenue earned. The buyer and the seller will make appropriate adjustments to their respective advance accounts.
24. The use of budget clearing account F3885 as outlined in OMB Circular No. A-11 is permitted under these rules.
25. In addition to other required elements, an IPAC transaction will include the buyer’s order number, the DUNS number for the buyer’s site location, the appropriation symbol for payment from (sender), the seller’s bill number, the DUNS number for the seller’s site location, and the appropriation symbol for collection by (receiver).
26. The buyer and the seller are expected to resolve any dispute within 30 business days of the billing date using existing dispute mechanisms. If the dispute cannot be resolved using these mechanisms, then the matter must be referred on the next business day to a dispute resolution task force for a binding decision. Administrative costs and penalties may be levied on the agencies involved in the dispute referral.

27. For intragovernmental orders that are not routed through the portal, the cut-off date for issuing new intragovernmental orders for the current fiscal year will be midnight on September 25 of that year (in order to allow selling agencies to receive and record customer orders). For orders that are routed through the portal, the cut-off date will be midnight on September 30 as measured by the date/time stamp assigned by the portal.
28. The cut-off date for new bills for each fiscal year will be midnight on September 30 as measured by the date/time stamp assigned by the portal. Revenue that is earned but not billed will be recorded as an accrued asset and a detailed notification of the revenue recognized will be provided by the seller to the buyer within 5 business days after the end of each fiscal year. The buyer will recognize an equivalent expense or asset and will record an accrued liability for the future payment. There will be no intragovernmental, unbilled accounts receivable for the seller at year-end.
29. Selling agencies are required to record an unfilled customer order immediately upon receipt and acceptance of an authorized intragovernmental order.

**Attachment A-1
Exchange Transactions**

Data Elements for Intragovernmental Orders

ORDER DATA ELEMENTS	DESCRIPTION
Order date	Calendar date that order placed (mm/dd/yyyy format)
Order No.	Document number that references a specific purchase transaction
Interagency Agreement No.	Number of document (interagency agreement, MOU, etc) to which this specific purchase is to be associated
Customer agency	DUNS number for site location placing order (buyer)
Delivery address	Delivery location if different from physical address listed in CCR/BPN
Providing agency	DUNS number for site location filling order (seller)
Line No.	Sequential number to differentiate among items when more than one item is ordered
Supply/Service	Description of supplies or services ordered
Quantity	Quantity ordered
Unit Cost	Cost of individual unit
Line Total	Unit cost times quantity in dollars/cents
Total Amount	Total of all line totals
Authorizing official	Electronic (certified) signature of authorizing official
Payment Terms	Quarterly/Monthly/Semi-annually/Upon delivery (specify only one option)
Ordering point of contact	Name of Individual to contact for questions about order
POC Phone	Phone number of ordering point of contact
E-mail	E-mail address of ordering point of contact
Program activity	Code/indicator to identify the major program/mission activity for which the order is required. (Purpose is to tie budget execution to performance of mission activity)
Obligation Mo/Yr	Month and year in which the obligation was recorded (Used to identify potential timing differences for reporting purposes)
Appropriation	Appropriation code that will be charged for purchase. Full

	symbol must be entered.
Funding organization	Code/indicator to identify organizational entity that is funding the purchase (This is the spending allocation that will be charged.)
Cost Center	Code/indicator for organizational entity that will be using the items purchase to execute the program/mission activity identified above. (This could be the same as the funding organization or it could be a specific project)
Object Class Code	Spending category that describes the type of goods or services being purchased. (Used for major object class reporting and for deriving general ledger posting.)
Fiscal Period	Number of fiscal month in which purchase transaction is recorded in the general ledger
Standard General Ledger	Proprietary and budgetary accounts in which the financial impact of the event is recorded
Capital Asset Indicator	Yes/No indicator to specify whether item purchased will be capitalized by the ordering agency and recorded as an asset rather than an expense

Attachment A-2
Exchange Transactions

Data Elements for Intragovernmental Bills

BILL DATA ELEMENTS	DESCRIPTION
Bill date	Calendar date of bill (mm/dd/yyyy format)
Bill No.	Document number that references a specific notice of delivery and/on invoice/bill
Intragovernmental Order No.	Document number that references the buyer's specific intragovernmental order number
Interagency Agreement No.	Number of document that corresponds with the interagency agreement associated with order and bill
Customer agency	DUNS number for site location placing the order (buyer)
Providing agency	DUNS number for site location fulfilling the order (seller)
Line No.	Line number from order that indicates the specific item being billed
Unit Cost	Cost of individual unit delivered for a given line
Line Amount	Quantity delivered times the unit cost (expressed in dollars and cents)
Total Amount	Total dollar amount of all line amounts on the bill
Partial/Final Indicator	Enter "F" if bill represents final bill against the intragovernmental order. For interim bills, enter "P"
Settlement Date	Last date to make fund transfer before penalty charges can be applied
Delivery point of contact	Name of Individual to contact for questions about delivery
Delivery phone	Phone number of delivery point of contact
E-mail	E-mail address of delivery point of contact
Program activity	Code/indicator for major program/mission activity associated with the revenue/sale
Period of Performance	Beginning and ending period for which revenue was earned (mm/yyyy/mm/yyyy format). Ending period can be same as the beginning period
Revenue Fiscal Period	Number of fiscal month in which the revenue transaction was recorded in the general ledger

Bill Fiscal Period	Number of fiscal month in the accounts receivable was recorded in the general ledger
Appropriation	Appropriation that will receive the transfer of funds. Full symbol must be entered.
Funding organization	Code/indicator for organizational entity that will receive the funds (usually at operating plan level)
Revenue/Profit Center	Code/indicator for the organizational entity or project that earned the revenue. May be the same as the funding organization
Revenue Code	Revenue category that describes the type of goods or services sold
Inventory/Asset Indicator	Enter "I" if goods sold from inventory; enter "A" if property asset sold; enter "9" if neither
Standard General Ledger	Proprietary and budgetary accounts in which the financial impact of the event are recorded

**Attachment B
Fiduciary Transactions**

**BUSINESS RULES FOR INTRAGOVERNMENTAL
FIDUCIARY TRANSACTIONS**

1. Effective October 1, 2002, for intragovernmental investments with the Bureau of the Public Debt (BPD), BPD and trading partner agencies will use the interest method for amortization on market-based notes, bonds, and zero-coupon bond securities. BPD and the trading partner agencies will continue to use the straight line method for market-based bills. Additionally, the following three provisions also apply:
 - a. Amortization of market-based premiums to call date. Market-based notes and bonds purchased at premium will be amortized to call date.
 - b. Held-to-maturity vs. Available-for-sale. BPD will carry notes and bonds at amortized cost and will not reflect a market adjustment. BPD will carry zero coupon bond securities at amortized cost and will report market adjustments. However, agencies may recognize market adjustments on bills, notes, bonds, and zero coupon bond securities classified as available-for-sale.
 - c. Inventory relief method for redemptions prior to maturity. All agencies, including central fiduciary agencies must use the specific identification method (i.e. purchase dates / tax lots) to be relieved upon early redemption of securities. If securities are not specifically identified the FIFO method will be used to identify the security to be sold. NOTE: Agencies must reconcile securities inventories with BPD at the tax lot level by December 31, 2002.
2. Effective October 1, 2002, for borrowings and investments with the BPD and borrowings from the Federal Financing Bank (FFB), agencies will report amounts consistent with those reported by these central fiduciary agencies, except as noted above.
3. Effective October 1, 2002, the Office of Personnel Management (OPM) will provide a factor (OPM factor) to federal agencies for calculating future employment related benefits. This factor will be provided no later than 15 days after the end of each reporting period.
4. Effective September 30, 2002, actual basic pay data will be used to calculate the future liability for employment related benefits. Estimated basic pay data may be used for the month of September if actual figures are not available timely.
5. Effective September 30, 2002, the agencies will enter payroll benefit data to the Internet Fiduciary Confirmation System (IFCS) within 15 days after the end of each reporting period. Agencies and OPM will report identical amounts on their financial statements.

6. Effective October 1, 2002, the Department of Labor will enter liabilities for each agency in the IFCS within 15 days after the end of each reporting period. Agencies must report the DOL provided amount on their financial statements.
7. Effective immediately, the system of record for reconciling and confirming fiduciary balances between trading partner and central fiduciary agencies will be the IFCS.
8. Effective October 1, 2002, trading partner and central fiduciary agencies are responsible for working together to resolve any differences within 25 business days after the close of the reporting period. If the dispute cannot be resolved using these mechanisms, then the matter will be referred on the next business day to a disputes resolution task force for a binding decision. Agreed to adjustments will be recorded in the IFCS and in the financial records of both parties.

Transactions executed prior to the effective date(s) need not be retroactively augmented to meet these requirements.

Exhibit A:

Summary of Key Legal Authorities and Criteria

Summary of Key Legal Authorities and Criteria

Legal Authority	Applicable Criteria
Economy Act of 1932 (31 USC § 1535)	a. Other party to the agreement is another Government agency.
	b. More specific authority does not exist.
	c. Funds are available.
	d. The head of the ordering agency decides the order is in the best interest of the Government.
	e. The agency filling the order is able to provide the goods or services.
	f. The head of the ordering agency decides the ordered goods cannot be provided as conveniently or cheaply by contracting directly with a commercial enterprise.
Federal Technology Transfer Act (15 USC § 3710a)	a. Agency program missions shall be advanced.
	b. Special consideration shall be given to small businesses and to businesses that agree to manufacture any products in the U.S.
General User Fee Authority (OMB Circular A-25)	a. Agencies may impose a fee for any activity that conveys special benefits to its recipient(s) beyond those accruing to the general public.
Intergovernmental Cooperation Act (31 USC § 6505)	a. Agencies may provide specialized or technical services for state or local governments that the agency is especially competent and authorized by law to provide.
	b. The services must be consistent with and further the government's policy of relying upon the private enterprise system to provide reasonably and quickly available services through ordinary business channels.
	c. Services may be provided only when there is a written request for those services made by the state or local government. The requestor must also pay all identifiable costs incurred by the agency in rendering the service.
Joint Project Authority (15 USC § 1525)	a. Other participants are eligible entities, i.e., for-profit and non-profit organizations, research organizations, or public organizations or agencies.
	b. Matters are of mutual interest.
	c. The total costs (sum of costs for all participants in the joint project) for such projects must be apportioned equitably.
	d. Joint projects may be performed only if (1) the project cannot be done at all or as effectively without the participation of all parties to the project; and, (2) the project is essential to the furtherance of a Departmental program.
Clinger-Cohen Act (P.L. 104-106, Section 5112(e))	a. Executive agent must have been designated by OMB. b. Acquisitions must be conducted in accordance with provisions of 48 CFR 16.505(b).

Exhibit B:

Summary of Eligibility

SUMMARY OF ELIGIBILITY

Organization Type	Economy Act	Intergovernmental Cooperation Act	Joint Project Authority
Other DOC Operating Unit	X		
Other Federal Agency	X		X
State or Local Government		X	X
Non-Profit			X
Research			X
University		X	X

Note: The User Charge and Operating Unit Special Authorities are not included on this table.

Exhibit C:

Form CD-580

Clearance Signature Sheet for
Proposed Interagency and Other Special Agreements

DEPARTMENT OF COMMERCE (DOC) CLEARANCE SIGNATURE SHEET FOR PROPOSED INTERAGENCY AND OTHER SPECIAL AGREEMENT														
NAME OF OFFICE AND OPERATING UNIT	OPERATING UNIT AGREEMENT NO: _____ AMENDMENT NO. (If Applicable): _____													
PROJECT TITLE	ANTICIPATED PERIOD OF AGREEMENT Start Date _____ Completion Date _____ Project Period _____													
LEGAL AUTHORITY FOR AGREEMENT (Name of Authority and Citation)	PROGRAMMATIC AUTHORITY FOR AGREEMENT (Name of Authority and Citation)													
ESTIMATED COSTS (if applicable) DOC FUNDS TO BE OBLIGATED \$ _____ NON-DOC FUNDS TO BE OBLIGATED \$ _____ TOTAL ESTIMATED COSTS \$ _____	ESTIMATED VALUE OF IN-KIND CONTRIBUTIONS (If applicable) DOC IN-KIND CONTRIBUTIONS \$ _____ NON-DOC IN-KIND CONTRIBUTIONS \$ _____ TOTAL IN-KIND CONTRIBUTIONS \$ _____													
TYPE OF PARTNER(S) (Circle as Applicable)														
<table style="width: 100%; border: none;"> <tr> <td style="width: 25%;">Another DOC Operating Unit</td> <td style="width: 25%;">State/Local Government</td> <td style="width: 25%;">Commercial Organization</td> <td style="width: 25%;">Research Organization</td> </tr> <tr> <td>Another Federal Agency</td> <td>College or University</td> <td>Non-Profit Organization</td> <td>For Profit Organization</td> </tr> <tr> <td>Public Organization</td> <td>Individual</td> <td colspan="2">Other (specify) _____</td> </tr> </table>			Another DOC Operating Unit	State/Local Government	Commercial Organization	Research Organization	Another Federal Agency	College or University	Non-Profit Organization	For Profit Organization	Public Organization	Individual	Other (specify) _____	
Another DOC Operating Unit	State/Local Government	Commercial Organization	Research Organization											
Another Federal Agency	College or University	Non-Profit Organization	For Profit Organization											
Public Organization	Individual	Other (specify) _____												
Is this an acquisition under the Economy Act with a conversion between in-house performance and contractor performance? ___Yes___ No___ If yes, were the requirements of OMB Circular A-76 followed? Yes___ No___														
NAME AND TITLE OF REVIEWER	SIGNATURE	DATE												
PROGRAM OFFICIAL Name: Title:														
FINANCE OFFICER (FOR REIMBURSABLE IOSA) Accounting Classification: Name:														
CONTRACTING OFFICER (IF A PAYABLE IOSA UNDER THE AUTHORITY OF THE ECONOMY ACT) (Signature indicates that based on the review of the statement of work and cost estimate, the D&F is approved and an acquisition may be established for this requirement.) Name:														
OFFICE OF GENERAL COUNSEL Name: Title														

Exhibit D:

Choosing the Correct Legal Authority
When an Agreement Is for a Purchase

Choosing The Correct Legal Authority When An Agreement Is For A Purchase

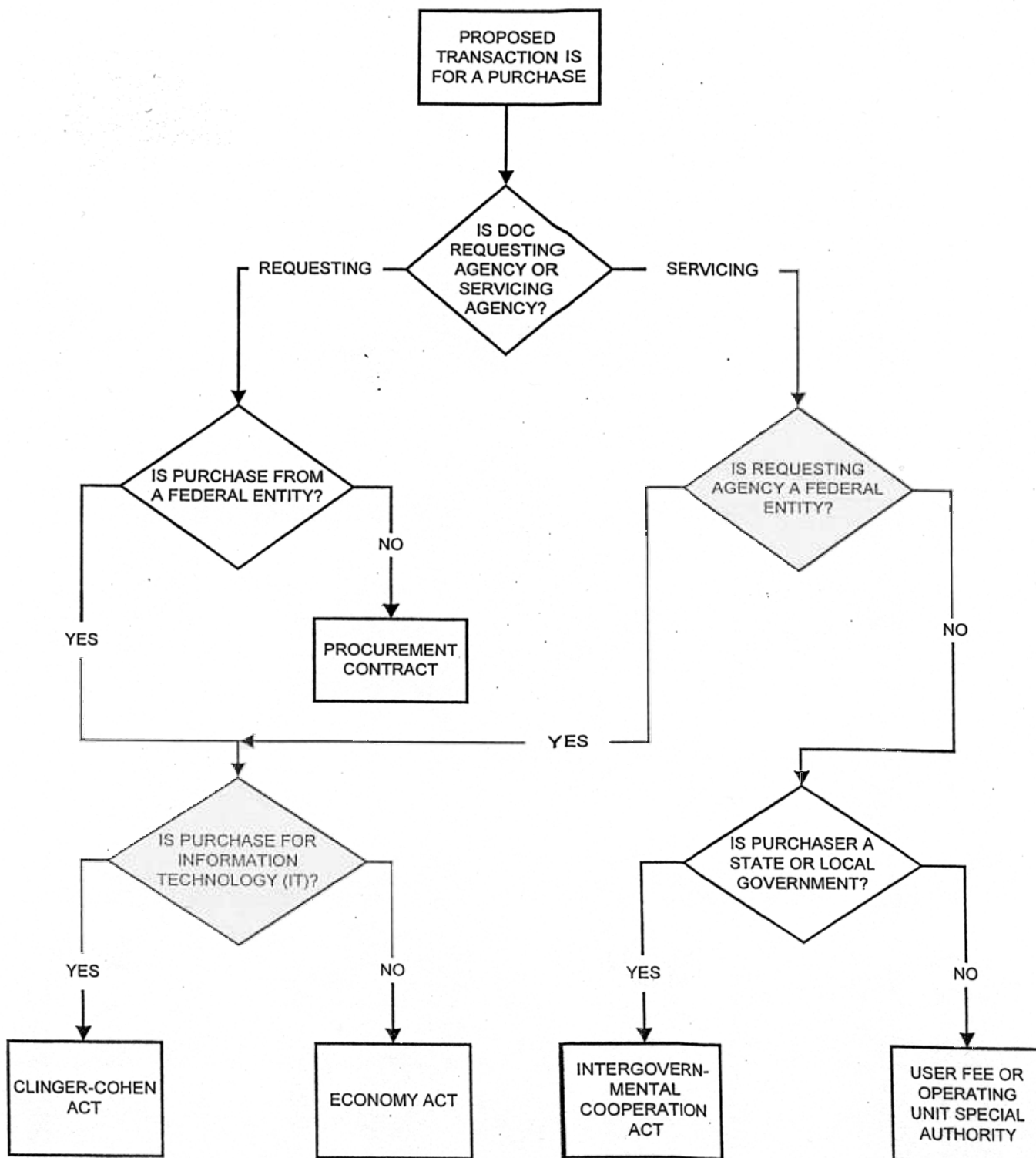


Exhibit E:

Choosing the Correct Legal Authority
When an Agreement Is Not for a Purchase

Choosing the Correct Legal Authority When An Agreement Is Not For A Purchase

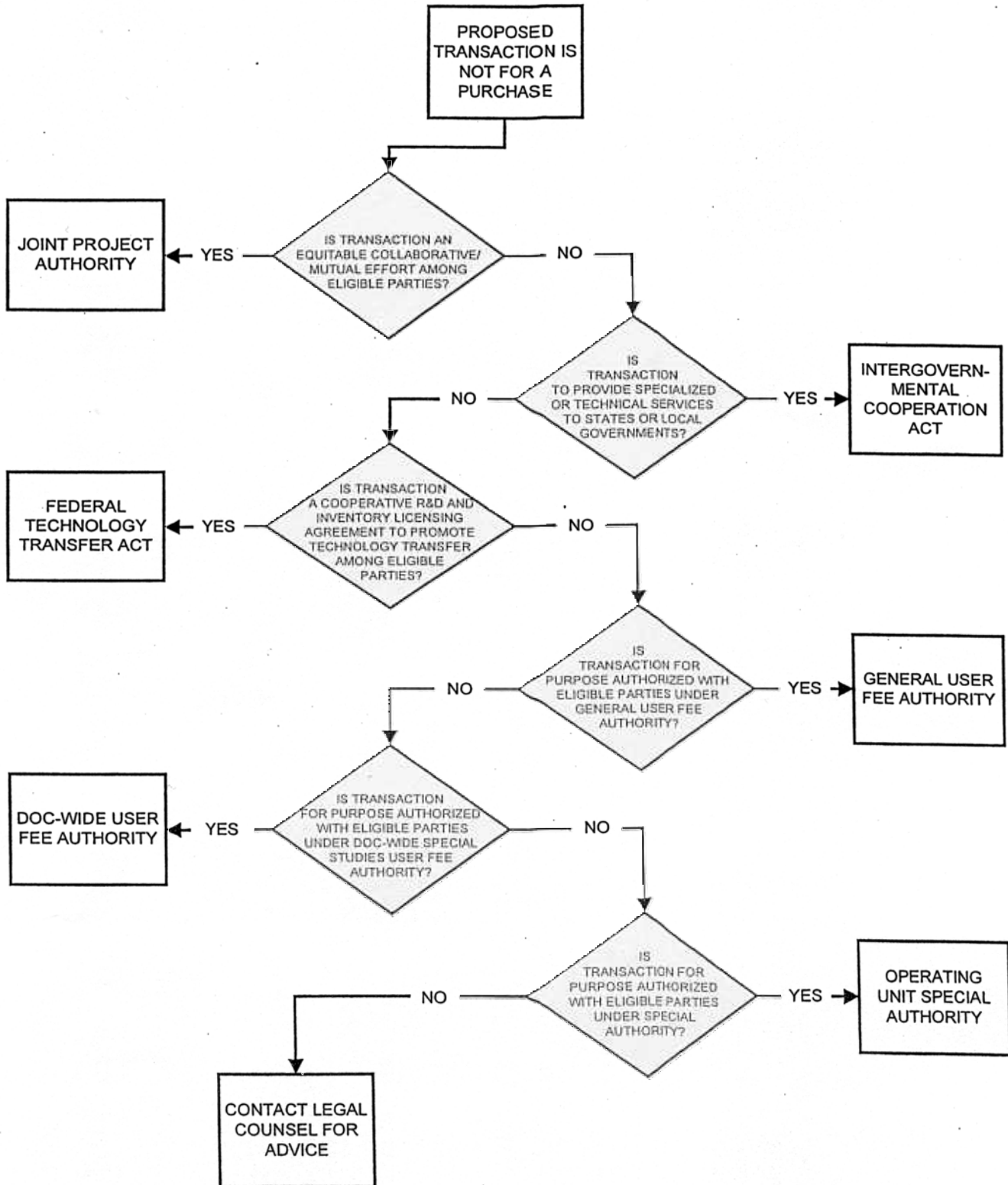


Exhibit F:

Form CD-572

Interagency and Other Special Agreements

CD-572
04/03

**DEPARTMENT OF COMMERCE
INTERAGENCY AND OTHER SPECIAL AGREEMENTS**

1.a. AGREEMENT NUMBER

b. AMENDMENT NUMBER (if applicable)

2. PARTIES TO THE AGREEMENT

a. NAME OF OPERATING UNIT AND OFFICE
(Name of administrative contact, including address, telephone and FAX numbers and e-mail.)

Requesting OU Servicing OU

b. NAME OF OPERATING UNIT AND OFFICE
(Name of administrative contact, including address, telephone and FAX Numbers, and e-mail.)

Requesting OU Servicing OU

3. PROJECT TITLE OR PURPOSE

4. GOODS AND SERVICES BEING EXCHANGED

(The description of goods and services being exchanged and delivery requirements are included in the attached terms and conditions.)

5. LEGAL AUTHORITY

15 U.S.C 1521 (DoC Working Capital Fund) 31 U.S.C. 1535 (Economy Act)

Programmatic Authority _____

6. ANTICIPATED PERIOD OF AGREEMENT

START DATE: _____

COMPLETION DATE: _____

7. FUNDING

a. Estimated Total Cost

b. Funds Citation/Cost Center

Frequency of Distribution: _____
(quarterly, monthly, etc.)

c. Cost Allocation

100% reimbursed by requesting Operating Unit
 Other. Explain: _____

d. Funds Availability/Budget Approval

Signature and Date (Head of Operating Unit or designee)

8. EXECUTION OF THE AGREEMENT

a. OU Approval Official

b. OU Approval Official

Signature

Date

Signature

Date

9. “RESOLUTION OF DISAGREEMENTS

Nothing herein is intended to conflict with current DOC, bureau, or office directives. If the terms of this agreement are inconsistent with existing directives of either of the offices entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished either by an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.”

10. DETERMINATION AND FINDING PURSUANT TO 48 CFR § 17.503(b)

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

It has been determined that this Economy Act order:

- _____ does not require contracting action by the servicing agency; or
- _____ requires contracting action by the servicing agency and that one of the following circumstances exists:
 - _____ 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 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
 - _____ the servicing agency is specifically authorized by law or regulation, *i.e.*, ***[set forth the citation for the law or regulation]***, to purchase such supplies or services on behalf of other agencies.

[Signature of DOC official who has authority to sign this D&F, i.e., either a contracting officer or other official designated by the agency to sign the D&F] [title]

_____	_____
Signature	Date
_____	_____
Name	Title

11. ECONOMY ACT CERTIFICATION

As an authorized designee of the agency head, I have determined that (1) amounts are available; (2) the order is in the best interest of the U.S. Government; (3) the order can be provided by the other party to this Agreement; and (4) the ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

_____	_____
Signature	Date
_____	_____
Name	Title