

April 28, 2011

## FAS INSTRUCTIONAL LETTER 2011-10

MEMORANDUM FOR ALL FAS ACQUISITION ACTIVITIES

FROM:

  
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ASSISTANT COMMISSIONER  
OFFICE OF ACQUISITION MANAGEMENT (QV)

SUBJECT:

GUIDANCE ON PREVENTING ABUSE OF INTERAGENCY  
CONTRACTS

1. Purpose: This Instructional Letter (IL) provides guidance on the implementation of the changes to Federal Acquisition Regulation (FAR) [Subpart 8.4](#)-Federal Supply Schedules (FSS) and FAR [Subpart 17.5](#)-Interagency Acquisitions as a result of Section 865, Preventing Abuse of Interagency Contracts, of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Pub. L. 110-417).
2. Background: An interim rule ([FAR case 2008-032, Preventing Abuse of Interagency Contracts](#)) amended the FAR to implement paragraphs (b) and (d) of the Section 865, Preventing Abuse of Interagency Contracts, of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Pub. L. 110-417).

This new interim rule impacts all FAS acquisition programs, both in performing assisted acquisition (e.g., FAS' Office of Assisted Acquisition Services (AAS) and Special Ordering Programs) and in facilitating direct acquisitions (e.g. FSS contracts, FAS Governmentwide Acquisition Contracts (GWACs), and FAS Multi-agency Contracts (MACs)).

A summary of the changes in the interim rule are as follows:

- Broadens the scope of FAR [Subpart 17.5](#)-Interagency Acquisitions, to address all interagency acquisitions, with limited exception;
- Requires requesting agencies to support the decision to use an interagency acquisition with a written determination that

such action is the “best procurement approach”;

- Requires assisted acquisitions be accompanied by written agreements between the requesting agency and the servicing agency documenting the roles and responsibilities of the respective parties, including the planning, execution, and administration of the contract; (reference Interagency Acquisition guidance at [http://www.whitehouse.gov/omb/assets/procurement/iac\\_revised.pdf](http://www.whitehouse.gov/omb/assets/procurement/iac_revised.pdf));
  - Requires the development of business cases when establishing a new MAC in accordance with the Economy Act (31 U.S.C. 1535) authority; and
  - Requires the senior procurement executive for each executive agency to submit an annual report on interagency acquisitions to the Director of OMB, in accordance with section 865(c) of Pub. L. 110-417.
3. Effective Date: Date of signature.
  4. Termination Date: This IL remains in effect until it is cancelled or incorporated into a handbook.
  5. Applicability: This IL applies to all FAS contracting activities. See section 7 for the specific applicability of various types of interagency acquisitions.
  6. Reference to Regulations: Section 865, Preventing Abuse of Interagency Contracts, of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Pub. L. 110-417), [FAR case 2008-032, Preventing Abuse of Interagency Contracts](#), FAR [Subpart 8.4](#), and FAR [Subpart 17.5](#).
  7. Instructions / Procedures:
    - A. **Direct Acquisitions**:
      - i. *Definition*: “Direct acquisition” means a type of interagency acquisition where a requesting agency places an order directly against a servicing agency’s indefinite-delivery contract. The servicing agency manages the indefinite-delivery contract but does not participate in the placement or administration of an order (e.g., the Department of Energy placing an order off a FSS).
      - ii. *Applicability for Customer Agencies*: It is important for the programs that administer GSA’s contract vehicles to be able to explain these requirements to GSA’s customer agencies. Therefore, the requirements listed below should be communicated to customers when they conduct direct acquisitions against applicable GSA contract vehicles.

A best procurement approach determination is required for all direct acquisitions to include the following:

- a. All orders placed against GWACs and MACs;
- b. All orders placed against a FSS, when the order is estimated over \$500,000;
- c. All orders placed against the SmartBuy Program (if the vehicle is established off a FSS, only orders estimated over \$500,000); and
- d. All orders placed against a Federal Strategic Sourcing Initiative (FSSI) vehicle (if the vehicle is established off a FSS, only orders estimated over \$500,000).

A best procurement approach determination, does **not** apply to the following procurements:

- a. Orders placed against a FSS when the order is estimated under \$500,000;
  - b. FAS performing assisted acquisitions utilizing a contracting vehicle that has been established and/or is being administered by GSA;
  - c. FAS conducting an internal procurement for another GSA entity (i.e. when placing task and delivery orders off of GSA contract vehicles), because this would be considered an **intra-agency** acquisition;
  - d. Requisitions under the Global Supply Program; or
  - e. Transportation Management Services Solutions utilizing government rate tenders under sections 10721 and 13712 of the Interstate Commerce Act (49 U.S.C. 10721 and 13712) pursuant to FAR [47.104](#).
- iii. *Applicability for FAS Acquisition Activities:* A best procurement approach determination is required by FAS when FAS's acquisition activity is placing an order off another agency's indefinite-delivery contract (e.g., NASA SEWP, CIO-SP2i).
- iv. *Guidance:* At a minimum, the best procurement approach determination shall include an analysis, including factors such as:
- a. The suitability of the contract vehicle;

- b. The value of using the contract vehicle, including the administrative cost savings from using an already existing contract, lower prices, greater number of vendors, and reasonable vehicle access fees; and
- c. The expertise of the requesting agency to place orders and administer them against the selected contract vehicle throughout the acquisition lifecycle.

If applicable, contracting officers shall document this analysis in the acquisition plan in accordance with FAR [7.105\(b\)\(4\)](#), Acquisition Considerations.

## B. Assisted Acquisitions:

### i. *Definitions:*

- a. "Assisted acquisition" means a type of interagency acquisition where a servicing agency performs acquisition activities on a requesting agency's behalf, such as awarding and/or administering a contract, task order, or delivery order.
- b. "Requesting agency" means the agency that has the requirement for an interagency acquisition.
- c. "Servicing agency" means the agency that will conduct an assisted acquisition on behalf of the requesting agency.

### ii. *Guidance:*

*FAS Conducting Assisted Acquisitions:* When conducting assisted acquisitions as defined above, the requesting agency is responsible for making a written determination that the use of assisted acquisition services represents the best procurement approach in accordance with FAR [17.502-1](#). A copy of the written determination shall be retained in the requesting agency's contract file, and shall include sufficient documentation to ensure an adequate audit consistent with FAR [4.801\(b\)](#).

Prior to the issuance of a solicitation or Request for Quote (RFQ), the servicing FAS acquisition activity and the requesting agency shall both sign a written interagency agreement (IA) that establishes the general terms and conditions governing the relationship between the parties, including roles and responsibilities for acquisition planning, contract award, and administration and management of the contract(s) or order(s). The requesting agency shall provide the servicing FAS acquisition activity with any unique terms, conditions, and applicable agency-specific statutes, regulations, directives, and other applicable requirements for incorporation into the order or

contract; for patent rights, see FAR [27.304-2](#). In preparing interagency agreements to support assisted acquisitions, agencies should review the Office of Federal Procurement Policy guidance on [Interagency Acquisitions](#). The signed interagency agreement shall be retained in the FAS contract file, and shall include sufficient documentation to ensure an adequate audit consistent with FAR [4.801\(b\)](#). The Office of Management and Budget (OMB) and the Department of Treasury are currently working to overhaul the Standard Interagency Agreement format. More information can be found on Treasury's Financial Management Service website: <http://www.fms.treas.gov/finstandard/forms.html>. Once this format is finalized, FAS acquisition activities shall use this as the new standard format, at which time QV will simply issue policy guidance to notify FAS personnel.

### C. Revisions to Customer Facing Acquisition Policy Guidance:

- i. FAS acquisition activities facilitating direct acquisitions through the administration of the applicable FAS contract vehicles (e.g. FSS, GWACs and MACs) and performing assisted acquisitions are responsible for updating acquisition guidance (e.g. ordering guides, websites, etc.) to reflect all changes. The following are examples of materials that may require updating:
  - a. Ordering guides for GSA GWACs and MACs (e.g. [Alliant](#), [COMMITTS NextGen](#), [8\(a\) STARS](#), [Networx](#)) should be updated by the office(s) responsible for maintaining and administering these contracts. Ordering guides should also be updated to ensure they are consistent with current regulations for interagency acquisitions as prescribed in FAR [Subpart 17.5](#).
  - b. The MAS Program Office will update the acquisition policy guidance on [www.gsa.gov/schedules](http://www.gsa.gov/schedules) to reflect the new requirements as prescribed in FAR [Subpart 8.4](#).
  - c. Sample interagency agreements on [www.gsa.gov](http://www.gsa.gov) portal should be updated by the assisted acquisition office responsible for maintaining these documents. These samples should be updated to ensure they are consistent with the current regulations for interagency agreements as prescribed in FAR [Subpart 17.5](#).

### D. Economy Act:

- i. *Applicability:* The Economy Act applies when more specific statutory authority does not exist. The Federal Property and Administrative Services Act [40 USC 501-502] is the authority for most of FAS's contract vehicles, including FSS and many other MACs (e.g. SATCOM II, Connections). In the case of GSA's GWACs, the Capital Planning and Investment Control Act [40 USC 11302(e)] is often the specific statutory authority. GSA's assisted acquisition services are also authorized by The Federal Property and Administrative Services

Act [40 USC 501-502];

ii. *Guidance:*

- a. *Establishing A New MAC:* In the rare case that FAS establishes a new MAC under the Economy Act authority, the FAS contracting activity must prepare a business-case analysis (BCA), which must be approved by the head of the contracting activity in accordance with FAR [Subpart 17.5](#).
- b. *Ordering under the Economy Act:* In general, GSA rarely places orders against vehicles that have been established under the Economy Act authority. In the rare case that GSA orders under the Economy Act authority, follow procedures in FAR [17.502-2](#).

**E. Reporting Requirements:** The senior procurement executive shall submit to the Director of OMB an annual report on interagency acquisitions, as directed by OMB. FAS Office of Acquisition Management will provide input to the Office of Government-wide Policy, Office of Acquisition Policy on the report.

8. Questions and Answers

**Where can I go to get training on interagency acquisitions?**

Training on interagency acquisitions has been made available through the Federal Acquisition Institute (see <http://www.fai.gov/IAA/launchpage.htm>).

GSA provides additional guidance on the [GSA Schedules Portal](#).

**Is a best procurement approach determination required when FAS is purchasing off a GSA contract vehicle (e.g. FSS, GSA GWAC, FSSI vehicle)?**

No. This would not be considered an interagency agreement, and therefore does not fit the definition of a “direct acquisition” because it is not “a type of interagency agreement.”

**Is a best procurement approach determination required when FAS is purchasing off a VA Schedule?**

No. GSA has delegated the authority to administer certain Schedules to the Department of Veterans Affairs; however, the FSS Program is under the GSA’s authority under the Federal Property and Administrative Services Act [40 USC 501-502]; therefore, this would not fit the definition of a “direct acquisition” because it is not “a type of interagency agreement.”

**If FAS is conducting an assisted acquisition, and using a GSA contract vehicle, are they required to make a best procurement approach determination?**

No. Remember, the requesting agency is required to make a best interest determination to determine that acquisition assistance is needed (e.g., expertise or acquisition resources are not readily available within the agency) and the servicing agency (FAS) can provide the assistance required. This determination is not the same as the best procurement approach required for direct acquisitions. In this case, since FAS is using a GSA vehicle to procure the products or services, a separate best procurement approach determination is not required because it does not fit the definition of a “direct acquisition” because it is not “a type of interagency agreement.”

**If FAS is conducting an assisted acquisition, and using another agency’s contract vehicle (other than GSA), are they required to make a best procurement approach determination?**

Yes. A separate best procurement approach is required if GSA is using another agency’s vehicle. See paragraph 7(A)(iii) of this IL.

**Is the Global Supply program required to complete a best procurement approach when processing a customer’s requisition?**

No, requisitions under the Global Supply program are not considered an acquisition; therefore, they do not fit the definition of an “interagency acquisition”, and do not require a best procurement approach.

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