

HOW THE BONA FIDE NEED RULE APPLIES TO **INTERAGENCY AGREEMENTS UNDER THE** **ECONOMY ACT**

BRIEF OVERVIEW:

WHAT IS THE BONA FIDE NEEDS RULE?

THE BONA FIDE NEEDS RULE IS A RULE OF APPROPRIATIONS LAW. IT MANDATES THAT A FISCAL YEAR'S APPROPRIATIONS BE OBLIGATED ONLY TO MEET A LEGITIMATE – OR BONA FIDE – NEED ARISING IN (OR SOMETIMES BEFORE) THE FISCAL YEAR FOR WHICH THE APPROPRIATION WAS MADE.

THE BONA FIDE NEEDS RULE APPLIES WHEN TRANSFERRING FUNDS BETWEEN FEDERAL AGENCIES. AS WITH A CONTRACT, AN AGENCY'S FUNDS ARE CONSIDERED OBLIGATED WHEN THE AGREEMENT IS SIGNED BY THE REQUESTING AGENCY, WHICH MEANS THERE MUST BE A BONA FIDE NEED FOR THE SUPPLIES OR SERVICES DURING THE FISCAL YEAR FOR WHICH THE FUNDS ARE OBLIGATED, EVEN IF THEY ARE OBLIGATED TO ANOTHER GOVERNMENT AGENCY.

REQUESTING AND SERVICING AGENCIES NEED TO DEVELOP CLEAR AND COMPLETE INTERAGENCY AGREEMENTS THAT:

- **ESTABLISH GENERAL TERMS AND CONDITIONS TO GOVERN THE RELATIONSHIP BETWEEN THE AGENCIES, INCLUDING EACH PARTY'S ROLE IN CARRYING OUT RESPONSIBILITIES IN THE ACQUISITION LIFE-CYCLE; AND**
- **PROVIDE INFORMATION REQUIRED TO DEMONSTRATE A BONA FIDE NEED AND AUTHORIZE THE TRANSFER AND OBLIGATION OF FUNDS.**
- **MAKE IT CLEAR AS TO THE PERIOD OF AVAILABILITY OF THE FUNDS FOR OBLIGATION BY THE PERFORMING AGENCY.**

WHAT IS THE ECONOMY ACT?

THE ECONOMY ACT, 31 USC (1535) AND 1536 IS A BROAD GOVERNMENT-WIDE AUTHORITY ALLOWING AGENCIES TO ENGAGE IN INTER- AND INTRA-AGENCY REIMBURSABLE AGREEMENTS WHICH WILL RESULT IN A TRANSACTION MORE ECONOMICAL OR CONVENIENT

THAN IF THE CUSTOMER AGENCY HAD ACQUIRED THE GOODS OR SERVICES FROM COMMERCIAL SOURCES.

HOW DOES THE BONA FIDE NEED RULE APPLY TO INTERAGENCY AGREEMENTS UNDER THE AUTHORITY OF THE ECONOMY ACT?

ECONOMY ACT ORDERS CITING AN ANNUAL OR MULTIYEAR APPROPRIATION MUST SERVE A BONA FIDE NEED ARISING, OR EXISTING, IN THE FISCAL YEAR (OR YEARS) FOR WHICH THE APPROPRIATION IS AVAILABLE FOR OBLIGATION. OTHERWISE, A VALID OBLIGATION IS NOT ACCOMPLISHED. BONA FIDE NEED GENERALLY IS A DETERMINATION OF THE REQUESTING AGENCY, AND NOT THAT OF THE SERVICING AGENCY. THE SERVICING AGENCY SHOULD, HOWEVER, REFUSE TO ACCEPT AN ECONOMY ACT ORDER IF IT IS OBVIOUS THAT THE ORDER DOES NOT SERVE A NEED EXISTING IN THE FISCAL YEAR FOR WHICH THE APPROPRIATION IS MADE.

UNDER THE ECONOMY ACT, IF THE SERVICING AGENCY INTENDS TO APPLY ANNUAL FUNDS TO A THIRD-PARTY CONTRACT, THE FUNDS HAVE TO BE OBLIGATED BY THE PERFORMING AGENCY BY THE END OF THE FISCAL YEAR THE APPROPRIATION EXPIRES. IF NOT, THE FUNDS MUST BE RETURNED TO THE REQUESTING AGENCY.