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MEMORANDUM FOR THE ASSISTANT GENERAL COUNSEL (RESEARCH,
DEVELOPMENT & ACQUISITION)

Subj: COMMENTS ON FURTHER DELEGATION OF AUTHORITY TO APPROVE
ECONOMY ACT ORDERS

On December 19, 1994, Ms. Slatkin approved the further delegation of authority to approve orders under the Economy Act 31 U.S.C. 1535, with authority for further delegation. The delegation does raise an issue that should be clarified to reflect the intent of the Economy Act and the implementation in the Federal Acquisition Regulation (FAR). The second bullet of the delegation grants authority to make such determinations, "For orders placed within the Department of Defense for which a determination may be required as specified in reference (b) [the FAR]." The use of the phrase "may be required" appears to leave open the issue whether Economy Act determinations are in fact required for orders placed with DOD. The APLA cover memorandum to Ms. Slatkin proposing the further delegation states that there is some disagreement between the military departments and also OSD concerning the extent to which Economy Act determinations are required for orders placed within DOD. The memorandum further states that "if a policy decision is ever made" that such orders require Economy Act determinations, the initial delegation does not cover such orders.

It is my opinion that the Economy Act applies to orders within DOD. Subsection (a) of the Economy Act states:

The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if-

- (1) amounts are available;
- (2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;
- (3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and

the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

The plain language of the Act states that it applies both to orders with another agency or a major organizational unit within the same agency. The requirement for a determination is in FAR Subpart 17.5. The problem has been the failure to define the phrase in the Act "major organizational unit within an agency." A policy to define the phrase "major organizational unit within

an agency" should be adopted so that it would result in significantly reducing the administrative burden to require determinations for orders within the Navy. This approach is consistent with the current draft FAR rewrite of Subpart 17.5 to implement the Federal Acquisition Streamlining Act of 1994, Public Law 103-355. The FAR draft rewrite states in 17.502(b), "The organizational level at which these determinations are required within an agency shall be as established by each agency." This language was drafted, as you know, by Joe Sousa of APFA, and this approach is supportable.

It is recommended that the organizational level required for an Economy Act determination be at the inter-military department level (Navy to Army or Air Force). As a result, orders placed outside the Navy would require a determination. Orders placed within the Navy (including the Marine Corps) would not require a determination. This approach would reduce the administrative burden of requiring determinations for intra-Navy orders and settle the issue concerning the application of the Economy Act within DOD.


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