GSA

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MEMORANDUM FOR FEDERAL TECHNOLOGY SERVICE ASSOCIATES

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SUBJECT: Compliance with Guidance and Information Concerning Interagency Transactions and Proper Management of Reimbursable Agreements in Revolving Funds, June 7, 2004

Over the past year and a half there have been internal reviews and Inspector General Audits that discovered improper contracting actions by Federal Technology Service (FTS) associates. As a result of these discoveries the "Get It Right" plan was initiated and written guidance was issued including the memorandum dated June 7, 2004 Subject: Guidance and Information Concerning Interagency Transactions and Proper Management of Reimbursable Agreements in Revolving Funds (the June 7 Guidance). Also, in some instances and after an independent review by management, disciplinary actions were proposed and/or taken in accordance with the GSA Penalty Guides (CPO 9751.1 Appendix 1). Disciplinary action was not taken against any associate who was following written guidance issued by the Commissioner of FTS, the Commissioner of the Federal Supply Service (FSS), the Office of the Chief Acquisition Officer, the Office of the Chief Financial Officer, or the Office of General Counsel. The purpose of this memorandum is to assure associates that the June 7 Guidance is correct and in accordance with current law and they may rely on it with confidence.

All associates who participate in interagency transactions are responsible for complying with the Federal Acquisition Regulation (FAR), the General Services Acquisition Manual (GSAM) and the June 7 Guidance and its appendices. Associates who in good faith rely on these and other current written guidance from the Commissioners of the Federal Acquisition Service, FTS or FSS, the Office of the Chief Acquisition Officer, the Office of

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the Chief Financial Officer and the Office of General Counsel regarding legal, fiscal and acquisition policy will not be subject to disciplinary action for doing so.

We note that the June 7 Guidance is lengthy and complex. We have attempted to clarify and illustrate certain aspects of it by issuing appendices.[1] Some associates continue to have questions about the June 7 Guidance and concerns that it may be inconsistent with the General Accounting Office's Principles of Federal Appropriations Law[2] (GAO Redbook). There are inconsistencies between the June 7 guidance and some volumes and/or editions of the GAO Redbook. This is because there have been changes in the law since the time some volumes and/or editions of the Redbook were published. In particular, the Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355 (Oct. 13, 1994), made significant changes in Government contracting practices and rendered some of the GAO fiscal interpretations obsolete. Thus, there are portions of the GAO Redbook and some GAO decisions that do not reflect current law. There are also numerous GAO cases dealing with the application of the Economy Act, 31 U.S.C. 1535, to interagency transactions. Authority for FTS to engage in interagency transactions is found in the Clinger-Cohen Act, as implemented, and 40 U.S.C. 501 (formerly section 201 of the Property Act). Therefore, much of the GAO discussion of interagency transactions is not applicable to FTS' transactions. Contracting Officers and other associates who have questions about the legal interpretation of GAO guidance are encouraged to seek advice from their servicing legal offices. Contracting Officers who have questions about the propriety of a particular contract action should document the file regarding their question and the answer they receive and proceed accordingly with the contract action.

Contracting Officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relations. In those cases where a contracting officer has a question whether a particular contract action or order is proper and in compliance with published guidance, s/he should request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate. FAR 1.602-2. A Contracting Officer may reasonably rely on the advice s/he receives from these agency experts. However, the final decision regarding the contract remains with the contracting officer in accordance with the FAR.

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[1] Associates should note that Appendix B was issued by memorandum dated October 7, 2004 Subject: Examples of Contracting for Services; Appendix C was issued by memorandum dated January 10, 2005 Subject Acquisition of Information Technology Services -- Clarifying Guidance; and Appendix D was issued by memorandum dated January 10, 2005 Subject: Decision Tree Illustrating Conditions for Closing of Projects and Returning Funds.

[2] There are five volumes of the GAO Redbook. Volume I (2d ed.) was published in 1991. Volume II (2d Ed.) was published in 1992. Volume III (2d ed.) was published in 1994. Volume IV (2d ed.) was published in 2001; and Volume V (2d ed.), an index, was published in 2002. A third edition of Volume 1 was published in 2004 -- third editions of the other volumes have not been published. The GAO Redbook can be found at www.gao.gov/legal.htm. Issues involving the Bona Fide Needs Rule and availability of funds are addressed mainly in Volume I. Interagency transactions and revolving funds are covered in detail in Volume IV.

All associates are responsible for attempting in good faith to comply with the June 7, Guidance and other current written guidance issued by GSA. Guidance concerning GSA's "Get it Right" and Acquisition Programs in addition to the June 7, Guidance can be found in the GSAM and in acquisition letters issued by the Office of the Chief Acquisition Officer on GSA's Get it Right or Acquisition Policy websites.