

Executive Office of the President, OMB: Memorandum for the Heads of Departments and Agencies

February 18, 2009

1. The Office of Management and Budget (OMB) has issued a memorandum to federal agencies detailing guidance for the Recovery Act, Subject: *Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009*. The memorandum can be accessed at: [http://www.recovery.gov/files/Initial Recovery Act Implementing Guidance.pdf](http://www.recovery.gov/files/Initial_Recovery_Act_Implementing_Guidance.pdf)
2. The following excerpts are related to the guidance and implementation procedures that will be enforced by the OMB. Federal agencies receiving Recovery Act money must abide by these regulations.

Section 1 General Information

1.5 What are the critical requirements or elements of this guidance for which agencies must begin to immediately implement or prepare?

Transparency and Reporting:

- *Weekly Updates. Starting March 3rd, agencies will be required to submit a weekly update report on a cumulative year-to-date basis for Recovery.gov [See Appendix 1]*
- *Award Transaction Data Feeds. Starting on May 5, agencies must provide all Recovery Act assistance transactions (primarily grants, loans and loan guarantees) in the standard format currently provided to USASpending.gov*
- *Agency Recovery Plan. No later than May 1st, agencies must provide their “Agency Recovery Plan” that describes both broad recovery goals and the agency’s coordinating efforts.*

Information collection and Dissemination:

- *To facilitate transparency and reporting, agencies should establish a page on their existing website dedicated to the Recovery Act (i.e., www.agency.gov/recovery), which will link to Recovery.gov and will provide a single portal for all agency-specific information related to the Act. [See Appendix 2]*

Actions Specific to Award Type:

- *Contract Awards. In addition to the Federal Acquisition Regulation (FAR) Part 5 requirements for pre-solicitation and award notices, publish pre-solicitation and award notices of orders under task and delivery order contracts on FedBizOpps ... Recovery Act items will be distinguished as such and funds shall be posted in a special section of Recovery.gov*
- *Grant and Cooperative Agreement Awards. Within twenty (20) days after enactment of the Recovery Act, agencies shall post funding opportunity announcements (i.e., “Synopses”) to Grants.gov. ... Within thirty days (30) , the Grants.gov synopsis shall link to the full announcement on the agency website ... announcement will include prominent labels and tags in funding opportunity synopses, full funding opportunity announcements, and award notices that clearly distinguish them as “Recovery Act” actions.*
- *Loans and Loan Guarantees. , Agencies shall post funding opportunity to GovLoans.gov. ... announcements will include prominent labels and tags that clearly distinguish them as “Recovery Act” actions.*

Section 2 Agency Plans and Public Reporting

2.2 What communication materials are agencies required for posting to Recovery.gov?

- *Beginning immediately, all Federal agencies receiving Recovery Act funds should determine which major communications are appropriate for posting to the ‘Announcements’ section of Recovery.gov. These materials should be in a press release format, and should include a clear heading and short (no more than 5 sentences) overview of the main communications points. Items should be of interest to a broad cross section of the American public, and focus on Presidential priorities and programs with a major impact.*

2.9 What reporting will be collected from recipients of Federal funding for reporting on Recovery.gov?

The Recovery Act and this guidance require extensive reporting from recipients of Federal funding. The Recovery Act defines “recipient” as any entity that receives Recovery Act funds directly from the Federal Government (including Recovery Act funds through grant, loan or contract) other than an individual and includes a State that receives Recovery Act funds.

- *Prime recipients. Reporting requirements only apply to the prime non-Federal recipients of Federal funding, and the subawards (i.e., subgrants, subcontracts, etc.) made by these prime recipients. They do not require each subsequent subrecipient to also report. For instance, a grant could be given from the Federal government to State A, which then gives a subgrant to City B (within State A), which hires a contractor to construct a bridge, which then hires a subcontractor to supply the concrete. In this case State A is the prime recipient, and would be required to report the subgrant to City B. However, City B does not have any specific reporting obligations, nor does the contractor or subcontractor for the purposes of reporting for the Recovery.gov website.*

Section 3 Governance and Risk Management

3.6 For risks that are common to all agencies, are there specific risk mitigation actions that all agencies must initiate?

- *Agencies may consider obligating funds provided under Recovery Act on an existing grant, including, but not limited to, a continuation or renewal grant.*
- *Consider weighting selection criteria to favor applicants for assistance with demonstrated ability to deliver programmatic result and accountability objectives included in the Recovery Act.*
- *Agencies must structure acquisitions to result in meaningful and measurable outcomes that are consistent with agency plans and that promote the goals of the Recovery Act. The evaluation criteria for award should include those that bear on the measurement and likelihood of achieving these outcomes.*

Section 5 Grants and Cooperative Agreements

5.1 Are there actions, beyond standard practice, that agencies must take while planning for competitive and formula grant awards under Recovery Act?

- *Determining Grant Objectives and Evaluation Criteria for Award. Agencies should structure grants to result in meaningful and measurable outcomes that are consistent with agency plans and that promote the goals of the Recovery Act.*

- Competition. Agencies should review their internal policies with a goal towards promoting competition to the maximum extent practicable.
- Timeliness of Awards. Agencies need to assess existing processes for awarding formula allocations and announcing, evaluating and awarding discretionary grant opportunities to comport with the objective to make awards timely.

5.2 Are there actions, beyond standard practice, that agencies must take related to solicitation and evaluation of competitive grants awarded under Recovery Act?

- Provide information in funding opportunity announcements and award notifications on Recovery Act-specific reporting requirements.
- Within twenty days after enactment of the Recovery Act, agencies shall post funding opportunity announcements (i.e., “synopses”) to Grants.gov
- Consider weighting selection criteria to favor applicants for assistance with demonstrated ability to deliver programmatic result and accountability objectives included in Recovery Act.

5.6 What audit tools will be used to drive accountability for Federal awards under the Recovery Act?

- Non-federal entities (States, local governments, tribes, and non-profits) are required by the Single Audit Act Amendments of 1996 and OMB Circular A-133 to have an annual audit of their Federal awards (e.g., grant programs). [Entities expending less than \$500,000 are exempt]

Section 6 Contracts

6.1 Are there actions, beyond standard practice, that agencies must take while planning for contract awards under the Recovery Act?

- Maximize opportunities for small businesses to compete for agency contracts and to participate as subcontractors
- Expeditiously award contracts using available streamlining flexibilities
- Competition. Although the law calls on agencies to commence expenditures and activities as quickly as possible consistent with prudent management, this statement, by itself, does not constitute a sufficient justification to support award of a federal contract on a non-competitive basis. Agencies are expected to follow the same laws, principles, procedures, and practices in awarding non-competitive contracts with Recovery Act funds as they do with other funds. Competition is the cornerstone of our acquisition system. The benefits of competition are well established. Competition saves money for the taxpayer, improves contractor performance, curbs fraud, and promotes accountability for results. Agencies should review their internal procurement review practices to ensure they promote competition to the maximum extent practicable. For instance, agencies might lower the dollar thresholds at which higher level review is required when a noncompetitive acquisition strategy is contemplated.

To the maximum extent practicable, contracts using Recovery Act funds shall be awarded affixed-price contracts (See FAR Subpart 16.2) using competitive procedures. These procedures include those identified under FAR Subparts 6.1, 6.2, and 16.505(b)(1) and Subsections 8.405-1 and 8.405-2. Existing fixed-price contracts that were competitively awarded may be used to obligate funds expeditiously.

A summary of any contract or order (or modification to an existing contract or order), including description of the required products and services, using such funds shall be posted in a special section of the web site Recovery.gov unless the contract or order is both fixed-price and competitively awarded (see Section 6.2(5) below).

- Determining Acquisition Objectives and Evaluation Criteria for Award. Agencies should structure acquisitions to result in meaningful and measurable outcomes that are consistent with agency plans and that promote the goals of the Recovery Act. The evaluation criteria for award should include those that bear on the measurement and likelihood of achieving these outcomes.
- Small Business Participation. Agencies must provide maximum practicable opportunities for small businesses to compete for agency contracts and to participate as subcontractors in contracts awarded by agencies. Agencies may take advantage of any authorized small business contracting program. If, in making an award to a small business, a non-competitive procedure is used, such as a noncompetitive set-aside under section 8(a) of the Small Business Act, then a summary of any such contract, including a description of the supplies and services, shall be posted in a special section of Recovery.gov (see Section 6.2(5)).

6.2 Are there actions, beyond standard practice, that agencies must take related to solicitation of offers and award of contracts under the Recovery Act?

- Pre-solicitation notices must be posted on FedBizOpps.
- All pre-solicitation notices must include the word “Recovery” as the first word in the title field in FBO preceding the actual title.
- Responsibility Determinations. FAR Part 9 addresses contractor qualifications. Agencies should place special emphasis on responsibility determinations and pre-award surveys. The award of a contract based solely on lowest evaluated price can produce a false economy, increasing performance, cost and schedule risk. FAR Subpart 9.103 states that a prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors. The general standards for responsibility include that the prospective contractor have:
 - Adequate financial resources to perform the contract or the ability to obtain them;
 - The ability to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
 - A satisfactory record of past performance, integrity, and business ethics;
 - The necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; and
 - The necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

Additionally, the prospective contractor must be otherwise qualified and eligible to receive an award under applicable laws and regulations. Agencies are reminded that they should review the Excluded Parties List System (see FAR subpart 9.404) before determining that a prospective contractor is responsible.