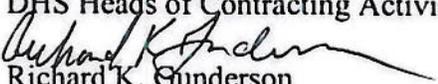


MAR 12 2009



Homeland Security

MEMORANDUM FOR: DHS Heads of Contracting Activities
FROM: 
Richard K. Gundersen
Acting Chief Procurement Officer
SUBJECT: Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009

This memorandum transmits the Office of Management and Budget's (OMB) guidance on the implementation of the American Recovery and Reinvestment Act of 2009 ("Recovery Act" or "Act") to Department of Homeland Security (DHS) Components receiving appropriations under the Act. It also provides instructions for initial implementation in DHS.

There are many required activities associated with the Recovery Act; this memorandum focuses on those directly related to procurement. Component Heads will be scheduled to brief the Secretary on their plans and activities in the near future. Impacted Heads of Contracting Activities (HCAs) and their staffs should anticipate quick turn-around taskers associated with the significant reporting requirements of the Act. In addition, OCPO anticipates issuing additional guidance on data quality.

Background: The Recovery Act, enacted February 17, 2009, has several goals, including:

- (1) To preserve and create jobs and promote economic recovery;
- (2) To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and
- (3) To stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.

To support these goals, the Act provides appropriations to DHS Components to procure supplies and services as follows:

Component	Program	Amount
Transportation Security Agency (TSA)	<ul style="list-style-type: none">• Purchase & installation of checked baggage & checkpoint explosive detection systems	\$1 Billion
Customs & Border Protection (CBP)	<ul style="list-style-type: none">• Design & construction of border checkpoints	\$420 Million
	<ul style="list-style-type: none">• Expedited development & deployment of border technology	\$100 Million
	<ul style="list-style-type: none">• Non-intrusive detection equipment	\$100 Million
	<ul style="list-style-type: none">• Tactical communications equipment & radios	\$60 Million

Immigration & Customs Enforcement (ICE)	<ul style="list-style-type: none"> • Tactical communications equipment & radios 	\$20 Million
U. S. Coast Guard (USCG)	<ul style="list-style-type: none"> • Shore facilities • Alteration of obstructive bridges 	\$98 Million \$142 Million
Federal Emergency Management Agency (FEMA) *	<ul style="list-style-type: none"> • Public transportation security & railroad security assistance • Port security • Non-federal fire stations • Emergency food & shelter 	\$150 Million \$150 Million \$210 Million \$100 Million
*For non-procurement instruments		
DHS Headquarters, Under Secretary for Management (USM)	<ul style="list-style-type: none"> • Construction & consolidation of DHS Headquarters 	\$200 Million

On February 18, 2009, OMB issued initial implementing guidance for the Recovery Act. The guidance is available at <http://www.whitehouse.gov/omb/management>. Chapter 6 *Contracts*, provided here as Attachment A, is of most significance to procurement professionals and provides more detail on the procedures described in this memorandum.

Transparency, accountability, and data integrity. Given the significant investment of taxpayers' dollars, Congress and the Administration have established unprecedented levels of transparency and accountability for actions that use Recovery Act funds. The Recovery Act establishes the Recovery.gov website to which agencies are required to post spending and performance data on contract and assistance awards. Additionally, agencies must dedicate an agency webpage to Recovery Act efforts and provide a variety of reports related to funding (allocations, obligations, risk mitigation, and planning efforts) to OMB on a periodic and ongoing basis. The DHS webpage is at www.dhs.gov/recovery.

To support transparency, the Act requires that all solicitation opportunities and award announcements be posted at Recovery.gov. This extends the normal requirements to include task and delivery order opportunities and awards, including those under GSA Schedule contracts, GWACs, and other indefinite-quantity contracts. Contracting Officers must post these opportunities and announcements to FedBizOpps, from which they will be transmitted for posting at Recovery.gov. Award obligations will be reported on USASpending.gov.

For contracts, information will be reported to USASpending.gov through FPDS-NG. To identify Recovery Act actions in FPDS-NG, OMB requires that each FPDS-NG record contain the Treasury Account Symbol (TAS) in the *Description of Requirement* field. Attachment B to this memorandum provides the TAS' established by the DHS Chief Financial Officer.

With the unprecedented levels of transparency and accountability, contract data will be more visible to and readily accessible by the public, interest groups, industry associations, and others. In addition, the Act provides \$5 million to the DHS Inspector General to review these contract actions. *Components must exercise particular diligence to ensure the integrity of data reported on Recovery Act contract actions. It is critical that DHS data be accurate, complete and timely.*

Maximizing competition and the use of fixed price contracts. The Recovery Act calls on agencies to maximize the use fixed-price contracts and competitive procedures to the maximum extent possible. Recovery.gov will contain information on all covered procurement actions. Awards that are other than fixed-price or competitive (including small business non-competitive set-asides under the 8(a) programs), will be posted in a special section of Recovery.gov, with a summary of the contract or order (or modification to an existing contract or order) including a description of the required products and services.

Applicability of Federal Acquisition Regulation (FAR) procedures. Contract actions using Recovery Act funds must comply with all aspects of the FAR. The Recovery Act provides no additional flexibilities for award of Federal contracts on a non-competitive basis beyond those currently authorized in FAR Subparts 6.1, 6.2 and 16.505(b)(1) and Subsection 8.405-1 and 8.405-2. It also does not provide a basis for exercising special emergency acquisition authorities. Agencies may use existing acquisition flexibilities such as the test program for commercial items under FAR Part 13.

OCPO recognizes that compliance with the FAR and competition requirements may appear to compete with the stimulus objective of the Recovery Act. The Act seeks to complete obligations quickly to boost the nation's economy. However, this goal must be balanced with responsible stewardship of the taxpayer dollars being used. DHS must ensure that all covered contract actions comply with the FAR, other applicable statutes, and OMB guidance.

Special contract terms and conditions. The Recovery Act establishes several special requirements for covered contracts. The FAR Council is working to issue interim rules that will provide standard clauses to implement the following requirements:

FAR Case 2009-008 - Buy American Requirements for Construction Material :
Implements Section 1605 - Use of American Iron, Steel, and Manufactured Goods. This section prohibits the use of funds appropriated or otherwise made available by the Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

FAR Case 2009-009 – Contractor Reporting Requirements
Implements Section 1512(c). This section imposes various reporting requirements on a Federal Government contractor receiving ARRA funds, including amounts received, projects or activities for which funds are to be used, estimated number of jobs created or retained, and information regarding subcontractors.

FAR Case 2009-010 - Publicizing Contract Actions
Implements requirements of OMB's, "Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009," Section 6.2. The requirements include: posting of presolicitation notices on FedBizOpps (FBO); unique requirements for announcing contract awards; unique requirements for entering awards into the Federal Procurement Data System (FPDS); unique requirements for contracts, orders, and

modifications exceeding \$500,000; and unique requirements for actions that are not fixed price or competitive.

FAR Case 2009-011 - GAO Access to Contractor Records

Implements ARRA Section 902, 1515, 1524(b). Inspectors General, the Accountability and Transparency Board, and Government Accountability Office are granted authority to examine any records of the contractor and interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding ARRA transactions.

FAR Case 2009-012 - Protecting Contractor Whistleblowers

Implements Section 1553, which requires protections against reprisal for employees of private contractors who disclose to Federal officials information reasonably believed to be evidence of gross mismanagement, gross waste, or violations of law related to contracts using ARRA funds.

In addition to these provisions which apply to all Federal contracts using Recovery Act funds, Section 604 requires, with certain exceptions, that DHS procure textiles and fibers from U.S. sources. While OCPO anticipates that only TSA will be significantly affected by this provision, it contains language that makes it applicable to some degree to all Components. OCPO, in collaboration with Office of General will issue specific guidance on this issue.

If a Component anticipates a need to issue a solicitation that will use Recovery Act funds prior to development of standard provisions and clauses, OCPO recommends that the Component, in consultation with its Office of General Council, consider incorporating language that advises offerors to expect a solicitation amendment that will add unique Recovery Act terms and conditions.

Future guidance. OCPO appreciates that there are unanswered questions on implementation of Recovery Act procurement requirements. OMB plans to issue supplemental guidance within 30 to 60 days. Additionally, OMB plans to issue a Recovery Act Architecture Package that will address some systems and data collection questions. As relevant information is provided, OCPO will issue updates.

Please direct questions or comments about this memorandum to Gloria Sochon, Senior Procurement Analyst, at (202) 447-5307 or email gloria.sochon@dhs.gov.

Attachments

Attachment A: OMB Initial Implementing Guidance for the American Recovery Act and Reinvestment Act of 2009, Chapter 6 Contracts

Attachment B: American Recovery and Reinvestment Act of 2009 - New TAFS

cc: DHS Acquisition Policy Board Members