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ACQUISITION TECHNOLOGY AND LOGISTICS

APR 21 2009

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (POLICY AND PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY (ACQUISITION & LOGISTICS MANAGEMENT), ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE (CONTRACTING), SAF/AQC
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DOD FIELD ACTIVITIES

SUBJECT: Updated Instructions for Posting Pre-Solicitation and Award Notices; Reporting Contract Actions; and Reporting Performance Assessments for Actions Funded by the American Recovery and Re-Investment Act of 2009

This memorandum provides updated instructions for employing specific federal Integrated Acquisition Environment (IAE) and specific DoD capabilities that you must use to implement and comply with the transparency and accountability requirements associated with the supplemental appropriations provided by the American Recovery and Re-Investment Act of 2009 (Recovery Act), Pub.L. 111-5. Five interim rules for the Federal Acquisition Regulation (FAR) were published in the Federal Register on March 31, 2009, in FAC 2005-032, which provide authorities, policies, and procedures for government-wide implementation of the Recovery Act and special contract provisions in the Guidance. The interim rules immediately make available FAR solicitation provisions and contract clauses to include in contracts related to the below topics:

- American Recovery and Reinvestment Act of 2009--Buy American Requirement for Construction Material
- American Recovery and Reinvestment Act of 2009--Reporting Requirements
- American Recovery and Reinvestment Act of 2009--Publicizing Contract Actions
- American Recovery and Reinvestment Act of 2009--GAO/IG Access
- American Recovery and Reinvestment Act of 2009--Protecting Contractor Whistleblowers

If Recovery Act funds will be used, contracting officers shall modify existing contracts, on a bilateral basis, in accordance with FAR 1.108(d)(3), to include the Recovery Act FAR clauses contained in the interim rules. This also applies to orders. In

the event that a contractor refuses to accept such a modification, the contractor will not be eligible for receipt of Recovery Act funds.

As a result of the published FAR changes, as well as updated Implementation Guidance (see http://www.recovery.gov) issued April 3, 2009, by the Office of Management and Budget, my office has updated the instructions I issued on March 13, 2009, specific to publicizing and reporting contract actions in Federal Business Opportunities (FedBizOpps) and Federal Procurement Data System (FPDS), respectively. The instructions are attached and also available at the DPAP website (http://www.acq.osd.mil/dpap/) in the Electronic Business section. These instructions are mandatory for contract actions that use Recovery Act funds. Though the instructions address procedures for reporting non-competitive and other than fixed price actions consistent with requirements in statute, my expectations are that every effort shall be made to award competitive, fixed-price actions and accurately report these actions in the FPDS.

Thank you for your special attention to these instructions in executing Recovery Act efforts. My action officer for these instructions is Lisa Romney, lisa.romney@osd.mil, 703-602-8007. As a reminder, grants and assistance actions using Recovery Act funding are also subject to specific instructions. Contact Dr. Mark Herbst, mark.herbst@osd.mil, 703-588-1377, in OUSD(AT&L)/DDR&E for further guidance on these actions. Please see http://www.defenselink.mil/recovery/ for more information as to DoD's role in executing the Recovery Act.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy

Attachment:
As Stated

ATTACHMENT
(UPDATED APRIL 17, 2009)

INSTRUCTIONS
POSTING PRE-SOLICITATION AND AWARD NOTICES AND REPORTING CONTRACT ACTIONS FOR ACTIONS FUNDED BY THE AMERICAN RECOVERY AND RE-INVESTMENT ACT OF 2009

Effective immediately, all Military Services and Defense Agency contracting offices shall implement the following instructions in reference to posting and reporting requirements for the American Recovery and Re-Investment Act of 2009 (Recovery Act).

1. Posting Presolicitation Notices on Federal Business Opportunities (FedBizOpps).

a. Presolicitation notices for proposed new contracts must be posted on FedBizOpps in accordance with FAR Part 5 applicable dollar thresholds. When posting a presolicitation notice for an action that will use Recovery Act funds, DoD contracting offices shall use the following special format:

- If directly posting on FedBizOpps using the website (www.fbo.gov):
  - All presolicitation notices must include the word RECOVERY as the first word in the *Title* field prior to the actual title of the presolicitation notice. The word RECOVERY must be spelled correctly.
  - Select the radio button on the screen that indicates the effort is for a Recovery Act effort.

- If using an electronic system to post to FedBizOpps, include the word RECOVERY as the first word in the <SUBJECT> tag on the Presolicitation template prior to the actual title of the presolicitation notice. For presolicitation notices not using Recovery Act funding, the classification code shall still remain in the first position of the Title field or <SUBJECT> tag. However for all Recovery Act funded notices, the word RECOVERY shall be placed before the classification code in the <SUBJECT> tag, followed by two dashes (as prescribed on the FedBizOpps website – under *Electronic Interfaces*). When submitted from an electronic system, FedBizOpps will allow the word RECOVERY to be placed before the classification code. The word RECOVERY must be spelled correctly.

b. Under the Recovery Act, presolicitation notices are also required for any contract modification or order under a task or delivery order contract, or order modification meeting the FAR part 5 dollar thresholds. This includes orders under Federal Supply Schedules, Governmentwide Acquisition Contracts (GWACs), multi-agency contracts or any other Indefinite Delivery Contract authorized in FAR part 16.5. This requirement is also applicable to orders under Blanket Purchase Agreements (BPAs) or Basic Ordering Agreements (BOAs) that meet the FAR part 5 dollar thresholds. Presolicitation notices for modifications and orders are required to be posted individually, they may not be posted under an umbrella notice for the base contract or ordering vehicle. For these modifications or orders, the following special format requirements apply:

- If directly posting on FedBizOpps using the website (www.fbo.gov):
  - All presolicitation notices must include the word RECOVERY as the first word in the *Title* field prior to the actual title of the presolicitation notice. The word RECOVERY must be spelled correctly.
  - Select the radio button on the screen that indicates the effort is for a Recovery Act effort.
  - All presolicitation notices must include verbatim the phrase RECOVERY – THIS NOTICE IS PROVIDED FOR INFORMATION PURPOSES ONLY. THIS OPPORTUNITY IS AVAILABLE ONLY TO CONTRACTORS UNDER [contracting officer insert program name]. at the beginning of the *Description* field prior to the actual title of the presolicitation notice. The program name to be inserted should be the name of the Federal Supply Schedule, GWAC, or multi-agency contract; for example GSA Schedule 03FAC, COMMITS, or Navy's SEAPORT-E. If the contract has no name, insert the contract number.

- If using an electronic system to post to FedBizOpps:
  - Include the word RECOVERY as the first word in the <SUBJECT> tag on the Presolicitation template prior to the actual title of the presolicitation notice. For presolicitation notices not using Recovery Act funding, the classification code shall still remain in the first position of the Title field or <SUBJECT> tag. However for all Recovery Act funded notices, the word RECOVERY shall be placed before the classification code in the <SUBJECT> tag, followed by two dashes (as prescribed on the FedBizOpps website – under *Electronic Interfaces*). When submitted from an electronic system, FedBizOpps will allow the word RECOVERY to be placed before the classification code. The word RECOVERY must be spelled correctly.
  - Include verbatim the phrase RECOVERY – THIS NOTICE IS PROVIDED FOR INFORMATION PURPOSES ONLY. THIS OPPORTUNITY IS AVAILABLE ONLY TO CONTRACTORS

UNDER [contracting officer insert program name]. at the beginning of the <DESC> tag on the Presolicitation template prior to the actual description of the procurement action. The program name to be inserted should be the name of the Federal Supply Schedule, GWAC, or multi-agency contract; for example GSA Schedule 03FAC, COMMITS, or Navy's SEAPORT-E. If the contract has no name, insert the contract number.

c. If it is anticipated that multiple or split awards could be made from the procurement, clearly state the possibility in the text of the posted notice.

d. Use clear and concise language to describe the planned procurement. Use descriptions of the goods and services (including construction), that can be understood by the general public. Avoid the use of acronyms or terminology that would only be understood by a select few.
   - Example of a bad description: "Construction stuff."
   - Example of a good description: "Construct the new wing of the medical clinic at Fort Bragg."
   - Example of a bad description: "Add-ons to Building 4."
   - Example of a good description: "Install carpeting for the Child Daycare Center on Andrews AFB."

2. Announcing Awards of Contracts, Modifications, and Orders on FedBizOpps.

Award notices must also be posted on FedBizOpps in accordance with FAR Part 5 requirements immediately upon contract action award. In addition, award notices for any modification or order meeting FAR Part 5 thresholds are also required by the Recovery Act to be posted on FedBizOpps. Award notices for modification and orders are required to be posted individually, they may not be posted under an umbrella notice for the base contract or ordering vehicle. To facilitate transparency and ensure consistency in tracking award announcements for Recovery Act funds, agencies shall use the following special format requirement:

- If directly posting on FedBizOpps using the website (www.fbo.gov):
  - All award notices must include the word RECOVERY as the first word in the *Title* field prior to the actual title of the award notice. The word RECOVERY must be spelled correctly.
  - Select the radio button on the screen that indicates the effort is for a Recovery Act effort.

- If using electronic systems to post to FedBizOpps, include the word RECOVERY as the first word in the <SUBJECT> tag on the Award template prior to the actual title of the award notice. For award notices not using Recovery Act funding, the classification code shall still remain in the first position of the *Title* field or <SUBJECT> tag. However for all Recovery Act funded notices, the word RECOVERY shall be placed before the classification code in the <SUBJECT> tag, followed by two dashes (as prescribed on the FedBizOpps website – under *Electronic Interfaces*). When submitted from an electronic system, FedBizOpps will allow the word RECOVERY to be placed before the classification code. The word RECOVERY must be spelled correctly.

- Use clear and concise language to describe the awarded procurement. Use descriptions of the goods and services (including construction), that can be understood by the general public. Avoid the use of acronyms or terminology that would only be understood by a select few.
    - Example of a bad description: "Construction stuff."
    - Example of a good description: "Construct the new wing of the medical clinic at Fort Bragg."
    - Example of a bad description: "Add-ons to Building 4."
    - Example of a good description: "Install carpeting for the Child Daycare Center on Andrews AFB."

3. Providing Summaries of Awards that are Other-Than-Fixed-Price and Non-Competitively Awarded.

a. **The contracting officer shall make every attempt to compete Recovery Act actions.** If the award notice references an action that was awarded using other than competitive procedures, ensure the award notice includes a summary of the rationale used for this acquisition approach.

- Ensure for new contract awards or modifications that add new work that the appropriate Justification and Authorization (J&A) document is posted on FedBizOpps in accordance with FAR Part 6.305 requirements and linked with the award notice.
- Contracting officers should use the following language in their award notice for new contracts or modifications to contracts to explain the use of non-competitive procedures: "This contract action was accomplished using other than competitive procedures because [*include one of the choices from below*]."
    - There is only one responsible source due to a unique capability provided, and no other supplies or services will satisfy agency requirements (FAR 6.302-1). See posted J&A for further information.

- There is only one responsible source as this is a follow-on contract, and no other supplies or services will satisfy agency requirements (FAR 6.302-1). See posted J&A for further information.
- There is only one responsible source as this was an unsolicited research proposal, and no other supplies or services will satisfy agency requirements (FAR 6.302-1). See posted J&A for further information.
- There is only one responsible source due to patent or data rights requirements, and no other supplies or services will satisfy agency requirements (FAR 6.302-1). See posted J&A for further information.
- There is only one responsible source as this contract is for utilities, and no other supplies or services will satisfy agency requirements (FAR 6.302-1). See posted J&A for further information.
- There is only one responsible source due to standardization requirements, and no other supplies or services will satisfy agency requirements (FAR 6.302-1). See posted J&A for further information.
- There is only one responsible source and no other supplies or services will satisfy agency requirements (FAR 6.302-1). See posted J&A for further information.
- There is an unusual and compelling urgency and a delay in award would result in serious injury, financial or other, to the Government (FAR 6.302-2). See posted J&A for further information.
- It is necessary to maintain a facility, producer, manufacturer, or other supplier for furnishing these supplies\services due to a national emergency (FAR 6.302-3). See posted J&A for further information.
- It is necessary to maintain a facility, producer, manufacturer, or other supplier for furnishing these supplies\services due to the need to achieve industrial mobilization (FAR 6.302-3). See posted J&A for further information.
- It is necessary to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center. (FAR 6.302-3). See posted J&A for further information.
- It is necessary to acquire the services of an expert or neutral person for a current or anticipated litigation (FAR 6.302-3). See posted J&A for further information.
- Competition need not be provided for when precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government (FAR 6.302-4). *(Enter one the following statements. When a J&A is required, per DFARS 206.302-4, enter:)* See posted J&A for further

information. (*When a J&A is not required, per DFARS 206.302-4, enter:)* This award is justified by a document describing the terms of an agreement or treaty or written direction and did not require a J&A (per DFARS 206.302-4).

  - A statute exists that expressly authorizes or requires that the acquisition be made from a specific source or through another agency (FAR 6.302-5); specifically, (*insert the specific FAR 6.302-5(b) authority using the words, not U.S.C. reference – for example, "a sole source award under the HUBZone Act"). (Enter one the following statements. When a J&A is required, per FAR 6.302-5, enter:)* See posted J&A for further information. *(When a J&A is not required, per FAR 6.302-5, enter:)* Per FAR 6.302-5 a J&A is not required for this award.
  - The agency's need is for a brand name commercial item for authorized resale (FAR 6.302-5). A J&A is not required, per FAR 6.302-5.
  - Disclosure of the Government's needs would compromise the national security (FAR 6.302-6). See posted J&A for further information.
  - The agency head has determined that it is not in the public interest to compete this action on a full and open basis (FAR 6.302-7). See posted J&A for further information.

- Contracting officers should use the following language in their award notices for orders or modifications to orders to explain the use of non-competitive procedures: "This contract action was accomplished using other than competitive procedures because [*include one of the choices from below*]." Contracting officers must provide additional narrative after the given language that explains why the exception was used.
  - This is a task/delivery order where an exception to fair opportunity requirements was approved due to urgency (FAR 8.405-6(b)(3) or 16.505(b)(2)(i)).
  - This is a task/delivery order where an exception to fair opportunity requirements was approved due to only one source being available (FAR 8.405-6(b)(1) or 16.505(b)(2)(ii)).
  - This is a task/delivery order where an exception to fair opportunity requirements was approved as this is a follow-on order to a competitive initial order (FAR 8.405-6(b)(2) or 16.505(b)(2)(iii)).
  - This is a task/delivery order where an exception to fair opportunity requirements was approved for a minimum guarantee (FAR 16.505(b)(2)(iv)).
  - This is a task/delivery order where an exception to fair opportunity requirements was approved due to Other Statutory Authority (DFARS 208.405-70(b)(1) or DFARS 216.505-70(b)(1)).
  - This is an order under an existing contract that was awarded using non-competitive procedures.

- The information posted on FedBizOpps regarding the extent to which competitive procedures were used must match what is reported to FPDS in accordance with FAR 4.6. Note: each of the above choices is considered the use of non-competitive procedures and corresponds with the values that can be reported in FPDS.

b. **The contracting officer shall make every attempt to award a fixed price contract action.** If the award notice references an action that is other than a fixed price contract type, ensure the award notice includes a summary of the rationale used for this acquisition approach.

- Contracting officers should use the following language in their award notice to explain the use of a non-fixed price contract type as the predominant contract type on the action: "This contract action was not awarded as a fixed price contract type because [*insert one of the choices from below*]." Provide additional rational as needed to clearly indicate why a non-fixed price contract type was awarded.
  - Uncertainties involved in contract performance did not permit costs to be estimated with sufficient accuracy to use any type of fixed price contract. As such, a cost-reimbursement type action was awarded (FAR 16.301-2).
  - It was not possible to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. As such, a time-and-materials type action was awarded for non-commercial supplies and services (FAR 16.601(c)).
  - It was not possible to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. As such, a labor-hours type action was awarded for non-commercial services (FAR 16.602).
  - It was not possible to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. As such, a time-and-materials type action was awarded for commercial supplies and services (FAR 12.207(b)).
  - It was not possible to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. As such, a labor-hours type action was awarded for commercial services (FAR 12.207(b)).
- The information posted on FedBizOpps regarding the use of other than a fixed price contract type must match what is reported to FPDS in accordance with FAR 4.6. Note: each of the above choices is considered the use of a non-fixed price contract type and corresponds with the values that can be reported in FPDS.

4. Reporting Recovery Act Actions to the Federal Procurement Data System (FPDS).

a. Agencies shall follow existing FAR Part 4 requirements for reporting contract actions to FPDS. With the exception of classified procurements and transactions under the micro-purchase threshold both purchased and paid for using the governmentwide purchase card, each DoD contract action that uses Recovery Act funds is required to be reported individually to FPDS regardless of dollar value. Contract actions shall be reported to FPDS immediately upon award. This reporting requirement includes any order placed using electronic catalog tools (e.g., GSA Advantage!, DoD EMALL, AFWay) using the governmentwide purchase card as the method of payment. Additional instructions are expected for open market purchase card transactions made under the micro-purchase threshold.

b. When entering contract action reports in FPDS to report contracting actions that were funded using Recovery Act funds, agencies shall enter the Treasury Account Symbol (TAS) at the beginning of the *Description of Requirement* field. NOTE: THIS ONLY APPLIES TO ACTIONS USING RECOVERY ACT FUNDS; DO NOT USE THIS FORMATTING FOR ACTIONS NOT USING RECOVERY ACT FUNDS.

The TAS is found in the line of accounting used to fund a contract action. The requiring / budget office should identify in the requirements package whether any of the lines of accounting to be used to fund the contract action use Recovery Act funds. When Recovery Act funds are then used on a contract action, the resulting line items must be clearly identified as using Recovery Act funds.

The TAS code shall be entered in the FPDS *Description of Requirement* field with TAS:: preceding the code and ::TAS following the code. The code itself is made up of three parts: (a) the Agency code (two or three characters), (b) the Account code (four characters), and (c) an optional Subaccount code (three characters). The fiscal year of the funds is not used in this format. At this time, Agency codes within DoD and other Federal Agencies are two characters. Although this may increase to three characters in the near future, FPDS can only accept two characters at this time. The Sub-account code is rarely used in DoD. When entering the TAS itself into FPDS, insert spaces between the segments. The entry would appear as follows:

- If a two-character Agency code and Subaccount is not used: TAS::XX XXXX::TAS
- Example: This should be the most common format encountered. The TAS for Operation and Maintenance, Navy - Recovery Act is 17-1805. This would be entered into the FPDS Description of Requirement field as TAS::17 1805::TAS.

- If a two-character Agency code and Subaccount is used: TAS::XX XXXX XXX::TAS

- As of the date of this memorandum, no DoD Recovery Act funds are anticipated to have TAS' in this format. However, it is provided for instruction in the case when DoD contracting offices award other Federal Agency provided Recovery Act funds.

  The following is possible future formatting for three-character Agency codes for your planning purposes. This is not available at this time in FPDS; please do not use. It is provided for planning purposes only:

- If a three-character Agency code and Subaccount is not used: TAS::XXX XXXX::TAS
- If a three-character Agency code and Subaccount is used: TAS::XXX XXXX XXX::TAS

  The contracting officer shall make every attempt to not use both Recovery Act funds and other funds on the same contract action. However, for contract actions that include both Recovery Act funds and other funds, the contracting officer shall use the *Multiple Reports* capability in FPDS available to DoD and shall report those actions separately by obligations of Recovery Act funds and other funds. If your office needs additional information on using the *Multiple Reports* capability, contact your Agency System Administrator.

  If the contract action included Recovery Act funding from more than one TAS, report only one contract action report and identify the TAS in the *Description of Requirement* field as described above using the TAS that represents the majority of the Recovery Act funding.

c. Use clear and concise language to describe the awarded procurement in the *Description of Requirement* field. Use descriptions of the goods and services (including construction), that can be understood by the general public. Avoid the use of acronyms or terminology that would only be understood by a select few.

- Example of a good description: "Install carpeting for the Child Daycare Center on Andrews AFB."
- Example of a good description: "Construct the new wing of the medical clinic at Fort Bragg."
- Example of a bad description: "Construction stuff."
- Example of a bad description: "Add-ons to Building 4."

d. The information reported to FPDS regarding contracting type and extent of competition must match what is posted on FedBizOpps in accordance with FAR 5.7.

5. Awarding Contract Actions for Other Federal Agencies

DoD contracting offices may be requested by other Federal Agencies to award contract actions on their behalf. In these cases, contracting officers shall follow the same

instructions as in Sections 1-3 above. In addition, contracting officers shall take special care to confirm with the other Federal Agency customer the correct TAS to report to FPDS. Federal Agencies must provide the DoD contracting office the appropriate TAS so the contracting officer can properly report it to FPDS using one of the two current formats identified in Section 3 above.

When reporting these actions to FPDS, DoD contracting officers shall also report the appropriate Program/Funding Agency and Office codes that represent the other Federal Agency on the contract action reports. Do not accept a purchase request package from another Federal Agency customer unless the customer provides both a Program/Funding Agency and Office code that the customer confirms are available for use in FPDS.

6. Data Accuracy.

Contracting officers must provide a meaningful description in the *Description of Requirement* field, in addition to the required Treasury Account Symbol (as specified in Section 3 above). It is important to remember that standard data verification and validation practices currently required by the Office of Federal Procurement Policy and Defense Procurement and Acquisition Policy are required to be maintained. It is imperative that Agencies place emphasis on the *Description of Requirement* field as part of your data validation efforts.

For Contracting Offices to monitor Recovery Actions reported in FPDS, contracting officials may use the FPDS Ad Hoc reporting capability setting the search criteria to the *Description of Requirement* IS SIMILAR TO: "TAS::". This will allow offices to query for all Recovery Act-related actions identified by the contracting official according to the above policy.

Static reports of all Recovery Act related actions (governmentwide) are available on the FPDS homepage (https://www.fpds.gov) and updated daily by the General Services Administration. The static report is found in the *Top Requests* section in the right top corner of the web page. FedBizOpps also provides a special section of its homepage (https://www.fbo.gov) that lists only Recovery Act related actions. Contracting offices are advised to review both websites regularly to ensure consistency.