



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

**Acquisition  
Bulletin (AB)**  
No. 04-01  
January 30, 2004

**MEMORANDUM FOR BUREAU CHIEF PROCUREMENT OFFICERS**

**FROM:** Eileen McGlinn /S/  
Acting Director  
Office of the Procurement Executive

**SUBJECT:** Contracts for Reconstruction of Iraq and Full and Open Competition

**Purpose:** This Acquisition Bulletin (AB) provides guidance for implementing the requirements of Public Law 108-106, the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (“the Act”).

**Effective Date:** This AB is effective immediately.

**Expiration Date:** This AB will expire when cancelled or superseded.

**Background:** Sections 2202 and 2203 of the Act, which are attached, impose procurement restrictions on the use of the *Iraq Relief and Reconstruction Fund*. These restrictions apply to “entering into any Federal contract (including follow-on contract)” and to “any extension, amendment, or modification of contracts entered into prior to the enactment of this Act using other than full and open competitive procedures.” The latter also applies to monies in “prior Foreign Operations, Export Financing and Related Programs Appropriations Acts.” The Act is intended to cover significant changes in scope or increased funding above award ceiling for contracts that were previously awarded without full and open competition. The Act specifically exempts contracts of less than \$5 million and contracts authorized by the Small Business Act (8(a) contracts, for example).

The restrictions relate to three aspects of the procurement process: approval of a Justification for Other than Full and Open Competition (JOFOC), pre-award Congressional notification, and publicizing contract actions. When award of an applicable contract or modification requires a JOFOC, the JOFOC must be signed by the head of the executive agency (i.e., the Secretary of the Treasury) without delegation and by the Administrator of the Coalition Provisional Authority. Congress must be notified no later than seven (7) calendar days prior to award; the notice must include the JOFOC plus a variety of background information. At the same time (7

days prior to award) a notice must also be published in the Federal Register or on the Federal Business Opportunities website and on the Coalition Provisional Authority's website.

As soon as the FAR is changed to incorporate the Act, the DTAR will be revised accordingly.

**Action:** Upon receipt of any contract requirements that are covered by the Act, notify the Office of the Procurement Executive to coordinate required approvals, notifications and publications.

Questions about this AB may be directed to Eileen McGlinn at [Eileen.McGlenn@do.treas.gov](mailto:Eileen.McGlenn@do.treas.gov)  
or  
(202) 622-6585.

Attachment

**Public Law 108-106 – November 6, 2003**

**Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004**

**Excerpts**

SEC. 2202 (a) Notwithstanding any other provision of law, none of the funds appropriated by this Act under the heading “Iraq Relief and Reconstruction Fund” and under the same heading in Public Law 108-11 may be used for entering into any Federal contract (including follow-on contract) using other than full and open competition, except in accordance with the Federal Property and Administrative Procedures Act (41 U.S.C. 251 et seq.), and any exception, if deemed necessary, shall be only upon the written approval of the Administrator of the Coalition Provisional Authority and the head of the executive agency of the United States awarding and managing such contract and such authority shall not be delegated.

Contracts.  
Deadline.  
Notification.

(b) In any case in which procedures other than full and open competitive procedures are to be used to enter into a contract, the Administrator of the Coalition Provisional Authority or the head of such executive agency of the United States shall submit not later than 7 calendar days before the award of the contract a notification to the Committees on Appropriations, and the Committees on Government Reform and International Relations of the House of Representatives, and the Committees on Governmental Affairs and Foreign Relations of the Senate. Such notification shall provide the justification for use of other than full and open competitive procedures, a brief description of the contract's scope, the amount of the contract, a discussion of how the contracting agency identified and solicited offers from contractors, a list of the contractors solicited, and the justification and approval documents (as required under section 303(f)(1) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)) on which was based the determination of use of procedures other than full and open competitive procedures.

Applicability.

(c)(1) This section shall not apply to contracts of less than \$5,000,000.

(2) This section also shall apply to any extension, amendment or modification of contracts entered into prior to the enactment of this Act using other than full and open competitive procedures using Iraq Relief and Reconstruction Funds in this Act and under Public Law 108-11 or funds made available in prior Foreign Operations, Export Financing and Related Programs Appropriations Acts.

(3) This section shall not apply to contracts authorized by the Small Business Act (15 U.S.C. 631 et seq.).

Federal Register,  
publication,  
Deadline.

SEC. 2203. (a) DISCLOSURE REQUIRED.--

(1) PUBLICATION AND PUBLIC AVAILABILITY.--The Administrator of the Coalition Provisional Authority or the head of an executive agency of the United States that enters into a contract for assistance for Iraq, using funds described in paragraph (2), through the use of other than full and open competitive procedures, shall publish in the Federal Register or Federal Business Opportunities, and otherwise make available to the public, including publication on the Coalition Provisional Authority's website, not later than 7 days before the date on which the contract is entered into, the following information:

(A) The amount of the contract.

(B) A brief description of the scope of the contract.

(C) A discussion of how the executive agency and, when applicable, the Coalition Provisional Authority, identified, and solicited offers from, potential contractors to perform the contract, together with a list of the potential contractors that were issued solicitations for the offers.

(D) The justification and approval documents (as required under section 303(f)(1) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)) on which was based the determination to use procedures other than competitive procedures.

(2) FUNDS.--The funds referred to in paragraph (1) are any funds under the heading "Iraq Relief and Reconstruction Fund" in this Act, and under the same heading in Public Law 108-11.

(3) APPLICABILITY.--

(A) This section shall also apply to any extension, amendment or modification of contracts entered into prior to the enactment of this Act using other than full and open competitive procedures using Iraq Relief and Reconstruction Funds in this Act and under Public Law 108-11 or funds made available in prior Foreign Operations, Export Financing and Related Programs Appropriations Acts.

(B) This section shall not apply to contracts of less than \$5,000,000.

(C) This section shall not apply to contracts authorized by the Small Business Act (15 U.S.C. 631 et seq.).

(b) CLASSIFIED INFORMATION.--

(1) AUTHORITY TO WITHHOLD.--The head of an executive agency may--

(A) withhold from publication and disclosure under subsection (a) any document that is classified for restricted access in

accordance with an Executive order in the interest of national defense or foreign policy; and

(B) redact any part so classified that is in a document not so classified before publication and disclosure of the document under subsection (a).

(2) AVAILABILITY TO CONGRESS.--In any case in which the head of an executive agency withholds information under paragraph (1), the head of such executive agency shall make available an unredacted version of the document containing that information to the chairman and ranking member of each of the following committees of Congress:

(A) The Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(B) The Committees on Appropriations of the Senate and the House of Representatives.

(C) Each committee that the head of the executive agency determines has legislative jurisdiction for the operations of such department or agency to which the information related.

(c) RELATIONSHIP TO OTHER DISCLOSURE LAWS.--Nothing in this section shall be construed as affecting obligations to disclose United States Government information under any other provision of law.

(d) DEFINITIONS.--In this section and section 2202 of this Act, the terms "full and open competitive procedures" and "executive agency" have the meanings given such terms in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).