



APD ALERT

The American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009, otherwise known as the “Recovery Act,” was signed into law by President Obama on February 17, 2009. The Act provides for unprecedented levels of transparency and accountability so that citizens will be able to know how, when, and where their tax dollars are being spent. The Web site, “Recovery.gov” (<http://www.recovery.gov/>) is the centerpiece of this effort.

To the maximum extent practicable, contracts using Recovery Act funds shall be awarded as fixed-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.

The Recovery Act imposes unique transparency requirements that change the pre-solicitation and award notice process, beyond standard practice, as described below:

Unique Requirements for Posting of Presolicitation Notices

Under the Recovery Act, presolicitation notices are required for any order, meeting the FAR Part 5 dollar thresholds, under a task or delivery order contract, including GWACs, multi-agency contracts and GSA Federal Supply Schedule contracts. These notices shall be posted in FedBizOpps (FBO) for informational purposes only (i.e., the requirements of FAR Subpart 5.203 do not apply). In addition, contracting officers should continue to use their usual solicitation practice (e.g., e-Buy).

To facilitate transparency and ensure consistency in tracking notices for Recovery Act funds, agencies must use the following special formatting requirements:

- All presolicitation notices must include the word “Recovery” as the first word in the *Title* field in FBO preceding the actual title.
- Presolicitation notices for delivery and task orders must also include the following statement in the *Description* field preceding the actual description:

“THIS NOTICE IS PROVIDED FOR INFORMATION PURPOSES ONLY. THIS OPPORTUNITY IS AVAILABLE ONLY TO CONTRACTORS UNDER [contracting officer insert program name. For example: GSA Schedule 03FAC, COMMITS, Navy’s SEAPORT-E.]”

Unique Requirements for Announcing Contract Awards

Contract award notices must also be posted at FBO in accordance with FAR Part 5, including all task and delivery orders as described above. To facilitate transparency and ensure consistency in tracking award announcements for Recovery Act funds, agencies must include the word “Recovery” as the first word in the *Title* field in FBO preceding the remaining title.

Unique Requirements for Entering Awards into the Federal Procurement Data System (FPDS)

When entering data in FPDS on any action (including modifications) funded by the Recovery Act, agencies must enter the Treasury Account Symbol (TAS) in the *Description of Requirement* field. The TAS code should be entered with TAS:: preceding the code and ::TAS following the code. The code itself should have spaces between the segments, i.e., Agency code (2 characters) would be entered followed by a space then the Account code (4 characters) followed by a space and then the Subaccount code (3 characters) which is optional and would only be included by those agencies utilizing this segment of the code. The entry would appear as follows: TAS::XX XXXX XXX::TAS

The ARS TAS code is: TAS::12 1402 XXX::TAS

Unique Requirements for Contracts, Orders, and Modifications Exceeding \$500,000

For each contract or order (or modification to an existing contract or order) over \$500,000, agencies shall provide a summary of the contract or order (or modification to an existing contract or order), including a description of the required products and services, which will be made available publicly and linked to Recovery.gov. Subsequent guidance will provide additional details.

Unique Requirements for Actions that are not Fixed-Price or Competitive

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

Other items of note:

- The Davis-Bacon Act and Service Contract Act apply to contract actions using Recovery Act funds. Agencies must follow the same laws, principles, procedures, and practices in awarding contracts with Recovery Act funds as they do with other funds.
- Agencies should use authorized acquisition flexibilities as appropriate to avoid unnecessary delays in awarding contracts with Recovery Act funds. Agencies are cautioned that the Recovery Act does not independently trigger use of emergency procurement authorities in FAR Part 18.001. Unless one of these circumstances exists, the special emergency authorities in FAR Part 18 shall not be used.
- As a general rule, if a question arises about whether to provide public disclosure of information, agencies should promote transparency to the maximum extent practicable when consistent with national security interests.

Any questions regarding this Alert can be directed to Michael Barnes at 301-504-1734, or via e-mail at Michael.Barnes@ars.usda.gov.

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Posting of Notice/Summary on Special Section

Description of Contract Action		Posting on Special Section of Recovery.Gov
(1)	A contract is competitively awarded and is fixed price	Not Required
(2)	A contract is awarded that is not fixed-price	Required
(3)	A contract is awarded without competition	Required
(4)	An order is issued under a new or existing single award IDIQ contract	Required if order is made under a contract described in (2) or (3)
(5)	An order is issued under a new or existing multiple award IDIQ contract	Required if one or both of the following conditions exist: i. the order is not fixed-price ii. the order is awarded pursuant to an exception to the competition requirements applicable to the underlying vehicle (e.g., award is made pursuant to an exception to the fair opportunity process)
(6)	A modification is issued	Required if modification is made: i. to a contract described in (2) or (3) above; or ii. to an order requiring posting as described in (4) or (5) above
(7)	A contract or order is awarded pursuant to a small business contracting authority (e.g., SBA's section 8(a) program)	Required if one or both of the following conditions exist: i. the contract or order is not fixed-price ii. the contract or order was not awarded using competition (e.g., a non-competitive 8(a) award)