



**DEPARTMENT OF VETERANS AFFAIRS**  
**Deputy Assistant Secretary for Acquisition and Logistics**  
**Washington, DC 20420**

**IL 001AL-09-07**  
**March 17, 2009**

**OFFICE OF ACQUISITION AND LOGISTICS INFORMATION LETTER**

- TO:** Under Secretaries for Health, Benefits, and Memorial Affairs; Assistant Secretary for Management; Director, Office of Construction and Facilities Management; Veterans Integrated Service Network Directors; Directors, VA Medical Center Activities, Outpatient Clinics, Medical and Regional Office Centers, and Regional Offices; Directors, Denver Acquisition and Logistics Center, VA Austin Information Technology Center, Records Management Center, VBA Benefits Delivery Centers, and the VA Health Administration Center; Executive Director and Chief Operating Officer, VA National Acquisition Center; Chief Information Officer; VA Health Revenue Center; and VA Health Eligibility Center.
- ATTN:** Heads of Contracting Activities (HCA) and Department of Veterans Affairs (VA) Contracting Officers (CO)
- SUBJ:** Implementing Guidance for Contracting Awards under the American Recovery and Reinvestment Act (RA) of 2009, Public Law 111-5

**I. PURPOSE**

- A. The purpose of this Information Letter (IL) is to set forth guidance for awarding and managing contracts using the RA 2009 funds. Implementing the RA is the Department's highest procurement priority.
- B. The RA mandates an unprecedented level of transparency, accountability, and coordination among all functional areas (e.g., Chief Acquisition Officer, HCAs, Chief Information Officer, Chief Financial Officer, Office of General Counsel, and all contracting offices responsible for obligating RA funds.)
- C. Further, Inspectors General have an increased responsibility to ensure that funds are spent and managed appropriately.
- D. This guidance contains critical action steps to aggressively and responsibly implement the provisions of the Act. Certain spending and performance data must be reported to the web site: [www.va.gov/recovery](http://www.va.gov/recovery). This reporting is in addition to advertising mechanisms already prescribed in the Federal Acquisition Regulation (FAR).

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- E. When developing and implementing acquisition strategies, program managers (PM) and COs must adhere to the statutory preference for fixed-price contracts and competitive procedures, as defined in section III B. of this IL.

**II. SCOPE**

**Covered Contracts**

- A. Any type of commitment (including construction) that obligates the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing.
  - 1. In addition to bilateral instruments, contracts included, but are not limited to: awards and notices of awards, job orders or task letters issued under basic ordering agreements, letter contracts, fully executed purchase, delivery, or task orders, and bilateral contract modifications.
  - 2. This includes task and delivery orders against a Government-wide Acquisition Contract (GWAC), multi-agency contract (MAC), General Services Administration (GSA) Federal Supply Schedule (FSS) contract, or agency Indefinite-Delivery/Indefinite-Quantity (IDIQ) contracts.
  - 3. Contracts do not include grants and cooperative agreements covered by 31 United States Code (U.S.C.) §6301, etc.

**III. POLICY**

**A. Use of Electronic Contract Management System (eCMS)**

By law, enhanced transparency and reporting is required for all RA procurements. To meet the statutory requirements, the following procedures are mandated:

- 1. Without exception, all RA covered contracts (see section II), regardless of dollar value, must be generated in the electronic Contract Management System (eCMS). Attachment 1 details the steps and process flow from receipt of a purchase request through award.

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2. Acquisition milestone plans must be developed in eCMS for all RA procurement actions. The dates in these plans will be recorded in the Acquisition Dashboard and reported on a weekly basis to the Secretary.
3. The eCMS is in the process of being upgraded to help reduce any added administrative burden associated with the expanded transparency and accountability requirements. Until those upgrades are complete, COs are required to manually enter information (see attachment 1).

**B. Acquisition Strategy Considerations**

1. To avoid unnecessary delays, COs should use any and all flexibilities authorized in the FAR, some of which are described in attachment 2.
2. Competitive procedures include any fixed-price contracts identified in FAR Subparts 6.1, 6.2, and 16.505 (b) (1). Existing fixed-price contracts that were competitively awarded may be used to obligate funds expeditiously (see attachment 2).
3. To the maximum extent practicable, contracts shall be fixed-price. Contract types other than fixed-price must be approved by the cognizant HCA and advertised in accordance with the guidelines in section C of this IL.
4. Further, to the maximum extent practicable, all contracts must be competitively awarded. Even though statutory timeframes for spending funds are aggressive, compelling urgency should not be used to justify any noncompetitive strategies. Any strategy that considers noncompetitive awards must be approved at a level higher than the CO and advertised on [www.va.gov/recovery](http://www.va.gov/recovery), in accordance with the guidelines set forth in section C. This approval shall become a permanent part of the contract file. Attachment 4 provides additional guidance on the process to justify and approve noncompetitive strategies.
5. Interagency Acquisitions (IA) are an acceptable acquisition strategy as long as there is strict adherence to the procedures set forth in IL 001AL-09-04, titled, "Managing Interagency Acquisition." Since one of the key objectives of the RA is to infuse monies into the economy as quickly as possible, at least 80 percent of all RA funds must be paid to the contractor not later than September 30, 2010. Therefore, COs and

PMs should only establish IAs with agencies that can reasonably meet these timeframes.

### C. Advertising (Posting) Requirements

1. COs must advertise all RA requirements that meet the dollar thresholds set forth in FAR Part 5 in FedBizOpps (FBO). This includes, but is not limited to, delivery or task orders against GWACs, MACs, FSS and IDIQ contract vehicles.

In addition, COs must provide presolicitation notices for any task or delivery orders under an existing contract if the obligation is expected to exceed \$500,000. Existing contracts include, but are not limited to: GWACs, MACs, GSA Schedules or agency IDIQs. As indicated in Paragraph 2, these actions must also be reported as "Recovery" actions.

2. In the pre-solicitation phase, the FBO notice can be classified as either "informational" or "sources sought."

#### a. FBO Notices (Pre-solicitation Phase)

- i. All requirements meeting the dollar thresholds set forth in FAR Part 5 must be posted on FBO and must include the term "Recovery" as the first word in the "Title" field.
- ii. However, for those advertisements posted as "information only," COs must incorporate the following language into the announcement:

a.) In the "Title" field, the word "Recovery" must precede the procurement description.

b.) In the "Description" field, include the following information:

"This notice is provided for informational purposes only. This opportunity is available only to contractors under *[insert program name]*. Examples of programs might include: NASA SEWP, FSS, and Ability One."

c.) For "information only" announcements, the timeframes set forth in FAR subpart 5.203 do not apply.

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- iii. If the CO is publishing a “sources sought” notice under full and open competition procedures and the thresholds exceed those prescribed in FAR Part 5.101, the pre-solicitation notice must still include the word “Recovery” in the title field but not include “Information Only” in the description field.
  - iv. COs are not precluded from using other solicitation practices (e.g., e-Buy).
- b. FBO Notices (Post Award Phase)
- i. Contract award notices, including all task and delivery orders described in section III, paragraph C. 2, must also be posted at FBO in accordance with FAR Part 5. Similar to the requirements for pre-solicitation notices, the word “Recovery” must precede the procurement description in the “Title” field.
- c. Posting data in Federal Procurement Data System (FPDS)-Next Generation.
- i. COs must enter the Treasury Account Symbol (TAS) in the “Description of Requirement” section of FPDS. To minimize any reconciliation issues, the TAS field will be provided by the Office of Finance.
  - ii. 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 as follows:  
  

TAS::XX XXX XXX::TAS
- d. Posting notices on [www.va.gov/recovery](http://www.va.gov/recovery) for noncompetitive and non-fixed-price contracts.
- i. In addition to adhering to the cited FBO advertising requirements, the RA introduces an additional level of transparency.
  - ii. For each government contract or order (or modification to an existing contract or order) that exceeds \$500,000, agencies shall post a summary of the action on [www.va.gov/recovery](http://www.va.gov/recovery). Included in the posting shall be a description of the required products and services.

- iii. For any contract or order described in subsection a. above that is not fixed-price or competitive, COs shall provide a description of the required products and services in a special section on the website [www.va.gov/recovery](http://www.va.gov/recovery).
- iv. Table 2 in attachment 2 summarizes those contract actions that must be advertised on [www.va.gov/recovery](http://www.va.gov/recovery).

#### **D. Small Business Participation**

1. Pursuant to 38 U.S.C. §8127(h), set-aside preferences for awarding contracts to small business concerns shall be applied in the following descending order of priority:
  - a. Service-Disabled Veteran-Owned Small Businesses.
  - b. Veteran-Owned Small Businesses.
  - c. Contracts awarded pursuant to:
    - i. Section 8(a) of the Small Business Act (15 U.S.C. 637(a)).
    - ii. Section 31 of such Small Business Act (15 U.S.C. 657a) (HUBZone).
  - d. Contracts awarded pursuant to any other small business contracting preference.
2. If noncompetitive procedures are used for any of the above mentioned contracts, a description of the supplies/services must be posted in a special section on [www.va.gov/recovery](http://www.va.gov/recovery). In addition, COs must conduct a thorough written price analysis to ensure that the final price is fair and reasonable. This documentation shall be a permanent part of the contract file. Attachment 4 provides additional guidance on the process to justify and approve noncompetitive strategies.

#### **E. Contract Financing**

1. Contract financing is not a normal practice in commercial item fixed-price contracting. However, tight credit markets may make it difficult for some contractors to secure the cash flow they need to fund their operations. Increased management and oversight must be provided if government financing is used.

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2. Alternatives to contract financing include restructuring contract line items to allow invoicing and payment based on interim or partial deliverables. Ensuring consideration of contractor cash flow will mitigate schedule and performance risks to government.

#### **F. Special Clauses**

1. There are several new clauses that need to be included in all RA procurements. By selecting the "Recovery Act" button in eCMS, the appropriate version of the following clauses will be included in the solicitation or award document:
  - a. The Buy American Act;
  - b. Wage rate requirements;
  - c. Compliance reporting; and
  - d. Comptroller General and Inspector General reviews.
2. COs must ensure that no RA document is issued unless these provisions are included.

#### **G. Application of Pertinent Laws, Rules, and Regulations**

1. PMs and COs must comply with all pertinent laws, rules, regulations, and policy, including those regarding:
  - a. The environment (including the National Environmental Policy Act, 42 U.S.C. sections 4321-4370d);
  - b. Historic preservation (including the National Historic Preservation Act, 16 U.S.C. sections 470, et seq.); and
  - c. Privacy requirements (see [http://www.privacy.va.gov/Privacy\\_Resources.asp](http://www.privacy.va.gov/Privacy_Resources.asp) for more information).
2. COs must ensure that VA Acquisition Regulation clause 852.273-75, "Security Requirements for Unclassified Information Technology Resources," (Interim – October 2008) is inserted in all contracts when appropriate.

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#### **IV. POINT OF CONTACT**

Questions regarding this IL should be directed to Acquisition Policy, telephone (202) 461-6865.

/s/Maurice C. Stewart  
Associate Deputy Assistant Secretary for  
Acquisition and Logistics Programs and Policy

Attachments (4)



Process Step:	Mechanism	Description
<b>Pre-award Phase</b>		
<b>Step 1:</b>	Manual	<p><b>Purchase Request (PR) Initiated by Customer:</b></p> <ul style="list-style-type: none"> <li>• PRs created in Integrated Funds Distribution, Control Point Activity, Accounting and Procurement (IFCAP) or Computer-Assisted Auditing Techniques (CAATs) by the requesting activity. CAATs PRs are pushed to the Electronic Contract Management System (eCMS).</li> <li>• Note: CAATs is used by the National Cemetery Administration (NCA).</li> </ul>
<b>Step 2:</b>	Automatic/Manual  (MANDATORY)	<p><b>Acquisition Plans created in eCMS:</b></p> <ul style="list-style-type: none"> <li>• Acquisition plans must be linked to PR actions in eCMS for all RA actions. This can be done in two ways.               <ol style="list-style-type: none"> <li>1. <u>Automatic</u>- COs will be automatically prompted to create acquisition plans from information downloaded from the Program Office Planning Module.</li> <li>2. <u>Manual</u>- A second option is for the CO to manually create the plans if program information is not provided from the Planning Module.</li> </ol> </li> </ul>
<b>Step 3</b>	Manual Push for CAATs PRs  Note: PR creation in eCMS is automatic upon successful retrieval or receipt	<p><b>PR Transferred into eCMS:</b></p> <ul style="list-style-type: none"> <li>• PRs created in IFCAP should be retrieved by the CO via the eCMS IFCAP retrieval module.</li> <li>• Successfully retrieved IFCAP PRs appear on the CO's eCMS desktop.</li> <li>• CAATs PRs are pushed into eCMS and result in the creation of a PR action on a shared desktop in eCMS.</li> </ul> <p>Recovery Act PRs include unique data values. The data include: Recovery Act appropriation codes, the funding amount, and the Treasury Symbol Accounting codes.</p>

Process Step:	Mechanism	Description
Step 4:	Manual	<p><b>Creation of Solicitation Actions</b></p> <ul style="list-style-type: none"> <li>All solicitation actions must use a system generated solicitation number. The CO will select the "RA" code as the solicitation type for all RA-funded appropriations. (e.g., VA-101-09-RA-0001).</li> <li>COs must enter the following information in the appropriate data values for the action: 1) RA project number, 2) Treasury Symbol account, 3) RA designator (Y).</li> </ul>
Step 5:	Manual	<p><b>Create/Publish Pre-Solicitation Notice:</b></p> <ul style="list-style-type: none"> <li>Certain Recovery Act acquisitions require a pre-solicitation notice to be published to FBO from eCMS (see Attachment 2).</li> </ul> <p>Note: The pre-solicitation notice title must start with "Recovery" and the notice description must include the following text: "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.]</p>
Step 6:	Manual	<p><b>Create/Issue Solicitation:</b></p> <ul style="list-style-type: none"> <li>Prepare solicitation action and document in eCMS.</li> <li>Publish solicitation document to FBO/e-Buy/Vendor Portal.</li> <li>Create and publish any solicitation amendments.</li> <li>Include special clauses referenced in Section III (F) of this IL.</li> </ul>
Step 7:	Electronic	<p><b>Evaluate Responses/Award:</b></p> <ul style="list-style-type: none"> <li>Responses can be received electronically via e-Buy or Vendor Portal.</li> <li>Evaluations can be conducted via eCMS Evaluation Module.</li> </ul>
Step 8:	Manual	<p><b>Funds Obligation:</b></p> <p>Funds obligation occurs in IFCAP via manual entry by CO and the obligation is automatically recorded in Federal Management System (FMS).</p>

Process Step:	Mechanism	Description
<b>Award Phase</b>		
<b>Step 9:</b>	Manual	<p><b>Record Obligation in eCMS:</b></p> <ul style="list-style-type: none"> <li>• All contract actions will use a system-generated contract number. The CO will select the “RA” code as the contract type when the action is funded by RA appropriations (e.g., VA101-RA-0001).</li> <li>• In eCMS, obligate funds from funding line using the Funding tab on the eCMS Award/Post-Award action.</li> </ul> <p><b>Note:</b> Award/Post-Award action must be linked to a PR action containing funding information.</p> <ul style="list-style-type: none"> <li>• CO must enter Obligation Number data value on eCMS award action exactly as issued by IFCAP.</li> <li>• Treasury Symbol Accounting Codes are populated in eCMS from funding line on incoming IFCAP/CAATs PR.</li> </ul>
<b>Step 10:</b>	Manual creation and electronic submission to FPDS-Next Generation (NG)	<p><b>Report to FPDS:</b></p> <ul style="list-style-type: none"> <li>• From eCMS, report and validate the action in the Federal Procurement Data System (FPDS). Note: Prior to finalizing award in eCMS, the action must be reported to FPDS.</li> <li>• Enter Treasury Account Symbols in “Description of Requirement” as: TAS::XX XXX XXX::TAS”</li> </ul>
<b>Step 11:</b>	Manual creation and electronic submission to FBO	<p><b>Publish Award Notice to FBO:</b></p> <ul style="list-style-type: none"> <li>• All Recovery Act acquisitions require an award notice to be published to FBO from eCMS. Note: This applies to all Recovery Act acquisitions, regardless of contracting/ordering method.</li> <li>• In eCMS, create and publish the FBO Award notice via the eCMS/FBO posting procedures.</li> <li>• Award notice title must start with “Recovery”.</li> </ul>

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Electronic Contract Management System Recovery Act Process

Attachment 1

<b>Process Step:</b>	<b>Mechanism</b>	<b>Description</b>
<b>Step 12:</b>	Manual	<b>Finalize Award in eCMS:</b> <ul style="list-style-type: none"><li>• Select the Award button to record the action as awarded in eCMS.</li><li>• Sufficient warrant is required for COs to award in eCMS</li></ul>
<b>Step 13:</b>	Automatic	<b>Award info transmitted to CAATs:</b> <ul style="list-style-type: none"><li>• For CAATs acquisitions, award information is forwarded from eCMS to CAATs system, and then forwarded to FMS.</li></ul>
<b>Step 14:</b>	Automatic/Manual	<b>Recovery Act Reporting via eCMS:</b> <ul style="list-style-type: none"><li>• Recovery Act actions can be reported in various forms via the eCMS data warehouse.</li></ul>

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Advertising/Posting Requirements on FBO and [www.va.gov/recovery/](http://www.va.gov/recovery/)

Attachment 2

Description of Contract Action		FedBizOpps (FBO)		Recovery website (VA site)		Special Section of Recovery website (VA site)		Approval for Special Section Advertisements
		Pre-Solicitation	Award	Pre-Solicitation	Award	Pre-Solicitation	Award	
1	Any competitively awarded contract that is fixed-price	>\$25K (must include Recovery)	>\$25K (must include Recovery)	No	No	No	No	CO
2	Non-fixed-price contract or order	>\$25K (must include Recovery)	>\$25K (must include Recovery)	No	No	Yes	Yes	<ul style="list-style-type: none"> <li>• Level above CO up to \$5M</li> <li>• HCA above \$5M</li> </ul>
3	Noncompetitive contract or order issued using FAR Part 6.302-1	>\$25K (must include Recovery)	>\$25K (must include Recovery)	No	No	Yes	Yes	See Attachment 4
4	Order under a new or existing single award IDIQ contract (e.g., FSS)	>\$25K (must include Recovery)	>\$25K (must include Recovery)	No	Yes >\$500,000	Yes If contract is not fixed-price	Yes If contract is not fixed-price	Level above CO
5	Order under a new or existing multiple award IDIQ contract (e.g. GWAC, etc.)	>\$25K (must include Recovery)	>\$25K (must include Recovery)	No	Yes >\$500,000	Only if fair consideration requirements were not followed or not fixed-price	Only if fair consideration requirements were not followed or not fixed-price	Level above CO
6	A modification against an existing contract that is not fixed-price or not competitively awarded	>\$25K (must include Recovery and Info only)	>\$25K (must include Recovery and info only)	No	Yes >\$500,000	Yes	Yes	Level above CO

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Advertising/Posting Requirements on FBO and [www.va.gov/recovery/](http://www.va.gov/recovery/)

Attachment 2

Description of Contract Action		FedBizOpps (FBO)		Recovery website (VA site)		Special Section of Recovery website (VA site)		Approval for Special Section Advertisements
		Pre-Solicitation	Award	Pre-Solicitation	Award	Pre-Solicitation	Award	
7	A contract or order pursuant to a small business contracting authority (e.g., 8(a))	>\$25K (must include Recovery and info only)	>\$25K (must include Recovery and info only)	No	Yes >\$500,000	Yes  If noncompetitive or non-fixed-price	Yes  If noncompetitive or non-fixed-price	See Attachment 4
8	Interagency Agreements	No	>\$25K (must include Recovery and info only)	No	Yes >\$500,000	If requirement is not competed and contract is not fixed-price.	if requirement is not competed and contract is not fixed-price.	Refer to Information Letter 001AL-09-04

I. Simplified Acquisition Threshold (SAT) (up to \$100,000)

- A. An oral solicitation should be considered for actions up to \$25,000.
- B. Further, depending on the complexity of the requirement, contracting officers may request proposal in fewer than 30 days (See FAR 5.101, 5.202, 5.303, 13.106-1).

II. Test Program for Commercial Items (\$100,000 to \$5,500,000)

In general, the test program referenced in FAR 13.501 may be appropriate.

III. Commercial Item Acquisitions (over \$5,500,000)

- A. Streamlined procedures for evaluation and solicitation prescribed in FAR Subpart 13.5 should be considered.
- B. The wait period between advertisement and issuance of a solicitation may be reduced (FAR 5.203(a)).
- C. Based on circumstances, the contracting officer may allow for less than a 30-day response time for receipt of offers (FAR 12.205, 5.203(b)).
- D. Acquisitions may be conducted in accordance with FAR Subpart 12.6 when appropriate.

IV. Non-commercial item acquisitions (over \$100,000)

- A. Some acquisitions for non-commercial items may qualify under procedures set forth in FAR Part 12 (FAR 12.102(f) & (g)).
- B. Wherever possible, offerors may be allowed to give oral presentations (FAR 15.102).

I. Use of Noncompetitive Procedures for RA requirements

- A. In accordance with section III (B) (4) of this IL, competitive procedures shall be used whenever possible.
- B. However, COs may use the statutory flexibilities (e.g., P.L 109-461, Small Business Act) to enter into noncompetitive contracts. COs must ensure that any strategy using these authorities yields the best value to the Government and that price reasonableness determinations are thorough and well documented. Any noncompetitive award that uses these flexibilities, and whose value is less than \$5 million, must be approved at a level above the CO.
- C. If a CO pursues noncompetitive strategies outside of the flexibilities defined above, the only allowable justification is FAR 6.302-1. For actions using the authority in FAR 6.302-1 and whose total value exceeds \$5 million, approval at the Senior Procurement Executive (SPE) level must be received. For actions whose total value is less than \$5 million, the approval authorities prescribed in the VAAR prevail.
- D. Note that all noncompetitive awards, regardless of authority, must be advertised in a special section on [Hwww.va.gov/recovery](http://www.va.gov/recovery)H.

II. Procedures for submitting noncompetitive justification under FAR 6.302-1

- A. A CO shall not commence negotiations or award a noncompetitive contract under FAR 6.302-1 unless the CO:
  - 1. Justifies the use of such actions in writing.
  - 2. Certifies the accuracy and completeness of the justification.
  - 3. Obtains the approval of the official at a level above the CO for actions whose total value is less than \$5 million.
  - 4. Obtains the approval of the SPE for actions whose total value is expected to exceed \$5 million. In addition:
    - a. The justification must be transmitted to the SPE through the operational activity's Head of Contracting Activity (HCA).
    - b. The HCA must concur with the CO's finding before forwarding the justification to the SPE.
    - c. The SPE will render a decision within two business days of receipt of the package.
- B. The CO shall adhere to advertising requirements set forth in this IL.