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Civilian Agency Acquisition Council Letter MV-04-01

MEMORANDUM FOR CIVILIAN AGENCIES OTHER THAN NASA

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CIVILIAN AGENCY ACQUISITION COUNCIL (CAAC)

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

If your agency is asked to spend monies for the reconstruction of Iraq, you need to know about a new law. New contracts and certain modifications have to comply with full and open competition. If they don't, the Justification and Approval/Justification for Other than Full and Open Competition (J&A/JOTFOC) must be signed by the Administrator of the Coalition Provisional Authority and the head of your executive agency (without delegation). The J&A and a discussion must be reported to Congress 7 days before award of the contract and published 7 days after award.

Where is the statute?

Public Law 108-106, "Emergency Supplemental Appropriations Act for Defense and for Reconstruction of Iraq and Afghanistan, 2004" can be found at the Library of Congress website: <http://thomas.loc.gov/bss/d108/d108laws.html>. The conference report (House Report 108-337) can be found at <http://thomas.loc.gov/cp108/cp108query.html>. Public Law 108-136, "Services Acquisition Reform Act of 2003," includes a similar, independent requirement to publish the J&A and discussion.

What monies and contracts are affected?

Sections 2202 and 2203 of Public Law 108-106 impose procurement restrictions on the use of the *Iraq Relief and Reconstruction Fund* found in this law and in Public Law 108-11, "Emergency Wartime Supplemental Appropriations Act, 2003." The 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 statute is intended to cover significant changes in scope or increased funding above award ceilings for contracts that were previously awarded without full and open competition.

Are there exceptions to Public Law 108-106?

Yes, there are exceptions:

- Contracts of less than \$5,000,000
- Contracts authorized by the Small Business Act (for example, 8(a) contracts).

For more information, see pages 58 and 59 of the GPO PDF version of the conference report.

Is there any additional guidance?

The Coalition Provisional Authority Program Management Office (CPA-PMO) is developing guidance now for their effort, which we will forward as model language once issued. Websites of interest for the Coalition include their homepage <http://www.cpa-iraq.org/index.html> and the CPA-PMO's website at http://www.rebuilding-iraq.net/portal/page?_pageid=33,30990&_dad=portal&_schema=PORTAL.