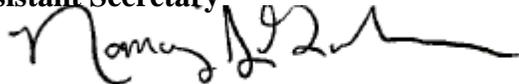




April 20, 2009

**Memorandum To:** Recovery Act Technical Council Members

**Through:**   
Dennis P. Williams, Deputy Assistant Secretary  
Office of Recovery Act Coordination

**From:** Nancy J. Gunderson, Acting Deputy Assistant Secretary  
Acquisition Management and Policy 

**Subject:** Contract Competition under the Recovery Act

The purpose of this document is to summarize, for OPDIV and program office leadership, the key competitive principles underlying the award of Recovery Act-funded acquisitions. For detailed advice on the nuances of this important topic, please consult with your respective Heads of Contracting Activity (HCA).

The Recovery Act and the March 4, 2009 Presidential memorandum on Government Contracting express a strong preference for competition -- the cornerstone of our acquisition system. The Act encourages Federal agencies to plan, obligate and spend Recovery Act funds as quickly as possible, but only when consistent with prudent management. Additionally, OMB's Recovery Act guidance promotes the use of competitive processes<sup>1</sup>.

However, the OMB guidance also advises that existing fixed-price contracts that were competitively awarded may be modified to obligate funds expeditiously. To that end, you are advised that to enter into any such modifications, your contracting officers must follow a rigorous and complex set of Federal and HHS acquisition rules governing: (a) the justification of non-competitive acquisitions; and (b) determinations as to whether your requirements are within or outside the scope of existing contracts.

Further, for actions exceeding \$25,000, a synopsis of the proposed requirement and acquisition strategy must be published, at the Government's Point of Entry, [www.fedbizopps.gov](http://www.fedbizopps.gov), prior to requesting a proposal from the contractor; and the results of the synopsis must be addressed in Justifications for Other Than Full and Open Competition (JOFOC). Federal acquisition rules require that JOFOCs be published at [www.fedbizopps.gov](http://www.fedbizopps.gov) following award of the contract action.

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<sup>1</sup> Competitive processes include Full and Open Competition; Full and Open Competition after Exclusion of Sources (such as small business set-asides); and competitive (fair opportunity) ordering procedures against pre-established schedule or multiple award contracts.

You are also advised that the following additional public notifications<sup>2</sup> at [www.fedbizopps.gov](http://www.fedbizopps.gov) are required for Recovery Act funded actions:

- Pre-solicitation notices:
  - Identification of any action that is funded in whole or in part by the Recovery Act.
  - Notification, for informational purposes only, of orders of \$25,000 or more.
  - Descriptions of supplies and services in a narrative that is clear and unambiguous to the general public
- Post-award notices:
  - For any contract action exceeding \$500,000, a clear and unambiguous description of the products and services.
  - Regardless of dollar value, the rationale for using other than competitive procedures or awarding other than a fixed-priced action (or both) for any contract action (basic contract, modification, or order).

The Department is committed to strengthening its internal quality controls to maximize the use of competitive procedures. With your support, we can use contract competition to enhance the stewardship of public funds, improve the quality of contracted goods and services, and maintain the integrity and fairness of the acquisition process. In addition, on those occasions when competitive acquisitions cannot be made, please work closely with your respective HCAs to prepare solid justifications that not only demonstrate the soundness of limiting competition but are able to withstand public scrutiny.

cc HHS Heads of Contracting Activity

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<sup>2</sup> Contracting Officers shall follow the Interim Rules prescribed in FAR Case 2009-010, American Recovery and Reinvestment Act of 2009 (the Recovery Act)-Publicizing Contract Actions, as published in the Federal Register on March 3 1,2009 until the final FAR rules are promulgated.