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**ACQUISITION OPERATING PROCEDURE (AOP)**

**FROM:**

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**JUL 13 2010**

**SUBJECT:**

AOP No. 9: American Recovery and Reinvestment Act Contracting

- ◆ **PURPOSE:** The purpose of this Acquisition Operating Procedure (AOP) is to establish contracting guidance to help ensure accountability and reporting needs of proposed contract actions using funds made available by the American Recovery and Reinvestment Act (ARRA). This procedure includes, but not limited to, Notices, Solicitations, Amendments, Contracts, Modifications, Purchase Orders, Task Orders, Delivery Orders, Blanket Purchase Agreements (BPA), BPA Calls, Basic Ordering Agreements (BOA) and BOA Orders.
- ◆ **AUTHORITIES:** Office of Management and Budget Memoranda, M-10-17, dated 5/4/10, "Holding Recipients Accountable for Reporting Compliance under the American Recovery and Reinvestment Act;" M-10-14, dated 6/22/10, "Updated Guidance on the American Recovery and Reinvestment Act;" M-10-08, dated 12/16/09, "Updated Guidance on the American Recovery and Reinvestment Act - Data Quality, Non-Reporting Recipients, and Reporting of Job Estimates;" M-10-05, dated 11/30/09, "Improving Compliance in Recovery Act Recipient Reporting."
- ◆ **REFERENCES:** References includes, but not limited to, the following Federal Acquisition Regulation (FAR), Agriculture Acquisition Regulation (AGAR), and Office of Procurement and Property Management (OPPM) guidance:
- FAR 4.605 - Contract Reporting-Procedures
  - FAR 5.704 - Publicizing Pre-Award
  - FAR 5.705 - Publicizing Post-Award
  - FAR 9.103 - Responsible Prospective Contractors-Procedures
  - FAR 9.404 - Debarment, Suspension & Ineligibility-Excluded Parties List System
  - AGAR Advisory 92B - Recovery Act Charge Card Utilization Plan
  - OPPM – Procurement Systems Division - American Recovery and Reinvestment Act Fact Sheet
- ◆ **PROCEDURES:**
1. All Contracts and/or Agreements awarded prior to implementation of the ARRA of 2009, that potentially utilizes ARRA funding shall be modified bilaterally to include the applicable ARRA provisions and clauses. Any contractors unwilling to execute said modification are ineligible for ARRA awards.

2. Prior to award, the Contracting Officer/Contracting Specialist (CO/CS) shall ensure that all Task/Delivery Orders or Calls placed against an existing contract includes all applicable ARRA provisions and clauses.
3. The CO/CS can identify ARRA funded projects' accounting data as shown below. The ten (10) represents the fiscal year and "AA" represents the ARRA appropriation.

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If the accounting for the ARRA funded project is issued by an office/agency other than Departmental Management, the CO/CS shall verify the ARRA accounting with the appropriate office/agency's budget official prior to release of any pre-solicitation documents.

4. **Pre-Award Notices:**

- a. All pre-solicitation notices shall include "**RECOVERY**" as the first word in the "Title" field shown in Federal Business Opportunities (FBO).
- b. The notice shall indicate if the requirement is being funded in Whole or in Part with ARRA funding.

Example: "**THIS PROJECT IS A FULLY FUNDED ARRA PROJECT**"

**OR**

**"THIS PROJECT IS A PARTIALLY FUNDED ARRA PROJECT"**

- c. In FBO, the field titled "Is this a Recovery and Reinvestment Act Action," the radio button "YES" must be checked.
- d. If a requirement will be awarded against an existing contract and or agreement, the following statement shall also be included in the FBO notice:

**"THIS NOTICE IS FOR INFORMATIONAL PURPOSES ONLY. THIS OPPORTUNITY IS ONLY OPENED TO THOSE AWARDEE(S) UNDER AGREEMENT OR CONTRACT NUMBER \_\_\_\_\_ (insert the award number)"**

- e. The CO/CS shall indicate on the first line in the description field on the appropriate the Standard Form of the contract:

**"NOTICE: THIS IS AN AMERICAN RECOVERY & REINVESTMENT ACT (ARRA) FUNDED PROJECT"**

5. **Post-Award Notices:**

The CO/CS shall indicate on the first line in the description field on the Standard Form of the contract:

**"NOTICE: THIS IS AN AMERICAN RECOVERY & REINVESTMENT ACT (ARRA) FUNDED PROJECT.**

6. **Award Document:**

The CO shall include the following data in the “Header” field of the Integrated Acquisition System for the award document:

- a. **Award Type** (*Identify to the recipient either: (1) Grant, (2) Loan, or (3) Federally Awarded Contract. Any other type of federal financial assistance that is neither a grant nor a loan should be identified, for purposes of Award Type, as a Grant*)
- b. **Award Number**
- c. **Order Number for Federally Awarded Contract**, if applicable
- d. **Funding Agency Code** (*4 characters*)
- e. **Awarding Agency Code** (*4 characters*)
- f. **Government Contracting Office Code**, if a Federally Awarded Contract (*6 characters or less*)
- g. **Award Date**
- h. **Amount of Award** (*For GRANTS: The total amount of Federal dollars on the award. For LOANS: The total amount of the loan obligated by the Federal Agency. This is the face value of the loan. For FEDERALLY AWARDED CONTRACTS: The total amount of dollars obligated by the Federal Agency*)
- i. **Catalogue of Federal Domestic Assistance (CFDA) Number** (*For Grants and Loans only*)
- j. **Activity Code** (*NAICS or NTEE-NPC, as applicable to the award and available through agency systems*). [*Agencies should review the Recipient reporting Data Model at the “Downloads” tab at FederalReporting.gov to determine which applies.*]
- k. **Program Source (TAS) Code** (Format will be 2 digits, a hyphen, and 4 digits, Ex: 13-0554)

7. **Solicitation Provisions and Contract Clauses:**

The ARRA solicitations and awards must include the following provisions and clauses as applicable to the requirement:

- 52.203-15 - Whistleblower Protections Under The American Recovery and Reinvestment Of 2009 (June 2010)
- 52.204-11 - American Recovery and Reinvestment Act - Reporting Requirements (Mar 2009)
- 52.212-4 - Contract Terms and Conditions—Commercial Items (June 2010)
- 52.212-5 - Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items (June 2010)

- 52.214-26 - Audit and Records - Sealed Bidding (Mar 2009)
- 52.215-2 - Audit and Records—Negotiation (Mar 2009)
- 52.225-21 - Required Use of American Iron, Steel, and Manufactured Goods-Buy American Act-Construction Materials (Mar 2009)
- 52.225-22 - Notice of Required Use of American Iron, Steel, and Other Manufactured Goods - Buy American Act - Construction Materials (Mar 2009)
- 52.225-23 - Required Use of American Iron, Steel, and Other Manufactured Goods - Buy American Act - Construction Materials Under Trade Agreements (Aug 2009)
- 52.225-24 - Notice of Required Use of American Iron, Steel, and Other Manufactured Goods- Buy American Act - Construction Materials Under Trade Agreements (Mar 2009)

8. **Reporting:**

a. **Recovery.gov:**

- (1) The CO/CS shall provide contractual information to the designated ARRA Coordinator in Management Services of Departmental Management as requested. This information may be required on a daily, weekly, monthly and quarterly basis.
- (2) The CO/CS shall refer to the “American Recovery & Investment Act of 2009 (ARRA) Funds Operating Procedures,” issued by Management Services of Departmental Management, for contractual information to be reported on Recovery.gov.
- (3) The CO/CS does not provide any direct entries into the recovery.gov database system.

b. **FederalReporting.gov:**

- (1) All ARRA prime recipients are required to report the awards in federalreporting.gov, pursuant to FAR 52.204-11. Failure to report precludes the Contract Recipient from participating in any future Federal government contracts.
- (2) Prime recipient (including subcontractors) are required to place an initial award entry into federalreporting.gov and update the information on a quarterly basis thereafter. The prime recipient may elect to report for the subcontractor(s) or require the subcontractor(s) to report independently.
- (3) The prime recipient’s first (1<sup>st</sup>) report is due no later than the 10th day after the end of the calendar quarter in which the Contractor received the award. Thereafter, reports shall be submitted, no later than the 10th day after the end of each quarter.

- (4) The CO/CS shall monitor and review all entries, and make comments on any noted errors and/or omissions on all contracts/grants of the prime recipient's reporting entries.
- (5) The CO/CS shall, within seven (7) calendar days after the prime recipient's 1<sup>st</sup> and/or quarterly entries, ensure that the contractor has posted the entries.
- (6) The CO/CS shall, within 23-29 days after the end of the quarter, review and comment (provide an annotation that a review has been conducted) in [federalreporting.gov](http://federalreporting.gov). The CO/CS shall continue this monitoring until such time that the recipient reports as required or the period for entry expires.

9. **Monitoring the Recipient's Reporting Entries:**

- a. The CO/CS shall prior to the 10<sup>th</sup> day of the recipient's reporting deadline, ensure the prime recipient has submitted the report in [federalreporting.gov](http://federalreporting.gov).
- b. If the report has not been submitted, the CO/CS shall send an "Email" notification to the prime recipient to advise that the reporting requirement is required. Additionally, the notification shall inform the ARRA prime recipient that failure to submit the mandatory report is grounds for ineligibility for future federal awards.
- c. All documentation and correspondence relating to contract monitoring, reviewing and commenting shall be placed in the contract file.
- d. The CO/CS shall insert a screen print of the [federalreporting.gov](http://federalreporting.gov) comments in the contract file.
- e. Reporting Timelines and Activities:
  - (1) 1-14 days after end of the quarter, prime recipients AND subcontractors enter draft reporting data OR initial submission determined by the award date.
  - (2) 15-20 days after end of the quarter, is the late submission period for prime recipients and/or subcontractors.
  - (3) 21-22 days after end of the quarter, prime recipients are able to review data submitted by their respective subcontractors AND both prime recipients and subcontractors are able to make corrections.
  - (4) 1-22 days after end of the quarter, the CO/CS will only have view capability.
  - (5) 23-29 days after end of the quarter, CO/CS review and comment period commences; AND prime recipients and subcontractors make any necessary corrections as a result of the CO/CS review comments.
  - (6) 30 days after end of the quarter, recipients' reports are published on [recovery.gov](http://recovery.gov).

- (7) 33-75 days after end of quarter, agency comments on data submitted, prime recipients review data submitted by subcontractors and prime recipients and subcontractor make corrections. Reports may only be corrected during this period.

10. **Award ID Change:**

- a. Changes in the naming convention/formatting or issuing entirely new award(s) number that will not be recognized within the system, the CO/CS shall submit:
- (1) Inform the DM Management Services ARRA Coordinator
  - (2) Send an email To: Recovery@omb.eop.gov and include:
    - Subject: [Agency Name] Request to Change Award ID {*enter the award ID*}
    - Email Body must contain:
      - Rational for the Request
      - Program Name
      - Recipient Type (*e.g., state/local government, Federal contractor, etc.*)
      - Number of Reports that will be Affected
- b. Upon receipt of OMB's approval to the Change Request, the CO/CS shall be prepared to provide a detailed record that links awards with different ID numbers across reporting quarters.