

Acquisition Policy
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2009-004

Date: June 17, 2009

To: Chief of the Contracting Office (COCO)
Acquisition Personnel

From: Office of the Senior Procurement Executive

Subject: RECOVERY ACCOUNTABILITY AND TRANSPARENCY

SUMMARY: The American Recovery and Reinvestment Act (ARRA or the "Act") mandates periodic reviews on whether reporting of contracts and grants that use Recovery Act funds meet applicable standards. The goal of the Act is to determine whether wasteful spending, poor contract or grant management, or other abuses are occurring and to refer matters to the appropriate inspector general for investigation.

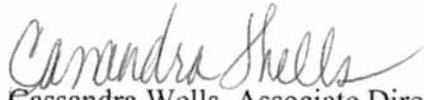
The Recovery Accountability and Transparency Board (RATB), was established to perform periodic reviews on reporting of contracts and grants that utilize Recovery Act funds meet applicable standards. The RATB's Procurement and Grant Compliance staff looked for noncompliance to both the "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009" issued by Office of Management and Budget and to the latest online edition of the Federal Acquisition Regulation.

The RATB's findings while based on a small, random sample of Recovery Act contracts awarded indicated that most errors that occur are administrative in nature. The RATB's findings are provided below:

- The title of the contract pre-solicitation and or award announcement is incomplete with only a reference to "Recovery."
- The synopsis field is left blank which subverts auditing and tracking efforts.
- Blanket Purchase Agreements (BPA) and Indefinite Delivery Indefinite Quantity (IDIQ) solicitations are being issued with specific reference to commingling Recovery funds along with appropriated dollars.
- Recovery funded BPA and IDIQ efforts should, to the extent practicable, be solicited separately from efforts using standard appropriation.
- Contractors are awarded multiple contracts, yet are not registered into CCR.gov.

Based on the RATB's analysis Office of Federal Procurement Policy developed a Contract Checklist Pre-award & Award (see attached) or view it at Recovery.gov.

For further information please contact Lenita Ahmadi, at (202) 366-4974 or email Lenita.Ahmadi@dot.gov.

A handwritten signature in cursive script that reads "Cassandra Wells".

Cassandra Wells, Associate Director,
Acquisition Policy, Oversight and Business Strategies Division
Office of the Senior Procurement Executive

Attachment



RATB Advisory - Procurement Trends



Summary

The American Recovery and Reinvestment Act (ARRA or the "Act") mandates periodic reviews on whether the reporting of contracts and grants that use Recovery funds meet applicable standards. The goal of the Act is to determine whether wasteful spending, poor contract or grant management, or other abuses are occurring and to refer matters to the appropriate inspector general for investigation.

In many of the initial cases, the RATB Procurement and Grant Compliance staff looked for noncompliance to both the "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009" issued by the Office of Management and Budget and to the latest online edition of the Federal Acquisition Regulation.

Our initial findings (based on a small, random sampling of Recovery contracts awarded) indicate that most errors are administrative in nature.

Transparency Examples

- 1) The title and synopsis of the contract pre-solicitation and/or award announcement does not adhere to OMB and FAR guidance and fails to be clear and unambiguous to the general public (e.g., Contract type and type of competition is missing, no specific rationale or citation is given for awarding an action that is not both fixed price and competitive, contractor address is missing). Although published, one cannot determine how these procurements are Recovery Act related on inspection.
- 2) Contractors identified in the Central Contractor Registration (CCR) database do not show reporting of contract awards in the Federal Procurement Data System (FPDS) as required by law. This prevents the public from scrutinizing awards data.
- 3) Contractors have awarded additional small business set-aside task orders from contracting activities even after the SBA OIG questioned the contractors' 8(a) status. It appears that in this instance, the company may have ultimately been allowed to retain the task order; however, our position is that more attention must be paid to contracts in this area, and contracting officers should consider these factors in their risk assessment prior to award.

Accountability Examples

- 1) The title of the contract pre-solicitation and/or award announcement is often incomplete with only a reference to "Recovery." The synopsis field is often left blank. In addition to being a transparency issue, this subverts auditing and tracking efforts carried out by any oversight body.
- 2) Blanket Purchase Agreements and Indefinite Delivery Indefinite Quantity solicitations are being issued with specific reference to commingling Recovery funds along with appropriated dollars. Recovery funded BPA and IDIQ efforts should, to the extent practicable, be solicited separately from efforts using standard appropriation.
- 3) Contractors are being awarded multiple contracts, yet on inspection have not registered their company into CCR.gov, which is a requirement for contract work with the federal government. This precludes verification of contractor qualification and eligibility.

Actions

Based on an analysis of initial trends, RATB made a template, vetted by the Office of Federal Procurement Policy (OFPP), to guide contracting specialists as they populate the open text fields (the title and synopsis sections) in the Federal Business Opportunities website (www.fbo.gov). Contracting specialists who use this template will be able to answer the requirements of the Recovery Act (e.g., "Relevance to the Act" and justification for "Other than Competitive" or "Fixed-Price actions").

We are also investigating whether Federal Business Opportunities can 1) change their website to incorporate our template and thus preclude every agency from having to send out policy letters, and 2) add DUNS functionality into their website in order to decrease administrative errors.

We expect that due to the emphasis on rapid spending of ARRA funds and the sheer volume of contracting actions, we will continue to see procurement process errors. However; it is our goal, that attention to detail in the beginning of the procurement cycle will help prevent future contract issues, aid in our accountability mission, and serve as an added deterrent against any criminal wrongdoing.

Award Checklist

1. If an award was not competitive, was it documented in the contract file as required by the FAR and Agency policy?
YES ___ NO ___
2. Was the contractor determined to be responsible and was verification conducted to ensure the contractor was not listed in the Excluded Parties List System at www.epis.gov?
YES ___ NO ___
3. Was the award announced on FBO?
YES ___ NO ___
4. Is the FBO award announcement appropriately identified by:
 - including the word "Recovery" as the first word in the Title field (if notices are submitted electronically via ftp/email)? YES ___ NO ___, or
 - selecting "yes" for the field "Is this a Recovery and Reinvestment Act action" on the Notice Details form (Step 2) located below the NAICS Code field? YES ___ NO ___
5. Was a summary of the action, including a clear, plain language description of the required products or services (including construction), posted on FBO?
YES ___ NO ___

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6. Regardless of dollar value, if the contract action, including all modifications and orders issued under task or delivery order contracts, is not both fixed price and competitive, does the description in the FBO award notice announcement include a rationale for using other than a fixed price and/or competitive approach?
YES ___ NO ___

7. Was the action reported in FPDS?
YES ___ NO ___

8. Did the FPDS entry include the TAS in the Description of Requirement field in the proper format?
TAS::XX XXXX XXX::TAS
YES ___ NO ___

References

- FAR 4.605
- FAR 5.704-5.705
- FAR 9.103
- FAR 9.404
- FAR 52.203-15
- FAR 52.204-11
- FAR 52.212-4
- FAR 52.212-5
- FAR 52.214-26
- FAR 215-2
- FAR 225-21 – 52.225-24

Contract Checklist

Pre-Award & Award



Recovery Accountability
and Transparency Board

Washington, DC

Pre-Award Checklist

1. If this is an interagency acquisition, does the Interagency Agreement include language determining Agency roles and responsibilities for meeting reporting and posting requirements under the American Recovery and Reinvestment Act (Recovery Act) and as implemented through OMB guidance and the FAR?
YES ___ NO ___
2. Does the solicitation or award indicate which products or services are funded under the Recovery Act?
YES ___ NO ___
3. Does the solicitation/award include the required FAR clauses relating to:
 - Whistleblower Protection?
YES ___ NO ___
 - Contractor Reporting Requirements?
YES ___ NO ___
 - Special Buy-American Act requirements?
YES ___ NO ___
 - Expanded GAO/OIG access to contractor records?
YES ___ NO ___
4. Were all authorized small business contracting programs considered in order to provide small businesses with maximum opportunities to participate as prime and subcontractors?
YES ___ NO ___
5. Does the solicitation/award comply with the environmental requirements of FAR Part 23?
YES ___ NO ___
6. Was a pre-solicitation announcement posted on FedBizOps (FBO) (required for both contracts and orders issued under task or delivery order contracts (See FAR Subpart 5.704(a)(2))?
YES ___ NO ___
7. Is the FBO pre-solicitation announcement appropriately identified by:
 - including the word "Recovery" as the first word in the Title field (if notices are submitted electronically via ffp/email)?
YES ___ NO ___; or
 - selecting "yes" for the field "Is this a Recovery and Reinvestment Act action" on the Notice Details form (in Step 2) located below the NAICS Code field?
YES ___ NO ___
8. If the pre-solicitation announcement was for an order under a task or delivery order contract, did it include the following statement in the Description field in FBO preceding the actual description?

**THIS NOTICE IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THIS OPPORTUNITY IS AVAILABLE ONLY TO CONTRACTORS UNDER (CONTRACTING OFFICER INSERT PROGRAM/CONTRACT NAME).
YES ___ NO ___**
9. Is the description of the supplies and services (including construction) in the FBO notice clear and unambiguous to the general public?
YES ___ NO ___

Reminder

- Any Recovery Act funded action that is not both competitive and fixed price must be supported by a "rationale" posted on FBO for other than a competitive and/or fixed price approach. See Award Checklist (over) and FAR 5.705(b) for more details.
- This requirement applies regardless of dollar value or whether the action is funded in whole or in part by the Recovery Act. It also applies to contracts, orders, or modifications to an existing contract or order.
- This requirement does not relieve you of your obligations to document the file and obtain approvals of other than competitive or fixed price actions required elsewhere in the FAR or by your agency.