



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Chief Financial Officer**  
**Assistant Secretary for Administration**  
Washington, D.C. 20230

APR 30 2009

**PROCUREMENT MEMORANDUM 2009-09 (Amendment 1)**

**ACTION**

**MEMORANDUM FOR: SENIOR BUREAU PROCUREMENT OFFICIALS  
HEADS OF CONTRACTING OFFICES**

**FROM:** Helen Hurcombe   
Senior Procurement Executive  
And Director for Acquisition Management

**SUBJECT:** Updated Guidance on Implementation of American  
Recovery and Reinvestment Act

**Background**

The American Recovery and Reinvestment Act (Recovery Act) of 2009 is designed to provide easily identifiable results through transparent contract award, administration and reporting processes. Contracting Officers are accountable for responsible disposition of the funding provided by the Recovery Act. Previously issued guidance (Procurement Memorandum 2009-04) outlined the initial implementation plan. Since that time, more specific guidance has been issued by the Office of Management and Budget (OMB) (Memorandum M-09-15). In addition, five (5) Federal Acquisition Regulation (FAR) interim rules were published in the Federal Register on March 31, 2009, and included in Federal Acquisition Circular (FAC) 2005-032, providing authorities, policies and procedures for government-wide implementation of the Recovery Act and special contract procedures. The interim rules immediately make available FAR solicitation provisions and contract clauses to include in Government contracts. Appendix A provides a Requirements Matrix for OMB Memorandum M-09-15 to assist in quickly identifying some of the key requirements of the Recovery Act.

**Purpose**

The purpose of this guidance is to update the requirements for Department of Commerce (DOC) Contracting Officers when planning, awarding and administering contractual actions and/or processing or administering interagency acquisitions involving funding provided through the Recovery Act. Further, this guidance rescinds Procurement Memorandum 2009-04.

**Applicability**

This guidance applies to all transactions that involve funding provided through the American Recovery and Reinvestment Act of 2009.

## Required Actions

- **Acquisition Planning Considerations**

Contracting Officers shall work closely with requirements officials to ensure that special emphasis is placed on the following considerations during acquisition planning.

- **Acquisition Plans**

In addition to the normal requirements provided by FAR Part 7 and Procurement Memorandum 2007-03, dated March 28, 2007, acquisition plans for acquisitions using Recovery Act funding must address:

- How Recovery Act funds will be tracked separately from other funds - Recovery Act and non-Recovery Act funding cannot be co-mingled in a single contract action;
- Contract requirements and outcomes expressed in terms of Recovery Act goals.

- **Contract Type Selection**

The objective of contract type selection is to ensure reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance. Contracting Officers shall select contract types that support requirements for meaningful and measurable outcomes consistent with program plans for, and goals of, the Recovery Act.

To the maximum extent possible, contracts funded under the Recovery Act shall be awarded as fixed-price contracts. The types of fixed-price contracts are listed at FAR Subpart 16.2. Note that the Recovery Act does not require a firm-fixed-price contract.

While contracts awarded under the Multiple Award Schedule (MAS) program are fixed-price contracts (with economic price adjustment), certain task orders placed under those contracts may not be fixed-price (e.g., Labor Hour or Time and Material). A MAS contract for services awarded based on hourly rates may be considered a fixed-price contract. However, a task order placed against that MAS contract is considered to be a labor hour order (not fixed price) when the order is awarded with a not-to-exceed ceiling price, for a certain level of effort, based on estimated hours multiplied by the contract hourly rates, and the contract is to be paid the hourly rates for actual hours expended.

If the task order is awarded using the MAS contract hours rates multiplied times estimated hours to arrive at a requested total price, and the contractor is to be paid the total price, regardless of the actual hours expended, then the task order may be considered fixed-price.

➤ **Competition**

Contracting Officers shall follow the same laws, principles, procedures, and practices in awarding non-competitive contracts with Recovery Act funds as they do with other funds.

To the maximum extent practicable, contracts using Recovery Act funds shall be awarded using competitive procedures. These procedures include those identified under FAR Subparts 6.1, 6.2, and 16.505(b)(1) and Subsections 8.405-1 and 8.405-2. As appropriate, existing fixed-price contracts that were competitively awarded may be used to obligate funds expeditiously.

➤ **Acquisition Objectives and Evaluation Criteria**

Contracting officers shall structure acquisitions to result in meaningful and measurable outcomes that are consistent with project plans and that promote the goals of the Recovery Act. The evaluation criteria for award should include those that bear on the measurement and likelihood of achieving these outcomes.

➤ **Acquisition Flexibilities**

Contracting Officers are authorized acquisition flexibilities, as appropriate, to avoid unnecessary delays in awarding contracts with Recovery Act funds. Appendix B provides a list of authorized flexibilities. The Recovery Act does not independently trigger use of emergency procurement authorities in FAR Part 18. These authorities are triggered in limited, statutorily identified, circumstances, such as in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States. Unless one of the circumstances identified in FAR Subpart 18.001 exists, the special emergency authorities shall not be used.

➤ **Interagency Agreements**

In addition to the requirements of Office of Federal Procurement Policy (OFPP) memorandum entitled *Improving the Management and Use of Interagency Acquisitions*, dated June 6, 2008, when using assisted acquisitions for requirements using Recovery Act funding, interagency agreements must spell out the assignment of agency roles and responsibilities to fulfill the unique requirements of the Recovery Act. These include, but are not limited to, report development and submission, accurate and timely data reporting, and special posting requirements to agency web sites and Recovery.gov.

The following language may be added to interagency agreements using Recovery Act funding and resulting in an assisted acquisition:

"[The servicing agency] shall ensure that: FPDS-NG reporting for Recovery Act funding is completed in a timely manner; FedBizOpps notice requirements are accomplished; any non-competitive or other than fixed price award is posted as required on Recovery.gov; the solicitation and award documents include all required Recovery Act clauses and provisions; the solicitation and award terms clearly identify the contractor's reporting

responsibilities under the Recovery Act; and all required reporting under the Recovery Act is timely and accurate.”

➤ **Small Business Participation**

Contracting Officers shall provide maximum practicable opportunities for small businesses to compete for contracts and to participate as subcontractors. Authorized small business contracting programs may be used.

➤ **Davis-Bacon Act and Service Contract Act**

The Davis-Bacon Act and Service Contract Act apply to contract actions using Recovery Act funds. Contracting Officers shall follow the same laws, principles, procedures, and practices in awarding contracts with Recovery Act funds as with other funds.

➤ **Javits-Wagner-O’Day Act – AbilityOne**

To maximize participation of Americans who are blind or severely disabled, Contracting Officers must continue to purchase required goods and services on the Procurement List maintained by the Committee for Purchases From People Who Are Blind or Severely Disabled. Contracting Officers are encouraged to pursue additional opportunities to award contracts to AbilityOne sources as authorized by the Javits-Wagner-O’Day Act.

➤ **Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace**

Contracting Officers shall comply with the requirements of FAR Part 23 when acquiring supplies and services using Recovery Act funds.

➤ **Contract Financing and Structuring Contract Deliverables**

Contracting Officers should give special attention to structuring contract deliverables to promote the economic stimulus goals (including expenditure timeframes) of the Recovery Act. Ensuring consideration of contractor cash flow during acquisition planning will mitigate schedule and performance risks to the government and reduce costs to the contractor.

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 provided to ensure accountability.

Alternatives to contract financing include structuring contract line items to allow invoicing and payments based on interim and partial deliverables, milestones, percent-of-completion, etc.

➤ **Existing Contracts**

If Recovery Act funds are used to modify an existing contract, Contracting Officers shall modify the existing contract, on a bilateral basis, to include the Recovery Act FAR clauses contained in the interim rules. This also applies to task and delivery orders. In the event that a contractor is unwilling to accept

such a modification, the contractor will not be eligible for receipt of Recovery Act funds on the contract.

▪ **Pre-solicitation and Award Notices**

The Recovery Act imposes unique transparency requirements that change the pre-solicitation and award notice process, beyond standard practice. A recent change to the FAR provides special instructions to Contracting Officers on their use of the Government-wide Point of Entry and the Federal Procurement Data System when Recovery Act funds are used. The FAR now requires:

- A rationale for using other than fixed-price or competitive approaches in award notices at;
- A description of supplies and services that is clear and unambiguous to support public transparency and understanding of the procurement; and
- Special posting requirements for modifications as well as orders under task and delivery order contracts.

Specific instruction for Recovery Act pre-solicitation and award notices are available at <https://www.fpds.gov> in the “What’s New” section under “American Recovery and Reinvestment Act” and at <https://www.fedbizopps.gov> under “Buyer FAQs”.

▪ **Responsibility Determinations**

Contracting Officers shall place special emphasis on responsibility determinations and pre-award surveys as required by FAR Part 9. Contracting Officers shall review the Excluded Parties List before determining that a prospective contractor is responsible prior to awarding contracts with Recovery Act funds. When an acquisition poses unique risks, Contracting Officers should use special responsibility standards to mitigate that risk. If sufficient information to make a determination of responsibility is not available, a pre-award survey should be requested unless the contract will be fixed-price at or below the simplified acquisition threshold or will involve the acquisition of commercial items.

▪ **Special Contract Requirements**

The Recovery Act establishes several special contract requirements for publicizing contract actions, contractor reporting, whistleblower protection, Buy American Act, and access to contractor records. The Interim FAR rules summarized below are effective immediately and prescribe provisions and clauses for implementing the special contract requirements for Recovery Act actions.

➤ Publicizing Contract Actions

To provide accountability and transparency in relation to publicizing contract actions, FAR Parts 4, 5, 8, 13, and 16 are amended as follows: (1) Part 4 includes a new paragraph requiring the Contracting Officer to enter data in the Federal Procurement Data System on any action funded in whole or in part by the Recovery Act, in accordance with the instructions at [www.fpds.gov](http://www.fpds.gov), [when entering data in FPDS on any action (including

modifications) funded by the Recovery Act, Contracting Officers shall enter the Treasury Account Symbol (TAS) in the *Description of Requirement* field in addition to existing requirements for this field. Contracting Officers shall coordinate with their budget/finance offices to identify the applicable TAS code]; (2) Subpart 5.7 is added to direct the contracting officer to use the government-wide point of entry ([www.fedbizopps.gov](http://www.fedbizopps.gov)) to (a) identify the action as funded by the Recovery Act; (b) post preaward notices for orders exceeding \$25,000 for "informational purposes only"; (c) describe supplies and services (including construction) in a narrative that is clear and unambiguous to the general public; and (d) provide a rationale for awarding any action, including modifications and orders, that is not both fixed-price and competitive, and include the rationale for using other than a fixed-price and/or competitive approach; (3) Parts 8, 13, and 16 are amended to reflect the new posting requirements for orders at Subpart 5.7.

➤ Contractor Reporting

To implement Section 1512 of Division A of the Recovery Act, also known as the Jobs Accountability Act which requires contractors to report on their use of Recovery Act funds, this rule adds Subpart 4.15 and FAR clause 52.204-11 that must be included in solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. Commercial item contracts and commercially available off-the-shelf (COTS) item contracts are covered, as well as actions under the simplified acquisition threshold. In addition, Contracting Officers who obligate Recovery Act funds on existing contracts or orders must modify those contracts to add the new clause. An online reporting tool is being developed for contractors to report any work funded by the Recovery Act and for which an invoice is submitted. This tool will allow the Contracting Officer to monitor contractor reporting as a matter of contract performance. The reporting tool will be made available in the July 2009 timeframe at [www.FederalReporting.gov](http://www.FederalReporting.gov).

➤ Whistleblower Protection

To implement the Recovery Act with respect to Section 1553 of Division A, which prohibits nonfederal employers from discharging, demoting, or discriminating against an employee as a reprisal for disclosing information, the interim rule adds Section 3.907, "Whistleblower Protections under the American Recovery and Reinvestment Act of 2009," and FAR clause 52.203-15, "Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009". The rule provides that nonfederal employers receiving funds under the Recovery Act are prohibited from discharging, demoting, or discriminating against employees as a reprisal for disclosing certain covered information to certain categories of government officials or a person with supervisory authority over the employee. In addition, definitions relevant to the statute are provided; time periods are established for when the inspector general and the agency head must take action with regard to a complaint filed by a contractor employee; procedures for access to investigative files of the inspector general are established; and remedies and enforcement authority are given.

➤ Buy American Act

To implement the Recovery Act with respect to the Buy American provision, Section 1605 in Division A, the rule adds Subpart 25.6, "American Recovery and Reinvestment Act–Buy American Act–Construction Materials," and provisions and clauses at Part 52, with conforming changes to Subparts 1.1, 5.2, 25.0, 25.2, and 25.11. In order to segregate the unique Buy American provisions of the Recovery Act from the requirements of the Buy American Act and the Trade Agreements Act, the rule changes are included in a separate subpart of FAR Part 25. Subpart 25.6 includes a policy statement on the prohibition against using funds appropriated by the Recovery Act for U.S. construction projects to purchase iron, steel, or other manufactured goods that were not produced in the United States. It also notes that unmanufactured construction materials remain covered by the provisions of the Buy American Act. Also among the changes is a new paragraph added to Section 25.1102, entitled "Acquisition of Construction," that substitutes four new provisions and clauses (with appropriate alternates), to be used when contracting with funds appropriated by the Recovery Act, for the four clauses otherwise used in construction contracts to implement the Buy American Act and U.S. obligations under applicable trade agreements.

➤ Access to Contractor Records

To implement the Recovery Act with respect to Sections 902, 1514, and 515, which serve to prevent the fraud, waste, and abuse of Recovery Act funds through the review and audit of contracts using such funds, alternate clauses are added to FAR clause 52.214-26, "Audit and Records–Sealed Bidding," clause 52.212-5, "Contract Terms and Conditions Required to Implement Statutes or Executive Orders–Commercial Items," and clause 52.215-2, "Audit and Records–Negotiation." In addition, FAR Section 12.504(a)(7) was amended for contracts using Recovery Act funds to apply 41 U.S.C. 254d(c) and 10 U.S.C. 2313(c), "Examination of Records of Contractor," to commercial item subcontracts that are otherwise exempt when subcontractors are not required to provide cost or pricing data. Similarly, clause 13.006(d) was amended for contracts using Recovery Act funds to apply clause 52.215-2 to contracts and subcontracts that otherwise are exempt because they are under the simplified acquisition threshold. The interim rule is necessary to implement these measures to both protect, and provide transparency in the use of, Recovery Act funds.

- **Obligations Funded by both Recovery and Non-Recovery Funds**  
Co-mingled funds (Recovery Act and non-Recovery Act on the same contract action) cannot be accurately reported. For obligations that are funded by both recovery and non-recovery funds, Contracting Officers shall award a separate contract action and report each in accordance with associated requirements.
- **Documentation**  
Contracting Officers shall place special emphasis on file documentation policies and procedures prescribed in FAR Part 4. Proper documentation shall be maintained for each contract award.

- **Oversight**

Special attention should be given to maintaining strong internal controls over Recovery Act program funds. The high risk associated with the award and expenditure of Recovery Act program funds merit increased oversight. Therefore, Senior Bureau Procurement Officials shall provide for appropriate oversight of contracts to ensure outcomes that are consistent with and measurable against project plans and goals under the Recovery Act. Bureau Procurement Officials shall ensure the appointment of qualified Contracting Officers, Contracting Officer Representatives (CORs) and Program Managers with certification levels appropriate for the complexity of the Recovery Act projects.

In addition, Bureau Procurement Officials shall actively monitor contracts to ensure that performance, cost, and schedule goals are being met, including:

- Ensuring that incentive and award fees are effectively administered;
- Implementing quality assurance procedures established for the contract;
- Documenting timely inspection and acceptance of deliverables;
- Promptly using all available tools to identify and remedy deficiencies related to contractor performance, cost, and schedule (e.g., Quality Assurance Surveillance Plans, cure notices, show cause letters); and
- Completing timely contractor performance evaluations that accurately reflect the contractor's actual performance, supported by appropriate documentation.

- **Programmatic Reviews**

All Recovery Act funded programs are subject to review by the Investment Review Board (IRB), regardless of whether an acquisition or grant is involved in the execution of the program or not. This review is intended to provide senior-level management oversight of the program and its progress. Periodic update reviews will be scheduled for each Recovery Act funded project. If acquisitions or Interagency Agreements (IAAs) are proposed to be executed under the program, the following thresholds will be utilized to determine the review process:

- **Acquisitions/IAs Exceeding \$75 Million or Classified as a Major Investment**  
Acquisitions whose life-cycle cost exceed \$75 million or classified as a "major investment" are subject to the IRB process.
- **Acquisitions/IAs Exceeding \$10 Million but not Classified as a Major Investment**  
Acquisitions whose life-cycle cost exceeds \$10 million but are less than or equal to \$75 million and are not classified as a "major investment" are subject to the paper acquisition review process as outlined in Procurement Memorandum 2009-06 entitled "Revised Acquisition Review Process for Acquisitions Exceeding \$10 Million but not Classified as a Major Investment".

➤ **Acquisitions/IAs Below \$10 Million**

Acquisitions whose life-cycle cost does not exceed \$10 million are subject to a post-award acquisition management review to be performed by the Office of Acquisition Management.

▪ **Reporting Requirements**

The Recovery Act imposes unique transparency requirements that require additional information collection and dissemination beyond standard practice.

➤ **Contracts, Orders, and Modifications Exceeding \$500,000**

For each contract or order (or modification to an existing contract or order) over \$500,000, Contracting Officers shall provide a summary of the contract or order (or modification to an existing contract or order), including a description of the required products and services, which will be made available publicly and linked to Recovery.gov.

➤ **Actions that are not Fixed-price and Competitively Awarded**

A summary of any contract or order (or modification to an existing contract or order), including a description of the required products and services, using Recovery Act funds shall be posted in a special section of the Recovery.gov web site unless the contract or order is both fixed-price and competitively awarded. This includes non-competitive set-asides under section 8(a) of the Small Business Act. Appendix C provides a summary of posting requirements.

➤ **Actions under \$25,000, Payments to Individuals, Administrative Funding, and Purchase Card Transactions**

Current reporting under the Federal Funding Accountability and Transparency Act only requires information above \$25,000 to be reported to USASpending.gov. The Recovery Act requires reporting on all funding, though it does allow for reporting of aggregates for amounts under \$25,000.

Beginning May 5, 2009, amounts under \$25,000, payments to individuals, administrative funding, and other amounts not currently reported to USASpending.gov shall be entered into FPDS using a single vendor name from a list to be provided by the Office of Management and Budget (OMB) in future guidance.

Initially, all transactions, including purchase card spending, will be included in the gross outlay reporting by TAFS, not by individual transaction. Instructions on more detailed reporting may be included in future updates to this guidance.

▪ **Purchase Card Transactions**

The GSA SmartPay® purchase card can be used for official purchases in support of the Recovery Act for transactions not to exceed \$3,000, regardless of cardholder warrant level. Cardholders shall not split requirements to circumvent the \$3,000 threshold. All purchases must comply with OMB Circular A-123, Appendix B, and Commerce Acquisition Manual (CAM) 1313.301.

Cardholders shall follow typical transaction reconciliation procedures, but must reconcile purchases to the accounting codes and provide appropriate Recovery Act transaction descriptions. All Recovery Act reconciliation and reporting is the responsibility of the cardholder and, in turn, their approving official and supervisor.

Agency Program Coordinators (APC) shall perform a 100% review of all Recovery Act purchase card transactions.

If you have general questions regarding this guidance, please contact Lori Donovan at [ldonovan@doc.gov](mailto:ldonovan@doc.gov) or (202) 482-1716.

cc: Acquisition Community  
Acquisition Council

## Appendix A – Requirements Matrix for OMB Memorandum M-09-15

<b>OMB Guidance, M-09-15, Citation</b>	<b>Pay special attention to the items provided below related to acquisitions that will use Recovery Act funds.</b>
Sec. 6.1(1), pg. 52	Select a contract type that supports requirements for meaningful and measurable outcomes consistent with agency plans for, and the goals of, the Recovery Act. The President's Memorandum of March 4, 2009, on "Government Contracting" established a preference for fixed-price contracts.
Section 6.1(1), pg. 52 and Sec. 3.8.e, pg. 32	Using other than a fixed-price contract may be appropriate but requires paying special attention to ensure that sufficient qualified acquisition personnel are available to perform contract administration to mitigate the government's risk. When riskier contract types are proposed provide appropriate oversight such that all alternatives have been considered and qualified staff is available for monitoring performance to mitigate risks.
Sec. 6.1, (2), pg. 53	Promote competition to the maximum extent practicable. The President's Memorandum of March 4, 2009, on "Government Contracting" stated that it is the policy of the Federal Government that executive agencies shall not engage in noncompetitive contracts except in those circumstances where their use can be fully justified and where appropriate safeguards are in place to protect the taxpayer.
Sec. 3.8.g, pg. 32	Ensure receipt of funds is made contingent on recipients meeting the reporting requirements in Section 1512 of the Act. Contracting officers must include the new clause (52.204-11) in solicitations and contracts funded in whole or in part with Recovery Act funds. Contracting officers shall ensure that the contractor complies with the reporting requirements of the new clause.
Section 3.8.h, pg. 32	Structure acquisitions to result in meaningful and measurable outcomes that are consistent with agency plans and that promote the goals of the Recovery Act. The evaluation criteria for award should include those that bear on the measurement and likelihood of achieving these plans and goals.
Sec. 3.8.i, pg. 32	Consider alternatives to contract financing, including structuring contract line items to allow invoicing and payments based upon interim or partial deliverables, milestones, percent-of-completion, etc. Ensure consideration of contractor cash flow during acquisition planning to mitigate schedule and performance risks to the government and reduce costs to the contractor associated with financing in a tight credit market.
Section 3.8.j, pg. 32	Evaluate workforce needs in order to appoint qualified Contracting Officers, Contracting Officer Technical Representatives (COTRs), and Program Managers with certification levels appropriate to the complexity of Recovery Act projects.
Sec. 6.1, pg. 52	Mitigate schedule, cost and performance risk.
Sec. 6.1, pg. 52	Maximize opportunities for small businesses to compete for agency contracts and to participate as subcontractors.
Sec. 6.1, pg. 52	Use supplies and services provided by nonprofit agencies employing people who are blind or severely disabled as provided in FAR Subpart 8.7, Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled.
Sec. 6.1, pg. 52 and 6.2(2), pg. 58	Expediently award contracts using available streamlining flexibilities. Agencies are cautioned that the Recovery Act does not independently trigger use of emergency procurement authorities in FAR Part 18, Emergency Acquisitions.

Sec. 6.1(8), pg. 55	Continue to comply with the requirements of FAR Part 23, Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace, when acquiring supplies and services using Recovery Act funds.
Sec. 6.2, (1), pg. 57	Place special emphasis on responsibility determinations and pre-award surveys. Reference FAR Part 9, Contractor Qualifications.
Sec. 6.2, (3), pp. 57-58	The Davis-Bacon Act and Service Contract Act apply to contract actions using Recovery Act funds. Agencies must follow the same laws, principles, procedures, and practices in awarding contracts with Recovery Act funds as they do with other funds.
Sec. 6.3, (1), pg. 59	Ensure that incentive and award fees are effectively administered. (For further guidance, see the OFPP memorandum entitled <i>Appropriate Use of Incentive Contracts</i> , 12/4/07).
Sec. 6.3, (1), pg. 59	Implement quality assurance procedures established for the contract.
Sec. 6.3, (1), pg. 59	Document timely inspection and acceptance of deliverables.
Sec. 6.3, (1), pg. 59	Use all available tools to identify and remedy deficiencies related to contractor performance, cost, and schedule (e.g., Quality Assurance Surveillance Plans, cure notices, show cause letters).
Sec. 6.3, (1), pg. 59	Complete timely contractor performance evaluations that accurately reflect the contractor's actual performance, supported by appropriate documentation.
Appendix 4.4, pg. 86	New Requests for Proposals issued under the Recovery Act initiatives should contain the necessary language to satisfy the requirements of the Recovery Act.
Appendix 4.4, pg. 86	Contracts shall be awarded in a prompt, fair and reasonable manner.
Appendix 4.4, pg. 86	Contracts or orders awarded using Recovery Act funds shall include the specific clauses required (see Recovery Act FAR interim rules).
Appendix 4.4, pg. 86	Contracts awarded using Recovery Act funds should be transparent to the public and reported in a clear, accurate and timely manner (e.g., required reporting to FPDS, FedBizOpps).
Sec. 6.5, pg. 60	Proper documentation must be maintained for each contract award. FAR Part 4, Administrative Matters, prescribes policies and procedures related to the proper documentation of contract files.
Sec. 1.14, pg. 9	GSA SmartPay® purchase cards can be used for official purchases in support of the Recovery Act.
Sec. 6.1(5), pg. 54	Interagency Agreements. When using the assisted acquisition process, the underlying Interagency Agreement must spell out the assignment of agency roles and responsibilities to fulfill the unique requirements of the Recovery Act.

## Appendix B – Acquisition Flexibilities

### Generally Available Acquisition Flexibilities A Quick Reference

#### **Small Dollar Acquisitions under the Simplified Acquisition Threshold (SAT) (\$3,000 to \$100,000)**

- Various flexibilities are provided in connection with publicizing – e.g., an oral solicitation may be efficient for actions up to \$30,000 & other actions for which there is an exception to notice; response time may be less than 30 days provided a response time is reasonable (FAR 5.101, 5.202, 5.203, 13.106-1).

#### **Acquisitions under the test program for commercial items (\$100,000 to \$5,500,000)**

- Acquisition generally may be treated like a purchase under the SAT, with certain exceptions (see FAR Subpart 13.501)

#### **Commercial Item Acquisitions (over \$5,500,000)**

- FAR Part 12 policies & procedures apply, including optional streamline procedures for evaluation and solicitation.

- Wait period after notice & before issuance of solicitation may be reduced (FAR 5.203(a)).

- Based on circumstances, the contracting officer may allow for fewer than 30 day response time for receipt of offers (FAR 12.205, 5.203(b)).

#### **Non-commercial item acquisitions (over \$100,000)**

- Some acquisitions of non-commercial items may qualify to use FAR Part 12 (FAR 12.102(f) & (g)).

- Offerors may be allowed to give oral presentation. (FAR 15.102).

## Appendix C – Posting on Special Section of Recovery.gov

### Posting of Notice/Summary on Special Section

	<b>Description of Contract Action</b>	<b>Posting on Special Section of Recovery.gov</b>
(1)	A contract is competitively awarded and is fixed price	Not Required
(2)	A contract is awarded that is not fixed-price	Required
(3)	A contract is awarded without competition	Required
(4)	An order is issued under a new and existing single award IDIQ contract	Required if order is made under a contract described in (2) or (3)
(5)	An order is issued under a new or existing multiple award IDIQ contract	Required if one or both of the following conditions exist: <ul style="list-style-type: none"> <li>I. the order is not fixed-price</li> <li>II. the order is awarded pursuant to an exception to the competition requirements applicable to the underlying vehicle (e.g., award is made pursuant to an exception to the fair opportunity process)</li> </ul>
(6)	A modification is issued	Required if modification is made: <ul style="list-style-type: none"> <li>I. to a contract described in (2) or (3) above; or</li> <li>II. to an order requiring posting as described in (4) or (5) above</li> </ul>
(7)	A contract or order is awarded pursuant to a small business contracting authority (e.g., SBA's section 8(a) program)	Required if one or both of the following conditions exist: <ul style="list-style-type: none"> <li>I. the contract or order is not fixed-price</li> <li>II. the contract or order was not awarded using competition (e.g., a non-competitive 8(a) award)</li> </ul>