



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

April 27, 2009

MEMORANDUM FOR: Grants Council
Department of Commerce

FROM: Helen Hurcombe
Director, Office of Acquisition Management

SUBJECT: American Recovery and Reinvestment Act of 2009,
Grants-Associated Deliverables

Signed

The American Recovery and Reinvestment Act of 2009 (ARRA) includes requirements associated with the award and administration of grants by Department of Commerce bureaus and offices. This memorandum supersedes the March 2, 2009 memorandum and is intended to provide updated guidance and implementation within the Department and reflects information contained in the April 3, 2009 "Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009" (Guidance) (M-09-15) from the Office of Management and Budget (OMB). Please forward this memorandum to your personnel as appropriate.

Section A – Reporting Requirements

To ensure that the Department is compliant with ARRA reporting requirements, information on the following topics is required to be reported to the Office of Acquisition Management (OAM) by the date(s) indicated:

1. Catalog of Federal Domestic Assistance (CFDA)

Programs are required to request an expedited ARRA CFDA number in OMB MAX at <https://max.omb.gov/community/x/r4C2Dw> for new ARRA programs or existing programs for which the ARRA provides for compliance requirements that are significantly different for the ARRA funding and identification of existing CFDA program descriptions that will be modified during the next CFDA update cycle to reflect ARRA authorities, financial information, etc. The due date for posting the request in OMB MAX is April 20, 2009.

Reporting Requirement – Provide a weekly report containing the following information:

- Programs for which new ARRA CFDA Numbers are requested
- Current CFDA program descriptions that will be modified to incorporate ARRA authorities and other requirements
- Status of request

Report Due Date – Weekly on Tuesdays, beginning March 10, 2009.

2. Grant.gov Synopses

Programs were required to post grant synopses to Grants.gov with a link to the full announcement on the DOC Recovery Act website by March 9, 2009. For those programs which did not do so OMB approval will be required prior to publication. The documents will be generated by the program offices and concurrently reviewed by their respective grants offices and then routed to OMB through Ellen Herbst in the Office of the Secretary at EHerbst@doc.gov. Any program related questions should be referred to the program office; grants/administrative questions should be referred to the respective grants offices.

Reporting Requirement – Report all synopses posted to Grants.gov and full announcements posted on the DOC Recovery Act website containing the following information:

- Date posted to Grants.gov
- Date announcement posted on DOC Recovery Act website.

Report Due Date – Weekly on Fridays, beginning March 6, 2009. When the updated report reflects the final posting, the report shall be certified as complete and final.

3. Federal Funding Opportunity (FFO) Announcements

Programs were required to post FFO announcements to Grants.gov by March 19, 2009. For those programs which did not do so OMB approval will be required prior to publication. The documents will be generated by the program offices and concurrently reviewed by their respective grants offices and then routed to OMB through Ellen Herbst in the Office of the Secretary at EHerbst@doc.gov. Any program related questions should be referred to the program office; grants/administrative questions should be referred to the respective grants offices.

Reporting Requirement – Report all funding opportunity announcements posted reflecting the following information:

- Date of posting
- Program title
- Funding opportunities to be posted and date when they will be posted
- Closing date for acceptance of applications.

Report Due Date – Weekly on Fridays, beginning March 6, 2009.

When the updated report reflects the final posting, the report shall be certified as complete and final.

4. Award Level Transaction Data Feeds

Recovery Act award obligations will be reported according to the current procedures for USASpending. Bureaus should immediately begin including Recovery Act awards in their USASpending files. To facilitate this reporting, the USASpending.gov guidance is being updated and will be reissued shortly.

5. Weekly Financial and Activity Reports

OMB has eliminated the monthly report and now requires reports on a weekly basis starting April 7, 2009 with a new template. These reports will require agencies to report Obligations and Gross Outlays as defined in Section 2.5 of the OMB guidance. The templates and data definitions for the Weekly Financial and Activity Report can be found at:

<https://max.omb.gov/community/x/doC2Dw>. Reports are due to OMB on each Tuesday of the week for cumulative recovery activity through the preceding Friday. The bureau reports should be submitted to Ellen Herbst at EHerbst@doc.gov with a copy to the Director, Grants Management Division, OAM at gjohnso3@doc.gov by COB Monday of each week. Certification that data is complete and correct will be performed by the following officials at the respective bureaus:

EDA – Chief Information Officer

NIST – Chief, Grants and Agreements Management Division

NOAA – Director, Grants Management Division

6. Recipient Reports

Recipient report requirements apply only to non-Federal recipients of discretionary Federal funding and the subawards or contracts made by these recipients. Contractors under grants or subrecipients do not have to report.

Recipient reporting requirements are addressed in Section D —Award Terms.

Report Due Date – Quarterly by the 10th day following end of the quarter; beginning October 10, 2009.

Section B – Federal Funding Opportunity Announcements and Federal Register Notices

Chapter 19 of the Grants Manual contains detailed information on the required content of Federal Register Notices (FRN) and FFO Announcements. The clearance process is also delineated in this Chapter with the exception of the new requirement that OMB will review all FRNs associated with the ARRA funds. Program offices should take into account in their planning that OMB is providing a detailed review of FRNs using ARRA funds. The Office of the Assistant General Counsel for Legislation and Regulation will facilitate this review as part of their clearance process. In addition to the requirements delineated in Chapter 19 of the Grants Manual, all FFO and FRN announcements related to the Recovery Act must be submitted to OMB prior to publication. The documents will be generated by the program offices and concurrently reviewed by their respective grants offices and then routed to OMB through Ellen

Herbst in the Office of the Secretary at EHerbst@doc.gov. Any program related questions should be referred to the program office; grants/administrative questions should be referred to the respective grants offices.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements, published in the Federal Register on February 11, 2008 (73 FR 7696), lists the statutory and regulatory requirements to which all recipients are subject. This document is currently referenced in all FFOs. The ARRA includes additional provisions recipients must comply with, in addition to those identified in the Grants Manual and the Pre-Award Notification Requirements. These provisions will require language to be added to both FFOs and FRNs in the following areas:

1. Buy America

A). When requesting applications or proposals for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair of a public building or public work, and **do not involve iron, steel, and/or manufactured goods covered under international agreements**, the following notice should be included in the “Administrative and National Policy Requirements” section of FFOs and “Additional Information” section of FRNs:

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS— SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) Definitions. “Manufactured good,” “public building and public work,” and “steel,” as used in this notice, are defined in the 2 CFR 176.140.

(b) **Requests for determinations of inapplicability.** A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5)(Recovery Act) should submit the request to the award official in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by paragraphs (c) and (d) of the award term and condition at 2 CFR 176.140 in the request. If an applicant has not requested a determination regarding the inapplicability of 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

(c) *Evaluation of project proposals.*

If the Federal government determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the Federal Government will evaluate a project requesting exception to the requirements of section 1605 of the Recovery Act by adding to the estimated total cost of the project 25 percent of the project cost, if foreign iron, steel, or manufactured goods are used in the project based on unreasonable cost of comparable manufactured domestic iron, steel, and/or manufactured goods.

(d) Alternate project proposals.

(1) When a project proposal includes foreign iron, steel, and/or manufactured goods not listed by the Federal Government at paragraph (b)(2) of the award term and condition at 2 CFR 176.140, the applicant also may submit an alternate proposal based on use of equivalent domestic iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the applicant shall submit a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of the award term and condition at 2 CFR 176.140 for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Government has not yet determined an exception applies.

(3) If the Federal government determines that a particular exception requested in accordance with paragraph (b) of the award term and condition at 2 CFR 176.140 does not apply, the Federal Government will evaluate only those proposals based on use of the equivalent domestic iron, steel, and/or manufactured goods, and the applicant shall be required to furnish such domestic items.

B). When requesting applications or proposals for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair of a public building or public work, and **involve iron, steel, and/or manufactured goods covered under international agreements**, the following notice should be included in the “Administrative and National Policy Requirements” section of FFOs and “Additional Information” section of FRNs:

**NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL, AND
MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL
AGREEMENTS)—SECTION 1605 OF THE AMERICAN RECOVERY AND
REINVESTMENT ACT OF 2009**

(a) **Definitions.** “Designated country iron, steel, and/or manufactured goods,” “foreign iron, steel, and/or manufactured good,” “manufactured good,” “public building and public work,” and “steel,” as used in this provision, are defined in 2 CFR 176.160(a).

(b) **Requests for determinations of inapplicability.** A prospective applicant requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5)(Recovery Act) should submit the request to the award official in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by paragraphs (c) and (d) of the award term and condition at 2 CFR 176.160 in the request. If an applicant has not requested a determination regarding the inapplicability of 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

(c) ***Evaluation of project proposals.***

If the Federal government determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the Federal Government will evaluate a project requesting exception to the requirements of section 1605 of the Recovery Act by adding to the estimated total cost of the project 25 percent of the project cost if foreign iron, steel, or manufactured goods are used based on unreasonable cost of comparable domestic iron, steel, or manufactured goods.

(d) Alternate project proposals.

(1) When a project proposal includes foreign iron, steel, and/or manufactured goods, other than designated country iron, steel, and/or manufactured goods, that are not listed by the Federal Government in this Buy American notice in the request for applications or proposals, the applicant may submit an alternate proposal based on use of equivalent domestic or designated country iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the applicant shall submit a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of the award term and condition at 2 CFR 176.160 for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Government has not yet determined an exception applies.

(3) If the Federal government determines that a particular exception requested in accordance with paragraph (b) of the award term and condition at 2 CFR 176.160 does not apply, the Federal Government will evaluate only those proposals based on use of the equivalent domestic or designated country iron, steel, and/or manufactured goods, and the applicant shall be required to furnish such domestic or designated country items.

2. Davis Bacon

When issuing announcements or requesting applications for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair the following language shall be included in the “Administrative and National Policy Requirements” section of FFOs and “Additional Information” section of FRNs:

Wage Rate Requirements under Section 1606 of the American Recovery And Reinvestment Act of 2009

a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR Parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The

Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

3. False Claims Act Violations

The following language should be included in the “Administrative and National Policy Requirements” section of FFOs and “Additional Information” section of FRNs:

Each recipient or sub-recipient awarded funds under the ARRA shall promptly refer to an appropriate inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

4. Job Creation and Retention

The following language should be included in the “Reporting” section of FFOs and the “Additional Information” sections of FRNs:

The following term will be placed on awards to implement the recipient reporting and registration requirements in section 1512 of the Recovery Act:

(Beginning of award term)

Reporting and Registration Requirements under Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5

- (a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (“Recovery Act”) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.
- (b) The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.
- (c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.
- (d) The recipient shall report the information described in section 1512(c) using the reporting instructions and data elements that will be provided online at www.FederalReporting.gov and ensure that any information that is pre-filled is corrected or updated as needed.

(End of award term)

Section 1512(c) of the Recovery Act states:

(c) RECIPIENT REPORTS.--Not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains--

- (1) the total amount of recovery funds received from that agency;
- (2) the amount of recovery funds received that were expended or obligated to projects or activities; and
- (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including--
 - (A) the name of the project or activity;
 - (B) a description of the project or activity;
 - (C) an evaluation of the completion status of the project or activity;
 - (D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and
 - (E) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.
- (4) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

Beginning October 10, 2009, with quarterly reports due 10 days after the end of each calendar quarter thereafter, recipients must report the above information.

Section C – Competition Requirements

In accordance with the President’s Memorandum of March 20, 2009, *Ensuring Responsible Spending of Recovery Act Funds*, agencies should promote competition to the maximum extent practicable. Merit-based selection criteria should be designed to fund projects that have to the greatest extent, a demonstrated or potential ability to:

- “(i) deliver programmatic results;
- (ii) achieve economic stimulus by optimizing economic activity and the number of jobs created or saved in relation to the Federal dollars obligated;
- (iii) achieve long-term public benefits by, for example, investing in technological advances in science and health to increase economic efficiency and improve quality of life; investing in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; fostering energy independence; or improving educational quality; and
- (iv) satisfy the Recovery Act's transparency and accountability objectives.”

Section D – Award Terms

Attached to this document are Recovery Act terms to be used on all financial assistance awards.

If you have any questions concerning the application of this guidance and/or ARRA reporting requirements to OAM, please contact Gary Johnson at 202-482-1679 or email him at Gjohnson@doc.gov.

Attachment