

# Economic Stimulus – Agencies and Vendors Off to the Races, But Don't Forget to Read the Fine Print

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With the Economic Stimulus bill (code name ARRA) passed and signed into law, agencies will be off to the races to spend the \$787 billion allocated. Yet, before agency leaders had a chance to finish reading the 1,100 pages of the stimulus bill, OMB released another 62 pages of guidance to agencies on how to track and report their spending. And there is promise of more to come from OMB as they proudly point out in the memo that it is the "first installment"!

Many agencies are going to find themselves with a windfall of money to spend, yet there are a lot of strings attached that agencies and vendors alike should be careful to understand before moving too fast.

Between the legislation and OMB's guidance, some of the more significant challenges agencies and vendors will face include:

- **Requirement for Firm Fixed Price** – Agencies are required "to the maximum extent possible" to award firm fixed price contracts. Defining a clear scope of work in a 30-120 day window is tough for even the most agile commercial organizations dealing with much smaller and modest requirements. Establishing them for multi-million dollar deals in the federal bureaucracy is a tall order indeed. Vendors and agencies need to tread carefully here to make sure they don't end up on the front page of *The Washington Post* in 6 months for reasons that are not good for PR.
- **Requirement for Competitive Procedures** – Agencies are required to follow competitive procedures "to the maximum extent possible" as well. Has anyone ever seen a federal agency produce an RFP, accept bids and make an award in 120 days? I welcome submissions! In the mean time, agencies should be looking at the money with an eye on channeling their contract requirements through existing task order based vehicles or GSA vehicles. Avoid no-bid contracts at all costs – those already have an edge of impropriety even when there is a strong legal basis for them.
- **Reporting, Reporting, Reporting** - Starting March 3, agencies are required to begin providing to OMB Weekly Reports of their progress in spending the stimulus money, including breakdown of funding, major actions taken, and major planned actions. These will be followed by Monthly Financial Reports starting May 8. They also must provide an Agency Recovery Plan and program specific Recovery Plans by May 1. There are countless other feeds, reports, risk management and oversight requirements buried in the guidance as well. This bill is going to produce so much paper, it could be a bailout for the forestry industry in disguise!
- **Accounting System Changes** – In order to meet the reporting requirements and to have clear separation of recovery dollars vs. regular appropriations, agencies are required to establish unique accounts and codes for recovery funds.

There is a laundry list of other provisions and instructions that will challenge agencies in their ability to accommodate them yet still spend the money as quickly as intended. Vendors and agencies alike should be deliberate but cautious in accepting and spending these recovery dollars to avoid the negative attention that comes with lack of care in government contracting.