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

SEP 29 2008

PROCUREMENT MEMORANDUM 2008-05

INFORMATION

MEMORANDUM FOR: **HEADS OF CONTRACTING OFFICES**

FROM: Helen Hurcombe
Senior Procurement Executive and
Director for Acquisition Management

SUBJECT: Conducting Acquisitions under a Continuing Resolution

Background
The extended duration of continuing resolutions in recent years requires acquisition professionals to devote additional attention to ensure compliance with the Anti-Deficiency Act and to avoid major disruptions to essential government services. The Anti-Deficiency Act prohibits an officer or employee of the Government from creating or authorizing an obligation in excess of funds available, or in advance of appropriations, unless otherwise authorized by law.

Purpose
The purpose of this Procurement Memorandum is to provide guidance on conducting acquisition under a continuing resolution.

Guidelines for Conducting Acquisition under a Continuing Resolution
Absent specific authority, funding under a continuing resolution is generally available only to fund ongoing projects and activities, not new initiatives or projects. Acquisition Professionals shall use the following guidelines for conducting acquisition under a continuing resolution.

- Coordinate with budget and finance personnel to determine the availability of funding for existing and new contract requirements. Modifications to existing contracts may be required by the fiscal constraints imposed by the continuing resolution.

- Provide contractors with appropriate notification of government funding limitations. Federal Acquisition Regulation (FAR) clause 52.232-18 expressly conditions the government's obligation under the contract upon the availability of funds. Contracting professional should ensure that applicable contracts contain appropriate clauses regarding availability of funds.

- Consult with the Office of General Counsel on the terms of the continuing resolution to establish the availability of funds.

Funding of Firm-Fixed Price Contracts under a Continuing Resolution
Only partial funding of firm-fixed price contracts is authorized during the period of a continuing resolution. Once all appropriations have been received and allocated, the program office should promptly provide the balance of funding necessary to fully fund the contract to the servicing acquisition office. Absent specific Congressional authority for the contract at issue, partial funding of firm-fixed price contracts can not be used after the Department has received its appropriation.

- **Successor Contractors or Options**
  A new firm-fixed price award of a successor contract (to an incumbent or otherwise) or exercise of a firm-fixed price option that continues to fund an ongoing project or activity that would be performed during a continuing resolution must provide at least partial funding for obligation of the contract. The funding obligated to the new contract or option must be consistent with the terms of the continuing resolution and the amount of funds it makes available.

  When a continuing resolution is passed prior to depletion of funds, acquisition professionals should work with the program office to determine how much funding will be made available and ensure that the funding is provided in advance of the start date of the contract or option period.

  The contract action shall cite FAR clause 52.232-18 to expressly condition the government's obligation under the contract for the balance of funding required upon the availability of funds. If FAR clause 52.232-18 has not been included in the contract, the contract cannot be funded or the option exercised unless a bilateral modification is negotiated with the contractor for its inclusion.

  If the continuing resolution does not lapse, additional partial or full funding should be provided for obligation on the contract before the existing funding has been fully expended in performance by the contractor.

- **Awards for New Initiatives or Projects**
  An award for a new initiative or project shall not be funded during the period of a continuing resolution absent specific Congressional authority. Program offices shall coordinate with their Budget Office to ensure that the terms of the continuing resolution is met before funds are provided to the servicing acquisition office for obligation. Submission of funding to the servicing acquisition office will constitute confirmation that use of the funding for obligation on the specific contract complies with the terms of the applicable continuing resolution.

If you have any questions, please contact Virna Evans vevans@doc.gov or (202) 482-3483.

cc: Acquisition Community
Acquisition Council