

# Subpart 5.7 - Publicizing Requirements Under the American Recovery and Reinvestment Act of 2009

Parent topic: [Part 5 - Publicizing Contract Actions](#)

## 5.701 Scope.

This subpart prescribes posting requirements for presolicitation and award notices for actions funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act). The requirements of this subpart enhance transparency to the public.

## 5.702 Applicability.

This subpart applies to all actions expected to exceed \$25,000 funded in whole or in part by the Recovery Act. Unlike subparts [5.2](#) and [5.3](#), this subpart includes additional requirements for orders and for actions that are not both fixed-price and competitive.

## 5.703 Definition.

As used in this subpart-

*Task or delivery order contract* means a "*delivery order contract*," and a "*task order contract*," as defined in [16.501-1](#). For example, it includes Governmentwide *Acquisition Contracts* (GWACs), multi-agency contracts (MACs), and other indefinite-delivery/indefinite-quantity contracts, whether single award or multiple award. It also includes Federal Supply Schedule contracts (including Blanket Purchase Agreements under [subpart 8.4](#)).

## 5.704 Publicizing preaward.

- (a)
- (1) Follow the publication procedures at [5.201](#).
  - (2) In addition, notices of proposed *contract actions* are required for orders exceeding \$25,000, funded in whole or in part by the Recovery Act, which are issued under task or *delivery order* contracts. This does not include modifications to existing orders, but these modifications are covered postaward, see [5.705](#). These notices are for "informational purposes only," therefore, [5.203](#) does not apply. *Contracting officers should* concurrently use their usual *solicitation* practice (e.g., eBuy).
- (b) *Contracting officers shall* identify proposed *contract actions*, funded in whole or in part by the

Recovery Act, by using the following instructions which are also available in the Recovery FAQs under "Buyers/Engineers" at the *Governmentwide Point of Entry (GPE)* ( <https://www.sam.gov> ):

(1) If submitting notices electronically via ftp or email, enter the word "Recovery" as the first word in the title field.

(2) If using the GPE directly, select the "yes" radio button for the "Is this a Recovery and Reinvestment Act action" field on the "Notice Details" form (Step 2) located below the "NAICS Code" field. In addition, enter the word "Recovery" as the first word in the title field.

(c) In preparing the description required by 5.207(a)(16), use clear and concise language to describe the planned *procurement*. Use descriptions of the goods and services (including *construction*), that can be understood by the general public. Avoid the use of acronyms or terminology that is not widely understood by the general public.

## **5.705 Publicizing postaward.**

Follow usual publication procedures at 5.301, except that the following supersede the exceptions at 5.301(b)(2) through (7):

(a)

(1) Publicize the award notice for any action exceeding \$500,000, funded in whole or in part by the Recovery Act, including-

(i) Contracts;

(ii) Modifications to existing contracts;

(iii) Orders which are issued under task or *delivery order* contracts; and

(iv) Modifications to orders under task or *delivery order* contracts.

(2) *Contracting officers shall identify contract actions*, funded in whole or in part by the Recovery Act, by using the following instructions which are also available in the Recovery FAQs under "Buyers/Engineers" at the *Governmentwide Point of Entry (GPE)* ( <https://www.sam.gov> ):

(i) If submitting notices electronically via ftp or email, enter the word "Recovery" as the first word in the title field.

(ii) If using the GPE directly, select the "yes" radio button for the "Is this a Recovery and Reinvestment Act action" field on the "Notice Details" form (Step 2) located below the "NAICS Code" field. In addition, enter the word "Recovery" as the first word in the title field.

(3) In preparing the description required by 5.207(a)(16), use clear and concise language to describe the planned *procurement*. Use descriptions of the goods and services (including *construction*), that can be understood by the general public. Avoid the use of acronyms or terminology that is not widely understood by the general public.

(b) Regardless of dollar value, if the *contract action*, including all modifications and orders under

task or *delivery order* contracts, is not both fixed-price and competitively awarded, publicize the award notice and include in the description the rationale for using other than a fixed-priced and/or competitive approach. Include in the description a statement specifically noting if the *contract action* was not awarded competitively, or was not fixed-price, or was neither competitive nor fixed-price. These notices and the rationale will be available to the public at the GPE, so do not include any proprietary information or information that would compromise national security. The following table provides examples for when a rationale is required.

### Posting of Rationale - Examples

	<b>Description of <i>Contract Action</i></b>	<b>Rationale Required</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 or existing single award IDIQ contract.	Required if order is made under a contract described in paragraph (b)(2) or (3) of this section.
(5)	An order is issued under a new or existing multiple award IDIQ contract.	Required if one or both of the following conditions exist: (i) The order is not fixed-price. (ii) The order is awarded pursuant to an exception to the competition requirements applicable to the underlying vehicle ( <i>e.g.</i> , award is made pursuant to an exception to the fair opportunity process).
(6)	A modification is issued.	Required if modification is made- (i) To a contract described in (b)(2) or (3) of this section; or (ii) To an order requiring posting as described in (b)(4) or (5) of this section.
(7)	A contract or order is awarded pursuant to a small business <i>contracting</i> authority ( <i>e.g.</i> , SBA's section 8(a) program).	Required if one or both of the following conditions exist: (i) the contract or order is not fixed-price; (ii) the contract or order was not awarded using competition ( <i>e.g.</i> , a non-competitive 8(a) award).

(c) *Contracting officers shall* use the instructions available in the Recovery FAQs under "Buyers/Engineers" at the GPE ( <https://www.sam.gov> ) to identify actions funded in whole or in part by the Recovery Act.