



June 22, 2009

Marguerite Pridgen  
Office of Federal Financial Management  
Office of Management and Budget  
Room 6025, New Executive Office Building  
Washington, DC 20503

RE: 2 CFR Part 176 *Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards*

Dear Ms. Pridgen:

On behalf of the National Association of State Procurement Officials (NASPO), which represents the chief procurement officers of the fifty states and the District of Columbia, I am writing in response to the Office of Federal Financial Management, Office of Management and Budget request for comments on 2 CFR Part 176 *Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards*, published in the Federal Register on Thursday, April 23, 2009. Please find those comments below.

### **Award Official**

**§ 176.30 Definitions.** *Award official means a person with the authority to enter into, administer, and/or terminate financial assistance awards and make related determinations and findings.*

**Comment:** There is some ambiguity as to roles and responsibilities of the Federal Government versus recipients of stimulus money and award officials. For example when the regulations state: “*Award officials shall ensure that recipients comply, § 176.20 Agency responsibilities (general),*” it seems reasonable to assume that the state or local government entity receiving the funds is the recipient and the award official is the agency responsible for the contract, but in some cases it could be one and the same (e.g. a state DOT is the recipient and issues an award to a local entity). Would the state DOT then be responsible for ensuring the compliance of that local entity?

Thus while this term is “defined” it is not clear if this is a position only pertaining to federal-level employees or could also be a state or local agency/person. Clarification of terms is essential to understanding the requirements in the Regulations and their impact on states, especially with respect to reporting requirements, determinations as to the use of foreign versus domestic steel based on factors such as cost, and the ability to meet timelines.

In addition, it would seem that state procurement agencies are inheriting a significant workload via the Regulations, and that there is a considerable training need for any agencies other than the state procurement office if other state agencies may be acting as award officials. Any guidelines or information must flow from state central procurement to agencies in the state that may have contract responsibility for a stimulus-funded contract. State agencies and other subrecipients should be encouraged to use existing contracts and procurement infrastructure for all stimulus money procurements. This will also assist the state in compiling data as instructed in the Regulations.

### **Award Term**

**§ 176.50 Award term—Reporting and registration requirements under section 1512 of the Recovery Act.** Agencies are responsible for ensuring that their recipients report information required under the Recovery Act in a timely manner.

*(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.*

**Comment:** Ten (10) days is an insufficient time period for the State as a recipient to collect, organize, and remit all information from pertinent contractors or subrecipients. This is also not a sufficient amount of time for the state to determine if the data has been submitted, if it is correct, nor to facilitate any necessary follow up with the contractor.

*(c) Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (<http://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 (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.*

**Comment:** Some subrecipients may not have a DUNS number. This could result in registration overload or related delays; therefore the capacity of the Dun and Bradstreet website must be verified. This requirement should also be highly publicized to agency recipients and potential contractors/subcontractors.

*(d) The recipient shall report the information described in section 1512(c) of the Recovery Act. Section 1512(c) of the American Recovery and Reinvestment Act of 2009 is a list of data requirements, including:*

*11. The names and total compensation of the five most highly compensated officers of the company if it received (1) 80% or more of its annual gross revenues in Federal awards; and (2) \$25M or more in annual gross revenue from Federal awards.*

**Comment:** This is not information usually collected by States or their agencies. It is logical for States to anticipate problems in collecting this information, especially in the ten (10) day reporting period prescribed by this guidance.

## **Subpart B, Buy America**

**§ 176.60 Statutory Requirement**—The head of the Federal department or agency may determine that the “*iron, steel or relevant manufactured goods is not produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.*”

Comment: If these terms refer only to the Federal level, then information related to a waiver of the Buy America provision must flow promptly to states. Otherwise there could be significant bid preparation and award delays. The timeframe for compliance with these regulations could impact project schedules. Note: the same concern applies to determinations to be made in Subpart B (2) and (3) – unreasonable cost and inconsistent with public interest.

In addition, the current guidance allows, but does not require, applicants to submit proposals for projects using both domestic and foreign inputs. This could help speed the award process if, following advertisement, the Federal Government determines that an exception permitting the use of foreign items does not apply. The agency could then immediately refer to proposals offering domestic inputs without a re-advertisement.

### **§ 176.70 Policy--**

*(b) When a determination is made for any of the reasons stated in this section that certain foreign iron, steel, and/or manufactured goods may be used—*

*(1) The award official shall list the excepted materials in the award; and*

*(2) The head of the Federal department or agency shall publish a notice in the Federal Register within two weeks after the determination is made, unless the item has already been determined to be domestically nonavailable.*

Comment: If an award official can be at a non-federal level, then these responsibilities and others appear to assume very close and timely working relationships between the award official and the federal agency granting the funds. Does it appear such relationships do or will exist? How will final determination be validated on a non-federal level? How will the potential increase in communication between state and federal agencies allow federal agencies enough lead time to publish notice within 14 days? How will this be enforced? Is a state subject to lose awarded funds in the event of non-compliance at the federal level?

In closing, NASPO and its members appreciate the opportunity to comment on these regulations. We welcome any opportunity to be of further assistance in the future. Please feel free to contact NASPO if you would like additional input or clarification.

Sincerely,



Vern Jones, NASPO President  
Chief Procurement Officer, State of Alaska