

## **Recovery Act New GAO and IG Authorities and Publication Requirements**

### **Government Accountability Office (GAO) Audit Authority**

For contracts using Recovery Act funds, the GAO will have the authority to (1) audit contracts and subcontracts and (2) interview contractor and subcontractor personnel, including those for commercial items under FAR Part 12 as well as procurements under the simplified acquisition threshold. The scope of these new audit rights extends to records and interviews “that pertain to, and involve transactions relating to” the contract or subcontract, and apply to solicitations issued and contracts awarded on or after March 31, 2009. They also apply to existing contracts where the parties agree bilaterally to include the new clause. The preamble to the interim rule states that contractors that refuse to accept a contract modification adding the new clause “will not be eligible for receipt of Recovery Act funds.” The new clause has mandatory flowdown requirements.

### **Inspector General Access to Records**

For contracts using Recovery Act funds, agency Inspectors General will have the authority to audit contracts and subcontracts – *and interview contractor but not subcontractor personnel* – including those for commercial items under FAR Part 12 as well as procurements under the simplified acquisition threshold. The scope of these new audit rights extends to records “that pertain to, and involve transactions relating to” the contract and subcontract, and apply to solicitations issued and contracts awarded on or after March 31, 2009. They also apply to existing contracts where the parties agree bilaterally to include the revised audit clause. The preamble to the interim rule states that contractors that refuse to accept a contract modification adding the new clause “will not be eligible for receipt of Recovery Act funds.” The new clause has mandatory flowdown requirements.

### **Publication Requirements**

To improve transparency, the interim rules amend the FAR to impose new requirements for agencies to publicize “contract actions” that are “funded in whole or in part” by the Act. Significantly, agencies would be required to publicize proposed awards of task and delivery orders to be awarded on Governmentwide Acquisition Contracts, Multiple Agency Contracts, Federal Supply Schedule contracts or any other Indefinite-Delivery Indefinite-Quantity contract, if the orders valued over \$25,000 are funded in whole or in part by the Act. Agencies are also required to publicize, post-award, all contract modifications and task/delivery orders funded by the Act, regardless of value, that are not fixed-price, or are not competitively awarded.

This continues a years-long trend in which Congress has chipped away at the procurement reforms introduced in the 1990s. Those reforms spawned an explosion of the use of unpublicized task/delivery orders contracting vehicles. For the last several years, Congress has gradually embraced the view that the lack of transparency in the award of task/delivery orders creates opportunity for fraud, waste and abuse. The requirement to publicize task/delivery orders funded by the Act is the latest expression of this view.

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