

Government Contracting

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release March 4, 2009

March 4, 2009

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Government Contracting

The Federal Government has an overriding obligation to American taxpayers. It should perform its functions efficiently and effectively while ensuring that its actions result in the best value for the taxpayers. Since 2001, spending on Government contracts has more than doubled, reaching over \$500 billion in 2008. During this same period, there has been a significant increase in the dollars awarded without full and open competition and an increase in the dollars obligated through cost-reimbursement contracts. Between fiscal years 2000 and 2008, for example, dollars obligated under cost-reimbursement contracts nearly doubled, from \$71 billion in 2000 to \$135 billion in 2008. Reversing these trends away from full and open competition and toward cost-reimbursement contracts could result in savings of billions of dollars each year for the American taxpayer.

Excessive reliance by executive agencies on sole-source contracts (or contracts with a limited number of sources) and cost-reimbursement contracts creates a risk that taxpayer funds will be spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the needs of the Federal Government or the interests of the American taxpayer. Reports by agency Inspectors General, the Government Accountability Office (GAO), and other independent reviewing bodies have shown that noncompetitive and cost-reimbursement contracts have been misused, resulting in wasted taxpayer resources, poor contractor performance, and inadequate accountability for results.

When awarding Government contracts, the Federal Government must strive for an open and competitive process. However, executive agencies must have the flexibility to tailor contracts to carry out their missions and achieve the policy goals of the Government. In certain exigent circumstances, agencies may need to consider whether a competitive process will not accomplish the agency's mission. In such cases, the agency must ensure that the risks associated with noncompetitive contracts are minimized.

Moreover, it is essential that the Federal Government have the capacity to carry out robust and thorough management and oversight of its contracts in order to achieve programmatic goals, avoid significant overcharges, and curb wasteful spending. A GAO study last year of 95 major defense acquisitions projects found cost more overruns of 26 percent, totaling \$295 billion over the life of the projects. Improved contract oversight could reduce such sums significantly.

Government outsourcing for services also raises special concerns. For decades, the Federal Government has relied on the private sector for necessary commercial services used by the Government, such as transportation, food, and maintenance. Office of Management and Budget Circular A-76, first issued in 1966, was based on the reasonable premise that while inherently governmental activities should be

performed by Government employees, taxpayers may receive more value for their dollars if non-inherently governmental activities that can be provided commercially are subject to the forces of competition.

However, the line between inherently governmental activities that should not be outsourced and commercial activities that may be subject to private sector competition has been blurred and inadequately defined. As a result, contractors may be performing inherently governmental functions. Agencies and departments must operate under clear rules prescribing when outsourcing is and is not appropriate.

It is the policy of the Federal Government that executive agencies shall not engage in noncompetitive contracts except in those circumstances where their use can be fully justified and where appropriate safeguards have been put in place to protect the taxpayer. In addition, there shall be a preference for fixed-price type contracts. Cost-reimbursement contracts shall be used only when circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract. Moreover, the Federal Government shall ensure that taxpayer dollars are not spent on contracts that are wasteful, inefficient, subject to misuse, or otherwise not well designed to serve the Federal Government's needs and to manage the risk associated with the goods and services being procured. The Federal Government must have sufficient capacity to manage and oversee the contracting process from start to finish, so as to ensure that taxpayer funds are spent wisely and are not subject to excessive risk. Finally, the Federal Government must ensure that those functions that are inherently governmental in nature are performed by executive agencies and are not outsourced.

I hereby direct the Director of the Office of Management and Budget (OMB), in collaboration with the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration, the Administrator of General Services, the Director of the Office of Personnel Management, and the heads of such other agencies as the Director of OMB determines to be appropriate, and with the participation of appropriate management councils and program management officials, to develop and issue by July 1, 2009, Government-wide guidance to assist agencies in reviewing, and creating processes for ongoing review of, existing contracts in order to identify contracts that are wasteful, inefficient, or not otherwise likely to meet the agency's needs, and to formulate appropriate corrective action in a timely manner. Such corrective action may include modifying or canceling such contracts in a manner and to the extent consistent with applicable laws, regulations, and policy.

I further direct the Director of OMB, in collaboration with the aforementioned officials and councils, and with input from the public, to develop and issue by September 30, 2009, Government-wide guidance to:

- (1) govern the appropriate use and oversight of sole-source and other types of noncompetitive contracts and to maximize the use of full and open competition and other competitive procurement processes;
- (2) govern the appropriate use and oversight of all contract types, in full consideration of the agency's needs, and to minimize risk and maximize the value of Government contracts generally, consistent with the regulations to be promulgated pursuant to section 864 of Public Law 110-417;
- (3) assist agencies in assessing the capacity and ability of the Federal acquisition workforce to develop, manage, and oversee acquisitions appropriately; and
- (4) clarify when governmental outsourcing for services is and is not appropriate, consistent with section 321 of Public Law 110-417 (31 U.S.C. 501 note).

Executive departments and agencies shall carry out the provisions of this memorandum to the extent

permitted by law. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA

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The White House

Office of the Press Secretary

For Immediate Release

January 20, 2010

President Obama Directs Administration to Crack Down on Tax Cheats Seeking Government Contracts

WASHINGTON, DC – Today, President Obama will direct the Office of Management and Budget, together with the Treasury Department and other federal agencies, to take steps to block contractors who are delinquent on their taxes from receiving new government contracts. He will also direct the IRS to conduct a review of the overall accuracy of companies' claims about tax delinquency to be sure that when a company says it's paying taxes, it is telling the truth. The President will be joined today by Vice President Biden, Senator Claire McCaskill, Congressman Ed Towns, Congressman Brad Ellsworth, IRS Commissioner Douglas Shulman, and Chief Performance Officer of the United States Jeffrey Zients.

In addition, the President is calling on Congress to give the government the tools necessary to ensure that the public's tax dollars are not used to boost the profits of companies who refuse to pay their taxes.

"By issuing this directive, all of us in Washington will be required to be more responsible stewards of your tax dollars. All across this country, there are people who meet their obligations each and every day. You do your jobs. You support your families. You pay the taxes you owe – because it's a fundamental responsibility of citizenship," said President Barack Obama. "The steps I'm directing today and the steps I'm calling on Congress to take are just basic common-sense. They're not going to eliminate all of the waste or abuse in government contracting in one fell swoop. Going forward, we'll also have to do more to hold contractors more accountable not just for paying taxes, but for following other laws as well."

When President Obama was in the Senate he sponsored legislation to give federal contracting officials the tools that they need to recoup these funds or stop tax scofflaws from getting federal contracts. The Administration urges Congress to approve legislation to allow the IRS to crack down on corporate tax cheats. Congress also is urged to allow data sharing between the IRS and contracting officials at agencies to ensure that scofflaws do not exploit some loophole to continue to win federal contracts.

Today's directive builds on steps the President has taken to crack down on government waste –

strengthening what works and eliminating what doesn't:

- In December, the Administration released an update on the President's efforts to cut high-risk, no-bid contracts, showing federal agencies on track to save \$19 billion in contracting reforms this year and \$40 billion by the end of 2011.
- In November, the President outlined steps to crack down on wasteful, improper payments which, in 2009, were expected to reach about \$100 billion.
- In May, the Administration released the results of the line-by-line review of the Budget and identified more than 120 programs that were wasteful, duplicative, or outdated. Congress approved more than 60 percent of the President's proposed cuts – significantly higher than recent administrations' results.

Blocking Government Contracts for Tax Cheats

The White House

Office of the Press Secretary

For Immediate Release

January 20, 2010

Memorandum for the Heads of Executive Departments and Agencies

The Federal Government pays more than half a trillion dollars a year to contractors and has an important obligation to protect American taxpayer money and the integrity of the Federal acquisition process. Yet reports by the Government Accountability Office (GAO) state that Federal contracts are awarded to tens of thousands of companies with serious tax delinquencies. The total amount in unpaid taxes owed by these contracting companies is estimated to be more than \$5 billion.

Too often, Federal contracting officials do not have the most basic information they need to make informed judgments about whether a company trying to win a Federal contract is delinquent in paying its taxes. We need to give our contracting officials the tools they need to protect taxpayer dollars.

Accordingly, I hereby direct the Commissioner of Internal Revenue (Commissioner) to conduct a review of certifications of non-delinquency in taxes that companies bidding for Federal contracts are required to submit pursuant to a 2008 amendment to the Federal Acquisition Regulation. I further direct that the Commissioner report to me within 90 days on the overall accuracy of contractors' certifications.

I also direct the Director of the Office of Management and Budget, working with the Secretary of the Treasury and other agency heads, to evaluate practices of contracting officers and debarring officials in response to contractors' certifications of serious tax delinquencies and to provide me, within 90 days, recommendations on process improvements to ensure these contractors are not awarded new contracts, including a plan to make contractor certifications available in a Government-wide database, as is already being done with other information on contractors.

Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law. This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Director of the Office of Management and Budget is hereby authorized and directed to publish this memorandum in the Federal Register.