



The Commonwealth of Massachusetts
Executive Office for Administration and Finance
Operational Services Division
One Ashburton Place, Boston, MA 02108-1552



<http://www.comm-pass.com>

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Governor

Timothy P. Murray
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Leslie A. Kirwan
Secretary

Ellen M. Bickelman
State Purchasing Agent

MEMORANDUM

To: Commonwealth Secretariats, Department Heads, Chief Financial Officers, General Counsels

From: Leslie A. Kirwan, Secretary for Administration and Finance
Ellen Bickelman, State Purchasing Agent, Operational Services Division

Date: July 16, 2009

Re: OSD Policy Guidance 10-03 - Procurement and Grant Posting and Record Requirements for American Recovery and Reinvestment Act (ARRA) Funds

The purpose of this memorandum is to provide posting and public notice requirements for procurements and grants, including the resulting contracts and grant awards, funded with American Recovery and Reinvestment Act (ARRA) funds, also referred to as "federal stimulus" funds.

To meet Governor Patrick's commitment to full transparency, these requirements apply specifically to projects funded with ARRA funds received directly from the Commonwealth. However, to promote single-site transparency, all public entities are strongly encouraged to follow these guidelines by posting ARRA projects, funded directly from the Federal Government, on Comm-PASS as well.

Effective immediately, all public entities in the Commonwealth, including but not limited to Executive and Non-Executive departments, municipalities, counties, authorities and non-profit human service providers that issue a competitive bid or offer a grant that includes any amount of ARRA funds directly from the Commonwealth must post all procurement/grant and contract/grant award records at www.comm-pass.com (Comm-PASS), the Commonwealth's free, publicly accessible Internet-based procurement system administered by the Commonwealth's central procurement office, the Operational Services Division.

This posting requirement applies to all procurement and grant documents which are typically created or received during three phases:

1. Bid/Offer including Announcements, Requests for Qualifications, Requests for Information, Requests for Proposals/Responses, Requests for Grant Applications or Requests for Quote;
2. Response/Application including but not limited to the list of Responding Bidders/Grant Applicants, Bidder Responses, the list of Awarded Contractors/Grantees; and,
3. Contract/Award including but not limited to Forms and Terms, Awarded Contractor/Grant Recipient information, Award Values.

To assist bidders and the general public in locating solicitations and contracts with ARRA funds, effective immediately, all qualified records posted on Comm-PASS must include the Additional Keyword terms "ARRA" and "federal stimulus."

OSD has enhanced Comm-PASS functionality to provide high visibility for all ARRA-funded projects. This new functionality consists of a new "Fed Stimulus" tab on the Comm-PASS home page and a new "Contains Federal Stimulus" checkbox for solicitations and contracts. ARRA records must include the Additional Keyword terms ("ARRA" and "federal stimulus") and the selected "Contains Federal Stimulus" checkbox.

Recipients of ARRA funds administered by the Commonwealth of Massachusetts who conduct procurements or grants must post the documents in [their procurement files, as defined in the OSD Procurement Information Center \(PIC\)](#), on Comm-PASS, as specified below:

1. No later than one (1) business day after Solicitation Close Date, post a list of all responding parties;
2. No later than five (5) business days after notification in writing to all respondents of award disposition, post a list of the awarded party or parties;
3. No later than ten (10) business days after the Solicitation status "Closed-Contract Awarded", post the awarded parties' bid response content in the Solicitation and post the stand-alone Contract record;
4. Within the requirements of the Massachusetts Public Records Laws (MGL c. 4, § 7, cl. 26; MGL c. 66, § 10), post any content that has been requested under public record law instead of providing paper copies or scheduling in-person review of content; and,
5. No later than three (3) months after the procurement is awarded, post all remaining documents in the procurement file except those which are subject to exemption under law, executive order, regulation or policy (see below).

This guidance does not preclude any recipient from posting all procurement/grant file information as soon as possible after the Solicitation Close Date within the parameters of procurement/grant, public record, security and public safety laws, executive orders, regulations, and policies.

The process for posting bidder response or grant applicant information on Comm-PASS can be streamlined by requiring that either:

1. submission content be uploaded by bidders through online submission functionality in Comm-PASS that is available to bidders at a modest charge; or,
2. any paper submission requirement is accompanied by a complete, electronic media copy via CD or USB flash drive.

Option 1 above ensures that all documents posted on Comm-PASS meet public record retention guidelines and eliminates the need to create paper copies, except for contract forms executed in wet ink after an award is determined. Storage on Comm-PASS is free and records are maintained for a minimum of nine years before any offline archiving is even considered. Online posting and storage can substantially reduce your organization's administrative costs and efforts associated with public record retention and archiving.

Option 2 above may streamline posting on Comm-PASS, but the paper record is the official public record under public record retention guidelines.

Procurement/grant records may include information which should be redacted prior to posting under one of several laws, executive orders, regulations or policies including but not limited to:

- a. Health Insurance Portability and Accountability Act (HIPAA) (45 CFR Parts 160, 162, and 164);
- b. Massachusetts Public Record laws (MGL c. 4, § 7, cl. 26; MGL c. 66, § 10);
- c. Fair Information Practices Act (FIPA) (MGL 66A); or,
- d. Executive Order 504.

To indicate redaction of information under an applicable law, executive order, regulation or policy, Issuers must post a document titled Document Name-Redacted and a brief description which classifies the redacted content. Information may be classified as:

1. Security-Sensitive Information: procurement officers should avoid widespread public disclosure of specific security solutions, building plans depicting locations of security cameras, computer network diagrams, blueprints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth. Such information is generally exempt from public disclosure under the Commonwealth's public records law and should be safeguarded by public agencies when possible. See MGL c. 4, § 7, cl. 26(n).; or,
2. Personal/Private Information: personal information, as defined in M.G.L. c. 93H, and personal data, as defined in M.G.L. c. 66A, including personal names, personal contact information, personal residence addresses as in resumes or references offered by bidders, social security, financial account information, drivers' license numbers; or,
3. Other Information exempt from disclosure under other provisions of the Public Records Laws, MGL c. 4, § 7, cl. 26.

Additional guidance for Comm-PASS posting requirements can be found at [Comm-PASS Guidance](#).

Please note: If you have already issued procurements for projects funded with ARRA funding received directly from the Commonwealth using a process other than what is required in this letter, please send an email to the Comm-PASS Help Desk at comm-pass@state.ma.us using the Subject "ARRA Procurement: Retroactive Posting Needed" to obtain guidance for meeting these requirements.

Many Massachusetts public entities are familiar with Comm-PASS and have a BuySmart account that allows them to post solicitations and create contracts at no charge.

If your organization's own website supports posting capabilities, please consider that posting on Comm-PASS can help create a one-stop source of free information for all ARRA-funded projects. If your organization's website does not have posting capabilities, remember that Comm-PASS access is available at no cost to Massachusetts public entities.

To join Comm-PASS, a signatory authority must request a BuySmart account by selecting the "JOIN" option from the Comm-PASS main navigation bar and following the BuySmart links. If Commonwealth public entities have questions regarding Comm-PASS BuySmart Membership or Comm-PASS navigation, please send an email to comm-pass@state.ma.us for prompt attention.

For public entities located in Massachusetts communities with limited or no broadband access, please contact the Comm-PASS Team as soon as possible to establish an alternate mechanism for posting ARRA solicitations and contracts on Comm-PASS as required by this memo.

You may reach the team by telephone Monday through Friday from 8:00 AM to 5:00 PM at 888-MA-STATE or by mail at:

Comm-PASS Team
Operational Services Division
Room 1017
One Ashburton Place
Boston, MA 02108
Attn: No Broadband Access

Thank you.