



PRESIDENT OBAMA AND THE OFFICE OF MANAGEMENT AND BUDGET ISSUE GUIDANCE FOR STIMULUS SPENDING

On March 4, 2009 President Barack Obama issued a “Memorandum for the Heads of Executive Departments and Agencies” regarding Government Contracting that reaffirms the Government’s commitment to competition in contracting and preference for lump sum contracts and discourages the indiscriminate use of no-bid and cost-reimbursement contracting. The President’s Memorandum directs the Office of Management and Budget (“OMB”) together with other agencies to develop by July 1, 2009 Government-wide guidance for a review to “identify contracts that are wasteful, inefficient, or not otherwise likely to meet the agency’s needs” and to “formulate appropriate corrective action.” Corrective action could include modification and cancellation of contracts. The President’s Memorandum also directs the Director of the OMB to issue Government-wide guidance by September 30, 2009, governing the use and oversight of all contract types, especially sole-source and cost-reimbursement contracts, assisting in determining the ability of Government personnel to manage the acquisition process and to determine when outsourcing for services is appropriate. The full text of the President’s Memorandum may be viewed at http://www.pecklaw.com/PDF_files/ObamaMemoGovtCont.pdf.

The President’s Memorandum was preceded on February 18, 2009 by a “Memorandum for the Heads Of Departments and Agencies” issued by Peter R. Orszaq, Director of the OMB, which he described as “the first installment of government-wide guidance for carrying out programs and activities enacted in the American Recovery and Reinvestment Act (“Recovery Act”) of 2009.” The OMB Director’s Memorandum outlined specific guidelines for transparency, procurement procedures and audits of direct Government contracts, Government funded contracts, Government Grants and Government loans and loan guarantees. The full text of the OMB Director’s Memorandum may be viewed at http://www.pecklaw.com/PDF_files/OMBguidance.pdf.

Taken together, these Memoranda create the impression that the current Administration will be striving to create greater transparency and to return to a greater reliance on traditional forms of competitive based procurements.

If you have any questions about the impact of these Memoranda upon your operations or about the application of Government laws and regulations to Projects implemented under the Recovery Act, please contact **Patrick J. Greene, Jr.** at pgreene@pecklaw.com (201-343-3434) or **William (Tom) Thompson** at wthompson@pecklaw.com (202-293-8815).