

COMPETITION AWARD Policy

FAM-FY2011-1

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Purpose

To provide the HHS financial management policy and procedures for implementing the *America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education and Science Reauthorization Act of 2010 (COMPETES Act)*, Public Law 111-358 (Attachment 1).

Scope

This policy applies to competitions conducted under the *COMPETES Act* authority. Other HHS non-*COMPETES Act* competitions are strongly encouraged to follow this policy.

Federal Laws

The *COMPETES Act*, Section 105 amends the *Stevenson-Wydler Technology Act of 1980* (15 U.S.C. § 3701 *et seq.*).

Regulations

The Office of Management and Budget (OMB) and the Office of Science and Technology Policy (OSTP) developed guidance interpreting the prize authority in the *COMPETES Act*. See Attachment 2, "Prize Authority in the *COMPETES Act*" Fact Sheet for information on many topics beyond those covered herein.

Background

The *COMPETES Act*, authorizes each head of a Federal agency, or the heads of multiple agencies in cooperation, to carry out a program to award prizes competitively to stimulate innovation that has the potential to advance the mission of the respective agency.

Funding Authority

HHS Office of General Counsel (OGC) advises, after consulting with OMB General Counsel, that the *COMPETES Act* essentially authorizes "prize competitions" (hereafter referred to as competitions) as a type of award mechanism. The Act authorizes agencies to utilize existing appropriations, so long as the expense of a competition is a "necessary expense" of the underlying appropriation, or the underlying legal authorities, which are the object of the appropriation. OGC advises that as long as a competition can be considered a necessary expense of carrying out the legal authorities available to an agency for which funds are appropriated, HHS could employ a competition mechanism with such funds, as authorized under the Act. OGC points out that such a determination, however, would need to be made on a case-by-case basis. Agencies seeking to use appropriated funds to finance competition awards, therefore, need to conduct such case-by-case reviews, in consultation with OGC.ⁱ

ⁱ The *COMPETES Act* amends the *Stevenson-Wydler Technology Innovation Act of 1980* by adding at the end a new Section 24. Prize Competitions. Section (m) concerns funding. Pertinent parts read:

"(1) *IN GENERAL* – Support for a prize competition under this section, including financial support for the design and administration of a prize or funds for a monetary prize purse, may consist of Federal appropriated funds and funds provided by the private sector for such cash prizes. The head of any agency may accept funds from other Federal agencies to support such competitions. The head of any agency may not give any special consideration to any private sector in return for a donation.

(2) *AVAILABILITY OF FUNDS* – Notwithstanding any other provision of law, funds appropriated for prize awards under this section shall remain available until expended. No provision in this section permits obligation or payment of funds in violation of section 1341 of title 31, United States Code.

(3) *AMOUNT OF PRIZE* – No prize may be announced under subsection (f) until all the funds needed to pay out the announced amount of the prize have been appropriated or committed in writing by a private source."

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Eligibility

HHS Staff Division (STAFFDIV) employees are only allowed to compete for challenges and competitions that are offered by HHS Operating Divisions (OPDIVs) or a STAFFDIV other than their own. HHS OPDIV employees may compete for challenges and competitions that are offered by: (1) an HHS STAFFDIV or an OPDIV other than their own; and (2) their own OPDIV if they are not in the reporting chain of the OPDIV award approving official, which may only be the OPDIV head or one of their direct reports. In addition, HHS employees may not work on their applications or submissions during assigned duty hours, and may not use Federal facilities or consult with a Federal employee except as permitted under Section 24(h) of the Act. Also, participants must obtain liability insurance or demonstrate financial responsibility, in amounts determined by the head of the agency, for claims by (a) a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in a competition and (b) the Federal Government for damage or loss to Government property resulting from such an activity.

Federal entities are not eligible to compete. Federal grantees may not use Federal funds to develop *COMPETES* Act challenge applications unless consistent with the purpose of their grant award and specifically requested to do so due to competition design, and as announced in the *Federal Register*. If a grantee using Federal funds wins the competition, the award needs to be treated as program income for purposes of the original grant in accordance with applicable OMB Circulars. Federal contractors may not use Federal funds from a contract to develop *COMPETES* Act challenge applications or to fund efforts in support of a *COMPETES* Act challenge submission. Costs associated with such activities are unallowable and are not allocable to Government contracts.

Policy and Procedures

The following financial management process applies to the implementation of the *COMPETES* Act.

1. Secure sufficient funds which are authorized to pay out the planned awards, and obtain funds certification for the competition.
 - a. When using *appropriated* funds, conduct case-by-case review of appropriation and authorizing language governing the funds to ensure that the language allows its use for *COMPETES* Act purposes.
 - b. Agencies may also accept donations from private sector entities and other Government agencies with authority to donate funds for cash prizes. Such private donations must be paid to the Federal agency conducting the competition, and deposited in an appropriate gift fund *prior* to announcing the competition. Note that, in general, Federal law prohibits the solicitation of gifts. In addition, agencies must comply with Section 24, which prohibits against giving any special consideration to any private sector entity in return for a donation.
 - c. The awarding agency executing the competition may choose to establish a separate Common Account Number (CAN) for each competition to accumulate costs for reporting purposes.
2. Print the competition in the *Federal Register* and, after that, through other additional sources as desired. (See *COMPETES* Act for full competition disclosure requirements^h). The *Federal Register* announcement must also indicate that awards will be paid using electronic funds transfer and may be subject to Federal income taxes, and that HHS will comply with the Internal Revenue Service (IRS) withholding and reporting requirements, *where applicable*. If the funding

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for the cash award is donated by a non-Federal entity, the *Federal Register* should not indicate the name of the donor. The OPDIV or STAFFDIV award approving official name must be included in the *Federal Register* notice.

3. As soon as the competition is announced by printing the information in the *Federal Register*, an obligationⁱⁱⁱ of funds must be recorded in the appropriate accounting system (e.g., UFMS, NBS, or HIGLAS). The obligation must be recorded for the amount of the total award pool announced. To obligate award funds under the *COMPETES* Act, use the *HHS Competition Award Obligating Document* (CAOD) form (Attachment 3). Data elements on this obligating form include, but are not limited to: purpose of the competition, anticipated number and amount of awards, Treasury Account Fund Symbol, Tax Identification Number (TIN)^{iv}, Budget Account Classification Structure (BACS), Common Account Number (CAN), Object Class (**25954**) for competition awards only, Funds Certification, OPDIV or STAFFDIV Award Approving Official, etc. Please note, OPDIV heads may delegate approval to one of their direct reports. The TIN of the announcing agency should be used on the obligation document as the award winner's TIN will not be known at this time. In addition, the OPDIV or STAFFDIV budget analyst must forward the CAOD form to the competition/challenge manager for the competition, **and to the Assistant Secretary for Administration (ASA)/Office of Business Management & Transformation (OBMT), who is responsible for *COMPETES* Act reporting (until further notice).**
4. Once the obligation is recorded, payment of the award can be made in a future fiscal year. This can be an indefinite time period for funds that are available until expended (which would include those funded through gift funds or from no-year appropriations accounts) or, for funds with a definite period of availability, up through the cancellation date for the funding appropriation (e.g., the end of the fifth year after the appropriation ceases to be available for new obligations). The timing of the competition period and payment of related awards must be structured accordingly (e.g., so that payment is completed before the funding expires).
5. Applications are received and competitions are adjudicated. Prior to announcing awards, the awarding agency must check the *Excluded Parties List System*^v to see if any prospective awardee has been suspended or debarred. If a prospective awardee appears on the list, please check with the HHS Office of General Counsel or the Deputy Assistant Secretary for Grants and Acquisition Policy and Accountability before proceeding.
6. To process payments for competition awards, the awarding agency must complete Standard Form 1034 (SF1034), "*Public Voucher for Purchases and Services Other than Personal*" (Attachment 4) and the associated supplemental document for payment (*SF1034 – Supp, Supplemental Competition Award Payment Document* (Attachment 5), hereafter referred to as

ⁱⁱ *COMPETES* Act Section 24(f) 1-5

ⁱⁱⁱ As with other accruals, an obligation for future payment to a non-Federal source must be recorded. Further instructions will be provided at a later date.

^{iv} Tax Identification Number (TIN) represents a company's Employer ID number or an Individual's Social Security Number.

^v THE *Excluded Parties List System* (EPLS) is currently available at www.epls.gov.

the SF1034 package). The SF1034 package shall contain the name, address, contact information, and prize amount for each winner, Treasury Account Fund Symbol, TIN, Budget Account Classification Structure, Object Class (**25954**) for competition awards only, and the OPDIV or STAFFDIV award approving official. The competition/challenge manager provides the *HHS Payment Information Form* (Attachment 6) to the awardees and submits for processing upon completion. In addition, the OPDIV or STAFFDIV budget analyst must submit the SF1034

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package to the competition/challenge manager for the competition and **to the ASA/OBMT, who is responsible for COMPETES Act reporting (until further notice).**

7. The SF1034 package is used for entry into the accounting system (UFMS, NBS, or HIGLAS) to produce an Electronic Funds Transfer (EFT). IRS withholding and reporting will be executed by the Accounting Center, as required. If other offsets are routinely made by the Treasury (e.g., tax delinquency, student loan defaults, child support debts), these offsets would be executed by the Treasury in this case as well.
8. To meet annual reporting requirements of the Act, competition/challenge managers shall use the *Template for Annual Challenge and Competition Reporting Requirements at HHS* (Attachment 7) to gather information from OPDIVs and STAFFDIVs. OPDIVs and STAFFDIVs have **five days** after the selection of awardees to complete data entry on each competition, allowing the ASA to capture the data in *real-time*, and then aggregate as necessary for submission to the Office of Science and Technology Policy by December 30th of each year.

Note: Steps 3-8 may be performed by Federal agencies or by contract. In any such contract, performance requirements would have to be consistent with this policy. Consistent with general Administration policy, such contracts should be competitively awarded in accordance with the *Federal Acquisition Regulation* (FAR). Note that if funds for the payment of the awards is included in the contract, the *Federal Register* notice for the competition must be printed in the same fiscal year as the contract was awarded. Advance payments are not authorized under such contracts – that is, the contractor would pay the competition award and then be reimbursed by the government via a standard invoice. GSA is required by the *COMPETES* Act to “develop a contract vehicle to provide agencies access to relevant products and services, including technical assistance in structuring and conducting prize competitions...”

Effective Date

This policy is effective upon issuance.

Additional Documents

Please see <http://www.hhs.gov/open/initiatives/challenges/index.html>
