

Strengthening Transparency and Accountability in Federal Spending Act of 2008 (S. 3077)

Senators Barack Obama (D-IL), Tom Coburn (R-OK), Tom Carper (D-DE) and John McCain (R-AZ) recently introduced the Strengthening Transparency and Accountability in Federal Spending Act of 2008 (S. 3077), which amends the Federal Funding Accountability and Transparency Act of 2006 (FFATA).¹ FFATA requires the U.S. Office of Management and Budget to develop a publicly available, free-of-charge, searchable Web site on federal funding. Federal funding includes grants, sub-grants, loans, awards, cooperative agreements, and other forms of financial assistance. Contracts, subcontracts, purchase orders, task orders, and delivery orders are also included. Individual transactions below \$25,000 and any credit card transactions made before October 1, 2008, are exempt.²

FFATA stipulates that states and sub-recipients of federal funds will be required to provide information on contracts and spending in a manner to be determined through a pilot program commencing June 23, 2008.³

The 2006 FFATA law specifically requires that, within 30 days of the award, the Web site contain:⁴

- The name of the entity receiving the award, amount of the award, transaction type, funding agency.
- CFDA number, program source, and descriptive award title.
- The location of entity.
- The unique identifier(s) of both the entity and parent entity.
- Other information OMB deems “relevant.”

The new legislation additionally requires that the Web site contain:⁵

- A unique award identifier that identifies each individual award vehicle.
- The date the financial award was made.
- The date the financial award requirements began.
- The date the financial obligations are dispersed to the recipient.
- The agency and department as well as the sub agencies and sub-offices that have authorized the federal award.

¹ P.L. 109-282.

² P.L. 109-282, Section 2(a)(2).

³ The first phase of the new law required federal agencies to submit the required information by January 1, 2008(www.usaspending.gov). The sub-award information is required as of January 1, 2009. P.L. 109-282, Section 2(d).

⁴ P.L. 109-282, Section 2(b)(1).

⁵ S. 3077, Section 2(a)(2). This information is required within six months of the date of enactment of the act.

- In negotiated procurements, the highest, lowest and median offered prices among all technically acceptable proposals or bids.

Furthermore the legislation specifically requires that recipients of grants and other forms of financial assistance provide:⁶

- The type of recipient receiving the award, such as state government, local government, Indian tribe, individual, small business, for-profit, or nonprofit.
- The type of financial assistance each transaction represents including direct payments, insurance, loans, grants, and cooperative agreements.
- The amount of money from non-Federal sources that is required to obtain the award.
- An indication if the funding is a congressionally directed spending item as defined in Public Law 110-81.⁷

After January 1, 2010, for call contracts, subcontracts, purchase orders, task orders, lease agreements and assignments, and delivery orders, the legislation requires:⁸

- Both a copy in a format that reproduces the original image of each page and a copy in a searchable text format of the request for proposals, the announcement of the award, the contract and the scope of work to be preformed.
- A product or service code that identifies the general category of product or service procured under the transaction.
- Information about the extent of competition in making the award, including the number of qualified bids or proposals during the competitive process, and if the award was not competed, the legal authority and specific rationale for making the award without full and open competition.
- The full amount of money that is awarded under a contract or, in the case of lease agreements or assignments, the amount paid to the government, and the full amount of any options to expand or extend under a contract.
- The amount and nature of the profit incentive offered to contractors for achieving or exceeding specified goals such as fixed price, cost plus pricing, labor hour contracts, and time and materials contracts.
- An indication if the contract is the result of legislative mandates, set-asides, preference program requirements, or other criteria, and whether the contract is multi-year, consolidated, or performance based.

⁶ S. 3077, Section 2(a)(N). This information is required by January 1, 2009.

⁷ The term “congressionally directed spending item” means a provision or report language included primarily at the request of a senator providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific state, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process (PL 110-81).

⁸ S. 3077, Section 2(a)(M).

- An indication if the contract is a congressionally directed spending item as defined in Public Law 110-81.
- Socio-economic characteristics of the entity that receives an award including its size, industrial classification (NAICS code), and whether the entity is owned by minority individuals, women, veterans, or other special categories.

In addition to additional data that is required to be posted to the website, the legislation provides how the Web site will present information about the awards and requires that OMB ensures data quality through:⁹

- Statistically representative samples by agency inspector generals' (IG) of agency federal awards every six months to verify accuracy and compliance with standards.
- Audits every six months on activity in the established error reporting system.
- Independent reviews every six months of data used for the Web site to verify the accuracy of the data and assess the process used for improving data quality with the ability for the public to review the requirements.
- Identification of new standards that should be implemented by agencies to improve data quality.

Findings of the IG reports and data quality audits are to be used to develop standards or guidance for agency implementation of the act.

OMB is also responsible for ensuring that no personally identifiable information be made available through the Web site, that a unique identifier be accurate and able to identify past and current subsidiary ownership, and that the consolidated federal funds report be published no later than six months after the end of the fiscal year.¹⁰ A plan to Congress on improving accuracy of agency financial information about federal awards it to be submitted to the relevant congressional committees and made available to the public by December 31, 2009.¹¹

Finally the proposed legislation would add a new section on recipient performance transparency and tax compliance. Performance transparency would include assessments of the quality of work performed on federal awards for the past five years, information about federal audit disputes and resolutions, and information regarding civil, criminal and administrative actions initiated by federal or state governments against federal award recipients.¹² The chief executive of an entity¹³ receiving a federal award would have to

⁹ S. 3077, Section 5(a)(2) and Section 5(a)(3).

¹⁰ S. 3077, Section 5(a)(4)(A), Section 5(a)(4)(D), Section 5(a)(4)(B), and Section 5(a)(6).

¹¹ S. 3077, Section 5(a)(7).

¹² S. 3077, Section 7(a).

¹³ State and locality are included in the definition of entity under FFATA. P.L.109-282, Section 2(a)(1)(A)(ix),

certify whether it had filed all its tax returns (for the preceding five years) and whether there are any issues with the IRS, including convictions or outstanding debt.¹⁴

¹⁴ S. 3077, Section 7(b).