

MAR 23 2017



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

PROCUREMENT MEMORANDUM 2017-02

MEMORANDUM FOR: Bureau Procurement Officials

Signed

FROM: Barry E. Berkowitz
Senior Procurement Executive and
Director for Acquisition Management

SUBJECT: Guidance on Presidential Memorandum on Hiring Freeze

BACKGROUND

This document supplements the Human Resources (HR) Bulletin #214, issued on February 17 2017, and continues the Department's commitment to provide a standardized approach to implement the January 23, 2017, Presidential Memorandum on the Hiring Freeze (PM), the Office of Management and Budget (OMB) guidance issued on January 25, 2017 M-17-17 and the joint OMB/Office of Personnel Management (OPM) guidance issued on January 31, 2017 M-17-18.

The Presidential Memorandum states: "Contracting outside the Government to circumvent the intent of this memorandum shall not be permitted." M-17-18 states; "For example, agencies shall not acquire by contract with a commercial vendor services that are substantially similar to those that would have been provided by a Federal civilian in a vacancy covered by the Presidential Memorandum." It states further that the memo does not restrict agencies from "continuing, modifying, or entering into service contracts for other purposes, consistent with law, regulation, and any applicable management direction."

GUIDANCE

The Department has reviewed the PM and the guidance from OMB and OPM and interprets its application to Departments contracting actions for support services as follows:

- Existing contracts, task orders, delivery orders, and call orders for support services may continue;
- New task orders, delivery orders, and call orders under and modifications to existing contracts for support services shall not be issued without a determination by the responsible program official that they are not being awarded or issued in lieu of a hiring action prohibited by the PM; and
- Solicitations for new contracts for support services shall not be issued without a determination by the responsible program official that the requirement is not being solicited in lieu of a hiring action prohibited by the PM.

CERTIFICATION

- To ensure that responsible program officials are giving appropriate consideration to the prohibition articulated in the PM before contracting for support services, all procurement request packages for support services shall include a completed and signed certification using the attached "Hiring Freeze Certification for Contracts." The responsible program official shall select one of the listed bases for his/her determination and include relevant information to support it.
- For example, if a responsible program official's determination is based on the operating unit's history of contracting for the same or similar services, he/she shall include the contract numbers of the relevant contracts. Similarly, if the determination is based on the characteristics of the requirement, the responsible program official should identify the distinguishing characteristics such as the nature of the services required being highly specialized or for a limited duration to satisfy a temporary need. Because the listed bases are not all inclusive, the certification includes an "other" category that allows responsible program officials to provide rationales not initially contemplated by the certification.
- If an exception from the Presidential Memorandum has been granted a copy of the exception must be attached to the certification. If you have any questions regarding filling a vacancy, please contact MFrcdcrick@cloc.gov, and we are advising the Bureau Heads if they have any procurement questions to refer them to you, the Bureau Procurement Official.

Attachment:

Hiring Freeze Certification for Contracts

Hiring Freeze Certification for Contracts

Background: The January 23, 2017, Presidential Memorandum on the Hiring Freeze (PM), announced a hiring freeze of Federal civilian employees to be applied across-the-board in the executive branch, regardless of the sources of their operational and programmatic funding. The PM prohibits executive departments and agencies from "contracting outside the Government to circumvent the intent" of the memo. The Office of Management and Budget (OMB) and the Office of Personnel Management (OPM) subsequently issued joint guidance memorandum M-17-18, which states that agencies "shall not acquire by contract with a commercial vendor services that are substantially similar to those that would have been provided by a Federal civilian in a vacancy covered by the Presidential Memorandum." It further states that the memo does not restrict agencies from "continuing, modifying, or entering into services contracts for other purposes, consistent with law, regulation, and any applicable management direction."

Purpose: The purpose of this certification is to ensure compliance with the President's direction that executive departments and agencies not use contracts to circumvent the intent of the hiring freeze.

Instructions: The responsible bureau program official shall complete and sign this certification and submit it with all procurement request packages for support services.

Certification:

I have determined that this contracting action is not being taken in lieu of a hiring action and therefore does not circumvent the intent of the Presidential Memorandum Regarding the Hiring Freeze. The basis for my determination is:

- The operating unit has a history of contracting for the same or similar services
[insert contract number(s)]

- There was an approved acquisition plan in place signed before the Presidential Memorandum or other evidence of a pre-existing plan to contract for the services in question *[insert date of acquisition plan approval and approving official or other documentation of intent to contracO*

- The characteristics of the requirements distinguish it from a hiring action
[describe relevant characteristics, e.g., highly specialized service or short-term need]

- o Other *[provide narrative explanation]*

Signature

Date

OR

This contracting action has been granted an exception via the Department's approved exception process and a copy of the exception is attached.

Signature

Date