

Department of the Interior

Guidance for Prize Challenges to Stimulate Innovation

March, 2015

1: What is the authority for employing prize challenges to stimulate innovation and technological change?

A: The America COMPETES Reauthorization Act of 2010, codified at 15 USC § 3719, gives every agency the authority to implement a program to award prizes competitively to stimulate innovations that have the potential to advance its mission. This section of the United States Code falls within Chapter 63 “Technology Innovation” of Title 15.

2: Is the authority to implement prize challenges delegated to bureaus?

A: Yes. This authority is covered by 207 DM 8, which delegated the Secretary’s authority to implement technology transfer activities to Assistant Secretaries, and re-delegated that authority to Bureau Directors.

3: Must a bureau obtain specific appropriations for the express purpose of conducting a prize competition in order to use the prize authority under 15 USC § 3719?

A: No. A bureau may rely on 15 USC § 3719 to conduct a prize competition using “Federal appropriated funds.” This does not require that the appropriations statute in question specifically provide funding for the express purpose of conducting a prize competition. See 15 USC § 3719(m)(1). Per the Congressional reporting requirements in the Act, bureaus should consider prize competitions as one of many options for executing their goals. See 15 USC § 3719 (p)(2)(B) (requiring for each prize competition an analysis of why a prize competition was the “preferable method of achieving the goals ... as opposed to other authorities available to the agency, such as contracts, grants and cooperative agreements”). When a bureau evaluates whether it can use an appropriation for the purpose of conducting a prize competition (in the case of an appropriation that does not expressly address prize competitions), the bureau must determine whether the use of those appropriated funds for a prize competition lies within the scope of the objects of that appropriation. Bureaus should consult with the Solicitor’s Office and their budget office about this issue, specifics of which would depend on the design of the prize and the language of the appropriations statute.

4: Can bureaus collaborate with outside parties to administer prize competitions?

A: Bureaus may “enter into an agreement with a private, nonprofit entity to administer a prize competition” (15 USC § 3719(l)). Bureaus can also collaborate with each other and other agencies in administering and funding prizes. Where necessary, such collaboration must employ standard acquisition procedures and mechanisms (e.g., an Interagency Agreement if the collaboration is with another Federal entity, or a process under the Federal Acquisition Regulation if the collaboration is with a non-Federal entity).

5: Can bureaus collaborate with outside parties to fund prize competitions?

A: Funding for the prize design, administration, and monetary award may come not only from Federally appropriated funds but also from the private sector. Funding from the non-Federal entity may be accepted under the authority of 15 USC 3719(m)(1). However, no private sector entity may be given “special consideration” in return for such donations. Where necessary, such collaboration must also employ standard acquisition procedures and mechanisms (e.g., an Interagency Agreement if the collaboration is with another Federal entity, or a process under the Federal Acquisition Regulation if the collaboration is with a non-Federal entity).

6: Do prizes and awards have to be monetary? Are there limits on the prize amounts?

A: Prizes may be monetary, non-monetary, or any mix of the two. A bureau may choose to offer a non-monetary prize such as a plaque or certificate if it is of minimal value or cost. The law limits the prize amount to \$50 million unless a 30-day notice has been given to the appropriate Congressional committees. It is DOI policy that no bureau may offer a prize in excess of \$1 million without the Secretary’s approval.

7: Do funds obligated for a prize expire?

A: Notwithstanding any other provision of law, funds appropriated for prize awards under the America COMPETES Reauthorization Act of 2010 shall remain available until expended (15 USC § 3719 (m)(2)). No provision of that Act, however, permits obligation or payment of funds in violation of 31 USC § 1341 (15 USC § 3719 (m)(2)). If the prize (and its administration) is funded from other appropriations, the obligation and expenditure must be made in accordance with the funds’ authorizing statutes. For additional guidance on funding issues, see FAQs 5 and 6 in the OMB memo, [*Prize Authority in the America COMPETES Reauthorization Act*](#), and consult the Office of the Solicitor.

8: Who may be appointed to judge the winner(s)? Does FACA apply?

A: There should be at least one judge. Judge(s) may come from within or outside the bureau, including from the private sector. Any committee, board, commission, panel, task force, or similar entity, created solely for the purpose of judging prize competitions is exempted from the Federal Advisory Committee Act (5 U.S.C. App.) under 15 USC § 3719(k)(4).

9: What factors should be employed to identify potential judges?

A: Factors to be used in selecting interim or final judges include knowledge of the problem area that is the focus of the prize, expertise in disciplines that may be useful in reviewing prize submissions, stature in the community or among stakeholders associated with the problem, and reputation for adhering to the highest standards of fairness, accuracy and integrity.

10: What are the guidelines “to ensure that the judges appointed for such competitions are fairly balanced and operate in a transparent manner”?

A: Ideally, judges should be selected on an interim basis prior to announcing or closing a prize competition. The America COMPETES Act specifically requires that judges must not have:

- Personal or financial interests in, or be an employee, officer, director, or agent of any entity that is a registered participant in a competition; or
- Familial or financial relationships with an individual who is a registered participant.

That these requirements have been satisfied, however, cannot be verified until after all participants have registered, that is, until after the period for submitting entries has expired. Accordingly, bureaus may identify interim judge(s) in the Federal Register notice while noting that once the registration for the competition has closed interim judges will be asked to verify/certify that they do not have any conflicts of interest that could color their evaluations. Only those providing this verification/certification should be used as judges.

Non-Federal individuals retained, with or without compensation, by the government as judges under the America COMPETES Act will be Special Government Employees (SGEs) and therefore subject to the ethics rules as they pertain to that category of employee, including the obligation to file a Confidential Financial Disclosure Report (OGE Form 450), the restrictions imposed on SGEs by the criminal conflict of interest statutes (for example, 18 U.S.C. § 208), the Standards of Ethical Conduct, and applicable supplemental regulations.

Federal employees from within or outside the bureau(s) offering the competition that are acting within the scope of their official duties when serving as judges on prize competitions remain

subject to the ethics rules as they apply to government employees and may also be subject to any supplemental ethics regulations applicable to their home agency and the agency sponsoring the competition. Employees serving as judges should consult their servicing ethics office to seek advice on the ethics rules that apply to them as judges. In addition, Federal employees serving as judges will also be subject to the additional restrictions required by the COMPETES Act, laid out in the foregoing.

11: What are the requirements for conducting prize competitions?

A: Bureaus or offices conducting prize competitions must do the following:

- **Topic Selection.** “[C]onsult widely both within and outside the Federal Government” when selecting topics for prize competitions (§ 3719(d)).
- **Advertising.** “[W]idely advertise each prize competition to encourage broad participation” (§ 3719(e)).
- **Federal Register Notice.** Bureau Directors must publish a notice in the Federal Register announcing the competition and setting out the rules, including eligibility, prize amount, process, and criteria for selecting the winner(s) (§ 3719(f)).
- **Fairness and Transparency.** “[D]evelop guidelines to ensure that the judges...are fairly balanced and operate in a transparent manner” (§ 3719(k)(3)). In addition, agencies are prohibited from appointing any judge who has (1) personal or financial interests in, or is an employee, officer, director, or agent of any entity that is a registered participant in a competition, or (2) a familial or financial relationship with an individual who is a registered participant (§ 3719(k)(2)(A) and (B)).
- **Funding.** Before announcing the prize or increasing the prize amount, ensure that funds for the prize are either appropriated, or committed in writing by a private source (§ 3719(m)(3)(A)). Once announced, a prize amount may only be increased subsequently only if notice of the increase is provided in the same manner as the initial notice of the prize.
- **Intellectual Property.** The Federal government may not gain an interest in the intellectual property (IP) submitted to a prize competition without the written consent of the submitting participant (§ 3719(j)(1)). However, it may negotiate a license for the use of intellectual property developed by a prize participant (§ 3719(j)(2)). It is recommended that any model agreements developed by bureaus consider asking for a nonexclusive government purpose license upfront for any IP submitted or selected for award (in lieu of negotiating one after conclusion of the competition).
- **Eligibility.** Limit eligibility to win a prize to entities/individuals that:
 1. Have agreed to the rules of the competition (§ 3719(g)(1));

2. Are either (a) in the case of an entity, incorporated in and maintains a primary place of business in the United States, or (b) in the case of an individual, a citizen or permanent resident of the United States (§ 3719(g)(3));
3. Are not a Federal entity or Federal employee acting within the scope of employment (§ 3719(g)(4));
4. Assume risks and waive claims against the Federal Government and its related entities (§ 3719(i)(1)(B)); and
5. Obtain liability insurance or demonstrate financial responsibility, in amounts determined by the head of an agency, for claims by third parties and the Federal Government (§ 3719(i)(2)).
6. Are of 18 years of age or who have obtained consent from their legal guardian.

12: What additional items should be covered in the Federal Register notice?

A: In addition to announcing the competition and setting out the rules for the prize competition including eligibility, prize amount, process for registration and submissions, associated timeline, and criteria for selecting the winner(s), the notice should:

- (1) Explain the rationale for selecting a prize as a vehicle for stimulating innovation as opposed to using other more traditional methods,
- (2) Explain how the prize competition is expected to advance the bureau's mission,
- (3) Specify whether the bureau plans to consider or intends to seek an interest in any intellectual property submitted to a prize competition, and the nature of such interest, if known.
- (4) Note whether the bureau offering the prize competition is getting or plans to get assistance from any other entities to operate and manage the competition and associated logistics. If known, the identities of these entities should be listed.
- (5) Identify the interim judge(s), if selected before the Federal Register package is sent forward.
- (6) Identify which organizations or individuals outside the Department have been consulted on the selection of the topic and associated aspects related to the prize competition.
- (7) Include a liability clause and amount of liability.

(8) Include a privacy statement (statement of how PII information from submitters will be protected, etc.).

(9) Provide a checklist of eligibility requirements.

(10) Note any specialized requirements relevant for the challenge. These may include, for example, requirements for any software accompanying submissions (e.g., acceptable language, formats and platforms; security concerns; Section 508 compliance). Similarly, challenges focused on data usage should specify data sources.

13: What additional due diligence must be conducted prior to announcing a prize competition?

A: If a monetary prize is being offered, before signing the Federal Register notice the Bureau Director must verify that sufficient funds are available and, based on consultation with the Solicitor's Office, that under the law the identified funds are not precluded from use as prize money to further the bureau's mission in general, and this prize offering in particular.

14: What is the clearance process within DOI before announcing and conducting a prize competition?

A: Since a Federal Register notice has to be published to announce a prize competition, the clearance process within DOI should be the same as that used for clearance of a Federal Register notice as outlined in 318 DM 3. In general, this means that:

1. The bureau announcing the prize follows its own internal process prior to signing the notice. 318 DM 3 notes that Federal Register notices should be signed at the lowest level possible, and that each bureau/office should have its own policies for the appropriate signature and approval level for various types of notices.
2. Prior to signature, the originating office must get the surname from the Solicitor's Office.
3. After signature, the originating office must submit the notice to the Office of the Executive Secretariat and Regulatory Affairs for approval by the Secretary's Office.
4. Prior to publication of the Federal Register notice, the bureau should coordinate with its Communications Office to ensure that the competition receives publicity to maximize participation.

15: If additional DOI bureaus are contributing to the prize amount, do they also have to issue their own Federal Register notices?

A: No, only one bureau needs to publish a Federal Register notice. However, that bureau should obtain surnames from all collaborating bureaus prior to sending the notice on to the Secretary's Office. In such cases, the clearance (surname) package should conform to the requirements outlined in Q&A 22.

16: When must the prize competition be posted on Challenge.gov?

A: The law requires that the competition be posted on Challenge.gov. This should be done as soon as possible subsequent to the publication of the Federal Register notice.

17: Is announcing, conducting, or awarding a prize a procurement action?

A: Announcing, conducting, and/or awarding a prize are not procurement actions and are, therefore, not subject to the Federal Acquisition Regulations (FAR) under the Prize Competition section of the American COMPETES Reauthorization Act of 2010. However, if the bureau announcing or awarding the prize engages the services of a contractor to administer or otherwise help with the prize, procurement(s) subject to FAR may be necessary to obtain those services.

18: Can a competition involving a monetary prize be announced prior to obligating funds for the prize?

A: To the extent the Federal Government is funding the prize amount, the amount must be obligated prior to announcing the prize. However, to the extent the funding is to be shared with a non-governmental entity, either the latter's share of the funding or a letter of commitment for its share must be received prior to the publication of the notice.

19. How can funds be obligated in advance of announcing a prize competition?

A: The obligation of Federal funds must be done in accordance with Federal Appropriations Law, the Federal Acquisition Regulation, and other applicable Departmental and bureau policies. Please consult with your Bureau Procurement Chief and Bureau Budget Officer for specific direction.

20: Can prize participants use Federal facilities or consult with Federal employees during the competition?

A: Yes, “if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis” (§ 3719(h)).

21: What are the reporting requirements pertaining to prize competitions?

A: Under 15 USC 3719, the Department is required to submit a report on prize challenges to the Office of Science and Technology Policy (OSTP) annually. Accordingly, each bureau should submit an annual report to the Office of Policy Analysis in the Office of the Assistant Secretary – Policy, Management and Budget using the format specified by OSTP. AS-PMB’s office will compile this information for transmittal to OSTP.

22: Can bureaus offer prize challenges that are open to non-United States citizens/entities?

A: Yes. But although submissions can be entertained from all comers regardless of whether they are U.S. citizens/entities, **prizes — whether monetary or otherwise — may not be awarded to non-U.S. citizens/entities under the authority of the *America COMPETES Reauthorization Act of 2010***. Challenges that may award a prize to non-U.S. citizens/entities can, however, be designed and conducted using authorities other than the America COMPETES Reauthorization Act of 2010. The March 8, 2010 Memorandum from Jeffrey D. Zients, Deputy Director for Management titled “[Guidance on the Use of Challenges and Prizes to Promote Open Government](#)” discusses the use of other authorities. In deciding whether a prize should be awarded to entries from non-U.S. entities and individuals, the bureau should weigh whether the additional complexity is justified by the potentially broader response to the competition. Note that these guidelines do not necessarily apply to challenges that are offered under authorities other than 15 USC § 3719 but, to the extent practicable and relevant, such challenges should adhere to them.

23: What should be included in a clearance package sent for surnaming within the Department?

A: While the individual(s) and office(s) managing the prize challenge should ensure that any clearance package conforms to their bureau’s requirements, if surnames also need to be obtained from other bureaus and Departmental offices (see Q&As 14 and 15), the package should include:

- *A Note to Reviewers*, essentially a briefing paper summarizing salient points of the prize challenge.

- The draft *Federal Register Notice* required under 15 USC § 3719, if that is the authority being used to offer the prize challenge/competition. For details on the contents of the *Notice*, see Q&A. 12.
- A summary on the *Specifics of the Prize Challenge*, including its rationale, and administrative and other details.

Additional details are provided in the accompanying document, *Recommended Contents of Clearance Package for Prize Challenge* (Attachment B).

24. What supplemental guidance is available to bureaus?

A: Additional guidance, including brief FAQs, is in the 2011 OMB memorandum, [*Prize Authority in the America COMPETES Reauthorization Act*](#).

25: What additional resources can the prize competition manager draw upon or consult in developing, managing and implementing the competition?

A: The prize manager(s) should also consult the law itself, as well as documentation of the practices of other agencies. Note that procedures and templates used by other departments and bureaus may have to be tailored to each bureau's requirements and circumstances. The following is a list of useful resources:

- [15 USC § 3719 — Prize competitions](#).
- [HHS COMPETES Playbook](#). [Click on the hyperlink and then follow the PLAYBOOK link.]
- [OMB guidance on use of challenges to promote open government](#). This predates the America COMPETES Reauthorization Act of 2010, but contains useful information, particularly on the potential benefits associated with prize competitions and on developing international competitions (which that Act does not address).
- HHS's [Federal Register template](#).
- Reclamation's Miscellaneous Obligation Template (a document obligating funds for a prize).
- [Challenge.gov](#) website.
- [Challenges section in digital.gov](#)