

**U.S. DEPARTMENT OF AGRICULTURE  
WASHINGTON, D.C. 20250**

<b>DEPARTMENTAL REGULATION</b>	<b>Number:</b> 2405-001
<b>SUBJECT:</b> Guidance on the Use of Prize Competitions and Challenges	<b>DATE:</b> September 30, 2014
	<b>OPI:</b> Office of the Chief Financial Officer

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## 1. PURPOSE

This Departmental Regulation (DR) prescribes standards for assisting U.S. Department of Agriculture (USDA) agencies and staff offices with understanding the requirements for the use of prize competitions and challenges. Prize competitions and challenges are one of the tools available to federal agencies to advance their missions, like procurement contracts, grants, and cooperative agreements.

- a. This DR will assist USDA agencies and staff offices with understanding the requirements for using prize competitions and challenges as tools for advancing open government, innovation, and the agency's mission. It defines roles and responsibilities and explains how to track USDA results with prize competitions and challenges as well as ensure internal coordination and consistency.

Prize competitions and challenges may be appropriate for use when:

- (1) An agency wants to highlight excellence in a particular area to motivate, inspire, or guide others;
  - (2) An agency wants to increase the number and diversity of individuals, organizations, and teams that are addressing a particular problem of national or international significance;
  - (3) An agency wants to improve the skills of the participants in the prize competition or challenge;
  - (4) An agency wants to stimulate private sector investment in a particular area;
  - (5) An agency wants to capture the public imagination about a particular area;
  - (6) An agency wants to pay only for results.
- b. There are multiple types of prize competitions and challenges. In considering the use of a prize competition or challenge an agency must have a clear idea of what it is they are trying to accomplish so they can choose the best type of prize to help them accomplish the goal. Prize types are listed below:
    - (1) Exemplar prizes define excellence within an area.
    - (2) Point solution prizes aim to reward and spur development of solutions for a particular well defined problem.
    - (3) Exposition prizes help identify and promote a broad range of promising ideas and practices that may not otherwise attract attention, ideally facilitating further development of the idea or practice by third parties.

- (4) Network prizes build networks and strengthen communities by organizing winners into new problem-solving communities that can deliver more impact than individual efforts.
- (5) Participation prizes create value by using the competition or challenge as a vehicle to educate participants and encourage them to change their behavior or develop a new skill that may have beneficial effects during and beyond the competition.
- (6) Market stimulation prizes try to establish the viability of a market to address a potential market failure, mobilize additional human talent and financial capital to jumpstart the development of a new industry, or change public perceptions about what is possible.

## 2. AUTHORITIES

There are multiple authorities agencies can use to conduct prize competitions and challenges. For example, prize competitions and challenges can be conducted through procurement, through grants and cooperative agreements (with limitations), or as part of an agency's outreach and education activities. There is also a contest-specific statutory authority for agencies to conduct prize competitions and challenges. (See The America COMPETES Reauthorization Act of 2010, 15 U.S.C. § 3719 (America COMPETES Act)). This DR provides general guidance on the use of these various authorities to conduct prize competitions and challenges. Not all of the possible authorities are available to each agency of USDA; some authorities will be agency specific. For each prize competition or challenge an agency wishes to conduct, the agency will need to determine which of the possible authorities is available to the agency and which of the agency's available authorities is most appropriate to help the agency achieve the agency's end goal. This section discusses some of the possible authorities, and identifies guidance resources to help agencies determine which type of prize competition or challenge will best fit their needs.

- a. In 2010, the Office of Management and Budget (OMB) issued a memorandum titled "Guidance on the Use of Challenges and Prizes to Promote Open Government" (OMB Memorandum M-10-11, March 8, 2010); this memorandum advises agencies on the potential uses of prize competitions and challenges, types of prizes, use of various types of authorities to conduct prize competitions and challenges, and includes a discussion of some of the issues agencies must consider when conducting a prize competition or challenge – e.g., intellectual property rights, the Paperwork Reduction Act. This OMB memorandum is included as [Appendix A](#) of this DR.

Some of the possible authorities for prize competitions and challenges discussed in the OMB memorandum are:

- (1) Direct prize authorities – e.g., the America COMPETES Act;

- (2) Discretionary competitive grants where the grantee’s proposed way of addressing the aim of the grant funding is to conduct a competition. The grantee would use the federal funds to conduct their own prize competition or challenge – i.e., this is not a way to conduct a prize competition or challenge for USDA. The solution(s) created through the prize competition or challenge process would not be for the direct use or benefit of the federal government;
  - (3) A procurement for a contractor to provide a particular solution where that solution is obtained through a prize competition or challenge process. The solution obtained could be for the direct use or benefit of the federal government;
  - (4) As part of an agency’s already authorized outreach and education activities conducting a prize competition with prizes of no or nominal monetary value, and using the Department’s gift acceptance authority to accept the winning solutions for the direct use or benefit of the federal government;
  - (5) Other transactions authority – the Department has limited other transactions authorities that are available to some, but not all of the agencies within USDA;
  - (6) Agency partnership authorities may have limited uses for prize competition efforts.
- b. In January of 2011, the President signed into law the America COMPETES Act. This statute provides direct prize authority for all civilian agencies, including USDA, to carry out a program to award prizes competitively to stimulate innovation that has the potential to advance the mission of the agency.
- (1) Shortly after the passage of the America COMPETES Act, OMB issued a memorandum titled “Prize Authority in the America COMPETES Reauthorization Act.” This memorandum provides a list of frequently asked questions and general guidance for agencies on the use of the direct prize authority of the America COMPETES Act. This OMB memorandum is included as [Appendix B](#) of this DR.
  - (2) The Under Secretaries, Assistant Secretaries, and General Officers listed below in (a) are delegated the authority vested in the Secretary to implement the America COMPETES Act. This authority may be redelegated, as appropriate.
    - (a) The USDA officials who have been delegated America COMPETES Act authority are:
      - 1 Under Secretary for Farm and Foreign Agriculture Services
      - 2 Under Secretary for Natural Resources and Environment

- 3 Under Secretary for Marketing and Regulatory Programs
- 4 Under Secretary for Food Safety Programs
- 5 Under Secretary for Food, Nutrition and Consumer Services
- 6 Under Secretary for Rural Development
- 7 Under Secretary for Research, Education and Economics
- 8 Assistant Secretary for Civil Rights
- 9 Assistant Secretary for Administration
- 10 Chief Economist

This delegation has the following exclusions:

- a Secretarial approval is required for all prize competitions that may result in the award of more than \$1,000,000 in cash prizes, 15 U.S.C. § 3719(m)(4)(B).
- b No prize competition approved by the Secretary may offer a prize in an amount greater than \$50,000,000 unless 30 days have elapsed after written notice has been transmitted to the Committee on Commerce, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives, 15 U.S.C. § 3719(m)(4)(A).

### 3. DEFINITIONS

- (1) Challenge.gov. Challenge.gov is a website administered by General Service Administration (GSA) that serves as the central listing for federal agency prize competitions and challenges. Agencies are required to list every prize competition or challenge they conduct on the Challenge.gov website. Some types of prize competitions and challenges can also be hosted on the Challenge.gov website.
- (2) Prize Competition Coordinator. The Office of the Chief Financial Officer (OCFO) is responsible for ensuring all necessary steps are completed when an agency/staff office submits a prize competition or challenge.
- (3) Prize Competition Manager. A representative from a USDA agency/staff office responsible for administering prize competitions and challenges.

#### 4. POLICY

Section 4.a. discusses the policy for use of the direct prize authority provided by the America COMPETES Act. Section 4.b. discusses the policy for all non-direct authority prize competitions and challenges. Section 4.c. discusses the policies that are applicable to **all** USDA prize competitions and challenges.

- (1) America COMPETES Act Prize Competitions and Challenges
- (2) Signed into law in 2011, the America COMPETES Act authorizes each head of an agency, or heads of multiple agencies in cooperation, to carry out programs to award prizes competitively to stimulate innovation that has the potential to advance the mission of the respective agency, 15 U.S.C. § 3719 (b). See Section 2. paragraph b. (2) for a discussion regarding delegation of this authority.
- (3) Prizes.
  - (a) A Prize (monetary or non-monetary) is used to give a solver an incentive to support innovation and encourage the development and spread of new ideas. In the Federal context, a prize may be considered similar to an acquisition tool, 15 U.S.C. § 3719 (c). A prize under the America COMPETES Act may be one or more of the following:
    - 1 A point solution prize that rewards and spurs the development of solutions for a particular, well-defined problem.
    - 2 An exposition prize that helps identify and promote a broad range of ideas and practices that may not otherwise attract attention, facilitating further development of the idea or practice by third parties.
    - 3 Participation prizes that create value during and after the competition by encouraging contestants to change their behavior or develop new skills that may have beneficial effects during and after the competition.
    - 4 Such other types of prizes as agency heads consider appropriate to stimulate innovation that has the potential to advance their respective agency missions.
- (4) Eligibility.
  - (a) For individuals, whether participating individually, or in a group, only citizens or permanent residents of the United States are eligible to compete in America COMPETES Act prize competitions and challenges, 15 U.S.C. § 3719 (g)(3).

- (b) For private entities, only those entities that are incorporated and maintain a primary place of business in the United States are eligible to compete in America COMPETES Act prize competitions and challenges, 15 U.S.C. § 3719 (g)(3).
  - (c) Federal employees acting within the scope of their employment are ineligible to enter prize competitions, 15 U.S.C. § 3719 (g)(4). Because Federal conflicts of interest may be implicated, Federal employees acting in their personal capacity should consult with their ethics officials prior to applying for any USDA prize competitions or challenges.
  - (d) A contractor may not use Federal funds from a contract to develop an entry for a prize competition or challenge. Costs associated with such activities are unallowable and are not allocable to Government contracts.
  - (e) Federal grantees may not use Federal funds to develop an entry for a prize competition or challenge, unless entry into the prize competition or challenge is consistent with the purpose of their grant award. If a grantee using Federal funds wins a prize competition or challenge, the monetary value of the prize purse/award must be treated as program income for the purposes of the original grant in accordance with applicable OMB circulars and 2 CFR Part 200.
- (5) Funding for Prize Competitions and Challenges under the America COMPETES Act.
- (a) 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 cash prizes, 15 U.S.C. § 3719 (m)(1).
    - 1 Acceptance of funds from private sector donors must comply with DR 5200-003 “Gift Acceptance Policy.”
    - 2 Agencies may not give special consideration to a private sector entity in return for a donation.
  - (b) Agencies may accept funds from other Federal agencies to support prize competitions, 15 U.S.C. § 3719 (m)(1).
  - (c) Federal appropriated funds may only be used for prize competitions and challenges that match the purpose for which Congress appropriated the funds.
- (6) Administration of Prize Competitions and Challenges.
- (a) Agencies may administer America COMPETES Act prize competitions and challenges themselves.

- (b) Agencies may hire a contractor to administer an America COMPETES Act prize competitions and challenges. GSA has established a federal supply schedule contract for prize competition and challenge administration contractors.
  - (c) The America COMPETES Act authorizes agencies to enter into cooperative agreements with private, nonprofit entities to administer prize competitions and challenges on behalf of the agency, 15 U.S.C. § 3719(l).
- (7) Limitation on Prize Amount.
- (a) No prize competition or challenge may result in the award of more than \$1,000,000 in cash prizes without the approval of the Secretary, 15 U.S.C. § 3719 (m)(4)(B).
  - (b) No prize competition or challenge approved by the Secretary may offer a prize in an amount greater than \$50,000,000 unless 30 days have elapsed after written notice has been transmitted to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Science and Technology, 15 U.S.C. § 3719 (m)(4)(A).
- (8) Announcement of Prize Competition or Challenge.
- (a) Prize competitions and challenges conducted using the direct prize authority of the America COMPETES Act require publication in the Federal Register, 15 U.S.C. § 3719(f).
  - (b) The Federal Register notice must be published either before the start date or on the same day as the start date of the prize competition or challenge; the notice cannot be published after the start date.
  - (c) The Federal Register notice must include:
    - 1 The subject of the competition;
    - 2 The rules for being eligible to participate in the competition;
    - 3 The process for participants to register for the competition;
    - 4 The amount of the prize; and
    - 5 The basis on which a winner will be selected.
- (9) Liability – Prize competition and challenge rules must require participants to agree to assume any and all risks associated with participation in the competition or

challenge, and waive claims against the Federal Government, 15 U.S.C. § 3719(i)(1)(B).

(10) Insurance.

- (a) When designing a prize competition or challenge, agencies will need to consider whether the risks posed by participation in the competition or challenge are of such a type or degree that participants should be required to obtain liability insurance prior to participating.
- (b) For every prize competition or challenge, the agency must make a written determination of the amount of liability insurance required for that prize competition or challenge. The determination may be that zero liability insurance is required.
- (c) Anytime liability insurance is required for participation in a prize competition or challenge, the required insurance shall cover:
  - 1 Claims by a third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in the competition, with the Federal Government named as an additional insured under the participant's insurance policy and participants agreeing to indemnify the Federal Government against third party claims for damages arising from or related to competition activities.

and

  - 2 The Federal Government for damage or loss to Government property resulting from competition activities.

(11) Intellectual Property.

- (a) Agencies may not obtain ownership of or interests in (e.g., licenses) intellectual property developed by a participant in an America COMPETES Act prize competition or challenge as part of the prize competition or challenge.
- (b) Agencies may negotiate for a license for use of intellectual property developed by a participant in an America COMPETES Act prize competition or challenge after the prize competition or challenge.

(12) Judges.

- (a) For each prize competition or challenge the agency shall appoint one or more qualified judges to select the winner or winners of the competition. Judges

may include individuals from inside the agency and individuals from outside the agency, including from the private sector, 15 U.S.C. § 3719(k)(1).

- (b) [Appendix E](#) sets forth the judging guidelines for USDA prize competitions and challenges.
- (c) The Federal Advisory Committee Act (FACA), 5 U.S.C. App. does not apply to a group created solely for the purpose of judging America COMPETES Act prize competitions or challenges, 15 U.S.C. § 3719(k)(4).

(13) Agencies/staff offices considering prize competitions or challenges should consult with their appropriate program counsel office for their mission area concerning legal issues relevant to their agencies/staff offices and to ensure that each use of a prize competition or challenge is consistent with congressional authorizations or appropriation.

#### b. Non-Direct Authority Prize Competitions and Challenges

- (1) Prize competitions under other authorities may include any of the types of prizes discussed in section 1., or any of the types of prizes contemplated by the America COMPETES Act.
- (2) Administration of Prize Competitions and Challenges under Other Legal Authorities.
  - (a) Agencies may administer prize competitions and challenges themselves.
  - (b) Agencies may hire a contractor to administer a prize competition or challenge. GSA has established a federal supply schedule contract for prize competition and challenge administration contractors.
  - (c) Depending on the type of authority used for the prize competition or challenge having a grantee, cooperator, or other partner administer the prize competition or challenge may be a possibility.
- (3) Eligibility. Individuals who are not U.S. citizens or permanent residents might be eligible to win prizes in prize competitions and challenges conducted under other legal authorities. Eligibility will be determined by the type of authority being used for the prize competition or challenge.
- (4) Authority. There are a number of authorities under existing statutes that agencies potentially could rely upon to structure a prize competition or challenge; see section 2. Not every authority will be available for every agency. Agencies should always consult with their appropriate program counsel office for their mission area concerning available authority and other legal issues relevant to their

agencies to ensure that each use of a prize competition and challenge is consistent with congressional authorization and appropriation.

- (5) **Funding.** Availability of appropriated funds or outside funding sources for prize competitions and challenges using other legal authorities will be determined based upon:
  - (a) The particular authority being used for the prize competition or challenge;  
and
  - (b) The purpose of the prize competition or challenge.
- (6) **Prize Amount of Prize Competition or Challenge under Other Authorities.** No prize competition or challenge may result in the award of more than \$1,000,000 in cash prizes without the approval of the Secretary and OCFO.
- (7) **Announcement of the Prize Competition or Challenge.** USDA prize competitions and challenges conducted under other legal authorities require the same publication in the Federal Register as prize competitions and challenges under the America COMPETES Act (see 4.a.(7)).
- (8) **Liability.** Prize competitions and challenges conducted under other legal authorities should include in their rules the same liability requirements as America COMPETES Act competitions (see 4.a.(8)).
- (9) **Insurance.** Prize competitions and challenges conducted under other legal authorities require the same written determination about amount of any liability insurance that will be required as America COMPETES Act (see 4.a.(9)).
- (10) **Intellectual Property.** The ability of the agency to obtain ownership of or an interest in (e.g., licenses) intellectual property developed by a participant in a prize competition or challenge under other legal authorities will be determined by the type of legal authority used for the prize competition or challenge.
- (11) **Judges.**
  - (a) Prize competitions and challenges under other legal authorities will use the same judging guidelines as prize competitions and challenges under the America COMPETES Act competitions (see 4.a.(11)(a) and (b)). The judging guidelines are included as [Appendix E](#).
  - (b) Judging panels for prize competitions and challenges under other legal authorities may be subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. Judging panels consisting wholly of federal employees will not be subject to FACA. If a judging panel will have non-federal members, the

agency will need to consult with the Office of the General Counsel (OGC) to determine whether FACA applies to their particular prize competition or challenge.

c. Policy Applicable to Both America COMPETES Act and Other Legal Authority Prize Competitions and Challenges.

(1) Announcement Timing.

Agencies may not announce prize competitions or challenges until all the funding needed to pay out the prize amount has been appropriated and/or committed in writing by any private source(s) providing funding.

(2) Federal Endorsement of Products or Services. Agencies should avoid any improper Federal endorsement of products or services when creating prize competitions and challenges. See 5 C.F.R. 2635.702 (c).

(3) Entities/persons that are suspended or debarred are not eligible to win prize competitions and challenges.

(4) Paperwork Reduction Act (PRA). Agencies should consult with their agency PRA Coordinator, and if necessary with OGC to determine whether the PRA applies to the entry forms or other documents the agency intends to use for a particular prize competition or challenge. The standard forms that prize winners will be required to fill out (see section 6.) should already satisfy the requirements of the PRA; if there is a question about whether use of these forms triggers any additional PRA requirements agencies should consult with their PRA Coordinator.

(5) Privacy Act. For prize competitions and challenges with monetary prize purses the agency will need to collect personally identifiable information from the prize winners in order to make payments. Agencies will use already established standard forms for the collection of this information. Accordingly, the Privacy Act requirements for collection of this information should already be satisfied. If additional forms will be used for a particular prize competition or challenge, the agency should consult with their agency privacy officer, and if necessary with the OCFO and/or OGC to determine what Privacy Act requirements apply to the additional forms.

(6) Challenge.gov.

(a) All prize competitions and challenges must be posted on the Challenge.gov website.

1 To post a prize competition or challenge on the Challenge.gov website agencies will need to apply with the GSA for administrator access to the site.

- (b) Certain types of prize competitions and challenges can also be hosted on the Challenge.gov website. Other types of prize competitions and challenges will need to be hosted on a website other than Challenge.gov.

1 For guidance on the use and availability of Challenge.gov for hosting prize competitions and challenges please visit the Challenge.gov website.

- (7) Requirements for Transactions Related to the Prize Competition or Challenge.

During the course of conducting a prize competition or challenge, agencies may enter into other transactions related to the prize competition or challenge. The standard rules, procedures, and documentation requirements that normally apply to these types of transactions continue to apply in the prize competition or challenge arena. For example, an agency may enter into a procurement contract to have a contractor administer the prize competition or challenge. This procurement contract would be subject to the same competition requirements, Federal Acquisition Regulation requirements, and records retention requirements as any other procurement contract.

- (8) Compliance with State Law. Agencies should evaluate the need for participants to comply with varying state laws.
- (9) Reporting. Agencies should submit the template for Annual Reporting Requirements at USDA to OCFO within 5 days after the selection of a prize competition or challenge winner. See [Appendix H](#). This information will be used in compiling USDA's annual report to Congress on its use of prize competitions and challenges.

## 5. RESPONSIBILITIES

### a. Office of the Secretary.

- (1) America COMPETES Act Prize Competitions and Challenges
  - (a) Approve prize competitions that may result in awards of more than \$1,000,000 as set forth in 15 U.S.C. § 3719 (m)(4)(b).
  - (b) Ensure that no prize competition may offer a prize in an amount greater than \$50,000,000 unless 30 days have elapsed after written notice has been transmitted to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Science and Technology as set forth in 15 U.S.C. § 3719 (m)(4)(A).
- (2) Other Legal Authority Prize Competitions and Challenges

- (a) Approve prize competitions that may result in awards of more than \$1,000,000 (see 4.b.(6)).
- b. OCFO.
  - (1) Responsibilities Applicable to Both America COMPETES Act and Other Authority Prize Competitions and Challenges
    - (a) Act as the USDA agency Prize Competition Coordinator.
    - (b) Review, in collaboration with the OGC, all prize competition and challenge proposals submitted by agencies/staff offices. See [Appendix C](#).
    - (c) Complete the OCFO/OGC Review Document. See [Appendix D](#).
    - (d) Submit the consolidated USDA annual report for America COMPETES Act to the OMB's Director of Office of Science and Technology Policy by December 30<sup>th</sup> of each year, regarding the Department's activities during the fiscal year that ended on the preceding September 30 as set forth in 15 U.S.C. § 3719 (p)(1).
- c. Agencies/staff offices.
  - (1) Identify a Prize Competition Manager for their agency/staff office who will be responsible for both America COMPETES Act and other legal authority prize competitions and challenges.
- d. Prize Competition Manager.
  - (1) America COMPETES Act Prize Competitions and Challenges.
    - (a) Directly, or through an agreement with a private, nonprofit entity, shall appoint one or more qualified judges to select the winner or winners of the prize competition as set forth in 15 U.S.C. § 3719 (k)(1).
    - (b) Work with the agency/staff office budget office to secure sufficient funds for administration of the prize competition or challenge and award of the prize amount. Appropriated funds may only be used if the purpose of the prize competition or challenge matches the purpose for which Congress appropriated the funds.
    - (c) If it is known that the agency/staff office intends to negotiate intellectual property (IP) rights later, this may be noted under the "Additional Information" section of the Federal Register Notice. This will ensure the proper treatment of IP rights in the notice.

- (2) Other Legal Authority Prize Competitions and Challenges.
- (a) Secure sufficient funds that are authorized for the planned prize competition or challenge and are consistent with congressional authorization and appropriation.
  - (b) Select the right vehicles and partners for the prize competition or challenge. Think broadly about the role that effective partners can play in administering or publicizing contests. Depending on agency authority, it may be appropriate to seek Federal agency or non-Federal partners to help meet agency goals. Some or all of the following vehicles may, in appropriate circumstances, be worthy of consideration:
    - 1 Design, administer, and pay for the challenge competition internally within the agency.
    - 2 Award a procurement contract for administration of the prize competition.
    - 3 Enter into an Economy Act agreement or other interagency agreement to involve other federal agencies in the conduct of a prize competition.
    - 4 As permitted by agency authorities, encourage the formation of a public-private partnership to fund and administer the challenge competition.
- (3) Responsibilities Applicable to Both America COMPETES Act and Other Legal Authority Prize Competitions and Challenges.
- (a) Select topics for prize competitions and challenges.
  - (b) Complete and submit USDA Review Form to OCFO. See [Appendix C](#).
  - (c) Publish a notice in the Federal Register announcing:
    - 1 The subject of the competition;
    - 2 The rules for being eligible to participate in the competition;
    - 3 The process for participants to register for the competition;
    - 4 The amount of the prize; and
    - 5 The basis on which a winner will be selected.
  - (d) When developing an announcement of the prize competition or challenge for publication to the Federal Register, include OCFO in the clearance process

- (e) When prize purses are paid with Federal funds, the Federal Register announcement must indicate i) that awards will be paid using electronic funds transfer and ii) all Federal, state and local taxes are the sole responsibility of the winner(s). See [Appendix G](#). If the funding for the prize purse is donated by a non-Federal entity, the contest rules announced in the Federal Register should reflect the name of the USDA award approving official; not the name of the donor.
- (f) If the funding for the prize purse is paid by a non-Federal entity, the contest rules should reflect the name of the partner. The agency/staff office will need to coordinate with the partner regarding instructions for award of the prize purse.
- (g) Consult with their appropriate program counsel for their mission area concerning legal issues relevant to their agencies to ensure that each use of a prize competition or challenge is consistent with congressional authorization and appropriation.
- (h) Use the appropriate vehicle (e.g., Interagency Agreement with another Federal agency or an appropriate agreement with a private party) when USDA is accepting outside funds for a prize competition or challenge.
  - 1 When USDA is responsible for making the payment to the prize competition winners, the funds from the outside source must be received and deposited as an advance prior to announcing the prize competition. When the prize competition or challenge is fully completed, any remaining funds must be returned to the outside source.
  - 2 If the outside source is responsible for making the payment directly to the winner(s) of the prize competition or challenge, USDA will:
    - a Obtain the outside source's commitment in writing; and
    - b Clearly state in the prize competition or challenge rules and announcement that an outside source is responsible for paying the monetary prize.
- (i) Notify the Judges. Upon approval of qualified judges, provide the selected judges with USDA judging guidelines document for completion. See [Appendix E](#).
- (j) Develop judging evaluation criteria for the prize competition or challenge. See [Appendix F](#). Prize Competition Managers must document and keep a record of the decision-making process used to select the finalists.

- (k) Work with agency/staff office accounting staff to record a commitment of funds in USDA's accounting system before the prize competition or challenge is announced.
- (l) List USDA prize competitions or challenges on Challenge.gov (USDA-wide policy). All USDA Prize Competition Managers wishing to post a challenge on Challenge.gov must be approved by OCFO or agency designee.
- (m) When a prize purse is monetary, check the System for Award Management (<https://www.sam.gov/portal/public/SAM/>) to determine whether a prospective winner has been suspended or debarred. Agencies need to include in the contest rules the exclusion of Suspended and/or Debarred entities or individuals from being able to win the contest.
- (n) Have available for inspection by OCFO documentation: 1) identifying the winner(s) of the prize competition or challenge, 2) how the winner(s) of the prize competition or challenge were selected, and 3) how the winner(s) of the prize competition or challenge were announced.
- (o) Obtain winner(s) information needed to process a payment for a prize competition or challenge within USDA's accounting system. The USDA agency/staff office will complete Standard Form 1034 (SF1034), "Public Voucher for Purchases and Services Other than Personal" and submit the SF1034 to the unit responsible for processing payment to the winner(s).
- (p) Ensure that all prize competition or challenge documentation provides clear audit trails of financial transactions which include all materials created in support of financial events and disclosure of events or circumstances that affect a user's interpretation.
- (q) Paperwork Reduction Act. Agencies should evaluate the applicability of the PRA to any prize-related activities. Consult with your PRA Coordinator should you have any questions about the applicability of prizes and the PRA to a specific competition or challenge.
- (r) Privacy Act. Agencies should evaluate the applicability of the Privacy Act to any prize-related activities.
- (s) Gift Acceptance. Agencies should apply USDA gift acceptance policy guidelines for acceptance of any gifts related to prize competitions or challenges. See USDA Gift Acceptance Policy, DR 5200-003.
- (t) Ethical Issues. Federal employees must comply with the Standards of Ethical Conduct for Employees of Executive Branch, 5 C.F.R. § 2635, and the general principle that employees will act impartially and not give preferential treatment to any private organization or individual.

- (u) Submit the template for Annual Reporting Requirements at USDA to OCFO within five days after the conclusion of a prize competition or challenge. See [Appendix H](#). This information will be used in compiling USDA's annual report to Congress on its use of prize competitions and challenges.

-END-

## APPENDIX A

### Guidance on the Use of Challenges and Prizes to Promote Open Government (OMB Memorandum M-10-11)



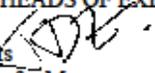
EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

DEPUTY DIRECTOR  
FOR MANAGEMENT

March 8, 2010

M-10-11

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Jeffrey D. Zients   
Deputy Director for Management

SUBJECT: Guidance on the Use of Challenges and Prizes to Promote Open Government

At the outset of his Administration, President Barack Obama signed the Memorandum on Transparency and Open Government, committing the Administration to creating a more transparent, participatory, and collaborative government. On December 8, 2009, the Director of the Office of Management and Budget (OMB) issued the Open Government Directive (Directive), which required executive departments and agencies to take specific actions to further the principles established by the President's memorandum. The Directive also tasked the OMB Deputy Director for Management with issuing guidance for the increased use of challenges and prizes to develop new tools and approaches to improve open government. This memorandum highlights for agencies policy and legal issues related to the implementation of the Obama Administration's commitment to increase the use of prizes and challenges as tools for promoting open government, innovation, and other national priorities.

#### I. Policy

##### A. Background

In September 2009, the President released his *Strategy for American Innovation*, calling for agencies to increase their ability to promote and harness innovation by using policy tools such as prizes and challenges. Some agencies already have started to effectively use prizes and challenges. For example, Defense Advanced Research Projects Agency's "grand challenges" have advanced the state of the art of robotic cars that drive themselves. The National Aeronautics and Space Administration's (NASA) Centennial Challenges have triggered an outpouring of creative solutions from students, citizen inventors, and entrepreneurial firms for technologies such as lunar landers, space elevators, fuel-efficient aircraft, and astronaut gloves. The Department of Energy has sponsored the L Prize, designed to spur the development of high-quality, highly efficient solid-state lighting products to replace today's inefficient light bulbs. The Environmental Protection Agency has used prizes to encourage students and others to develop videos to promote environmental stewardship. The Department of State has sponsored highly successful video and writing contests that have attracted contestants from a broad diversity of countries and geographic regions, and that have furthered the U.S. public diplomacy mission.

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### **B. Potential Benefits of Prizes**

The Administration believes that prizes and challenges have a number of potential benefits. Under the right circumstances, they may allow the government to:

- Establish an important goal without having to choose the approach or the team that is most likely to succeed;
- Pay only for results;
- Highlight excellence in a particular domain of human endeavor to motivate, inspire, and guide others;
- Increase the number and diversity of the individuals, organizations, and teams that are addressing a particular problem or challenge of national or international significance;
- Improve the skills of the participants in the competition;
- Stimulate private sector investment that is many times greater than the cash value of the prize;
- Further a Federal agency's mission by attracting more interest and attention to a defined program, activity, or issue of concern; and
- Capture the public imagination and change the public's perception of what is possible.

Accordingly, it is Administration policy to strongly encourage agencies to:

- Utilize prizes and challenges as tools for advancing open government, innovation, and the agency's mission;
- Identify and proactively address legal, regulatory, technical, and other barriers to the use of prizes and challenges;
- Select one or more individuals to identify and implement prizes and challenges, potentially in partnership with outside organizations, and to participate in a government-wide "community of practice" led by the Office of Management and Budget and the Office of Science and Technology Policy; and
- Increase their capacity to support, design, and manage prizes, potentially in collaboration with external partners.

To support agencies in the execution of prizes that further the policy objectives of the Federal Government, the Administration will make available a web-based platform for prizes and challenges within 120 days. This platform will provide a forum for agencies to post

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problems and invite communities of problem solvers to suggest, collaborate on, and deliver solutions. Over the longer term, the General Services Administration (GSA) will also provide government-wide services to share best practices and assist agencies in developing guidelines for issuing challenges. Additionally, GSA will develop, as expeditiously as possible, a contract vehicle to provide agency access to relevant products and services, including technical assistance in structuring and conducting contests to take maximum benefit of the marketplace as they identify and pursue contest initiatives to further the policy objectives of the Federal Government.

### II. Use of Prizes and Challenges – Policy Issues for Consideration

In considering the use of prizes and challenges, agencies should have a clear idea of what they are trying to accomplish by supporting or encouraging the creation of a prize, and how the prize will help them achieve that goal. A prize should not be an end in itself, but one means within a broader strategy for spurring private innovation and change. Furthermore, agencies should plan appropriately for all stages of prize development and, where permissible, consider partnering with other entities that might administer, support, or catalyze the prize.

#### A. Choose the Right Prize for the Goal

Experts often make a distinction between “recognition” prizes that honor past achievements, and “inducement” or “incentive” prizes that encourage participants in the competition to achieve a particular goal. These experts have developed different characterizations of prize types. A recent study identified six prize archetypes.<sup>1</sup> Drawing from this framework, this section provides examples of different prize types that agencies may wish to consider, subject to their own analysis of legal and ethical issues, including those identified in sections III and IV.

As noted, a prize should not be an end in itself, but one means within a broader strategy for spurring change. When considering prizes, agencies should select the type of prize best able to accomplish the broader aim.

- *Exemplar prizes*, such as the Nobel Prize, define excellence within an area. Historically, most prizes have been exemplar prizes that recognize past general achievement in a field, but other prize designs may more effectively spur *future* innovation.
- *Point solution prizes* aim to reward and spur development of solutions for a particular, well-defined problem. NASA, for example, is using an online “innovation marketplace” with 180,000 participants to spur solutions to problems such as forecasting solar activity, keeping food fresh in space, and developing a compact aerobic device for astronauts. An advance market commitment may be one vehicle for spurring specific solutions by providing a commitment to purchase a product that does not yet exist. In the private sector, for example, five governments and the Gates Foundation have pledged \$1.5

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<sup>1</sup> McKinsey & Company, “And the winner is...”  
([http://www.mckinsey.com/App\\_Media/Reports/SSO/And\\_the\\_winner\\_is.pdf](http://www.mckinsey.com/App_Media/Reports/SSO/And_the_winner_is.pdf)).

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billion to support the purchase of pneumococcal vaccines for children in developing countries, which could save the lives of 7 million children by 2030.

- *Exposition prizes* help identify and promote a broad range of promising ideas and practices that may not otherwise attract attention, facilitating further development of the idea or practice by third parties. Successful exposition prizes can mobilize capital and institutions in support of ideas and practices developed during a prize competition. For example, the Director of National Intelligence sponsors the Galileo Award to encourage Federal employees to propose creative solutions for the Intelligence Community, and provides winners with a cash prize and the opportunity to brief senior officials on their ideas.
- *Network prizes* build networks and strengthen communities by organizing winners into new problem-solving communities that can deliver more impact than individual efforts. One example would be a contest encouraging people worldwide to share their thoughts and ideas on a variety of topics of universal interest and then organizing participants into an active online community, creating a global, cross-cultural dialogue in furtherance of the public diplomacy mission of the United States.
- *Participation prizes* create value during and after the competition – not through conferral of the prize award itself but through their role in encouraging contestants to change their behavior or develop new skills that may have beneficial effects during and beyond the competition. As part of his “Educate to Innovate” campaign, for example, President Obama has highlighted the FIRST robotics competitions, which engage over 200,000 students, and are designed to motivate young people to pursue opportunities in science, technology, engineering, and mathematics. A contest encouraging good nutrition on the part of school cafeterias or school children would be an example of a participation prize; contestants participate not necessarily to collect the reward, but for the fun and benefits of the competition itself.
- *Market stimulation prizes* try to establish the viability of a market to address a potential market failure, mobilize additional human talent and financial capital to jumpstart the development of a new industry, or change public perceptions about what is possible. The goal of the Ansari X Prize, for example, was to serve as a catalyst for the private spaceflight industry.

### **B. Focus on All Stages of the Prize, including Pre-Prize and Post-Prize Stages**

Agencies should plan appropriately for all stages of prize development and administration. The design of a prize and the award process often receive the bulk of sponsors’ attention, but effective sponsors devote extensive time to defining the broader goals of the prize and analyzing the motivations of participants before they consider the prize type or the purse. Agencies also should take care to plan for the post-prize phase, reinforcing the impact of an award with other investments and follow-up activities. In some cases, it may be helpful and appropriate to increase the visibility of a prize by involving senior agency officials in the launch. It may be further helpful in some

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instances for an agency to identify government actions that would increase the impact of the prize over the long-term.

### C. Choose the Right Vehicles and Partners for the Prize

Agencies should think broadly about the role that effective partners can play in administering or publicizing contests. It may be appropriate, where legally permissible, to seek Federal agency or non-federal partners to help meet agency goals. Some or all of the following vehicles may, in appropriate circumstances, be worthy of consideration:

- Designing, administering, and paying for the prize internally within the agency;
- Providing a grant, cooperative agreement, or contract to an outside organization that covers some or all of the costs associated with the prize purse and prize administration; or
- Encouraging the formation of a public-private partnership to fund and administer a prize.

## III. Potential Legal Authority – Issues for Consideration

There are a number of authorities under existing statutes that agencies potentially could rely upon to structure prize competitions. The following, which lists some possible legal authorities, does not purport to be exhaustive. Moreover, these authorities will not be available for all agencies. Agencies considering prizes and competitions should consult with their general counsels concerning legal issues relevant to their agencies and to ensure that each use of a prize or competition is consistent with congressional authorization or appropriation.

### A. Direct Prize Authority

A number of agencies have direct statutory authority to conduct prizes contests. Pursuant to these authorities, agencies have been able to structure prize competitions with a variety of features.

1. Agency-Funded and Agency-Administered Prizes. Some agencies can directly administer prize competitions and provide the funding for the prize purse. NASA (42 U.S.C. § 2459f-1) and the Departments of Defense (10 U.S.C. § 2374a) and Energy (42 U.S.C. § 16396) possess the authority to directly administer prize competitions and use appropriated funds to provide the prize purse.
2. Third-Party Administered Prizes. Third-party administration of prize contests has also been specifically authorized by statute. NASA (42 U.S.C. § 2459f-1(h)) and the Department of Energy, with respect to the Bright Tomorrow Lighting Prize (42 U.S.C. § 17243), have the discretion to select a third party to administer a prize competition. Congress has required that the Department of Energy H Prize (42 U.S.C. § 16396(f)) be administered by third parties.
3. Outside Funding. Several statutes provide for agencies to seek outside funding for prize contests. For example, NASA (42 U.S.C. § 2459f-1(i)(1)) and the

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National Science Foundation (42 U.S.C. § 1870(f)) are permitted to receive private contributions for the purposes of funding prize competitions.

4. Recognition Awards. Recognition prizes can be used to support several of the prize contests referenced in section II. A number of agencies have explicit authority to offer recognition prizes and awards. For example, the Department of Commerce is authorized to present a Commercial Space Achievement Award under 15 U.S.C. § 5808. The Department of Transportation is authorized to provide a medal and cash prize to private sector recipients or Federal laboratory personnel whose efforts have “substantially improved domestic motor vehicle research and development in safety, energy savings, or environmental impact.” 15 U.S.C. § 3711c. The Department of Education recognizes “Blue Ribbon Schools” under 20 U.S.C. § 7243(b)(5).

### B. Grants and Cooperative Agreements

Some agencies have authority to award grants and/or participate in cooperative agreements and may be able to conduct prize competitions through that authority. A “grant” is defined in the Federal Grant and Cooperative Agreement Act (and in OMB Circulars) as financial assistance by the Federal Government that provides support or stimulation to accomplish a public purpose; a “cooperative agreement” is similarly defined, with the additional criterion that the agency expects to have substantial involvement with the recipient in carrying out the activities contemplated in the agreement. Neither instrument may be used to acquire goods or services for the direct use or benefit of the Federal Government, such as to conduct an agency’s own prize contest; agencies must use procurement contracts for that purpose. Accordingly, where grants or cooperative agreements are appropriate mechanisms under a given statute to distribute funds, then a “cash prize for a competition” could potentially also be a type of grant or the subject of a cooperative agreement that could be used if otherwise consistent with the specific authorizing statute for the grant. Discretionary, competitive grant programs (in contrast to formula grants or block grants) may be best suited as vehicles for prize competitions, since discretionary, competitive grants are often authorized by statutes that do not specify the manner in which grant funds must be distributed. As part of their consideration of using grants to facilitate prize competitions, agencies may examine their authority to make fixed obligation awards without requirements for Federal monitoring of actual costs.

### C. Necessary Expense Doctrine

An agency without explicit prize authority might be able to conduct a contest and/or offer a prize if doing so bears a direct relationship to the agency’s statutorily authorized mission. Agencies should consult their general counsels to determine whether such a relationship exists.

Under the “necessary expense” doctrine, an agency has reasonable discretion in determining how to carry out the objects of an appropriation. To qualify as a “necessary

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expense,” the expenditure must: (1) make a direct contribution to carrying out either a specific appropriation or an authorized agency function for which more general appropriations are available; (2) not be prohibited by law; and (3) not be an item that falls within the scope of some other appropriation or statutory funding scheme. See Government Accountability Office, Principles of Federal Appropriations Law, 4-19 to 4-29, 4-162 to 4-164 (discussing Comptroller General’s view of the “necessary expense” doctrine and government-sponsored contests).

For example, the Comptroller General has viewed an agency’s decision to sponsor a contest as a permissible exercise of administrative discretion in implementing a statutory objective to provide “recreational services.”<sup>2</sup> See id. at 4-163. Similarly, where an agency has a statutory mandate to collect information from the public, the Comptroller General has approved contests incentivizing the public to provide such information. See id. Another example of agencies’ use of the necessary expense doctrine to directly host competitions with prize purses includes NASA’s reliance on its statutory authority to seek and encourage the commercial use of space to sponsor a contest in 2005 to develop technologies that could be useful in developing a space elevator, although in that case there was no contest winner and no funds were distributed.<sup>3</sup>

Statutory authorities in areas such as public education, outreach, and cooperation with nongovernmental entities may also be an appropriate basis for agencies to pursue participation prizes or certain types of prizes, or to assist prize competitions even if not directly sponsoring the contest or funding a prize purse. For example, relying on its authority under the “Laboratory cooperative science centers and other authorized education activities” provision established in the Energy Policy Act of 2005 (42 U.S.C. § 7381b), DOE issued grant funds to support the outreach and educational efforts of the nonprofit X Prize Foundation, which is conducting a contest for the successful development of vehicles with 100 mile per gallon efficiency.

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<sup>2</sup> GAO decisions are not binding on Executive branch agencies. See Memorandum Opinion for Sara D. Lipscomb, General Counsel, Small Business Administration, from Jeannie S. Rhee, Deputy Assistant Attorney General, *Re: Permissibility of Small Business Administration Regulations Implementing the Historically Underutilized Business Zone, 8(a) Business Development, and Service-Disabled Veteran-Owned Small Business Concern Programs*, at 13 (August 21, 2009) (noting that the Office of Legal Counsel “has on many occasions issued opinions and memoranda concluding that GAO decisions are not binding on Executive Branch agencies and that the opinions of the Attorney General and of this Office are controlling” and providing citations). Nonetheless, GAO rulings and analysis may be helpful to the Executive in its own determinations as to availability of appropriations and the permissibility of expenditures of public funds.

<sup>3</sup> NASA at that time did not have explicit statutory prize authority; however, its appropriations act anticipated the conduct of prize competitions where “otherwise authorized.”

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Agencies may have increased latitude to offer cash prizes in competitions that involve artistic design. See Government Accountability Office, Principles of Federal Appropriations Law, 4-162 to 4-164. Any prize purse awarded must be related to the reasonable cost of producing the design. See *id.* For example, using artistic merit as the primary selection criteria, EPA has conducted prize contests for educational videos under its authorities in the Clean Water Act, 33 U.S.C. § 1254(a)(1), and Clean Air Act, 42 U.S.C. § 7403(a)(5), to provide training to the public.

### **D. Authority to Provide Non-Monetary Support to Prize Competitions**

Agencies may have statutory authorities in areas such as public education, outreach, and the like that can serve as a basis for supporting prize competitions without providing funds. For example, the EPA entered into a no-funds “co-sponsorship” agreement with the American Le Mans Series (ALMS) to provide technical assistance and visibility to “Green Challenge” racing competitions using its authority to cooperate with nonprofit entities to reduce air pollution under section 103 of the Clean Air Act (42 U.S.C. § 7403(b)(2)).

### **E. Procurement Authority**

Agencies may be able to conduct a procurement in a contest-like manner to encourage greater innovation and private sector participation, when the payment of a prize is for a good or service for the benefit of the government. Where appropriate, an agency could thus use existing procurement authority, such as that provided by the Federal Acquisition Regulation (48 C.F.R. Chapter 1), to issue a solicitation seeking offers that would have to meet certain technical criteria – essentially the rules of the contest – for which the agency would pay a fixed amount (the prize). In situations where small monetary prizes or small procurements are considered (in particular, below the \$100,000 simplified acquisition procedure threshold), agencies might also be able to leverage the flexibilities afforded by simplified acquisition procedures to allow for innovative, contest-based approaches to such procurements.

In addition, a contractor may be able to conduct a prize competition among sub-contractors to encourage innovative means of satisfying the contract and achieving the agency’s procurement needs. Agencies should work with their Office of General Counsel and procurement officials to structure competitions that are compliant with applicable rules and regulations.

### **F. Other Transactions Authority**

Some agencies are authorized to enter into “other transactions” (OTs), which may provide those agencies with the flexibility to structure prize competitions that draw in entities that do not traditionally do business with the Federal Government or to leverage private sector funding. These authorities differ by agency, so those agencies that possess OT authority should consult their general counsels and examine their specific implementing regulations and guidance documents.

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While OTs can resemble contracts, grants, and cooperative agreements in function, OTs are typically not subject to the FAR or other Federal laws and regulations governing normal Federal transactions. Innovative companies often cite government requirements governing intellectual property rights and cost accounting standards, among others, as bases for avoiding doing business with the government. In some cases, OTs are able to provide flexibility for some of these requirements in order to allow government agencies to: (1) attract nontraditional contractors who engage in cutting-edge research and development without requiring these entities to change most of their existing business practices; (2) to enter into agreements with traditional or nontraditional contractors in which there is significant private sector cost-sharing; or (3) enter into other innovative arrangements with contractors that would not be feasible under procurement contracts, grants, or cooperative agreements. Some protections of the government's interest in the use of funds remain, as implementing regulations for certain agencies' OTs established minimum requirements, such as auditing and reporting requirements. In particular, OTs that are structured as fixed-support, rather than expenditure-based, may provide these benefits (10 C.F.R. § 603.315; 32 C.F.R. § 3.4).

Individual OT agreements can vary in support of individual program objectives. For example, the Department of Defense (10 U.S.C. § 2371) has made use of this authority to procure prototype weapons systems from nontraditional government contractors. In 2007, the Department of Energy (42 U.S.C. § 7256(g)) entered into an OT agreement with a nontraditional contractor to design, construct, and operate an integrated ethanol biorefinery in which the Federal Government agreed to provide 21 percent of the total project cost.

The flexibility afforded to agencies with OT authority may allow those agencies that possess this authority to structure prize competitions. Prior to receiving its direct prize authority, NASA used its OT authority (42 U.S.C. § 2473(c)(5)) to enter into an agreement with a nonprofit organization to assist in the development of its 2005 Beam Power Challenge and Tether Challenge.

Agencies with OT authority should work with their Offices of General Counsel to determine whether this authority would be beneficial in structuring competitions.

### **G. Agency Partnership Authority**

Agencies may have statutory authority to form partnerships with other agencies. See, e.g., 49 U.S.C. § 106(l)(6), 106(m) (providing FAA with the authority to enter into "other transactions" with and to accept "services, equipment, personnel, and facilities" from other Federal agencies). Such authority may prove useful to agencies that want to further their statutory missions by working with or supporting other agencies' prize endeavors. If contemplating such a partnership, an agency should be sure to consult with its Office of General Counsel.

### **H. Public-Private Partnership Authority**

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Agencies may have authority to partner with outside entities such as foundations and nonprofit organizations that may elect to award cash prizes or other forms of recognition directly to the winners of government prize competitions. A supplemental award from the private sector can increase the incentives for participation in a competition. An agency considering such partnerships should consult with its Office of General Counsel, and should specifically consider issues relating to its solicitation or gift acceptance authorities to ensure compliance with the rule against augmenting appropriations.

### IV. Other Prize-Related Legal Issues

There are a number of common issues that must be addressed by agencies in structuring prize competitions.

#### A. FACA Compliance

The Federal Advisory Committee Act (FACA) imposes requirements related to certain groups formed to advise agencies or officers of the Federal Government. See 5 U.S.C. app. § 1 et seq. Agencies should be sure to comply with FACA's requirements, where applicable, when establishing a method of selecting a prize or contest winner. FACA may apply to a prize committee unless it is composed entirely of Federal officers or employees, and unless any outside individuals participating in committee meetings are not given a "vote or veto" over committee matters. See In re Cheney, 406 F.3d 723, 728 (D.C. Cir. 2005) (en banc). FACA may also apply when Federal agencies receive input from non-federal employees unless the agencies solicit advice from a group of individuals or entities on an individual basis, rather than the group as a whole. See Association of Am. Physicians & Surgeons v. Clinton, 997 F.2d 898, 913 (D.C. Cir. 1993); see also 41 C.F.R. § 102-3.40(e).

#### B. Ethical Issues and Federal Endorsement of Products or Services

Federal employees must comply with the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, and the general principle that employees will act impartially and not give preferential treatment to any private organization or individual. Any competition, challenge, or contest run by or with the involvement of a Federal agency must be run so as to ensure participants are treated equally and there is no conflict of interest, or appearance of a conflict, on the part of the contest judges or administrators.

Moreover, agencies should avoid any improper Federal endorsement of products or services when creating contests and prizes. See 5 C.F.R. 2635.702(c). Federal endorsement is not improper when it is "[i]n furtherance of statutory authority to promote products, services or enterprises" or "[a]s a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission." Id. Thus, agencies contemplating contests or prizes that could lead to the appearance of Federal endorsement should examine their statutory authorities to

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determine if they have authority to promote products, services, or enterprises, or whether the contest or prize is offered “in support of” their statutory mission. Agencies should consult with their Offices of General Counsel on avoiding conflicts of interest and engaging in or permitting Federal endorsement, or the appearance thereof, in connection with government contests.

### **C. Intellectual Property**

Agencies should carefully consider whether a competition will involve intellectual property and determine in advance how to assign the rights to such works between themselves and the winning contestants. For example, under the Bayh-Dole Act (35 U.S.C. § 200 et seq.): (1) small businesses, universities, and other nonprofit organizations that develop inventions with Federal funds received through procurement contracts, grants, and cooperative agreements can elect to retain title to and profit from these inventions, provided adherence to certain requirements; and (2) the Federal Government retains nonexclusive, nontransferable, irrevocable, royalty-free licenses to utilize these inventions. Pursuant to a 1983 Presidential memorandum to the heads of executive departments and agencies, and Executive Order 12951 of April 10, 1987, the requirements of the Bayh-Dole Act apply to large businesses as well. Agencies should also be cognizant of the potential need to address trademark, copyright, patent, and publicity rights. Agencies should consult with their general counsels in determining how to assign intellectual property rights.

### **D. Compliance with State Law**

Agencies should evaluate the need for potential contests and prizes to comply with varying state laws. To the extent that state laws apply to a Federal prize competition at all, be aware that states generally regulate contests of chance much more heavily than they do contests of skill, and that injecting any element of chance into the selection of a contest or prize winner may significantly alter the state legal requirements with which the agency must comply.

### **E. Standard Requirements for Procurement Contracts, Grants, and Cooperative Agreements**

Agencies that enter into procurement contracts, issue grants, or enter into cooperative agreements regarding prize competitions should consider standard requirements for documentation, reporting, and audits, and the Bayh-Dole Act (35 U.S.C. § 200 et seq.). Depending on the objectives, types, and sizes of prize competitions to be awarded, agencies may be able to modify the standard requirements to better match the administration and purposes of these awards. Agencies may consider applying all standard requirements pertaining to pre-award and audit requirements, and modifying – to the extent allowable by law – the requirements for post-award requirements and compliance with the OMB cost principles. For example, agencies may retain the requirements for recipients to have the necessary certifications, comply with conflicts of interest principles, maintain adequate proper internal control systems for funds accountability, and have the awards covered and reviewed under the Single Audit Act, where applicable. But, agencies may modify the post-award and cost compliance

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requirements with respect to program income and financial reporting. This could include, for purposes of illustration and when legally allowable, a waiver of the requirement for recipients to file a final financial report since the awards are for fixed amounts. Agencies may also opt not to apply OMB cost principles since the prize awards are pre-determined and not based on costs. Exceptions to standard requirements should be made on a case by case basis.

### **F. Paperwork Reduction Act**

Agencies should evaluate the applicability of the Paperwork Reduction Act (PRA) to any prize-related activities. As a general matter, if an agency is directing identical questions to, or imposing identical recordkeeping requirements on, ten or more persons, then such an information collection is subject to the PRA (44 U.S.C. § 3501 et seq.; 5 C.F.R. Part 1320). An agency is, however, permitted to ask the general public about ideas for improving current practices, and these general requests do not become subject to the PRA merely because they take the form of a contest, or because the agency announces that it will give a prize to those with the best ideas. The Office of Information and Regulatory Affairs at OMB will soon be issuing guidance to clarify when and how the PRA is applicable to competitions for prizes. To answer questions about the relationship between prizes and the PRA, agencies should consult with the Office of Information and Regulatory Affairs.

### **G. Privacy Act**

Agencies should evaluate the applicability of the Privacy Act to any prize-related activities.

If you have any questions regarding this memorandum, please direct them to [opengov@omb.eop.gov](mailto:opengov@omb.eop.gov). Departments and agencies should consult agency general counsels in developing prize contests.

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### Prize Authority in the America COMPETES Reauthorization Act



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

#### MEMORANDUM FOR GENERAL COUNSELS AND CHIEF INFORMATION OFFICERS FOR EXECUTIVE DEPARTMENTS AND AGENCIES

**FROM:** Boris Bershteyn  
General Counsel

Steven VanRoekel  
Federal Chief Information Officer

**SUBJECT:** Prize Authority in the America COMPETES Reauthorization Act

On January 4, 2011, President Obama signed Public Law 111-358, the [America COMPETES Reauthorization Act](#). Section 105 of this Act added section 24 (Prize Competitions) to the Stevenson-Wydler Technology Innovation Act of 1980, to provide agencies with authority to conduct prize competitions in order to spur innovation, solve tough problems, and advance their core mission, as called for in the President's [Strategy for American Innovation](#) and the [2010 OMB "Guidance on the Use of Challenges and Prizes to Promote Open Government"](#) (OMB Memorandum M-10-11 of March 8, 2010).

As noted below, this new prize authority is designed to expand the authority of Federal agencies to conduct prize competitions to further their goals. It does not affect any existing prize authority already provided by any other law. Prize competitions under this new statute may be funded jointly by more than one agency and by the private sector, and may be judged by committees exempt from the requirements of the Federal Advisory Committee Act. The requirements under this new authority with respect to eligibility to win a prize, conduct the competition, liability, insurance, intellectual property rights, funding, and prize amounts are described below.

To permit the Office of Science and Technology Policy (OSTP) to file the required annual reports to Congress, agencies conducting prize competitions under this new authority should complete the attached report to OSTP by December 30 each year. Agencies are also encouraged to include in such reports information about prize competitions conducted under other authority. There is no need to report if an agency has not conducted any prize competitions during the course of the year.

The following Fact Sheet and Frequently Asked Questions were developed jointly by policy and legal staff in the Office of Science and Technology Policy (OSTP) and the Office of Management and Budget (OMB) to provide informal guidance to agencies in their implementation of the prize authority in section 24 of the Stevenson-Wydler Act, as added by the America COMPETES Reauthorization Act.

#### FACT SHEET

New section 24 of the Stevenson-Wydler Technology Innovation Act of 1980, 15 U.S.C. § 3719, as enacted by the America COMPETES Reauthorization Act, includes the following authorities and requirements.

##### Authorities

- **In General.** Section 24 permits any agency head to "carry out a program to award prizes competitively to stimulate innovation that has the potential to advance the mission of the respective

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agency” (§ 24(b)). Section 24 authorizes agencies to use both Federal appropriated funds and funds provided by the private sector in order to design prizes, administer prizes, and offer monetary awards for prize competitions (§ 24(m)(1)).

- **Type.** Section 24 gives agencies flexibility in selecting the prize type best able to accomplish the goal. Specifically, the Act authorizes agencies to conduct a point solution prize, exposition prize, participation prize, or “[s]uch other type[s] of prizes as each head of an agency considers appropriate to stimulate innovation that has the potential to advance the mission of the respective agency” (§ 24(c)(1)–(4)).
- **Federal Funding and Size.** Section 24 does not itself provide any “budget authority” or Federal appropriation for the funding of a prize. With respect to authorization for prize competitions of otherwise appropriate funds to an agency, section 24(m)(4) states that
  - “No prize competition under this section may result in the award of more than \$1,000,000 in cash prizes without the approval of the head of an agency.”
  - “No prize competition under this section may offer a prize in an amount greater than \$50,000,000 unless 30 days have elapsed after written notice has been transmitted to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives.”
- **Cross-Agency Collaboration.** Section 24 authorizes “the heads of multiple agencies in cooperation” to conduct prize competitions that advance shared goals (§ 24(b)). Section 24 also authorizes agencies to “accept funds from other Federal agencies to support [prize] competitions” (§ 24(m)(1)).
- **Multi-Sector Partnerships.** Section 24 authorizes agencies to “enter into an agreement with a private, nonprofit entity to administer a prize competition” (§ 24(j)). In addition, financial support for the prize design, administration, and monetary award may consist of not only Federally appropriated funds but also “funds provided by the private sector for such cash prizes” (§ 24(m)(1)).
- **External Expertise.** Section 24 authorizes agencies to tap external expertise throughout the lifecycle of the prize. Agencies may (1) empanel advisory committees to recommend topics for prize competitions (§ 24(d)), and (2) appoint judges from the private sector (§ 24(k)(1)). Section 24(k)(4) exempts from the Federal Advisory Committee Act (FACA) “any committee, board, commission, panel, task force, or similar entity created solely for the purpose of judging prize competitions under this section.” In addition, the Act encourages agencies to seek technical assistance from the marketplace in structuring and conducting prize competitions. See § 24(n) (requiring the General Services Administration to “develop a contract vehicle to provide agencies access to relevant products and services, including technical assistance”).

### Requirements

Section 24 includes the following requirements for agencies conducting prize competitions.

- **Topic Selection.** “[C]onsult widely both within and outside the Federal Government” when selecting topics for prize competitions (§ 24(d)).

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- **Advertising.** “[W]idely advertise each prize competition to encourage broad participation” (§ 24(e)). The head of an agency must publish a notice in the Federal Register announcing the competition and setting out the rules, including eligibility, prize amount, process, and criteria (§ 24(f)).
- **Fairness and Transparency.** “[D]evelop guidelines to ensure that the judges...are fairly balanced and operate in a transparent manner” (§ 24(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 (§ 24(k)(2)(A) and (B)).
- **Funding.** Before announcing the prize, ensure that funds for the prize are either (1) appropriated, or (2) committed in writing by a private source (§ 24(m)(3)(A)).

In addition, section 24(m)(3)(B) provides that the head of an agency “may increase the amount of a prize after an initial announcement is made under subsection (f) only if—

“(i) notice of the increase is provided in the same manner as the initial notice of the prize; and

“(ii) the funds needed to pay out the announced amount of the increase have been appropriated or committed in writing by a private source.”

- **Intellectual Property.** Take no interest in the intellectual property submitted to a prize competition without the written consent of the submitting participant (§ 24(j)(1)).
- **Eligibility.** Limit eligibility to win a prize to entities/individuals that:
  1. have agreed to the rules of the competition (§ 24(g)(1));
  2. are either (a) in the case of an entity, incorporated in and maintain 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 (§ 24(g)(3));
  3. are *not* a Federal entity or Federal employee acting within the scope of employment (§ 24(g)(4));
  4. assume risks and waive claims against the Federal government and its related entities (§ 24(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 (§ 24(i)(2)).

In addition, section 24(h) provides that:

“An individual or entity shall not be deemed ineligible under subsection (g) because the individual or entity used Federal facilities or consulted with Federal employees during a

## APPENDIX B

competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.”

### **Annual Report**

Section 24 requires the OSTP to submit to Congress by March 1 of each year a report on the prize competitions conducted under section 24 during the preceding fiscal year. To meet the March 1 deadline, all Federal agencies should report to OSTP, no later than December 30 of each year, regarding the agency's activities during the fiscal year that ended on the preceding September 30. *Thus, each agency should submit its first report to OSTP by December 30, 2011, regarding the agency's prize activities during fiscal year 2011. Please see Appendix I for more detail on the format in which agencies should submit their report.*

## APPENDIX B

### FREQUENTLY ASKED QUESTIONS

1. Does the new § 24 of the Stevenson-Wydler Technology Innovation Act of 1980, as enacted by § 105 of the America COMPETES Reauthorization Act, apply to my agency?

Section 24 applies to all “Federal agenc[ies]” as defined by the Stevenson-Wydler Technology Innovation Act of 1980, with the exception of agencies in the legislative branch. Stevenson-Wydler defines “Federal agency” broadly to include any “Executive agency” as defined in 5 U.S.C. § 105, as well as any military departments as defined in 5 U.S.C. § 102. In turn, section 105 of Title 5 defines “Executive agency” broadly to include not only Executive departments, but also “Government corporation[s],” as defined in 5 U.S.C. § 103, and “independent establishment[s],” a catchall term defined to cover most other entities in the Executive Branch (other than the United States Postal Service or the Postal Regulatory Commission), as defined in 5 U.S.C. § 104.

2. May the head of the agency delegate the prize authority in § 24, as well as the authority of the agency head to approve a prize competition that may result in the award of more than \$1 million?

Section 24 does not restrict an agency head from delegating the agency head’s authorities under this section, in accordance with the agency’s organic statute, other laws, and applicable regulations.

3. Can my agency continue to conduct prize competitions under other authorities, including the authorities identified in the [OMB Memo M-10-11](#) and approved by my agency’s General Counsel (e.g. Procurement Authority, “Other Transactions” Authority, etc.)?

Yes. Section 24(o)(2) states, “Nothing in this section affects the prize authority authorized by any other provision of law.”

4. Must my agency obtain specific appropriations for the express purpose of conducting a prize competition in order to use this new prize authority under § 24?

No. An agency may rely on the new section 24 to conduct a prize competition using “Federal appropriated funds,” and section 24 does not require that the appropriations statute in question specifically provide funding for the express purpose of conducting a prize competition. See § 24(m)(1). As indicated by the Congressional reporting requirements in the Act, agencies should consider prize competitions as one of many options for executing their goals. See § 24(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 an agency evaluates whether the agency 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 agency must determine whether the use of those appropriated funds for a prize competition lies within the scope of the objects of that appropriation. Prior to the enactment of section 24, OMB issued [guidance \(M-10-11\)](#) outlining the general principle that an agency has reasonable discretion under the “necessary expense” doctrine to determine how the agency will carry out the objects of an appropriation. There is now a broad scope for prizes under the new section 24, which authorizes agencies to conduct prize competitions that will “stimulate innovation that has the potential to advance the mission of the ... agency” (§ 24(b)). Section 24 thus provides a legal basis under which an agency may use its appropriated funds that are available (expressly or implicitly) in order to conduct a prize competition that meets this standard and is not otherwise prohibited (or funded by another appropriation). Agencies should consult with their general

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counsel, and where necessary with OMB, about this issue, which would depend on the specific design of the prize and the language of the agency's appropriations statute.

5. **Can my agency use one-year, multi-year, or no-year funds to conduct a prize competition (in the situation in which my agency does not have an express appropriation for prize competitions to be conducted under § 24)?**

An agency's ability to use appropriated funds for conducting a prize competition is not limited to appropriations that have a particular period of availability. Thus, an agency can use one-year funds, multi-year funds, or no-year funds to conduct a prize competition (so long as the appropriation is available for that purpose). However, as Section 24(m)(2) makes clear, an agency must comply with the Antideficiency Act when obligating and expending funds: "No provision in this section permits obligation or payment of funds in violation of section 1341 of title 31, United States Code." Moreover, depending on the length of the time period during which a prize may be awarded, after the prize competition has been announced, an agency may need to rely on a multi-year or no-year appropriation in order to ensure that the amounts that the agency has obligated for the prize (at the time the prize competition is announced) will continue to be available for expenditure during the period in which the prize can be awarded. See 31 U.S.C. § 1552 (providing for the cancellation of obligated balances on September 30 of the fifth fiscal year after the period of availability has ended).

6. **In the case of an appropriations act that includes an express appropriation for a prize competition to be conducted under § 24, will those funds be no-year funds (i.e., remain available for obligation until expended) by virtue of § 24(m)(2)?**

Section 24(m)(2) provides that: "Notwithstanding any other provision of law, funds appropriated for prize awards under this section shall remain available until expended." Since Congress in a later-enacted appropriation could specify a different period of availability for such appropriated funds, agencies should consult with their general counsels, and where necessary with OMB, about this issue, which would depend on the language of the applicable appropriations statute.

7. **Must my agency have separate gift authority to conduct a prize competition supported by private sector funds?**

No. Section 24(m) grants agencies authority to accept and use private-sector funds for the design, administration, or prize purse of a competition conducted under section 24, regardless of whether the agency has pre-existing statutory authority to accept donations or gifts. In considering private sector support for a prize competition, agencies must review all applicable ethics and conflict-of-interest rules, and agencies must comply with the prohibition in section 24 against "giv[ing] any special consideration to any private sector entity in return for a donation."

Note that although section 24(m)(3) permits an agency to announce a prize competition when "all the funds needed to pay out the announced amount of the prize have been appropriated or committed in writing by a private source," section 24 provides no exception to the general rule that an agency may not incur an obligation until such time as the agency has actually received the funds (i.e., the written commitment does not provide "budget authority" against which an agency may incur a legal obligation and record a budgetary obligation). Moreover, section 24(m)(2) makes clear that the section does not waive the application of the Antideficiency Act ("No provision in this section permits obligation or payment of funds in violation of section 1341 of title 31, United States Code."). Thus, in those cases where an agency is announcing a prize competition, but the agency has not yet received the private funds for which a written commitment has

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been provided, the agency must make clear in announcing the prize competition that the agency's (and the Federal Government's) legal obligation extends only to the payment of any Federal share of the prize, and that the private source is therefore liable for the payment of its share of the prize.

8. **Must my agency have cooperative agreement authority to enter into an agreement with a private nonprofit entity to administer a prize competition under § 24(j)?**

No. Section 24(j) grants agencies authority to enter into an agreement with a private nonprofit entity to administer a prize competition under section 24, regardless of whether the agency has pre-existing statutory authority to enter into such agreements.

In considering potential agreements with private nonprofit entities for the purpose of a prize competition, agencies should review all applicable ethics and conflict-of-interest rules.

9. **Section 24(n) requires GSA to develop a contract vehicle for assisting agencies in conducting prize competitions and authorizes agencies to enter into agreements with non-profit entities for the administration of prize competitions. In addition to these approaches, does my agency also have the authority to contract directly with for-profit companies to acquire products and services to help the agency identify, design, and administer prize competitions under § 24?**

Yes. Section 24 specifically directs the General Services Administration to “develop a contract vehicle to provide agencies access to relevant products and services, including technical assistance in structuring and conducting prize competitions to take maximum benefit of the marketplace as they identify and pursue prize competitions to further the policy objectives of the Federal Government” (§ 24(n)). Section 24(j) expands agency authority to enter into agreements with non-profit entities for the purpose of administering a prize competition (see question 8 above), which some agencies previously did not have, but does not restrict an agency from using pre-existing contract, grant, cooperative agreement, or other authorities to acquire products, services, or technical assistance from for-profit entities that will help the agency identify, design, and administer prize competitions under the Act. GSA efforts to develop a government-wide contract vehicle should make it faster and easier for agencies to procure prize-related products and services – and agencies are encouraged to consider using this vehicle to avoid unnecessary duplication of effort – but they are not prevented from using their own contracts and existing processes to do so. Any such use of pre-existing authorities in support of a prize competition under the Act must comply with all applicable law. For example, all contracts must comply with applicable regulations under the Federal Acquisition Regulations System (48 C.F.R. Chapter 1) and may not be used to perform inherently governmental functions. In this analysis, agencies should also note that section 24(k) provides that individuals from the private sector may participate as judges for a prize competition.

10. **Does § 24 authorize agencies to accept funds from, or provide funds to, another agency?**

Yes. Section 24(b) specifically authorizes the heads of “multiple agencies in cooperation” to carry out a prize program when it “has the potential to advance the mission of the respective agenc[ies].” Section 24(m)(1) authorizes the head of an agency to “accept funds from other Federal agencies to support” such prize competitions. Read together, these provisions provide authority to accept funds from, or provide funds to, another agency to support a cooperative prize competition with the potential to advance the mission of both agencies. Transactions between agencies under section 24(m) will not change the purpose or availability of the funds received. Agencies considering a joint prize competition must ensure that the prize competition falls within the scope of each agency's appropriation and is otherwise consistent with each applicable appropriations statute and other applicable law.

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### 11. To what extent must participants demonstrate financial responsibility for all prize competitions conducted under § 24?

Section 24(i)(2) requires participants to “obtain liability insurance or demonstrate financial responsibility, *in amounts determined by the head of an 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” (§ 24(i)(2) (emphasis added)).

Section 24(i)(2) thus gives the head of an agency flexibility to distinguish between prize competitions that pose substantially different levels of risk to third parties and the Federal Government (e.g., between a competition challenging participants to launch a rocket into space and a competition challenging students to build software applications). Consequently, in establishing liability insurance amounts or otherwise establishing requirements for financial responsibility, the agency may take into account the amount of risk involved. While there may be scenarios in which a minimal amount of risk would justify a determination that a demonstration of *de minimis* financial responsibility is sufficient, the evaluation must be made based on an assessment of the facts of each specific case.

Agencies should consult with their general counsels, and where necessary with OMB and the Department of Justice, about the implementation of this requirement for participants to “obtain liability insurance or demonstrate financial responsibility.”

### 12. Are non-U.S. individuals or entities eligible to win prizes in prize competitions conducted under § 24?

Section 24(g)(3) limits individual eligibility to U.S. citizens or permanent residents (regardless of whether participating singly or in a group) and limits eligibility for private entities to those that are (1) incorporated in the United States, and (2) maintain a primary place of business in the United States.

Keep in mind that individuals who are not U.S. Citizens or permanent residents might be eligible to win prizes in prize competitions conducted under other legal authorities (see question 3 above).

### 13. Can agencies conduct internal prize competitions under the prize authority in § 24?

Section 24(g)(4) states that Federal employees “acting within the scope of their employment” are not eligible to win a prize under section 24.

Agency personnel, however, may compete for prize competitions conducted under section 24 if the employees participate in the competition on their own time and outside the scope of their employment. In such situations, the agency personnel would be subject to the “equitable basis” restriction in section 24(h):

“An individual or entity shall not be deemed ineligible under subsection (g) because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.”

We recommend that agencies provide appropriate guidance for their employees who might wish to participate, as an outside activity, in a competition under section 24.

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### 14. How should an agency make the payment to the winner of a prize competition?

Section 24 neither directs nor restricts the mechanism by which an agency transfers a cash prize to an eligible winner. Various options may be available, and agencies should consult their Comptroller or Chief Financial Officer, as well as their General Counsel. The following DARPA and NASA case studies are provided to illustrate two potential options:

In past prize competitions, DARPA paid the winner through a single electronic funds transfer. The money was obligated in the accounting system and the Comptroller sent Standard Form 1034 to the Defense Finance and Accounting Service, which executed the transfer of funds to the winner's bank account.

NASA typically transfers competition funds through a contractor or grantee. In most cases, the contractor or grantee also conducts the competition and the requirement to transfer funds to the solvers/winners was part of the award to the contractor/grantee. That contractor charges NASA a handling fee to make the transfer to the winner.

In processing prize transactions, agencies must provide for the issuance of the required IRS documentation (Form 1099).

### 15. Is a particular approach to intellectual property issues required by § 24 of the America COMPETES Act?

No. Each agency should determine whether or not to seek an ownership interest or license in intellectual property developed by a participant in a prize competition, and should do so based on a careful analysis of the goals of the prize competition, an analysis of the full set of incentives for potential participants in light of any agreement about sharing intellectual property rights, and a theory of how solutions will be implemented after the prize is awarded.

In so doing, agencies should note that Section 24 prohibits agencies from gaining an interest in intellectual property developed by a participant in a competition *without the written consent* of the participant (§ 24(j)(1)). Agencies should clearly articulate, in prize competition rules, how the intellectual property will be treated, and agencies should require all participants to provide written consent to the rules when or before submitting an entry, as a condition of their eligibility to participate in the competition. Agencies choosing to use an electronic signature to fulfill the requirement of § 24(j)(1) should comply with all applicable statutes, including the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 *et seq.*) and the procedures prescribed by OMB under the Government Paperwork Elimination Act, [http://www.whitehouse.gov/omb/fedreg\\_gpea2/](http://www.whitehouse.gov/omb/fedreg_gpea2/).

Notably, the Act specifically permits agencies to “negotiate a license for the use of intellectual property developed by a participant for a competition” (§ 24(j)(2)).

### 16. What reporting obligations will an agency incur through use of the prize authority in § 24?

Section 24(p)(1) requires the Director of the OSTP to submit to Congress a report on the activities carried out under Section 24 during the preceding fiscal year no later than March 1 of each year. To meet the March 1 deadline, all Federal agencies should report to OSTP on the activities carried out during Fiscal Year 2011 under section 24 no later than December 30, 2011. Please see Appendix I for more detail on the format in which agencies should submit their report.

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- 17. Section 24(n) calls on the General Service Administration to (1) “provide government wide services to share best practices and assist agencies in developing guidelines for issuing prize competitions,” and (2) “develop a contract vehicle to provide agencies access to relevant products and services.” May agencies conduct prize competitions under the Act prior to GSA completion of these tasks?**

Yes. GSA efforts under section 24(n) should ultimately make it easier for agencies to design and conduct prize competitions under the Act, but should not prevent agencies from doing so on their own.

- 18. Whom should my General Counsel contact with questions about § 24?**

Agencies should send an email to OSTP ([prizes@ostp.gov](mailto:prizes@ostp.gov)) and OMB’s Office of General Counsel ([ogc@omb.eop.gov](mailto:ogc@omb.eop.gov)).

## APPENDIX B

### Appendix I: Format for Report to Congress

By no later than December 30, 2011, and using the format below, please report to OSTP all activities your agency carried out during fiscal year 2011 under Section 24 of the Stevenson-Wydler Technology Innovation Act of 1980.

#### SUBMISSION DETAILS

- **Submit by email to:** [prizes@ostp.gov](mailto:prizes@ostp.gov) by: COB December 30, 2011
- **Requirements:** Section 24(p) of the Stevenson-Wydler Act requires a report on all prize competitions conducted under Section 2. Agencies should use the template below to report to OSTP all activities under section 24. Agencies are also encouraged to report to OSTP on prize competitions conducted under other legal authorities, including why the competition was conducted under that authority.
- **Clearance:** In your submission, please confirm that appropriate agency leadership has approved the report.

#### REPORT TEMPLATE (TO BE COMPLETED SEPARATELY FOR EACH PRIZE COMPETITION OR CHALLENGE)

1. **Title of prize competition or challenge**
2. **Sponsoring Agency**
3. **Primary point of contact for the prize competition**
4. **Tagline of 350 words or less.** Similar to the first line of a newspaper story, the tagline should clearly explain what the prize competition is, who the prize challenged, what it challenged them to do, and why it is important or unique.
5. **Link to the homepage for the prize competition (e.g., on Challenge.gov)**
6. **Problem Statement.** Explain the problem the prize competition solves.
7. **Proposed Goals.** What were the primary objectives of the prize competition?
8. **Why a Prize.** Provide an analysis of why a prize competition was the preferable method of achieving the goals described in #7 as opposed to other authorities available to the agency, such as contracts, grants, and cooperative agreements.
9. **Participants.** Whom did the agency hope to mobilize to compete?
10. **Solicitation & Outreach.** What methods did the agency use to market the prize competition, mobilize potential participants, and ensure high quality submissions? Were those methods effective? Did the agency learn any lessons about outreach that might be valuable for future prize competitions?
11. **Incentives.** What incentives did the agency provide for participants to compete in the prize competition (monetary and non-monetary)? What is the total amount of cash prizes awarded for the prize competition, including a description of the amount of any private funds contributed in the program and the sources of those private funds, and the manner in which the amounts of cash prizes awarded and claimed were allocated among the accounts of the agency for recording as obligations and expenditures (i.e., what amount(s) were obligated to what appropriations account(s))?
12. **Evaluation.** What methods did the agency use to evaluate submissions to the prize competition? Were those methods effective? Did the agency learn any lessons about evaluation that might be valuable for future prize competitions?
13. **Partnerships.** What partnerships did your agency form (formal or informal) with other agencies or private sector entities to make successful a prize competition conducted under section 24? What were the benefits derived from those partnerships? Did the agency learn any lessons about public private partnerships that might be valuable for future prize competitions?
14. **Resources.** Which agency resources, including personnel and funding, did the agency use in the execution of each prize competition? Please provide a detailed description of the activities for which those resources were used and an accounting of how funding for execution was allocated among the accounts of the agency for recording as obligations and expenditures (i.e., amounts in personnel and other administrative expenses associated with the prize competition that were obligated and spent under each relevant appropriations account).

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- 15. Results.** Please explain how the prize competition advanced the mission of the agency and the specific objectives identified in #7.

## APPENDIX C

### Sample USDA Review Form

The Office of the Chief Financial Officer (OCFO) and the Office of General Counsel (OGC) team establishes a transparent and formal agency process for proposing and tracking prize competitions and challenges. The review process will ensure that prize competitions and challenges are subject to high-levels of safeguard. OCFO also serves as a point of contact to disseminate policy guidance and resources regarding the use of prize competitions and challenges.

**Procedures:** Proposals for prize competitions and challenges must be submitted to OCFO *before* development begins. Prize Competitions Managers will complete a form (attached) and submit it to the OCFO Challenge Review Team ([challengereviewteam@cfo.usda.gov](mailto:challengereviewteam@cfo.usda.gov)). Under normal circumstances, OCFO and OGC will review the proposal and provide a response within two weeks.

A review of a prize competition or challenge will consider:

- Legal issues
- Relation to agency mission
- Budget rationale
- Communication plan and outreach strategy
- What program is this furthering?
- Who is the universe of solvers?
- What do you want to get out of this?
- What is the problem to be solved?

APPENDIX C

OCFO and OGC will review all proposals based on the information provided below.

Please email the completed form to [challengereviewteam@cfo.usda.gov](mailto:challengereviewteam@cfo.usda.gov) and your agency program counsel in OGC.

Email with this USDA Review Form, a communication plan for the prize competition or challenge that includes any plans for events.

You should receive a response within two weeks. Incomplete forms will delay a response.

-----  
SECTION 1. BASIC INFORMATION

1. Proposed Name of Prize Competition or Challenge.

2. Staff Point of Contact (name/title/email/phone number).

Name	Title	Email	Phone Number

3. Supervisor Approving Form Submission and Signature (name/title/email/phone number).

Name	Title	Email	Phone Number

4. Prize Competition Manager Approving Form Submission and Signature (name/title/email/phone number).

Name	Title	Email	Phone Number

Signature: \_\_\_\_\_

5. Under what authority is this prize competition or challenge being conducted?

6. Are appropriated funds planned for use for this prize competition or challenge?  
a. If yes, what appropriation are the funds from, and what is the assigned purpose of the appropriated funds?

7. Proposed start/close date for prize competition or challenge.

---

## SECTION 2. PROPOSAL DESCRIPTION

1. Describe the prize competition or challenge.
2. Describe how this prize competition or challenge relates to or furthers the program mission of the agency/staff office.
3. Describe the group(s) of solvers.
4. Describe the judging evaluation criteria.
5. Describe any intended prizes for solvers. If monetary, please list the intended amount(s):
6. What is the partnering plan? If applicable.
7. What is the source of funding? Are any funds coming from outside the USDA?
8. Why is a prize competition and/or challenge the best way to approach this problem?

---

## SECTION 3. IMPLEMENTATION

1. All prize competitions and challenges must be made available through Challenge.gov. Who will be the contact point for Challenge.gov?
2. Agencies can choose platforms that best meet their needs for specific competitions. GSA created a Special Item Number (SIN) for challenge and competition services that are available on GSA.gov (541 4G).
3. Are there any other organizations participating? If so, please provide details below:
4. Is this a technology or science-based prize competition or challenge? If yes, has a patent search been conducted?

APPENDIX D

OCFO/OGC Review Document

TO: Prize Competition Manager

FROM: Office of the Chief Financial Officer  
Office of General Counsel

DATE:

PROJECT NAME: [Proposed Name of Prize Competition or Challenge]

The Office of the Chief Financial Officer and the Office of General Counsel have reviewed the USDA Review Form submitted for the above referenced project name.

[The Office of the Chief Financial Officer and the Office of General Counsel checks the appropriate line below for *recommend approval*, *recommend approval with changes*, *do not recommend approval*, or *need more information*, dates the memo, and signs below.]

OCFO Recommends Approval \_\_\_ Recommend Approval with changes \_\_\_ (attach a description of the recommended changes) Do Not Recommend Approval \_\_\_ Need More Information \_\_\_ (list additional information required)

\_\_\_\_\_  
Office of the Chief Financial Officer

\_\_\_\_\_  
Date

OGC Recommends Approval \_\_\_ Recommend Approval with changes \_\_\_ (attach a description of the recommended changes) Do Not Recommend Approval \_\_\_ Need More Information \_\_\_ (list additional information required)

\_\_\_\_\_  
Office of the General Counsel

\_\_\_\_\_  
Date

## APPENDIX E

### USDA Judging Guidelines

Judge Selection. Judges may 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
- have a familial or financial relationship with an individual who is a registered participant.

**To ensure that judges appointed for prize competitions and challenges are fairly balanced and operate in a transparent manner, every judge appointed for a USDA prize competition or challenge must complete the following non-disclosure and conflict of interest agreement attached to Appendix E.**

## APPENDIX E

### NON-DISCLOSURE AND CONFLICT OF INTEREST AGREEMENT

Name:

Organization:

Title:

Email:

Phone Number:

Title of Prize Competition or Challenge:

Agency Prize Competition Manager:

- 1) I acknowledge that USDA has selected me to participate as a judge in the above prize competition or challenge. I am aware that during the course of executing my duties, I may receive confidential business information, as well as participate in confidential deliberations leading to a decision by USDA to select a prize competition or challenge winner.
- 2) I certify that I will not knowingly disclose any information obtained during the judging process (e.g. application materials not already in the public domain, comments and deliberations of the judging panel), directly or indirectly, to any person other than USDA's Prize Competition Manager, or a person authorized by the Prize Competition Manager, to receive such information. I understand that unauthorized disclosure of such information may subject me to substantial administrative, civil and criminal penalties, including fine, imprisonment, and loss of Federal employment under applicable laws and regulations.
- 3) I understand that I am not permitted to have a personal or financial interest in or be an employee, officer, director, or agency of any entity that competes in the prize competition or challenge. After the close of the entry period and prior to performing my judging duties I will be provided a list of all contestants in the prize competition or challenge. I commit to review the list of contestants and immediately make the Prize Competition Manager aware of any conflict of interest I have with any of the contestants, and will recuse myself from judging the entries of any and all contestants for whom such conflicts of interest arise.
- 4) I understand that I am not permitted to have a familial or financial relationship with any individual that competes in the prize competition or challenge. After the close of the entry period and prior to performing my judging duties I will be provided a list of all contestants in the prize competition or challenge. I commit to review the list of contestants and immediately make the Prize Competition Manager aware of any conflict of interest I have with any of the contestants, and will recuse myself from judging the entries of any and all contestants for whom such conflicts of interest arise.

## APPENDIX E

- 5) The Whistleblower Protection Enhancement Act of 2012, Pub. L. No. 112-199 (Nov. 27, 2012) (WPEA) makes it a prohibited personnel practice for Federal agencies to enter into any “nondisclosure policy, form or agreement” that does not include the following specific language:

These provisions are consistent with, and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to the Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling. Prohibited personnel practices are listed at 5 U.S.C. § 2302(b).

- 6) I certify that I will operate in a transparent manner in accord with the following minimum standards of conduct:
- A. I will base each proposal evaluation on the published evaluation factors;
  - B. I will remain free from bias in making selection decisions;
  - C. I will provide USDA’s Prize Competition Manager or his/her representative a score sheet or such other documentation the USDA Prize Competition Manager requires for each application I review describing the basis for my evaluation of the application;
  - D. I will not discuss evaluation matters related to competition entries or the judging thereof with any unauthorized individuals, including Federal personnel, even after competition award, without specific prior approval from USDA’s Prize Competition Manager or his/her representative;
  - E. I will not disclose a participant’s proposal to another participant or other individuals except for USDA’s Prize Competition Manager and his/her representatives;
  - F. I will remain free from conflicts of interest with participants;
  - G. I will disclose to USDA any contact during a competition with a participant regarding prospective employment;
  - H. I will not ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, accept, directly or indirectly, any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of a contestant. I will advise my family that the acceptance of any such money, gratuity, or other thing of value may be imputed to me as a violation and must therefore be avoided; and
  - I. I will not solicit or accept any promise of future payment, employment or business opportunity from, or engage, directly or indirectly, in any discussion of future payment, employment or business opportunity with any applicant or any officer, employee, representative, agent, or consultant of an applicant.

APPENDIX E

- 7) I understand that my obligations under this agreement are of a continuing nature. If at any time during the judging process, I receive a contact from a contestant in the prize competition or challenge I am judging concerning payment, employment or other business opportunity or the offer of a gift from a contestant's competitor, or I encounter circumstances where my participation as a judge might result in a real, apparent, or potential conflict of interest, I will immediately seek the advice of USDA's Prize Competition Manager or his/her representative.
  
- 8) These restrictions do not supersede, or otherwise alter, Federal employee obligations, rights, or liabilities established by statute, regulation, Executive Order or agency policy.

The acknowledgement and signature provided does not bar disclosures to Congress or to an authorized representative of USDA's Office of Inspector General or an official of an executive agency or the Department of Justice that are essential to reporting substantial violation of law.

I understand that making a false, fictitious, or fraudulent certification may subject me to prosecution under Title 18, U.S.C. Section 1001.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

APPENDIX F

Sample of Judging Evaluation Criteria

Subject of the prize competition or challenge: Example: The USDA seeks, in collaboration with its Office of Communications, the development of a public service video explaining how more fruits and vegetables can be added to diets without straining household budgets.

Judge: \_\_\_\_\_

Date: \_\_\_\_\_

\*\*\*\*\*

Contestant Information

Example:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email: \_\_\_\_\_



This prize competition or challenge will be evaluated on the following criteria:

Element	Points Possible OR Adjectival Ratings Possible	Points Given OR Adjectival Rating Given
		TOTAL SCORE/OVERALL RATING: _____

## APPENDIX G

### USDA Guidance for Federal Register Notice

Provided below is guidance for USDA officials functioning as Prize Competition Managers to use in developing the required Federal Register notice for the announcement of a prize competition or challenge. The Federal Register notice must contain: (1) the subject of the competition; (2) the rules for being eligible to participate in the competition; (3) the process for contestants to register for the competition; (4) the amount of the prize; and (5) the basis on which a winner will be selected.

The requirements for writing a notice for the Federal Register can be found in the Federal Register Document Drafting Handbook, the relevant portion of which is available at <http://www.archives.gov/Federal-register/write/handbook/chapter-3.txt>.

Prize Competition Managers may utilize their operating or staff division's processes for submitting this document to their Executive Secretariats for publication in the Federal Register.

The notice announcing the requirements and registration of the prize competition or challenge should be published in the Federal Register before it is announced on Challenge.gov.

APPENDIX G

SAMPLE TEMPLATE FOR FEDERAL REGISTER NOTICE

[Billing Code]

U.S. DEPARTMENT OF AGRICULTURE

[Subagency Name]

[Agency Docket Number]

**Announcement of Requirements and Registration for \_\_\_\_\_ [Insert Name of Prize Competition]**

**Authority:** For America COMPETES Act competitions the authority will be 15 U.S.C. § 3719; For prize competitions and challenges conducted under other legal authorities the authority citation will be competition-specific.

**AGENCY:** \_\_\_\_\_ [Subagency Name], USDA

**ACTION:** Notice

**SUMMARY:** In summarizing the prize competition or challenge that will be issued by your agency, please answer the following four questions:

- 1) What action is being taken?
- 2) Why is this action necessary?
- 3) What is the objective of the prize competition or challenge?
- 4) What is the intended effect of this action?

The summary should be brief. Supporting information and details should be placed under the SUPPLEMENTARY INFORMATION caption below.

**DATES:** Effective on [list the effective dates of the prize competition or challenge].

**FOR FURTHER INFORMATION CONTACT:** [List the name and telephone number and email address of an authorized representative of the USDA Prize Competition Manager who can answer questions about the prize competition or challenge.]

**SUPPLEMENTARY INFORMATION:**

Insert the rules of the competition here. At a minimum, the rules must include the following elements:

## APPENDIX G

### **Subject of Prize Competition or Challenge:**

### **Eligibility Rules for Participating in the Competition or Challenge:**

“To be eligible to win a prize under this prize competition or challenge, an individual or entity—

- (1) Shall have registered to participate in the competition under the rules promulgated by [the issuing agency];
- (2) Shall have complied with all the requirements under this section;
- (3) May not be a Federal entity or Federal employee acting within the scope of their employment.”

FOR AMERICA COMPETES ACT PRIZE COMPETITIONS AND CHALLENGES  
INSERT THIS LANGUAGE

- (4) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States

FOR PRIZE COMPETITIONS AND CHALLENGES UNDER OTHER  
AUTHORITIES INSERT THE APPROPRIATE LANGUAGE REGARDING  
CITIZENSHIP REQUIREMENTS

Prize Competition Managers should include the following statement regarding consultation with Federal employees:

“An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis”

### **Registration Process for Participants:**

State the process for contestants to register for the competition.

Prize Competition Managers should be aware that all prize competitions in which USDA is involved must be listed on the Challenge.gov website, even if the challenge is run on an outside platform.

### **Amount of the Prize:**

State the amount/type of the prize(s).

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Prize Competition Managers should be aware that the amount of a prize may be increased after an initial announcement is made in the Federal Register **only if** notice of the increase is provided in the same manner as the initial notice of the prize – i.e., only if notice of the increase is published in the Federal Register.

If no monetary prize is offered, the Federal Register notice should describe the planned recognition for the winner(s).

### **Payment of the Prize:**

If the prize is directly paid by USDA, include the following statements: “Prizes awarded under this competition will be paid by electronic funds transfer. All Federal, state and local taxes are the sole responsibility of the winner(s).” If the prize is paid by a private entity, state that XXXX will pay the prize directly to the winner. Coordinate with the outside entity paying the prize to determine what language should be included regarding payment method; taxes; etc.

### **Judging:**

Describe the criteria on which entries will be judged; the point or adjectival rating system that will be used for judging; the expected number of winners, if multiple winners are anticipated; and the way in which ties will be decided.

**Additional Information:** Prize Competition Managers should include any additional information in this section that would be relevant for participants. For example, the information could include background information about the data sources or materials that should be accessed for the purposes of the prize competition, treatment of intellectual property rights if it is an area the agency plans to negotiate later in the prize competition, or background information about related initiatives or challenges.

This section will also include liability language, insurance language (if applicable, language requiring contestants to ensure they do not infringe on copyright or use images without permission, etc. Examples of the boilerplate language can be found in the rules of prior USDA competitions archived on the Challenge.gov website.

Date: \_\_\_\_\_.

\_\_\_\_\_[signature]\_\_\_\_\_

Name of Prize Competition Manager

Title of Prize Competition Manager

## APPENDIX H

### Sample Template for Annual Reporting Requirements

Prize Competition Managers have **five days** after the conclusion of a competition or challenge to complete data entry on each prize competition or challenge. This will allow the Office of the Chief Financial Officer (OCFO) to capture the data in real-time and aggregate as necessary for submission to the Office of Science and Technology Policy (OSTP) by December 30th of each year. In order to collect relevant information, Prize Competition Managers should provide the following in accordance with OSTP guidelines:

1. **Title** of prize competition or challenge.
2. **Type of prize competition or challenge.** Was it America COMPETES Act or Other Prize Authority Prize Competition or Challenge?
3. **Sponsoring Agency/Staff Office;**
4. **Primary point of contact** for the prize competition or challenge.
5. **Tagline** of 350 words or less. Similar to the first line of a newspaper story, the tagline should clearly explain what the prize competition or challenge is, who the prize challenged, what it challenged them to do, and why it is important or unique.
6. **Link** to the homepage for the prize competition or challenge (e.g., on Challenge.gov).
7. **Problem Statement.** Explain the problem the prize competition or challenge solves.
8. **Proposed Goals.** What was the primary objective of the prize competition or challenge?
9. **Why a Prize.** An analysis of why a prize competition or challenge was the preferable method of achieving the goals described in number 7 above as opposed to other authorities available to the agency/staff office, such as contracts, grants, and cooperative agreements.
10. **Participants.** Who did the agency/staff office hope to mobilize to compete?
11. **Solicitation & Outreach.** What methods did the agency/staff office use to market the prize competition or challenge, mobilize potential participants, and ensure high quality submissions? How would the agency/staff office evaluate the effectiveness of such methods? What lessons did the agency/staff office learn about outreach that might be valuable for future prize competitions or challenges?
12. **Incentives.** What incentives did the agency/staff office provide for participants to compete in the prize competition or challenge (monetary and non-monetary)? What is

## APPENDIX H

the total amount of cash prizes awarded for the prize competition or challenge, including a description of the amount of private funds contributed in the program, the sources of such funds, and the manner in which the amounts of cash prizes awarded and claimed were allocated among the accounts of the agency/staff office for recording as obligations and expenditures?

13. **Evaluation.** What methods did the agency/staff office use to evaluate submissions to the prize competition or challenge? How would the agency/staff office evaluate the effectiveness of such methods? What lessons did the agency/staff office learn about evaluation that might be valuable for future prize competitions or challenges?
14. **Partnerships.** What partnerships did your agency/staff office form (formal or informal) with other agencies or private sector entities to make successful a prize competition or challenge conducted under Section 105 of the America COMPETES Act or challenge conducted under OMB “Guidance on the Use of Challenges and Prizes to Promote Open Government?” What were the benefits derived from those partnerships? What lessons did the agency/staff office learn about public private partnerships that might be valuable for future prize competitions or challenges?
15. **Resources.** What resources, including personnel and funding, did the agency/staff office use in the execution of each prize competition or challenge? Please provide a detailed description of the activities for which such resources were used and an accounting of how funding for execution was allocated among the accounts of the agency/staff office for recording as obligations and expenditures.
16. **Results.** Please explain if and how the prize competition or challenge advanced the mission of the agency/staff office and the specific objectives identified in number 7 above.
17. **Winners.** Please identify the winners of the prize competition or challenge. Describe the winning solutions. Please provide web links to the winning solutions if they are available.