

PRIZE CONTESTS UNDER THE AMERICA COMPETES ACT

All individuals serving as judges under the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Reauthorization Act of 2010, PL 111-358, January 4, 2011 (COMPETES Act or Act), regardless of employment status, are subject to specific ethics requirements set forth in the Act. The Act specifically requires that judges must not:

- have personal or financial interests in, or be an employee, officer, director, or agent of any entity that is a registered participant in a competition; or
- have a familial or financial relationship with an individual who is a registered participant.

According to the Act, judges are those persons who “select the winner or winners of a prize competition”.

Additional ethics requirements will apply to judges serving on prize competitions authorized by the America COMPETES Act, depending on the way their services are secured by the government and what activities they perform for HHS. Possible approaches could include the following:

Special Government Employees

Non-Federal individuals retained by the government as judges under the COMPETES Act will be Special Government Employees (SGE’s) and therefore subject to the ethics rules as they pertain to that category of employee, including:

- The obligation to file a Confidential Financial Disclosure Report (OGE Form 450),¹ and

¹ Many Federal employees are required to file financial disclosure reports of one type or another. The presumption is that SGEs are required to file the Office of Government Ethics’ (OGE) Form 450, the Confidential Financial Disclosure form. Under OGE regulations, it is possible for agencies to seek permission to use different forms to satisfy this filing requirement, subject to OGE approval. However, it is not likely that OGE would approve the use of an alternative form which requires filers to report substantially less information than the OGE 450.

- The restrictions imposed on SGEs by the criminal conflict of interest statutes (for example, 18 U.S.C. § 208), and the Standards of Ethical Conduct, and applicable supplemental regulations.

In addition, these judges will be subject to the restrictions imposed by the COMPETES Act described above.

Federal Employees from outside HHS:

Federal employees from outside HHS that are acting within the scope of their official duties when serving as a judge on HHS COMPETES Act competitions, remain subject to the ethics rules as they apply to Government employees and may also be subject to any supplemental ethics regulations applicable to their agency. In addition, Federal employees serving as judges will also be subject to the additional restrictions required by the COMPETES Act, laid out above.

Restrictions on Non-Judges

Individuals may participate in the process of evaluating prize competition entries, without their participation rising to a level that would require them to be viewed as judges under the terms of the COMPETES Act itself. For example, it may be possible to retain individuals to provide technical advice in relation to the judging process, but not to make the final selection decision. Such individuals would not make the selection decision in the judging process, and therefore would not likely be considered SGEs. Similarly, as they would not be considered judges under the COMPETES Act, they would not be subject to the restrictions in the Act itself.

Use of Procurement Contracts for Technical Advisory Services

A Competes Act Challenge Manager may wish to explore the option of obtaining technical advisory services to assist competition judges by a contract awarded under the Federal Acquisition Regulation (FAR). Such a contract would need to be structured such that only the Government performs inherently governmental functions (including making the final decision for award of a Competes Act prize). Because numerous factual circumstances and legal requirements will drive whether a particular contracting vehicle is an appropriate and proper contract mechanism in a given instance, challenge managers should consult their cognizant Contracting Officer (CO) to discuss contract options that may be available to them. Furthermore, because of legal requirements for full and open competition on FAR contracts, Challenge Managers should consult with their CO before identifying the specific technical evaluator from whom they would like to receive services.

