

SRF and ARRA 101

The State Revolving Fund Programs

- Clean Water and Drinking Water State Revolving Funds
- 51 state-state run independent SRF programs (Puerto Rico also has a program)
 - States are responsible for implementing program priorities
 - States make final decisions on which projects to fund
- EPA provides annual capitalization, support and oversight to state programs

“Assistance Recipients”

- Many different types of organizations are eligible for SRF financing, including:
 - Municipalities
 - Publicly owned wastewater treatment works
 - Privately owned wastewater treatment works (in national estuary areas)
 - State agencies
 - Nonprofit organizations
 - Homeowners
 - Farmers

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CWSRF Project Types

- Planning and design
- Wastewater Treatment facilities
 - Primary treatment
 - Secondary treatment
 - Advanced treatment
- Sewer systems
 - New sewer construction
 - Sanitary sewer overflow
 - Combined sewer overflow
- Water Reuse Projects
- Urban stormwater management
- Nonpoint source
 - Onsite sewage treatment/ decentralized systems
 - Hydromodification
 - Agricultural BMPs
 - Silviculture
 - Brownfields/Underground storage tanks
 - Leachate control
- Estuary projects

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DWSRF Project Types

- Planning and design
- Treatment facilities
 - Primary standard compliance
 - Secondary standard compliance
- Transmission and distribution
- Drinking water sources
- Source water protection
- Storage capacity costs
- Project related costs
 - Creation of new systems
 - Consolidation of existing systems
 - Restructuring costs
 - Land acquisition

SRF Programs: Financial Success

- SRF interest rates average 50% of market, saving communities significant financing costs:

Cost Savings of SRF Below-Market Interest Rates

		SRF Rate				
		0.0%	1.0%	2.0%	3.0%	4.0%
Market Rate	5.0%	38%	31%	24%	16%	8%
	6.0%	43%	36%	30%	23%	16%

- For example, when the market rate is 6.0%, a 3.0% SRF loan to a \$100,000 dollar project is equal in savings to a \$23,000 grant and a \$77,000 loan at market rates

How Do the SRF Programs Work?

- SRF programs provide assistance on a reimbursement basis
 - Assistance recipients submit reimbursement requests with invoices for work completed
 - SRF program disburses funds to assistance recipients
 - Assistance recipients provide funds to contractors and vendors for work completed or services provided

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General SRF Requirements

- Uniform Funding Application
- Priority List ranking
- Planning, design, and permitting
- Financial and technical review
- Environmental review
- Crosscutter review
- Disadvantaged Business Enterprise (DBE) participation

DBE Participation

- Statutes: Public Laws 101-549, 102-389
- It is EPA policy that recipients of EPA financial assistance award a “fair share” of subawards to small, minority, and women-owned businesses
- In the SRF program, this means that States must require assistance recipients to make a “good faith effort” to hire DBE contractors for SRF projects
- Assistance must also require contractors to the same effort to hire DBE sub-contractors

DBE Requirements: Assistance Recipients

- Attempt the Six Good Faith Efforts, to the extent practicable
- Require the prime contractor to conduct the Six Good Faith Efforts in procuring a subcontractor, to the extent practicable.
- Require the prime contractor to provide EPA Form 6100-2 and 6100-3 to its subcontractors, completed EPA Form 6100-4, and include completed EPA Forms 6100-2, 6100-3, and 6100-4 in the bid or proposal package.
- Several other requirements for payment and termination policies, contract language, and goal-setting

Compliance with DBE

- Participation is mandatory
 - Assistance recipients and contractors may choose whom they hire, but must make an effort to reach out to DBEs
- Fair Share Goals are objectives, not quotas
- No requirement to complete all Six Good Faith Efforts
 - just the ones that are feasible and practical

The American Recovery and Reinvestment Act of 2009

“A-R-R-A”

“ARRA”

“ARRA”

“Stimulus”

“Recovery Act”

“Cha-Ching!”

- \$38.7M for New Mexico water supply and water quality through the CW/DWSRF programs

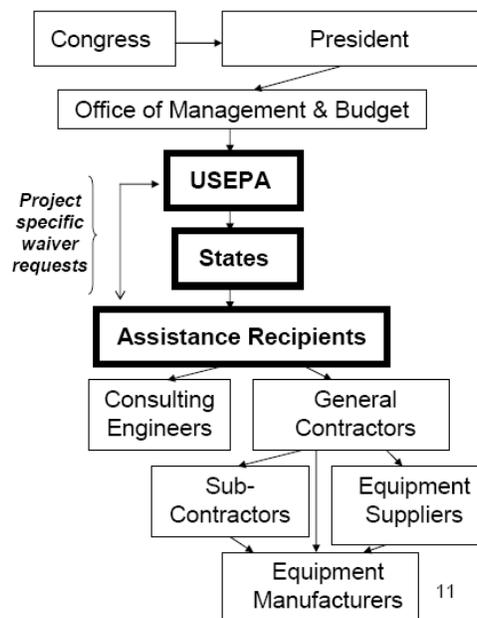
ARRA and the SRF

- Special requirements for the use of ARRA funding:
 - Abbreviated funding cycle
 - Projects under contract or construction before February 17, 2010
 - Creation of a Green Project Reserve (GPR)
 - Grant/loan forgiveness/negative interest required
 - Buy American provision
 - Davis-Bacon provision
 - Reporting requirements
 - Increased oversight
- EPA guidance for ARRA can be found at www.epa.gov/recovery

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Understanding Roles & Responsibilities Under ARRA

Assistance Recipients are responsible for complying with ARRA requirements, and for passing requirements down the supply chain



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Overview of ARRA Buy American Provisions

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ARRA Includes Buy American Requirement

- Section 1605(a) of ARRA requires assistance recipients to use domestic iron, steel, and manufactured goods that are produced in the U.S. This is the expected means of compliance.
- Section 1605(b) provides for a waiver of this requirement under circumstances identified and limited in that provision
- ARRA applies to “all I/S/MG used in a project,” so entire project must comply with §1605 if any ARRA funds are used

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Complying with §1605(a): SRF Assistance Recipients Must Make Efforts to Buy American

- Must in good faith (where applicable, design the project) and solicit bids for construction with American made iron, steel, and manufactured goods (I/S/MG)
- Should include ARRA's Buy American terms in any RFPs or bid solicitations

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Assistance Agreement Recipients Comply With Buy American Requirements Through One or a Combination of 4 Pathways

1. Exclusively procure iron, steel, and manufactured goods that meet the definition of being "manufactured in the United States" (**This is the presumed pathway of compliance**)
2. Any non-domestically manufactured items are covered by a categorical (national) waiver
3. Project specific waiver for any non-domestically manufactured items not covered by a categorical (national) waiver
4. In very limited circumstances, an international trade agreement may apply

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Definition of Manufactured Good

- “A good brought to the construction site for incorporation into the building or work that has been processed into a specific form and shape, or combined with other raw material to create a material that has different properties than the properties of the individual raw materials”
- “There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the United States.”
 - ~OMB Guidance [§176.140, 176.70(a)(2)(ii)]
- Recipients, in conjunction with consultants, contractors, and others, are responsible to decide if products are American-made per §1605(a)

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“Substantial Transformation”

- “In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed.”
 - This OMB Guidance term [§176.160] for international agreements applies to few SRF recipients
 - While term is binding on few if any SRF recipients, EPA believes it provides important guidance on this issue, rooted in well-established legal interpretations

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Basic Principles in “Substantial Transformation” Analysis

- Determination of whether “substantial transformation” has occurred is always case-by-case
- No good “satisfies substantial transformation test by ... having merely undergone ‘[a] simple combining or packaging operation.’”
- “Assembly operations which are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation.”

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Questions for Determining Whether Substantial Transformation Has Occurred in the U.S.

Question	Yes	No
1. Were all of the components of the manufactured good manufactured in the United States, and were all of the components assembled into the final product in the U.S.? (If the answer is yes, then this is clearly manufactured in the U.S., and the inquiry is complete)		
2. Was there a change in character or use of the good or the components in America? (These questions are asked about the finished good as a whole, not about each individual component) <i>[Questions 2.a., 2.b., and 2.c. shown on next slide]</i>		
3. Was(/were) the process(es) performed in the U.S. (including but not limited to assembly) complex and meaningful? <i>[Questions 3.a., 3.b., 3.c., 3.d. and 3.e. shown on later slide]</i>		

Substantial transformation has occurred in the U.S.
if answer yes to either Question 1, 2, or 3

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To Answer Question 2, Ask the Following:

Question	Yes	No
2. Was there a change in character or use of the good or the components in America? (These questions are asked about the finished good as a whole, not about each individual component)	√	
a. Was there a change in the physical and/or chemical properties or characteristics designed to alter the functionality of the good?		
b. Did the manufacturing or processing operation result in a change of a product(s) with one use into a product with a different use?		
c. Did the manufacturing or processing operation result in the narrowing of the range of possible uses of a multi-use product?	√	

If answer yes to any of 2a, 2b, or 2c,
then answer to Question 2 is yes
(checked answers are for illustration only)

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To Answer Question 3, Ask the Following:

Question	Yes	No
3. Was(/were) the process(es) performed in the U.S. (including but not limited to assembly) complex and meaningful?	√	
a. Did the process(es) take a substantial amount of time?	√	
b. Was(/were) the process(es) costly?		
c. Did the process(es) require particular high level skills?	√	
d. Did the process(es) require a number of different operations?		
e. Was substantial value added in the process(es)?		

If answer yes to at least two of 3a, 3b, 3c, 3d, or 3e,
then answer to Question 3 is yes
(checked answers are for illustration only)

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Established Interpretations Disqualify Some Actions Under Any Circumstances

- Cosmetic or surface changes (e.g., painting, lacquering, or cleaning)
- Simply cutting a material to length or width (e.g., cutting steel pipe to particular length)
- If all pieces are shipped by one company with the intent of providing all components necessary to be assembled into a functional good (e.g., pump station)

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Assistance Recipients: Key Occasions to Apply ST Analysis

- To decide in unclear (marginal) cases, recipients can ask: *would we be confident to use information from the analysis to document our BA compliance to the State or EPA that this good is U.S.-produced?*
- If have reasonable doubt, and U.S.-made good meeting recipient's needs is not available, then should apply for waiver
- For recipients considering use of goods claimed to be U.S.-made
 - If a competing manufacturer, bidder or supplier protests such claim, can ask competitors to frame any concerns in the form of specific responses to these questions
 - Responses could provide a resource that recipient can consider

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“Substantial Transformation” May Occur On-site IF...

- Manufacturer brings all components of the good to the site and does so in normal course of business
 - Ensures that this is not an attempt to game Buy American rules
- Manufacturer does all the work onsite
 - May use sub for this only if manufacturer does so already in the normal course of business
- Answered yes to Questions 1, 2, or 3 above (i.e., found substantial transformation occurs)
 - Case is strongest if the transformative work must be done onsite (e.g., work includes adjustments, calibration, etc required to meet performance spec)

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Categorical/Nationwide Waivers

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Refinancing Waiver

- Basis: Public Interest
- For projects with debt obligations incurred on or after October 1, 2008 and prior to February 17, 2009 that are refinanced by the SRF using ARRA funds
- Justified by specific ARRA provision that makes eligible projects initially financed within an “in anticipation of ARRA” window

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Refinancing Waiver, continued

- Congressionally-defined window:
 - On or after Oct. 1 = “in anticipation of ARRA”
 - Prior to Feb. 17 = in good faith and without fair notice as to the existence and statutory scope of any Buy American requirement
- To qualify, must have “debt obligations ... incurred” within the window
 - Does not include self-financing or incurring costs alone
 - Might include certain other types of funding agreements if the commitments of both parties are tantamount to a “debt obligation incurred”

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Bid Waiver

- Basis: Public Interest
- For projects that solicited bids on or after October 1, 2008 and prior to February 17, 2009
- To have waiver cover a project, potential assistance recipients must also show verifiable basis on which they believed it was reasonable and prudent to solicit bids for these projects
- Verifiable basis must show solicitation undertaken in specific anticipation of timely funding (from ARRA or other source)

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Bid Waiver, continued

- Rationale for applying both ends of ARRA window is the same as with refinancing
 - Begins when bid solicitations can properly be considered “in anticipation of ARRA”
 - Limited to time before ARRA signing gave fair notice as to Buy American requirement
- Thus, this waiver does not apply to projects that solicited bids after ARRA signing on February 17
- Waiver is intended to recognize appropriateness of proactive steps States took to encourage SRF projects’ readiness for expeditious construction

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Revised De Minimis Waiver

- Basis: Public Interest
- For *de minimis* incidental components of projects, where they comprise no more than 5 percent of the total cost of the materials used in and incorporated into a project
 - 5% of total materials cost determined from research conducted by EPA

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De Minimis Waiver, continued

- Assistance recipients would determine and retain relevant documentation
- Assistance recipients would include in reports to the State:
 - Types/categories of items to which this waiver is applied
 - Total cost for each type
 - Calculations of the total cost of materials used to determine the dollar value of goods to which they have applied the waiver

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De Minimis Waiver, continued

- The waiver text identifies the following as characteristics needed for items to be covered:
 - “Use of literally thousands of miscellaneous...components” (different items of miscellaneous character)
 - “Generally low cost”

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If ARRA-Funded Project Is Covered By Categorical Waiver...

- Do not need to apply for an individual waiver
- Documentation that a project is covered by a categorical waiver *must include all elements required by the waiver*
- Maintain documents in project files

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Project Specific Waivers

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ARRA Provides Three Bases on Which a Project Specific Waiver May be Granted by EPA

- Applying Buy American is inconsistent with public interest (§1605(b)(1))
- U.S. iron, steel, and manufactured goods are not produced in sufficient and reasonably available quantities or of satisfactory quality (§1605(b)(2))
- Inclusion of U.S. iron, steel, and manufactured goods will increase cost of overall project by > 25% (§1605(b)(3))

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EPA Anticipates That Many Waiver Applications May Be Based Upon “Availability” Considerations

- U.S. iron, steel, and manufactured goods are not produced in sufficient and reasonably available quantities or of satisfactory quality (§1605(b)(2))
 - The Agency’s April 28, 2009 memorandum defines “reasonably available quantity” as:
 - “Quantity will be available at the time needed and place needed, and in the proper form or specification as specified in the project plans and design.”

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Possible Basis on Which an Assistance Agreement Recipient Could Apply for an “Availability” Waiver

- An Assistance Agreement Recipient May Apply to EPA for a Waiver from the “Buy American” Requirements on the basis of “Availability” if, based upon the responses to a bid solicitation, the Assistance Agreement Recipient has determined that:
 - Only Non-U.S. Manufactured
 - Iron
 - Steel or
 - Manufactured Good(s)
 - Meet the Project Specifications (e.g.):
 - Performance
 - Physical Characteristics
 - Timeliness of Delivery

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SRF Assistance Recipients Should:

- Ensure that project design specifications do not unnecessarily preclude U.S.-produced iron/steel/manufactured goods (I/S/MG)
- Include bid solicitation provisions and enforceable contract provisions for timely delivery of I/S/MG to ensure expeditious construction under ARRA
- Should make clear bidders' responsibility to document in detail any unavailability of U.S.-produced I/S/MG in response to bid solicitation

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Incorporating Buy American into SRF Projects

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Goals:

- Explain how assistance recipients, design firms, and construction contractors should alter their standard practices to comply with Buy American
- Ensure that appropriate documentation is kept to demonstrate compliance with Buy American

Notes:

- ARRA includes a Buy American clause – this is NOT the same as requiring the Buy American Act

Pink Sheets

- Include new forms available for certifying Buy American compliance
- Complete description of ARRA Buy American statute and requirements (p. 119)
 - Requirements of the Buy American ACT described on pages 46-47 do NOT apply

Handout

- “Buy American Roles and Required Documentation” is designed to explain the actions and documentation that are required of assistance recipients, A/E’s, and construction contractors through the process
- Follow along!

Buy American Roles and Required Documentation				
	Assistance Recipients	Architecture and Engineering Firms	Construction Contractors	
1. Planning and design	Actions	<ul style="list-style-type: none"> • Issue costs with A/E's to be included in design • Issue a budget in contract with A/E's requiring A/E's provide information that may be necessary for design activities 	<ul style="list-style-type: none"> • This design requires that we use major Buy America • Identify compliance that is (likely) required in order • This is the only way to ensure that the design complies with the Buy American Act 	NA
	Documentation	<ul style="list-style-type: none"> • Information that may be included in submittal preparation 	<ul style="list-style-type: none"> • Information that may be included in submittal preparation 	NA
2. Preparing for bidding	Actions	<ul style="list-style-type: none"> • Issue costs with A/E's to be included in price 	<ul style="list-style-type: none"> • This requires that we have a contract with the contractor • Identify compliance that is (likely) required in order 	<ul style="list-style-type: none"> • A/E's provide records that will be used in the project that require a Buy American goal • The contract requires that we have a goal of 100% Buy American goal
	Documentation	NA	<ul style="list-style-type: none"> • Record of design records that are to be included in the bid 	<ul style="list-style-type: none"> • List of specifications of a contract that will be used in the bid
3. Bid process	Actions	<ul style="list-style-type: none"> • Issue RFP requires A/E's to comply with the Buy American Act and to include a list of the contractor's certified suppliers for the bid • Issue RFP requires A/E's to include a list of the contractor's certified suppliers for the bid • Issue RFP requires A/E's to include a list of the contractor's certified suppliers for the bid • Issue RFP requires A/E's to include a list of the contractor's certified suppliers for the bid 	<ul style="list-style-type: none"> • Report to all requests for certification 	<ul style="list-style-type: none"> • Identify all items that are Buy American goal required for the project • Identify all items that are Buy American goal required for the project • Identify all items that are Buy American goal required for the project • Identify all items that are Buy American goal required for the project
	Documentation	<ul style="list-style-type: none"> • Certification records that are required for certification 	<ul style="list-style-type: none"> • Reporting to all requests for certification 	<ul style="list-style-type: none"> • Certification records that are required for certification • Reporting to all requests for certification • Information that may be included in submittal preparation

Note:

- Some large utilities or municipalities will have staff that are responsible for various tasks typically performed by architecture and engineering firms or construction

Key Areas of Implementation

1. Planning and Design
2. Preparing for Bidding
3. Bid Process
4. Development of Construction Contracts
5. Construction

Remember:

- It is best to use a bottom up approach to Buy American compliance
 - Will need certifications all the way down to vendors, suppliers, or manufacturers for each component procured for project
- Engage players well down the supply chain as early as possible

Remember:

- Buy American applies ONLY to iron, steel, and manufactured goods used during construction
- Raw materials (plywood, stone, concrete mix) and machines used during construction are NOT required to comply with Buy American

Waivers:

- Waivers are the **exception**
- You should apply for a waiver as soon as you know you will need one. You are encouraged to apply for a waiver before bidding occurs.

Waivers:

- **Never** assume that you will receive a waiver
 - EPA will be evaluating each waiver application on the information presented in the application
 - You will not receive a waiver for a design choice unless the choice was made based on performance parameters
 - If your waiver application is not accepted, you will not be able to include the foreign-made component that the waiver would have covered in your project, even if you use another, non-ARRA source to pay for the component
- **Always** have a design contingency in the case that a waiver is not received

Assistance Recipients

Assistance Recipients

- Work with design firms to ensure that BA is considered in the development of plans, designs, and specs (*when possible*)
- Include language in contracts requiring design firms to help with the development of necessary waivers

Assistance Recipients

- Ensure RFP has language requiring BA compliance
 - Includes definition of substantial transformation
 - Includes description of waiver process
- Consider BA during bid evaluation
 - Ask for more info if one bidder is significantly lower than others
 - Select winning bidder that you know can comply with BA

Assistance Recipients

- Include language in contracts requiring contractors and vendors to comply with BA
 - Require certifications/documentation
 - Indemnification process
- Make substantial transformation decisions (*can be delegated*)
- Ensure waivers are submitted and approved (*as necessary*)

Architecture and Engineering Design Firms

Design Firms

- Ensure that BA is considered in the development of plans, designs, and specs *(when possible)*
- Specify American-made goods *(when possible)*
 - Identify necessary components that are not available domestically

Design Firms

- Respond to any BA-related requests for clarification during the bidding process
- Assist assistance recipients in developing BA waivers
 - Design firms know the reasoning behind design decisions

Construction Contractors

Construction Contractors

- Consider BA during bid process:
 - Identify all American-made iron, steel, and manufactured goods
 - Estimate prices assuming procurement of domestically made goods (*when possible*)
 - Identify components that will require a waiver
 - Submit requests for clarification when necessary
 - Have a backup plan in case waivers are not received

Handout

- “Buy American and Bid Package Pricing” provides a framework for construction contractors bidding on ARRA projects

Buy American and Bid Package Pricing				
<small>Answer questions 1-3 to determine the appropriate pricing for bid and required documentation for a component.</small>				
1. What product would you procure under normal circumstances?	2. Characteristics of standard options	3. Additional determinations to make	Appropriate pricing for bid	Required documentation
A specific American-made product	N/A	N/A	Price the American-made product	None
One of several products	At least one American-made option	N/A	Price the American-made product	None
	Only foreign-made option	Determine whether there is any other American-made good that is available	If there is a functional American-made product, price the American-made product. If there is not a functional American-made product, price the foreign-made product at the next lowest available price.	Collect documentation from the producer of the American-made product, including information on foreign-made.
A specific foreign-made product	Foreign-made option with proprietary design	Determine whether there is a functional American-made product with similar function	If there is no functional American-made product, price the American-made product with similar function, price the American-made product. If there is a functional American-made product with similar function, price the foreign-made product.	Obtain the functional information that provides that product that American-made product with similar function.
	Foreign-made option without proprietary design	Determine whether there is an American-made version of the product	If there is an American-made version of the product, price the American-made product. If there is not an American-made version of the product, price the foreign-made product.	Collect documentation of the version that is an American-made version if available.

Construction Contractors

- Communicate to vendors that you need goods that are documentable as domestically made
 - Be on the look out for new vendors, suppliers, or manufacturers of American-made goods
- Include language in contracts requiring sub-contractors and vendors to comply with BA
 - Require certifications/documentation
 - Indemnification process

Construction Contractors

- Collect documentation for all iron, steel, and manufactured goods not covered by a waiver demonstrating compliance with BA
- Make substantial transformation decisions (if delegated by assistant recipient)

Checking Manufacturers

- Most manufacturers are eager to prove compliance with Buy American
 - Some are too eager
 - Not subject to the same contract penalties as contractors and assistance recipients
- Buy American requirements will mean that you may be dealing with unfamiliar vendors
- Perform due diligence on manufacturers to ensure you are comfortable with their certifications
 - Don't hesitate to ask questions, request references, or do some background research
- Report dishonest practices to the OIG

Important Forms

NM Buy American Compliance Form

- Assistance recipients: Include form in bid documents
- Contractors: Have the form completed by every manufacturer/supplier
- Contractors: Include completed forms as the first page in the bid submission
- Assistance recipients: Keep completed forms on file

Statement of Compliance with the Buy American Provision of the American Recovery and Reinvestment Act (ARRA)

Project: Ruidoso – Ruidoso Downs Regional WWTP Phase 1B Wastewater Treatment Facilities – 2009

Contractor: Click here to enter Contractor name. **Date:** Click always arrow to select date.

Supplier: Click here to enter Supplier name.

Manufacturer: Click here to enter Manufacturer name.

Product Description: Click here to enter Product Description.

Note: *International Trade Agreements do not apply for this project.*

**Substantial transformation has occurred in the U.S.
If the answer is Yes to any of Questions 1, 2, or 3.**

Criteria	Yes	No
1. Were all of the components of the manufactured good manufactured in the United States, and were all of the components assembled into the final product in the U.S.? If the answer is yes, then this is clearly manufactured in the U.S., and the inquiry is complete.	<input type="checkbox"/>	<input type="checkbox"/>
2. Was there a change in character or use of the good or the components in America? (These questions are asked about the finished good as a whole, not about each individual component). The answer is yes if the answer is yes to any of 2a, 2b, or 2c:	<input type="checkbox"/>	<input type="checkbox"/>
a. Was there a change in the physical and/or chemical properties or characteristics designed to alter the functionality of the good?	<input type="checkbox"/>	<input type="checkbox"/>
b. Did the manufacturing or processing operation result in a change of a product(s) with one use into a product with a different use?	<input type="checkbox"/>	<input type="checkbox"/>
c. Did the manufacturing or processing operation result in the narrowing of the range of possible uses of a multi-use product?	<input type="checkbox"/>	<input type="checkbox"/>
3. Was/were the process(es) performed in the U.S. (including but not limited to assembly) complex and meaningful? The answer is yes if the answer is yes to at least two of 3a, 3b, 3c, 3d, or 3e:	<input type="checkbox"/>	<input type="checkbox"/>
a. Did the process(es) take a substantial amount of time?	<input type="checkbox"/>	<input type="checkbox"/>
b. Was/were the process(es) costly?	<input type="checkbox"/>	<input type="checkbox"/>
c. Did the process(es) require particular high level skills?	<input type="checkbox"/>	<input type="checkbox"/>
d. Did the process(es) require a number of different operations?	<input type="checkbox"/>	<input type="checkbox"/>
e. Was substantial value added in the process(es)?	<input type="checkbox"/>	<input type="checkbox"/>

Please elaborate any "Yes" answers (include additional sheets as needed):
Click here to enter additional information.

Supplier's Signature

Printed Name

Buy American Compliance (ARRA) Form, rev7.10.08

R6 Bidder Certification Form

- Assistance recipients: Include this form (or equivalent) in bid documents
- Contractors: Submit the signed form with the bid

ARRA-311
06/09/09

**BIDDER'S CERTIFICATION *
IN COMPLIANCE WITH SECTION 1605 "BUY AMERICAN PROVISIONS" OF
THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)**

I hereby certify that:

- 1. Identification of American-made Iron, Steel, and Manufactured Goods:** Consistent with the terms of the Purchaser's (Grant Recipient's) bid solicitation and the provisions of ARRA Section 1605, the Bidder certifies that this bid reflects the Bidder's best, good faith effort to identify domestic sources of iron, steel, and manufactured goods for every component contained in the bid solicitation where such American-made components are available on the schedule and consistent with the deadlines prescribed in or required by the bid solicitation.
- 2. Verification of U.S. Production:** The Bidder certifies that all components contained in the bid solicitation that are American-made have been so identified, and if this bid is accepted, the Bidder agrees that it will provide reasonable, sufficient, and timely verification to the Purchaser of the U.S. production of each component so identified.
- 3. Documentation Regarding Non-American-made Iron, Steel, or Manufactured Goods:** The Bidder certifies that for any component or components that are not American-made and are so identified in this bid, the bidder has included in or attached to this bid one or both of the following, as applicable:
 - a. Identification of and citation to a categorical waiver published by the U.S. Environmental Protection Agency in the Federal Register that is applicable to such component or components, and an analysis that supports its applicability to the component or components;
 - b. Verifiable documentation sufficient to the Purchaser, as required in the bid solicitation or otherwise, that the Bidder has sought to secure American-made components but has determined that such components are not available on the schedule and consistent with the deadlines prescribed in the bid solicitation, with assurance adequate for the Bidder under the applicable conditions stated in the bid solicitation or otherwise.
- 4. Information and Detailed Justification Regarding Non-American-made Iron, Steel, or Manufactured Goods:** The Bidder certifies that for any such component or components that are not so available, the Bidder has also provided in or attached to the bid information, including but not limited to the verifiable documentation and a full description of the Bidder's efforts to secure any such American-made component or components, that the Bidder believes are sufficient to provide and as possible constitute the detailed justification required for a waiver under section 1605 with respect to such component or components. The bidder further agrees that, if this bid is accepted, it will assist the Purchaser in amending, supplementing, or further supporting such information as required by the Purchaser to request and, as applicable, implement the terms of a waiver with respect to any such component or components.

I understand that a false statement on this certification may be grounds for rejection of this bid proposal or termination of the contract award.

Typed Name & Title of Bidder's Authorized Representative

Signature of Bidder's Authorized Representative

Date

*ARRA-311 is a suggested form #. The grantee may substitute other equivalent form #.

R6 Contractor Certification Form

- Assistance recipients:
Include this form (or equivalent) in contract documents
- Contractors: Sign form with contract documents

ARRA-314
(06/09)

CONTRACTOR'S ACKNOWLEDGMENT*
IN COMPLIANCE WITH SECTION 1605 "BUY AMERICAN PROVISIONS" OF
THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA)

I hereby acknowledge to and for the benefit of the City of _____ ("Purchaser") and the State of _____ (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the federal ARRA (or are being made available for a project being funded with monies made available by federal ARRA) and such law contains provisions commonly known as "Buy American," that requires all of the iron, steel, and manufactured goods used in the project be produced in the United States ("Buy American Requirements") including iron, steel, and manufactured goods provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the Buy American Requirements, (b) all of the iron, steel, and manufactured goods used in the project will be and/or have been produced in the United States in a manner that complies with the buy American Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the Purchaser or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney's fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

Typed Name & Title of Contractor's Authorized Representative

Signature of Contractor's Authorized Representative

Date

*ARRA-314 is a suggested format. The grantee may substitute other equivalent format.




REGION 6 BUY AMERICAN

Gene P. Wossum, P.E.
U.S. Environmental Protection Agency
Region 6 - Dallas





5-Step Review Process For Individual Project Waivers

1. Once Region finds request package is complete, initial technical review by contractor/evaluation by Regional office
2. Coordination with Cross-Agency Working Group
3. OARM Concurrence (after RA tentative approval)
4. Signature by Regional Administrator
5. Publication in Federal Register

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Applying “Substantial Transformation” Analysis: EPA Role

- EPA does not make “substantial transformation” (ST) or US/foreign origin determinations
- EPA §1605 role is to review waiver requests when recipient believes it cannot comply by buying US-made good, and do compliance oversight

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Summary of State Buy American Role

- Ensure recipients have adequate documentation in project files to demonstrate all applicable means of BA compliance
 - For US-made goods: verification of US production (as stated in sample certification point 2 in EPA 4/28/09 BA memo)
 - For items covered by a categorical (e.g., nationwide) waiver: the documentation must include all elements specified in and required by the waiver for an item or project to be covered
 - For any component that has been granted a waiver: FR notice of project specific waiver, and/or
 - For items subject to an international agreement
 - Communication from applicable state or municipal party to the agreement that recipient and item(s) are covered, and
 - Verification of country of origin

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Substantial Transformation Concerns For States

- Be cautious regarding recipient requests to consult on substantial transformation
 - States have direct responsibility to ensure BA compliance of recipients
 - Recognize tension between State role for compliance and discretionary provision of BA technical assistance
 - Don't advise unless you have sufficient information to be confident that recipient compliance is demonstrated

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40 CFR Part 31 for ARRA Grant Recipients

Gene P. Wossum, P.E.
U.S. Environmental Protection Agency
Region 6 - Dallas



Applicability of 40 CFR Part 31

Recipients Receiving a SRF Grant
Rather Than Other Forms of Subsidy
Such as Principal Forgiveness or
Negative Interest Rate Must Follow
the Provisions of 40 CFR Part 31.



For New Mexico the CWSRF Under
ARRA is Providing Such Assistance.






Procurement Under Part 31

Procurement standards

SRF grantees must use procurement procedures which reflect applicable federal state and local laws and regulations.






SRF Grant Recipient Requirements

- Will maintain a contract administration system
- Will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts.
- Will conduct all procurement in a manner promoting full and open competition. (ref 40 CFR 31.36(c))
- Will review proposed procurements to avoid purchase of unnecessary or duplicative items





SRF Grant Recipient Requirements (Cont.)



- Should consider entering into State and local intergovernmental agreements for procurement or use of common goods and services.
- Are encouraged to consider using Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- Are encouraged to consider using value engineering clauses in contracts for construction projects of sufficient size








SRF Grant Recipient Requirements (Cont.)



- Are encouraged to make awards only to responsible contractors possessing the ability to perform successfully
- Will use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk
- Will maintain records sufficient to detail the significant history of a procurement








SRF Grant Recipient Requirements (Cont.)



- Will assume responsibility for the settlement of all contractual and administrative issues arising out of procurements
- Will maintain protest procedures to handle and resolve disputes relating to their procurements
- Will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences



SRF Grant Recipient Requirements (Cont.)



- Will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition.
- Will follow applicable competitive procurement requirements for conducting technical evaluations and bidding for A/E services





SRF Grant Recipient Requirements (Cont.)

- Will follow applicable procurement rules for noncompetitive proposals when procurement is through a solicitation of a proposal from one source.










SRF Grant Recipient Requirements (Cont.)

- Will conduct a cost or price analysis in connection with every procurement action including contract modifications. (ref 40 CFR 31.36(f))
- Will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed.










SRF Grant Recipient Requirements (Cont.)



- Will make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase.
- Will make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates as required








SRF Grantees Will Use Certain Provisions in Contracts:



- For contracts or subcontracts exceeding the simplified acquisition threshold, use local bonding policy and requirements with approval from state.
- Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms
- Termination for cause and for convenience
- Compliance with equal employment opportunity Executive orders and other requirements








SRF Grantees Will Use Certain Provisions in Contracts (Cont.):



- Compliance with federal anti-kickback requirements
- Compliance with the Davis-Bacon Act
- Compliance with Contract Work Hours and Safety Standards Act and associated Department of Labor regulations
- Notice of awarding agency requirements and regulations pertaining to reporting
- Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.



SRF Grantees Will Use Certain Provisions in Contracts (Cont.):



- Notice of requirements and regulations pertaining to copyrights and rights in data.
- Allowing access federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to records of the contractor
- Retention of all required records for three years after final payments and all other pending matters are closed
- EPA Region 6 has standard language to insert into contracts





SRF Grantees Will Use Certain Provisions in Contracts (Cont.):



- Compliance with all other applicable standards, orders, or requirements issued under section 306 of the Clean Air Act, section 508 of the Clean Water Act , Executive Order 11738, and Environmental Protection Agency regulations
- Requiring standards and policies relating to energy efficiency which are contained in the State energy conservation plans
- Funding Recipient as noted earlier should have established procurement standards, and
- Exercise full and open competition in procurement








Procurement by Competitive Proposals 31.36(d)(3) A/E Services



Two or more sources submit an offer in response to a Request for Proposals

- Fixed price type contract
- Cost reimbursement type contract (with or without a fee)
- The % of construction cost and the cost plus % cost types of agreements are prohibited








Procurement by Competitive Proposal A/E Services (Cont.)



Request for Proposals (RFP)

- Must be well publicized (newspaper, trade journals and mailing of notices)
- Solicited from an adequate number of qualified sources (at least 2)
- Evaluation factors and their relative importance identified
- Must have a method for conducting technical evaluations of proposals and selection of successful offeror.








Procurement by Competitive Proposal A/E Services (Cont.)



- Awards made to responsible firm whose proposal is most advantageous to the program, considering costs and other factors.
- For A/E professional services, price can be omitted as an evaluation factor
 - During price negotiation, recipient should perform a cost and price review to arrive at appropriate contract amount (using EPA Form 5700-41 or equivalent)
 - Maximum hourly rate for CY2009 is \$73.40








EPA 5700-41



Form approved
OMB No. 2030-0011
Approval expires 10-31-86

EPA COST OR PRICE SUMMARY <small>(see accompanying instructions before completing this form)</small>				
PART I - GENERAL				
1. RECIPIENT		2. ASSISTANCE IDENTIFICATION NO.		
3. NAME CONTRACTOR OR SUBCONTRACTOR		4. DATE OF PROPOSAL		
5. ADDRESS OF CONTRACTOR OR SUBCONTRACTOR <i>(Include ZIP Code)</i>		6. TYPE OF SERVICE TO BE FURNISHED		
TELEPHONE NUMBER <i>(Include Area Code)</i>				
PART II - COST SUMMARY				
7. DIRECT LABOR <i>(specify labor categories)</i>	ESTIMATED HOURS	HOURLY RATE	ESTIMATED COST	TOTALS
		\$	\$	
DIRECT LABOR TOTAL:				\$
8. INDIRECT COSTS <i>(Specify indirect cost pool)</i>	RATE	x BASE =	ESTIMATED COST	TOTALS
			\$	
INDIRECT COSTS TOTAL:				\$
9. OTHER DIRECT COSTS			ESTIMATED COST	TOTALS
a. TRAVEL			\$	



EPA 5700-41 (Cont.)



(1) TRANSPORTATION			\$	
(2) PER DIEM			\$	
TRAVEL SUBTOTAL:			\$	
b. EQUIPMENT, MATERIALS, SUPPLIES <i>(Specify categories)</i>		QTY	COST	ESTIMATED COST
			\$	\$
EQUIPMENT SUBTOTAL:				
c. SUBCONTRACTS			ESTIMATED COST	
			\$	
SUBCONTRACTS SUBTOTAL:			\$	
d. OTHER <i>(Specify categories)</i>			ESTIMATED COST	
			\$	
OTHER SUBTOTAL:			\$	
e. OTHER DIRECT COSTS TOTAL:			\$	
10. TOTAL ESTIMATED COST			\$	
11. PROFIT			\$	
12. TOTAL PRICE			\$	

 **Procurement by Small Purchase 31.36(d)(1)** 

Suitable for securing supplies, equipment, property and services other than A/E

- The total aggregated price does not exceed \$100,000
- Price or rate quotations are obtained from an adequate number of qualified sources (at least 3)



 **Procurement by Noncompetitive Proposals 31.36(d)(4)** 

Procurement through solicitation from only one source or after solicitation from a number of sources and the competition is determined to inadequate.

- The service is available from only one source
- Public exigency or emergency requires fast action
- Funding agency must provide review and approval
- Cost analysis as with competitive procurement





Procurement by Sealed Bids 31.36(d)(2)—Construction



Conducted with two or more sources submitting sealed bids in response to a well publicized Invitation for Bids providing adequate time to prepare bids

- The Invitation for Bids will include any specifications and pertinent attachments (A standard specification insert will be provided to assist you)
- Requires complete, adequate and realistic specifications



Procurement by Sealed Bids 31.36(d)(2)—Construction (Cont'd)



- Procurement lends itself to firm fixed price contract
- Bids will be opened at the time and place in the Invitation for Bids
- Award is made primarily based on price
- A firm fixed price award will be made in writing to the lowest, responsive, responsible bidder
- Any or all bids can be rejected for sound reason





40 CFR Part 31 for ARRA Grant Recipients

Questions?



Davis-Bacon and Your ARRA Project

Requirements and Implementation



Introduction to Davis-Bacon

- Davis



- Bacon



Davis-Bacon and ARRA

- Section 1606 of the ARRA legislation:
“Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, **all laborers and mechanics employed by contractors and sub contractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality** as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.”
- Davis-Bacon applies to all ARRA projects
- Applies for the entire project, not just the portion funded by ARRA

For States with State Prevailing Wage Laws

- All of the same requirements apply
 - Federal clauses must be included in contracts
 - Federal wage rates and posters must be posted
 - Federal wage rates must be checked and met or exceeded for all applicable workers

Davis-Bacon Responsibilities

1. Find appropriate wage determinations
2. Incorporate wage determinations into bid solicitations and contracts
3. Include required clauses into bid solicitations and contracts
4. Collect and review weekly payroll records and compliance statements
5. Submit certification to state for each week
6. Conduct wage rate interviews
7. Verify registration/certifications for apprentices and trainees
8. Submit semi-annual enforcement reports

1. Find Appropriate Wage Determinations

- The Department of Labor (DOL) establishes prevailing wages
 - Based on work function and location
 - Updated periodically
 - Pending revisions noted each week on <http://www.wdol.gov>
- Current wage rates can be found on www.wdol.gov

The screenshot shows the homepage of Wage Determinations OnLine.gov. At the top, there is a navigation bar with links for HOME, FAQs, User Guide, and Help. Below this is a main menu with three categories: Service Contract Act, Davis-Bacon Act, and Related Information. Under Davis-Bacon Act, the link 'Selecting DBA WDs' is circled in red. The main content area features a 'Welcome to the Wage Determinations OnLine Program!' section with introductory text and a 'News and Updates...' section on the right side.

Wage Determinations OnLine.gov
 Providing public access to federal wage determinations and related information.

WDOL.gov is part of the Integrated Acquisition Environment, one of the E-Government initiatives in the President's Management Agenda. It is a collaborative effort of the Office of Management and Budget, Department of Labor, Department of Defense, General Services Administration, Department of Energy, and Department of Commerce.

HOME | FAQs | User Guide | Help

Service Contract Act	Davis-Bacon Act	Related Information
<ul style="list-style-type: none"> ▪ Selecting SCA WDs ▪ e98 ▪ Archived WDs ▪ WDs due to be revised 	<ul style="list-style-type: none"> ▪ Selecting DBA WDs ▪ Archived WDs ▪ WDs due to be revised 	<ul style="list-style-type: none"> ▪ Agency Labor Advisors ▪ Library ▪ DOL Wage and Hour Website

Welcome to the Wage Determinations OnLine Program!

This website provides a single location for federal contracting officers to use in obtaining appropriate Service Contract Act (SCA) and Davis-Bacon Act (DBA) wage determinations (WDs) for each official contract action. The website is available to the general public as well. Guidance in selecting WDs from this website is provided in the WDOL.gov User's Guide.

Alternatively, the WDOL.gov Program also provides contracting officers direct access to the Department of Labor's (DOL's) "e98" website to submit a request for SCA WDs for use on official contract actions. In some instances, the WDOL.gov Program will not contain the appropriate SCA WD, and contracting officers will be directed to use DOL's e98 website in order to obtain the required SCA WD. DOL will provide the contracting officer with an SCA WD through the e98 system.

Questions pertaining to the application of contract labor standards or the selection of appropriate WDs for specific contract actions should be referred to the contracting officer or to the designated agency labor advisors.

News and Updates...

» The DOL has announced the dates for the first in a series of Prevailing Wage Conferences to be held throughout the country at locations within each of their five regions.

The Wage and Hour Division will host three Prevailing Wage Conferences in September. The conferences will address issues associated with the administration and enforcement of the Davis-Bacon Act, McNamara O'Hara Service Contract Act, and the labor standards provisions of the American Recovery and Reinvestment Act of 2009.

The conferences are scheduled for Long Beach, California from September 15-17; San Antonio, Texas from September 22-24; and Boston, Massachusetts from September 29 through October 1. Registration requests are now being accepted. You may pre-register for these

CAUTION: Users should note that the only WDs applicable to a particular solicitation or contract are those that have been incorporated by the contracting officer in that contract action.

Selecting DBA Wage Decisions

Select DBA WD by number:

(Enter WD number in the following format: two letter abbreviation for the state and the number of the WD. For example, VA3, NOT VA030003 or MD150 NOT MD030150.)

OR

By Selection criteria beginning with:

State:

County:

Construction Type: (Types of Construction Under DBA)

WD Number:

[Back](#)

Browse by state/territory.

View the latest modifications and additions to the Davis-Bacon Database.

View the modifications or additions to Davis-Bacon Wage Determinations due to be issued and published on WDOL.gov.

View Archived Wage Determinations

[Help](#) | [Privacy & Security Statement](#) | [Quality and Disclaimers](#) | [Contact Webmaster](#)






Wage Determinations OnLine.gov

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[HOME](#) | [FAQs](#) | [User Guide](#) | [Help](#)

Service Contract Act	Davis-Bacon Act	Related Information
<ul style="list-style-type: none"> ▪ Selecting SCA WDs ▪ e9B ▪ Archived WDs ▪ WDs due to be revised 	<ul style="list-style-type: none"> ▪ Selecting DBA WDs ▪ Archived WDs ▪ WDs due to be revised 	<ul style="list-style-type: none"> ▪ Agency Labor Advisors ▪ Library ▪ DOL Wage and Hour Website

CAUTION: Users should note that the only WDs applicable to a particular solicitation or contract are those that have been incorporated by the contracting officer in that contract action.

Selecting DBA Wage Decisions

The Wage Determination you have requested is below.

Please scroll down to review the WD carefully to ensure that it is appropriate for the specific contract action.

Rates	Fringes
ELECTRICIAN	
Electrical work where the cost is \$150,000 or less...	\$ 22.85 10.79
Electrical work where the cost is over \$150,000...	\$ 27.00 10.91

ELEC0068-001 06/01/2009	
ADAMS, ARAPAHOE, BOULDER, BROOMFIELD, DENVER, DOUGLAS, JEFFERSON, LARIMER, AND WELD COUNTIES	
Rates	Fringes

Base Rate + Fringe
= Prevailing Wage

Printer Friendly Version

2. Include Wage Determination in Bid Solicitation and Contracts

- Pre-bid:
 - Compare work that needs to be performed based on plans & specs with the existing wage determinations
- Bid advertisements/specifications:
 - Include language requiring Davis-Bacon in all bids received
 - Include the wage rates for different functions that will be required
- Bids received should include:
 - The number and types of workers that will be needed to construct the project
 - Wages being paid to all workers

During the Bid Period

- Monitor www.wdol.gov weekly for changes to the wage determination
- If the wage determination changes:
 - More than 10 days before bid opening: modify the solicitation
 - Less than 10 days before bid opening: request a note from the State confirming that there is not reasonable time to modify the bid

What if There is No Wage Determination?

- In some cases, DOL may not have a prevailing wage for a class of worker or location
- The contractor, unclassified employee, and assistance recipient must agree on a wage rate (including fringe benefits)
- Submit the decision to the State using Standard Form 1444
- State will send the decision to DOL
- DOL will approve or deny the decision within 30 days
- **DOL will only consider cases for projects that are under contract**

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE			AUTHORIZED FOR LOCAL REPRODUCTION
<input type="checkbox"/> SERVICE CONTRACT <input type="checkbox"/> CONSTRUCTION CONTRACT		CME No.: 0000-0089 Expires: 04/30/2005	
Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretary (MFP), Office of Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (3000-0089), Washington, DC 20503.			
INSTRUCTIONS: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16. KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER.			
1. TO: ADMINISTRATION, Employment Standards Administration WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, D.C. 20330		2. FROM: (REPORTING OFFICE)	
3. CONTRACTOR		4. DATE OF REQUEST	
5. CONTRACT NUMBER	6. DATE BIDDING BEGAN/DECEASED	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED
9. DATE OFFERED/DECEASED IF A PUBLIC WORK (MKT)			
10. SUBCONTRACTOR (IF ANY)			
11. PRODUCT AND DESCRIPTION OF WORK (AFFIX ADDITIONAL SHEET IF NEEDED)			
12. LOCATION (CITY, COUNTY AND STATE)			
13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION			
14. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); THE DESCRIPTION(S), DUTIES, AND RATIONALE FOR PROPOSED CLASSIFICATION(S) (SCA ONLY)	15. DATE:	16. WAGE RATE(S)	17. FRINGE BENEFITS PAYMENTS
<i>(DO NOT WRITE IN THESE SPACES)</i>			
14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY)		15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE	
16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE		TITLE <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE	
TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1010 (SCA) OR FAR 22.406-3 (DBA))			
<input type="checkbox"/> THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.			
<input type="checkbox"/> THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.			
SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE		TITLE AND COMMERCIAL TELEPHONE NO.	DATE SUBMITTED
PREVIOUS EDITION IS USABLE			
STANDARD FORM 1444 (REV. 12-2001) Prescribed by GSA-FAR (48 CFR) 53.222(f)			

What if My Project is Already Under Contract?

- Either re-bid, or issue a change order
- Wage rates must be incorporated retroactive to the beginning of the contract for any of the project to be eligible for ARRA funds
- Assistance recipient is responsible for any resulting cost increase
- Make sure you have a contingency fund!

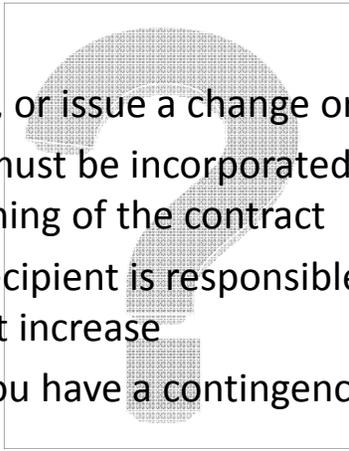
No Expiration Date

- Wage determinations should be included in contract language, so they
- Wage determinations remain effective for the life of the contract
 - Exception: the contracting Officer chooses to extend the life of the contract after a new wage determination has been released



What if I Use the Wrong Prevailing Wage?

Same answer:

- 
- Either re-bid, or issue a change order
 - Wage rates must be incorporated retroactive to the beginning of the contract
 - Assistance recipient is responsible for any resulting cost increase
 - Make sure you have a contingency fund!

3. Include Wage Clauses in Bid Solicitation, Contracts and Subcontracts

- Bid Solicitations, contracts with contractors and subcontractors should include language conforming to D-B
 - Including poster requirements
- Preconstruction conferences and letters are recommended by DOL
 - Ensures that contractor is aware of wage requirements and reporting

Language for Bid Solicitations and Contracts

“The successful bidder will be required to conform to all provisions of the federal Davis-Bacon and Related Acts which requires that all laborers and mechanics employed by contractors and subcontractors performing on contracts funded in whole or in part Recovery Act appropriations in excess of \$2,000 pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits, as determined by the Secretary of Labor, for corresponding classes of laborers and mechanics employed on similar projects in the area.”

Language for Bid Solicitations and Contracts, con't

- Clauses on these topics must be incorporated into contracts over \$2,000
 - Minimum wages
 - Withholding
 - Payrolls and basic records
 - Apprentices and trainees
 - Copeland Act compliance
 - Contract termination
 - Compliance with Davis-Bacon
 - Disputes
 - Eligibility
- These topics should be added for contracts over \$100,000
 - Contract Work Hours and Safety Standards Act
 - Overtime requirements
 - Violation
 - Withholding
 - Subcontracts

Poster Requirements

- **Wage rates** for the jobs being performed on a job site
- **Employee rights** under Davis-Bacon
- Posters should be posted in a conspicuous place, protected from the weather

EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT

FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

PREVAILING WAGES You must be paid not less than the wage rate listed in the Wage Decision posted with this Notice for the work you are performing.

OVERTIME You must be paid not less than one and one-half times the rate of pay for all hours worked over 40 in a work week, with certain exceptions.

ENFORCEMENT Contract payments can be withheld to ensure workers are paid for all hours worked, and liquidated damages may be assessed if contract requirements are not met. Davis-Bacon contract termination and debarment of contractors for contracts for up to three years. A contractor who falsifies payroll records or induces wage kickbacks may be subject to criminal prosecution, fines and/or imprisonment.

APPRENTICES Apprentice rates apply only to apprentices properly registered in approved Federal or State apprenticeship programs.

PROPER PAY If you do not receive proper pay, or require further information, contact the Contracting Officer listed on the contract.

DERECHOS DEL EMPLEADO BAJO LA LEY DAVIS-BACON

PARA OBREROS Y MECÁNICOS EMPLEADOS EN PROYECTOS DE CONSTRUCCIÓN FEDERAL O CON ASISTENCIA FEDERAL

LA SECCIÓN DE HORAS Y SUELDOS DEL DEPARTAMENTO DE TRABAJO DE EE.UU.

SALARIOS PREVALENTES No se le puede pagar menos de la tasa de pago indicada en la Decisión de Salarios Davis-Bacon para el tipo de trabajo que está realizando.

SOBRETIEPO Se le ha de pagar no menos de tiempo y medio de su tasa básica de pago por todas las horas trabajadas en exceso de 40 en una semana laboral. Existen pocas excepciones.

CUMPLIMIENTO Se pueden retener pagos por contrato para asegurarse que los obreros reciban los salarios y el pago de sobretiempos debidos, y se puede aplicar otras sanciones si no se cumple con los requisitos del pago de sobretiempos. Los cláusulas contractuales de Davis-Bacon permiten la terminación y exclusión de contratistas para afectar futuros contratos federales hasta tres años. El contratista que falsifica los registros contables de los salarios de pago o induce penalizaciones de salarios puede ser sujeto a procedimientos civiles o criminales, multas, y/o encarcelamiento.

APPRENTICES Las tasas de aprendices sólo se aplican a aprendices correctamente inscritos bajo programas federales o estatales aprobados.

PAGO APROPIADO Si Ud. no recibe el pago apropiado, o precisa de información adicional sobre los salarios aplicables, póngase en contacto con el Contratista Oficial que aparece abajo.

o póngase en contacto con la Sección de Horas y Salarios del Departamento de Trabajo de EE.UU.

Para obtener información adicional:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627

WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

5. Submit Certifications to State

- Assistance recipients must submit an assurance that Davis-Bacon has been satisfied for each week employees are paid

6. Wage Rate Interviews

- Must be conducted at least twice
 - Within two weeks of a contractor or subcontractor's first submission of payroll data
 - Within two weeks of the estimated project completion date
- Must use Standard Form 1445 or equivalent to memorialize interviews
- Additional interviews are appropriate if

LABOR STANDARDS INTERVIEW						
CONTRACT NUMBER		EMPLOYEE INFORMATION				
		LAST NAME	FIRST NAME	MI		
NAME OF PRIME CONTRACTOR		STREET ADDRESS				
NAME OF EMPLOYER		CITY		STATE	ZIP CODE	
SUPERVISOR'S NAME		WORK CLASSIFICATION		WAGE RATE		
LAST NAME	FIRST NAME	MI				
ACTION					CHECK BELOW	
					YES	NO
Do you work over 8 hours per day?						
Do you work over 40 hours per week?						
Are you paid at least time and a half for overtime hours?						
Are you receiving any cash payments for fringe benefits required by the posted wage determination decision?						
WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?						
HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?			TOOLS YOU USE			
DATE OF LAST WORK DAY BEFORE INTERVIEW (YYMMDD)						
DATE YOU BEGAN WORK ON THIS PROJECT (YYMMDD)						
THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE						
EMPLOYEE'S SIGNATURE				DATE (YYMMDD)		
INTERVIEWER	SIGNATURE		TYPED OR PRINTED NAME		DATE (YYMMDD)	
WORK EMPLOYEE WAS DOING WHEN INTERVIEWED			INTERVIEWER'S COMMENTS			
			ACTION (if explanation is needed, use comments section)			
			IS EMPLOYEE PROPERLY CLASSIFIED AND PAID?			
			ARE WAGE RATES AND POSTERS DISPLAYED?			
FOR USE BY PAYROLL CHECKER						
IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?						
<input type="checkbox"/> YES <input type="checkbox"/> NO						
COMMENTS						
CHECKER						
LAST NAME		FIRST NAME		JOB TITLE		
SIGNATURE				DATE (YYMMDD)		
AUTHORIZED FOR LOCAL REPRODUCTION Previous edition not usable			STANDARD FORM 1446 (REV. 12-98) Prescribed by GSA - FAR (48 CFR) 53.222(g)			

6. Wage Rate Interviews

- Must include:
 - Notation of each employee's:
 - Duties performed
 - Tools used
 - Note discrepancies between observations and employees' statements
 - Sign and date
- Compare this information with the rates being paid

7. Apprentice and Trainee Certification Verification

- Apprentices must be:
 - Registered in a program registered with DOL
 - Or is in a 90 day probationary employment in such a program
- Trainees must be:
 - Employed in a program that has been certified by DOL
 - Ratio of trainees to journeymen is set under the approved plan

8. Enforcement Reports

- Davis-Bacon code (29 CFR 5.7) requires that semi-annual enforcement reports be sent to DOL
- Due April 30 and October 31 each year
- Details still being worked out, but assistant recipient should be prepared to submit information
- Look to other programs that require Davis-Bacon, which may have existing forms that can be used as an example

8. Enforcement Reports

- Semi-annual enforcement reports contain information on:
 1. Period covered
 2. Number of prime contracts awarded
 3. Total dollar amount of prime contracts awarded
 4. Number of contractors against whom complaints were received
 5. Number of investigations completed
 6. Number of contractors found in violation
 7. Amount of back wages found due
 8. Amount back wages paid
 9. Total number of employees paid wage restitution

Other Requirements

Debarred Contractors

- Contractors and subcontractors that have been debarred from working on Federal projects for labor infractions cannot be hired
 - List can be found on the General Services Administration (GSA) website:

<https://www.epls.gov/>

Complaints/Disputes

- State regulations: complaints must be submitted within 2 years of project completion
- Workers would file complaint with BOTH state Department of Labor and Training and the US Department of Labor
 - DOL district office in each state can be a helpful resource
- If contractor is out of compliance, it must provide remaining wages to the workers
 - State regulations also allow the assistance recipient to terminate the contract



State of Rhode Island
DEPARTMENT OF LABOR AND TRAINING
 Division of Professional Regulation-Prevailing Wage Unit
 1511 Postoffice Avenue, Building #10
 Cranston, RI 02910-0944
 (401) 462-8288

PREVAILING WAGE COMPLAINT FORM

EMPLOYEE INFORMATION (please print):

Name of Complainant: _____ SSN: _____
 Address: _____ Tel #: () _____
 City/Town: _____ State: _____ Zip Code: _____

PROJECT/EMPLOYER INFORMATION (please print):

Project in Question: _____
 Address: _____ City/Town: _____
 General Contractor's Name: _____
 Employer's Name: _____
 Address: _____ City/Town: _____
 Awarding Authority: _____
 Contact Person: _____ Tel #: () _____
 Type of Project: _____
 Occupation: _____ Rate Paid: _____
 Type of Violation: Wage Rate Benefits Overtime Posting
 What type of evidence do you have to support claim: _____
 Additional Comments: _____

I hereby attest that the information provided is true and accurate to the best of my knowledge.

Complainant's Signature: _____ Date: _____
Please note under statute 37-13-17 you have the right of prima facie for violation of 37-13-7. Such action must be instituted within 3 years of violation and prior to issuance of notice of a hearing.

EPA Inspector General Reviews

- EPA's Office of Inspector General will be conducting reviews of Davis-Bacon compliance
- May conduct unannounced inspections at the project site and at the office
 - Review payroll records for compliance with D-B

More Information

- Wage Determinations Online
 - www.wdol.gov
- Department of Labor
 - <http://www.dol.gov/esa/whd/>
- DOL ARRA website
 - <http://www.dol.gov/esa/whd/recovery/>

ARRA Reporting Requirements



ARRA Section 1512

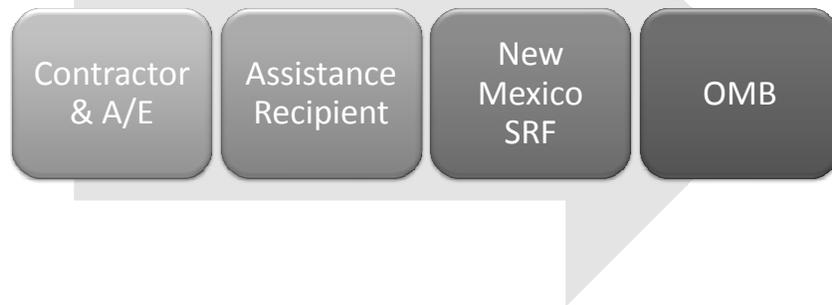
“Reports on Use of Funds”

(c) RECIPIENT REPORTS.—Not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains—

- (1) the total amount of recovery funds received from that agency;
- (2) the amount of recovery funds received that were expended or obligated to projects or activities; and
- (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including—
 - (A) the name of the project or activity;
 - (B) a description of the project or activity;
 - (C) an evaluation of the completion status of the project or activity;
 - (D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and
 - (E) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.
- (4) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

What Does This Mean for You?

Reporting Chain



The New Mexico SRF program will be able to provide many of the data elements, but some will need to be provided by Assistance Recipients and contractors

Who Must Report?

- Assistance Recipients receiving at least \$25,000 in ARRA funds
 - Including sole proprietorships
 - But not individuals

For...

- Projects or activities funded **in whole or in part** by ARRA funds

Reporting Elements: Assistance Recipients

- One Time:
 - Assistance recipient DUNS and CCR numbers
 - Basic contractor information
 - Basic project information
- Recurring:
 - Project completion status
 - Jobs created and retained
 - Description of employment impact
 - Construction contract execution dates

Reporting Elements: Assistance Recipients

- The names and total compensation of the Assistance Recipient's top five officers or executives

IF

- The preceding fiscal year the Assistance Recipient received 80% or more of its annual gross revenues in Federal awards, **AND**
- The annual gross revenues from Federal award were at least \$25 million, **AND**
- The information is not otherwise publicly available
- This requirement will not apply to many Assistance Recipients

Reporting Elements: Contractors

- Contractors and A/Es need to assist Assistance Recipients by providing the following information:
 - DUNS number or name and zip code of HQ
 - Project completion status
 - Job creation/retention narrative and number

Reporting Item #1

Project Completion Status

- Cumulative completion percentage for the entire project
- For awards funding multiple projects, provide your best estimate of completion for all projects based on aggregate information

Reporting Item #2 Job Creation (Number)

- Report jobs created and retained for the entire project
 - No need to prorate based on funding source
- Use your best guess on whether a job would have been created or saved in the absence of the Recovery Act. Do not count jobs if you are uncertain.

Calculating Jobs Created/Retained

- Number of jobs should be expressed in terms of “full-time equivalents” (FTEs)

$$\text{Number of FTEs to report} = \frac{\text{Total hours worked in jobs created/retained}}{\text{Number of hours in a full-time schedule}}$$

- Based on the contractor/sub-contractor’s normal definition of full-time
- Total hours reported may include paid leave

Reporting Job Creation

- All New Mexico agencies will use CertiClear to track job creation
- Assistance recipients, contractors and sub-contractors will be required to register for an account and report directly into CertiClear
- Data should be reported into CertiClear biweekly

How Does CertiClear Work?

- NMED will input information on ARRA awards into CertiClear, along with an email address for the assistance recipient
- The system will generate an email to the assistance recipient with a link to register in CertiClear

Network Recording Player - New Mexico ARRA Sub-recipient Software Training

Meeting Number: 737 237 190 Date: Tuesday, September 08, 2009 Time: 3:48 PM, Local Time (GMT -05:00)

Registration Profile - Internet Explorer provided by Dell

http://newmexicostest.certclear.com/RegistrationProfile.aspx

Registration Profile logout

Your Sub-Recipient/Vendor Organization Profile

Please enter in your organization's Legal Entity Name

Organization's Legal Name

Please classify your Organization:

State
 County/Parish
 Local (City/Town)
 Non-Governmental Recipient(Business or Non-Profit)

DUNS #(if available):

Organization / Business Name You Market As

Primary Executive or Director's Name

Address 1

Address 2

City

State

ZIP Code

Primary Contact First Name

Primary Contact Last Name

Network Recording Player - New Mexico ARRA Sub-recipient Software Training

Meeting Number: 737 237 190 Date: Tuesday, September 08, 2009 Time: 3:48 PM, Local Time (GMT -05:00)

Registration Executive Compensation - Internet Explorer provided by Dell

http://newmexicostest.certclear.com/RegistrationProfile/RegistrationExecutiveCompensation.aspx

Requirements for Executive Compensation Reporting

Please answer the following questions below to determine if your business meets executive compensation reporting criteria.

- Business Criteria

Has your business received 80% or more of its annual gross revenues from Federal awards in the preceding fiscal year? Yes No

Has your business received \$25,000,000 or more of its annual gross revenues from Federal awards in the preceding fiscal year? Yes No

Does the public already have access to information about the compensation of your senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986? Yes No

- Executive Compensation

Based on your answers above, you are required to provide the information below to be in compliance with the American Recovery and Reinvestment Act of 2009.

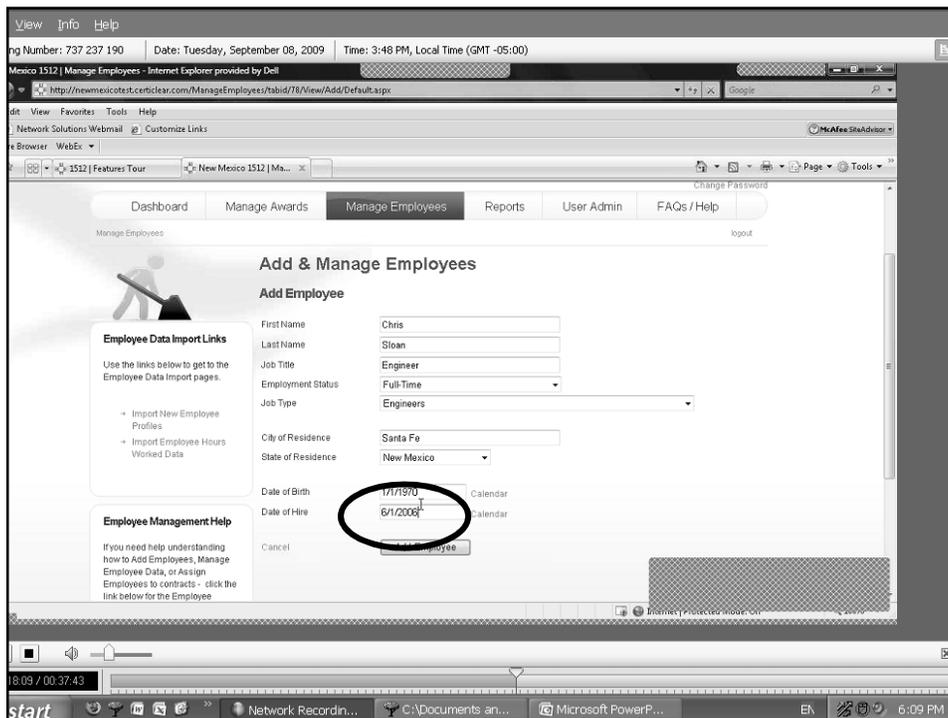
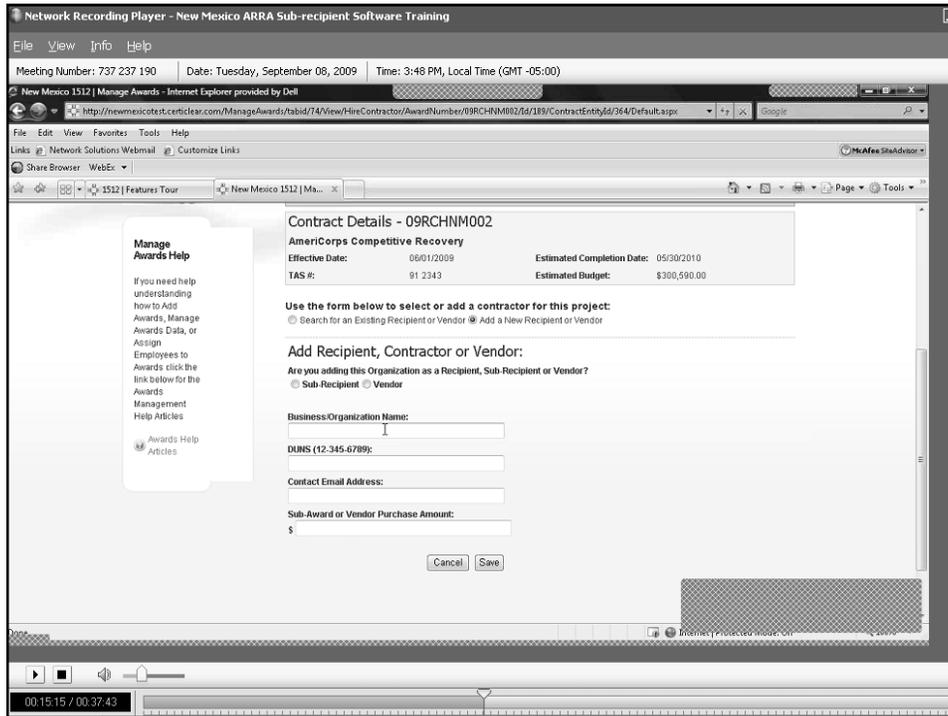
Please provide the names and total compensation of the five most highly compensated officers of your business.

Executive's Name	Total Compensation in dollars
<input type="text"/>	\$ <input type="text"/>
<input type="text"/>	\$ <input type="text"/>
<input type="text"/>	\$ <input type="text"/>

How Does CertiClear Work?

- NMED will pre-load information on the ARRA award
- Assistance recipients can add the name and email address for the prime contractor working on the project
- CertiClear will generate a registration email to be sent to the contractor
- Contractor can add names and emails of sub-contractors

The screenshot displays the CertiClear web application interface. At the top, there is a navigation bar with links for 'View', 'Info', and 'Help'. Below this, a header section includes the text 'DATA COLLECTION & REPORTING for Recovery Act Compliance' and 'Contact Us 1-877-803-5337'. A user login section shows 'Login Type: Contractor/Recipient/Vendor', 'Organization: Santa Fe Surfacing', and 'Logic: blambros10@certiclear.com'. A main navigation menu contains 'Dashboard', 'Manage Awards', 'Manage Employees', 'Reports', 'User Admin', and 'FAQs / Help'. The central content area is titled 'Manage Your Assigned Contract/Grant Awards' and features a 'Hire Contractor' link circled in red. Below this, the 'Award Details - 00PCHNM002' are displayed, including fields for Award Type (Grant), Project (AmeriCorps Competitive Recovery), Task Name (SECRETARY STATE, NEW MEXICO), Effective Date (06/01/2009), Estimated Completion Date (05/30/2010), TAS # (91 2343), and Estimated Budget (\$300,590.00). A section for 'Sub-Contractors You Hired for This Project' is visible at the bottom, with a note stating 'You have not yet hired any contractors for this project. Click on the Hire Contractors link above to begin.' The browser's address bar shows the URL 'http://newmexicostest.certiclear.com/ManageAwards/tabid/74/View/HireContractor/AwardNumber/00PCHNM002/Id/189/ContractEntryId/364/'.



Meeting Number: 737 237 190 Date: Tuesday, September 08, 2009 Time: 3:48 PM, Local Time (GMT -05:00)

http://newmexicostst.certclear.com/ManageEmployees/tabid/78/View/Profile/4/13536/Default.aspx

Dashboard Manage Awards **Manage Employees** Reports User Admin FAQs / Help

Manage Employees logout

Add & Manage Employees

Manage Employees

Chris Sloan

Job Title: Engineer Date of Birth: 01/01/1970
 Job Type: Engineers Date of Hire: 06/01/2006
 Job Status: Full-Time Termination Date: N/A
 Residence: Santa Fe, NM

Assign Employee to Contract(s)
 Click on the links within the grid below to assign or remove this employee from the contract.

Assign/Remove	Default Hours	Award #	Contract	Description	Hiring Org
Remove	40	09RCHNM002	AmeriCorps Competitive Recovery		SECRETARY STATE, NEW MEXICO

[Save Default Hours Values](#)

19:58 / 00:37:43

Network Recording Player - New Mexico ARRA Sub-recipient Software Training

Meeting Number: 737 237 190 Date: Tuesday, September 08, 2009 Time: 3:48 PM, Local Time (GMT -05:00)

http://newmexicostst.certclear.com/ManageEmployees.aspx

File Edit View Favorites Tools Help

Share Browser WebEx

Dashboard Manage Awards **Manage Employees** Reports User Admin FAQs / Help

Manage Employees logout

Add & Manage Employees

for Recovery Act Compliance

Login Type: Contractor/Recipient/Vendor
 Organization: Santa Fe Surfacing
 Login: bliambros10@certclear.com
 Change Password

Add Employee | Import Employees

	First Name	Last Name	Date of Hire	Status
Edit Contract Assign	Chels	Sloan	06/01/2006	Full-Time
Edit Contract Assign	Susan	Smith	07/08/2008	Part-Time
Edit Contract Assign	Harry	Thomas	04/01/2006	Full-Time

Employee Data Import Links

- Import New Employee Profiles
- Import Employee Hours Worked Data

Employee Management Help

If you need help understanding

00:28:15 / 00:37:43

Network Recording Player - New Mexico ARRA Sub-recipient Software Training

Meeting Number: 737 237 190 Date: Tuesday, September 08, 2009 Time: 3:48 PM, Local Time (GMT -05:00)

Manage Employee Hours Data | Job Counter - Internet Explorer provided by Dell

http://newmexicots.certclear.com/ManageEmployees/EmployeeHours.aspx

for Recovery Act Compliance

Dashboard Manage Awards Manage Employees Reports User Admin FAQs / Help

Employee Management Help

Import Employee Work Hours Data

Use the tool below to export a template sheet of hours for employees assigned to each award, and then use the import tool to import your actual employee hours data back into the system. The status column on the right help you keep track of which reporting cycles you have provided data for already.

Select Reporting Cycle: 08/30/2009 - 09/12/2009

Projects in reporting cycle:

Award #	Project Name	Reporting Cycle	Export Template	Import Data	Hours	Status
09RCHNM002	recovery	08/02/2009 - 08/15/2009	Export	Import	View	
		07/19/2009 - 08/01/2009				
		07/05/2009 - 07/18/2009				
		06/21/2009 - 07/04/2009				
		06/07/2009 - 06/20/2009				
		05/24/2009 - 06/06/2009				
		05/10/2009 - 05/23/2009				
		04/26/2009 - 05/09/2009				
		04/12/2009 - 04/25/2009				
		03/28/2009 - 04/11/2009				
		03/15/2009 - 03/28/2009				
		03/01/2009 - 03/14/2009				
		02/15/2009 - 02/28/2009				
		02/01/2009 - 02/14/2009				

Network Recording Player - New Mexico ARRA Sub-recipient Software Training

Meeting Number: 737 237 190 Date: Tuesday, September 08, 2009 Time: 3:48 PM, Local Time (GMT -05:00)

Emp Hrs-Contract

Contract	Task	Employee Name	Week of 08/16/2009 - 08/22/2009	Week of 08/23/2009 - 08/29/2009
AmeriCorps Competitive Recovery		Chris Sloan	30	30
AmeriCorps Competitive Recovery		Susan Smith	40	40
AmeriCorps Competitive Recovery		Harry Thomas	15	15

Features Tour Home

Dashboard

Portal Dashboard

Real-Time Reports

For Prime Recipients:

Prime Registration

Security Levels

Enter Contracts

Enter & Notify Sub-recipients

For Sub-recipients:

Sub-recipients Input Data

Data Reporting:

Report to Federal Gov't

Agency/Prime Recipient Alerts

End of current report period: 9/30/2009

Days remaining: 33

Head contractors not registered: 3

Head contractors not reporting: 2

Total Jobs Reported

Returned (343, 84%)

Created (64, 16%)

Total Jobs (407)

Executive Panel

Total Number of Jobs Created	66
Total Number of Jobs Returned	343
Total Number of Jobs Reported	408
Expected Target of Jobs to be Supported	1341
Number of Registered Recipients	26

Awards Management

AWARDS HELP

Add Awards Add & Invite Recipients Manage Awards

Awards Managed: 10

Number of Registered Recipients: 26

Number of Unregistered Recipients: 3

Employee Management

EMPLOYEES HELP

Add Employees Manage Employees Upload Timesheets

Employees reported from my organization: 4

Employees reported by recipients and sub-recipients: 405

Jobs By Contract

Contract Type	Jobs Counted
Agriculture	183
Commerce	0
Defense	0
Education	0
Energy	76
Environmental Management & Protection	0
Health and Human Services	0

Jobs by Contract Type

Contract Type	Jobs Counted
Agriculture	183
Commerce	0
Defense	0
Education	0
Energy	76
Environmental Management & Protection	0
Health and Human Services	0

This is the User Dashboard -- the account portal "home page" for registered prime recipients. Registered users must login with their username and password to get to this dashboard.

Here, prime recipient users can:

- > add account users
- > manage awards
- > oversee recipient compliance
- > view various reports
- > and monitor real-time job counts.

Charts shown on this Dashboard can be broken down into more detailed reports, as shown in the "Reports" section.

Features Tour Home

Dashboard

Portal Dashboard

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Features Tour Home

Dashboard

Portal Dashboard

Real-Time Reports

For Prime Recipients:

Prime Registration

Security Levels

Enter Contracts

Enter & Notify Sub-recipients

For Sub-recipients:

Sub-recipients Input Data

Data Reporting:

Report to Federal Gov't

Agency/Prime Recipient Alerts

End of current report period: 9/30/2009

Days remaining: 10

Hired contractors not registered: 0

Contractors not reporting: 2

Executive Panel

Total Number of Jobs Created: 66

Total Number of Jobs Retained: 343

Total Number of Jobs Reported: 438

Expected Target of Jobs to be Supported: 1341

Number of Registered Recipients: 26

Awards Management

Add Awards Add & Invite Recipients Manage Awards

Awards Managed: 10

Number of Registered Recipients: 26

Number of Unregistered Recipients: 3

Employee Management

Add Employees Manage Employees Upload Timesheets

Employees reported from my organization: 4

Employees reported by recipients and sub-recipients: 435

Total Jobs Reported

Retained (343, 78%)

Created (66, 14%)

Total Jobs (409)

Jobs By Contract

Highway	130
224	130
NO FEA THIS CO	21
STATE/UNIV/STATE	15
Rehabilitation	10
Temp	5
Hydrogen	5
Sports/Aviation	5
Residential Plans	5
Administrative	5
Renewable Energy	5
Construction	115
Other IOT	5
CONTRACT/FACIL	5
Water Pollution	5
S&B Field	5

Jobs by Contract Type

Contract Type	Jobs Counted
Agriculture	185
Commerce	0
Defense	0
Education	0
Energy	76
Environmental Management & Protection	0
Human Services	0

This is the User Dashboard -- the account portal "home page" for registered prime recipients. Registered users must login with their username and password to get to this dashboard.

Here, prime recipient users can:

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- manage awards
- oversee recipient compliance
- view various reports
- and monitor real-time job counts.

Charts shown on this Dashboard can be broken down into more detailed reports, as shown in the "Reports" section.

Tip:

- Maintain print-outs of CertiClear reports in organized files in case job creation data is requested by the OIG during an onsite inspection

Which Jobs Count?

- Direct jobs: Employees directly charged to Recovery Act supported projects or activities

NOT

- Indirect jobs: Materials suppliers or central service providers
- Induced jobs: Jobs in the local community where the project is taking place

Which Jobs Count?

COUNT	DON'T COUNT
Crane operator constructing the project	Worker manufacturing steel for the project
Equipment manager maintaining equipment used for the project	Salesman selling construction equipment
Engineer and architect designing the project	Attorney preparing contract language
Project manager supervising the project	Restaurant worker selling lunch
Inspectors reviewing the project	Clerical staff preparing reports
Lab technicians supporting the project	
Utility manager preparing specifications or directing procurement	

Reporting Item #3

Narrative Description of Job Creation

- Employment impact of the Recovery Act-funded work on the contractor workforce and sub-contractor workforces (if known)
- Brief description of types of jobs created or retained in the United States and outlying areas
 - Job titles
 - Broad labor categories
 - Terms that are widely understood and describe the general nature of the work

Update:

- CertiClear does not currently capture project completion status and narrative description of job creation
- The system is being modified to capture these reporting elements

When Does Reporting Start?

- Reporting begins once the ARRA award is made
 - Assistance Recipient: Grant agreement executed
 - Contractor: Notice to Proceed/Construction start date
- Assistance recipients should report any planning/design job creation that occurs prior to construction
- “Negative” reports are required even if no work was performed or payments were made

When Does Reporting End?

- Contractors: Contract completion
- Assistance Recipients: Final ARRA payment (disbursement) received

What To Do Now: Contractors

- Include reporting requirements in your contracts with subs
- Start collecting and tracking job creation data as soon as construction begins
 - Data reporting is cumulative
- Watch the CertiClear demo at <http://nm1512.certiclear.com/WhatisCertiClear1512.aspx>
- Register on www.FederalReporting.gov

DATA COLLECTION & REPORTING
for Recovery Act Compliance

Contact Us
1-877-803-5337

CertiClear 1512

Home **What is CertiClear 1512?** Features Tour Contact Us Portal Login

What is CertiClear 1512? login

one-stop solution

New Mexico Sub-recipient Training

Click [HERE](#) for a video/audio recording of the CertiClear 1512 Webinar training session for NM Sub-recipients

[What is CertiClear 1512?](#)

[How CertiClear 1512 Works](#)

[CertiClear, LLC Home](#)

What is CertiClear 1512?

CertiClear 1512 provides a one-stop solution to help New Mexico recipients of stimulus funding meet the requirements of Section 1512 of the Recovery Act. CertiClear 1512 combines technology with expert consulting services to assist prime recipients in understanding, implementing and managing the complexities of Section 1512.

The Web-based CertiClear 1512 software utilizes patent-pending technology in a hosted, secure environment to streamline the capture of all required data, including jobs created and retained by Recovery Act funding. The program collects all of the required information down through the hierarchy from prime recipients to sub-recipients to vendors with minimal strain on financial, administrative or IT resources.

CertiClear 1512 assures that New Mexico prime recipients and sub-recipients/vendors are meeting the Recovery Act deadlines on time and with accuracy.

Call the CertiClear 1512 Help Desk with any questions: 1-877-803-5337.

RECOVERY GOV

What To Do Now: Assistance Recipients

- Start collecting and tracking job creation data as soon as you close the ARRA SRF grant
- Include reporting requirements in your contracts
- Get a DUNS number
- Register in the CCR
- Watch the CertiClear demo at <http://nm1512.certiclear.com/WhatisCertiClear1512.aspx>
- Register on www.FederalReporting.gov

Obtaining a DUNS Number

- Data Universal Numbering System (DUNS) number from Dunn & Bradstreet
 - Nine-digit number required for all ARRA Assistance Recipients
 - Combines specific industry sectors with numeric sequencing providing a multitude of sector-based information that is compared and contrasted with like industries in a local, state and regional format.
 - Free and easy to obtain at http://www.dnb.com/US/duns_update/

Registering with the CCR

- Central Contractor Registry
 - National database for everyone doing business with the federal government
 - Required for all Assistance Recipients receiving ARRA funds
- If you are not registered, you may do so online at www.ccr.gov
- Collect registration information:
 - DUNS Number
 - Tax ID/Social Security Number
 - Point of Contact (POC)– person responsible for timely and accurate information provided to the CCR
 - Electronic Business Point of Contact (EB POC) – person with the sole authority to designate the staff member(s) who may represent the organization to federal business systems. The same individual may serve as both the CCR POC and as the EB POC
 - Marketing Partner ID (MPIN) – Create a special password to access the CCR system
- Approximately 48 hours for CCR registration to be complete.

Registering with FederalReporting.gov

- Back-up reporting option
- When you register to be a Recipient or Sub-recipient User, you will need to provide the following:
 - Name
 - Phone Number
 - Email Address
 - Organizational DUNS number
 - CCR Registration

Questions

Contracts and Records

Why is this Important?

OIG



+

\$20M



OIG Site Visits

- The OIG will visit many, if not all, ARRA-funded projects
- Visits (and findings) have already begun
- Assistance recipients, contractors, and sub-contractors are required to provide OIG access
 - To the project site
 - To files and records
 - To employees

Penalties for Non-Compliance

- We're not exactly sure yet
- Let's not find out
- Protect yourself by:
 - Writing good contracts
 - Keeping good records
 - Performing diligent oversight
 - Complying with all requirements

Contract Protections

- Include detailed description of requirements
 - Acceptable forms of documentation, deadlines, formats, process
- Impose indemnification requirements and penalties for non-compliance and misrepresentation
- Pass requirements and penalties down the supply chain
- Require signed certifications on a frequent and ongoing basis

- Remember: Assistance recipient bears ultimate responsibility for compliance, but good contracts can protect you from findings and help you recover costs resulting from penalties

Include in Contracts

- Buy American
- Davis-Bacon
- Reporting
- Debarment
- OIG Access
- Whistleblower protections
- Responsibility for change orders/cost increases
- Signage

Buy American

Clauses for inclusion in contracts can be found in:

- Pink Sheets
- EPA Buy American Guidance Memo

(Appendix 3), located at:

http://www.epa.gov/water/eparecovery/docs/04-29-2009_BA_waiver_process_final.pdf

Davis Bacon

Clauses for inclusion in contracts can be found in:

- SRF Davis-Bacon grant conditions
(Page 3, "Contract and Subcontract Provisions)

available at:

[http://www.epa.gov/ogd/tc/State Revolving Funds.pdf](http://www.epa.gov/ogd/tc/State_Revolving_Funds.pdf)

Reporting

Include in contracts:

- Reporting elements
- Frequency
- Deadlines
- Format
 - FTEs or workhours?
- Subcontract requirements

Debarment

Include in contracts:

- Requirement for contractors to check debarment status of all sub-contractors

Checking Debarment Status

- No ARRA funds to contractors who have been debarred or suspended by the Federal government
- Check all bidders on the Excluded Parties List at www.epls.gov
- Assistance recipients must check prime; prime must check subs

OIG Access

Include in contracts:

- Requirement for contractors and subcontractors to allow the OIG to:
 - Examine any records that pertain to, or transactions related to, the contract or subcontract
 - Interview any officer or employee of the contractor or subcontractor regarding such transactions

Whistleblower Protections

Include in contracts:

- Requirement for contractors to post the ARRA whistleblower poster at the construction site
- Reference to the protections and remedies for whistleblowers enumerated in ARRA Section 1553

Whistleblower Poster

Available at:

<http://www.recovery.gov/sites/default/files/Whistleblower+Poster.pdf>

Know Your Rights Under the Recovery Act!

Did you know?

The American Recovery and Reinvestment Act of 2009¹ provides protections for certain employees of non-federal employers who make specified disclosures relating to possible fraud, waste and/or abuse of Recovery Act funds.

Who is protected?

Employees of non-federal employers receiving recovery funds. This includes State and local governments, contractors, subcontractors, grantees or professional membership organizations acting in the interest of recovery fund recipients.

How are Whistleblowers Protected?

You cannot be discharged, demoted or otherwise discriminated against as a reprisal for making a protected disclosure.

What types of disclosures are protected?

The disclosure must be made by the employee to the Recovery Accountability and Transparency Board, an Inspector General, the Comptroller General, a member of Congress, a state or federal regulatory or law enforcement agency, a person with supervisory authority over the employee, a court or grand jury, or the head of a federal agency or his/her representatives.

The disclosure must involve information that the employee believes is evidence of:

- gross mismanagement of an agency contract or grant relating to recovery funds;
- a gross waste of recovery funds;
- a substantial and specific danger to public health or safety related to the implementation or use of recovery funds;
- an abuse of authority related to the implementation or use of recovery funds; or
- a violation of law, rule, or regulation related to an agency contract or grant awarded or issued relating to recovery funds.

Take Action!

Log on to Recovery.gov for more information about your rights and details on how to report at www.recovery.gov.

¹ Section 1553 of Division A, Title XV of the American Recovery and Reinvestment Act of 2009, P.L. 111-5

Change Orders

- Specify who (assistance recipient or contractor) bears responsibility for change orders/cost overruns resulting from unforeseen consequences of ARRA requirements
 - Buy American: U.S.- made project becomes unavailable
 - Davis-Bacon: Incorrect wage rates used in bid
 - Other scenarios?
- In many cases, extra costs will fall on the assistance recipient – be sure to establish a contingency fund!

Signage

Include in contracts:

- Requirement for ARRA emblem to be displayed in a prominent location on the project site throughout the construction phase
- Emblem download here:
<http://www.recovery.gov/?q=content/president-and-vice-president-unveil-new-recovery-emblem-download-available>
- Guidelines for displaying the emblem here:
http://www.epa.gov/ogd/forms/Recovery_emblem_guide_v1%5B1%5D.pdf

Records



- Who needs to keep records?
 - Contractors
 - Assistance recipient (obtain copies of all records from contractors)

- Who will check records?
 - OIG
 - State SRF site inspectors
 - Assistance recipient (or consulting engineer)

Records Should Be...

- Kept at the project site
- Secure but accessible
- Maintained for at least three years after project completion
- Well-organized

Disclaimer

- The list of documentation in this presentation is by no means exhaustive
- All sources of documentation may not be applicable or available in all cases
- EPA cannot provide guidance on what is considered an acceptable level of documentation
- Keep enough documentation so that you will be comfortable in the case of an IG visit

The Importance of Sharing



Buy American Records

Suggested system: Four-part binder with supporting documentation for:

1. National waivers
2. Project-specific waivers
3. De minimis components
4. U.S.-made components

Documentation for National Waivers

Refinancing Waiver

- Copy of the original debt instrument dated between 10/1/08 and 2/17/09
- Copy of the ARRA assistance agreement refinancing the original debt

Documentation for National Waivers

Bid Waiver

- Evidence that solicitation occurred between 10/1/08 and 2/17/09, such as:
 - Copy of published advertisement
 - Internet posting
 - Email distribution
- Evidence of imminent funding, such as:
 - Commitment letter
 - Priority List showing high ranking
 - Statement from the SRF or other source confirming funding (can include budgetary allocations or self-financing)

Documentation for Project-Specific Waivers (Availability)

- Project /component specifications
- Cut sheets for applicable component
- Project schedule showing when the applicable component is needed
- RFP/RFI
- Proposals/bids
- Delivery dates
- Copy or record of relevant communications with the prime contractor
- List of contacted vendors (date, time, summary of conversation)
- Copy of communications from U.S. suppliers showing non-availability
- Copy of evaluation criteria and product specification comparisons
- Commitment letter from non-U.S. producer to supply the product
- Copy of completed waiver checklist (April 28 memo)
- Copy of the waiver request as submitted to EPA
- Copy of the Federal Register notice for the waiver

Evaluation Criteria

Franklin WWTF Main Air Blower Improvements	
Blower Pre-selection scoring criteria	
Printed on: 21-Apr-09	
Criterion	Maximum Points
Company Qualifications/General Info	10
Recommended Blower Model Numbers	2
NRTL Certification of blower package as required by New Hampshire Fire Marshall - required for further consideration	25
Compliance with Buy American language in ARRA	25
Subtotal	62
Technical Submittal	
Blower maps (performance curves)	5
Dimensional Drawing - can be installed using existing floor hatch for access	20
Technical data - air foil bearing	10
Technical data - Impeller	10
Technical data - Motor	5
Technical data - VFD	5
Technical data - dB	5
Subtotal	60
Proposed price to provided scope of supply	20
Total lead time for delivery following order confirmation	10
Total factored power draw for 100 HP unit	15
Total factored power draw for 150 HP unit	15
20-yr present worth based on proposed price for specified scope and total factored power draw for one 100-HP unit and one 150-HP unit	20
No. of High-speed turbo blower US installations in wastewater market	20
No. of High-speed turbo blower worldwide installations	10
No. of Turbo blowers installed of 100 HP and 150 HP sizes	10
Maximum documented runtime of unit of > or = to 100 HP	10
Location of blower package manufacture and assembly	10
Component location(s)/sources of manufacture	10
Warranty (base warranty, per submitted information package, at no additional cost)	15
After-sale support network	
Location of factory training facility	10
No. of (factory certified) service technicians in North America	10
Base of support for Franklin installation	10
Guaranteed Maximum Support response time of (factory certified) service technician to site	10
Recommended spare parts	
List of field-replaceable spare parts	2
Location of field-replaceable spare parts inventory	5
Guaranteed Maximum delivery time	5
Repair time for rebuild, including round trip shipping to repair location	10
Subtotal	227
TOTAL POSSIBLE POINTS	340

Appendix 1: Information Checklist for Waiver Request

The purpose of this checklist is to ensure that all appropriate and necessary information is submitted to EPA. Please review this checklist carefully and provide all required information to EPA. This checklist is for informational purposes only and does not need to be included as part of a waiver application.

Items	✓	Notes
General <ul style="list-style-type: none"> Waiver request includes the following information: <ul style="list-style-type: none"> Description of the foreign and domestic construction materials Unit of measure Quantity Price Time of delivery or availability Location of the construction project Name and address of the proposed supplier A detailed justification for the use of foreign construction materials Waiver request was submitted according to the instructions in the memorandum Assistance recipient made a good faith effort to solicit bids for domestic construction materials/manufactured goods, as demonstrated by language in requests for proposals, contracts, and communications with the prime contractor 		
Cost <ul style="list-style-type: none"> Waiver request includes the following information: <ul style="list-style-type: none"> Price Comparison Worksheet shown in Table 1 Relevant excerpts from the bid documents used by the contractors to complete the Price Comparison Worksheet Supporting documentation indicating that the contractor made a reasonable survey of the market, such as a description of the process for identifying suppliers and a list of contacted suppliers 		
Availability <ul style="list-style-type: none"> Waiver request includes the following supporting documentation necessary to demonstrate the availability, quantity, and/or quality of the materials for which the waiver is requested: <ul style="list-style-type: none"> Supplier information or pricing information from a reasonable number of domestic suppliers indicating availability/delivery date for construction materials Documentation of the assistance recipient's efforts to find available domestic sources, such as a description of the process for identifying suppliers and a list of contacted suppliers. Project schedule Relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of construction materials Waiver request includes a statement from the prime contractor confirming the non-availability of the domestic construction materials for which the waiver is sought Has the State received other waiver requests for the materials described in this waiver request, for comparable projects? 		

April 28 Guidance Memo
www.epa.gov/recovery

Documentation for Project-Specific Waivers (Cost)

- Project /component specifications
- Cut sheets for applicable component
- Bids/proposals with pricing
- Project budget with cost breakdown
- Total project price comparison with foreign and domestic products (with component breakdown)
- Copy of completed waiver checklist (April 28 memo)
- Copy of the waiver request as submitted to EPA
- Copy of the Federal Register notice for the waiver

Documentation for De Minimis Components



- Total materials cost
- List of each de minimis item type, quantity used in the project, and item's total cost
- Receipts/invoices for de minimis items showing total cost
- Calculation showing the % cost of de minimis items in comparison to total project cost
- Copy of report to the State on de minimis project components

Documentation for U.S.-Made Components

- Written certifications from manufacturers/suppliers**
- Signed New Mexico Statement of Compliance with completed Substantial Transformation checklist
- RFPs, Bid Advertisements, Bids, and Contracts that include Buy American language
- Invoices
- Bills of lading
- Shipping manifests
- Photographs of Country of Origin labeling
- Cut sheets (if COO is specified)
- Photographs of serial numbers (or other ID) cross-referenced with cut sheets
- Sign-off sheet from contractor showing that materials were inspected upon delivery
- Documentation for de minimis components in excess of 5%

Other Records

- Davis-Bacon
- Reporting
- Green Project Reserve
- Disadvantaged Business Enterprises (DBE)

Davis-Bacon Records

- Copy of contract with wage determination and Davis-Bacon compliance language
- Change orders to revise wage determination (if applicable)
- Copy of wage determination request form (if applicable)
- Note verifying (non)debarment status
- Weekly payroll records
- Copy of weekly signed Statement of Compliance (back of WH-347)
- Completed Standard Form 1445 for Davis-Bacon interviews (at least two separate reports)
- Notes to the file confirming spot-check of payroll records (at least two separate reports)
- Registrations and certifications for apprentices and trainees

Reporting Records

- Dated Notice to Proceed
- DUNS/CCR registrations (assistance recipient)
- FTE calculations
- Justification for classifying a job as created/retained
- Tracking spreadsheets (if used)
- Print-outs of CertiClear reports

Green Project Reserve Records

- Business case (if applicable)
- Supporting documentation for business case
 - Engineering studies, project plans, water/energy audits, information from suppliers, technical specifications
 - Technical and financial analyses
- Supporting documentation for green components
 - Engineering studies, project plans, water/energy audits, information from suppliers, technical specifications

DBE Records

- 5700-52A Reporting Form
- 6100-2 Subcontractor Participation Form
- 6100-3 Subcontractor Performance Form
- 6100-4 Subcontractor Utilization Form
- Bidders List
- Contracts including non-discrimination clause and DBE compliance language
- Notification of termination of any DBE subcontractor

DBE Records

- Evidence of Six Good Faith Efforts
 - Copy of newspaper or trade journal advertisement for DBE contractors/subcontractors
 - Notes from a facilitation meeting to match assistance recipients with DBE contractors, or prime contractors with DBE subcontractors
 - Bid solicitation with provisions requiring DBE Good Faith Efforts
 - Screenshot or printout of a DBE database search

Small Business Administration

DBE Database

http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm



What is Fraud?

Simply, fraud is a false representation about a material fact.



It is any intentional deception designed to deprive the US unlawfully of something of privilege or to secure something from the US for an individual, a benefit, privilege, allowance or consideration to which he or she is not entitled.



What is Waste?

It is the extravagant, careless, or needless expenditure of Government funds, or the consumption of Government property that results from deficient practices, systems, controls, or decisions. The term also includes improper practices not involving prosecutable fraud.






What is Abuse?

It is the intentional or improper use of Government resources. Examples include misuse of rank, position, or authority or misuse of resources such as tools, vehicles, or copying machines.






Fraud, Waste, and Abuse Indicators

- No separation of duties
- Lack of internal controls
- High turnover of personnel
- Unexplained entries or altered records
- Unusually large amounts of payments for cash
- Inadequate or missing documentation
- Non-serial number transactions
- Unauthorized transactions







Common Fraud Schemes

(prior to award of a contract or grant)

- **Bribery, Gratuities and Kickbacks**
 - Giving or requesting a thing of value for the purpose of influencing an official act
- **Collusive Bidding**
 - Contractors agree to prohibit or limit competition and rig prices to increase the amount of business available to all
- **Unbalanced Bidding**
 - Contracting personnel providing a favored bidder with information in the bid process






More on Collusive Bidding – Sherman Antitrust Act

- Prohibits agreements among competitors to fix prices, rig bids, or engage in other anticompetitive activity
- Violation is a felony punishable by up to 10 years imprisonment and a \$1 million fine for individuals and a fine of up to \$100 million for corporations.







Bid Rigging

Four Basic Schemes

- **Bid Suppression:** In this type of scheme, one or more competitors agree not to bid, or withdraw a previously submitted bid, so that a designated bidder will win. In return, the non-bidder may receive a subcontract or payoff.
- **Complementary Bidding:** In this scheme, co-conspirators submit token bids which are intentionally high or which intentionally fail to meet all of the bid requirements in order to lose a contract. "Comp bids" are designed to give the appearance of competition.






Bid Rigging (Cont.)

- **Bid Rotation:** In bid rotation, all co-conspirators submit bids, but by agreement, take turns being the low bidder on a series of contracts.
- **Customer or Market Allocation:** In this scheme, co-conspirators agree to divide up customers or geographic areas. The result is that the co-conspirators will not bid or will submit only complementary bids when a solicitation for bids is made by a customer or in an area not assigned to them.







Bid Rigging (Cont.)

Quid Pro Quo

This is what you look for to spot payback patterns:

- Any kind of territorial pattern;
- A company always bids for a contract but never wins it or conversely always wins it;
- All of the companies in the group win an equal volume of business over time;
- All of the companies win an equal number of contracts over time; or
- Any pattern (many are possible).






Price Fixing

Price Fixing impacts procurement when business is conducted through purchase order or direct purchase. Competitors may agree to raise or fix prices they will charge for their goods or services, set a minimum price that they will not sell below, or reduce or eliminate discounts.







Problem Prevention

- Expand the list of bidders to make it more difficult for bidders to collude.
- Bid packages should require bidders to sign and submit a non-collusion affidavit.
- Ensure that your employees are familiar with the indicators of bid rigging, price fixing, and other types of collusion.






Problem Prevention (Cont.)

- Maintain procurement records, e.g., bid lists, abstracts, and awards.
- Ask questions. If the prices or bids submitted don't make sense, press your vendors to explain and justify their prices.
- Know and understand the dynamics of the markets.







Common Fraud Schemes

(after award of a contract or grant)

- **Defective Pricing**
 - Contractor's failure to disclose all facts that affect its cost for pricing products or services
- **Cost Mischarging**
 - Improper allocation of costs to a cost contract or charging at higher than allowed rates
- **Product Substitution**
 - Contractors deliver goods which do not conform to contract requirements without informing the government
- **False Statements and False Claims**
 - Knowingly and willfully falsifying or concealing a material fact, knowing the same contains any materially false statement or entry





If you suspect fraudulent activity, waste, or abuse...

...Contact EPA's Office of Inspector General (OIG)





24 Hour Hotline: 888-546-8740

Mail: US EPA OIG
1200 Pennsylvania Ave. NW (2443)
Washington, DC 20460

Email: OIG_Hotline@epa.gov



If you suspect collusive bidding...

...Contact the Department of Justice Antitrust Division



Phone: (214) 661-8600



**Mail: Dallas Field Office
Duncan S. Currie, Chief
1700 Pacific Avenue, Suite 3000
Dallas, TX 75201**