



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240



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Department of the Interior Acquisition Policy Release (DIAPR) 2010-10

Subject: Class Deviation from the Federal Acquisition Regulation (FAR) 4.15 and 52.204-11, American Recovery and Reinvestment Act – Reporting Requirements

References: FAR Case 2009-009, American Recovery and Reinvestment Act (The Recovery Act) Reporting Requirements – Second Interim Rule, draft dated February 2, 2010

1. **Purpose:**

The purpose of this DIAPR is to issue a class deviation from FAR 4.15 and 52.204-11 in order to implement pending FAR changes related to American Recovery and Reinvestment Act (ARRA) reporting requirements for contractors.

2. **Effective Date:**

Upon signature.

3. **Expiration Date:**

This DIAPR will remain in effect until the changes are made in the FAR.

4. **Background and Explanation:**

FAR 4.15 and 52.204-11 became effective March 31, 2009 as an interim rule. Since that time, the clause at 52.204-11 outlining ARRA reporting requirements for contractors has been included in DOI ARRA contracts. Currently, the FAR Councils are working with the Office of Federal Procurement Policy to finalize a second interim rule that includes changes and clarifications of the FAR coverage on ARRA reporting requirements. **Some of the key changes are:**

- **Establishment of a threshold of \$25,000 for ARRA reporting requirements for contractors**
- **Clarification of the clause prescription to provide an exception to ARRA reporting requirements for contracts with individuals**
- **Establishment of a requirement for agencies to assist contractors with completion of ARRA reports by providing certain data elements, and to monitor and validate ARRA reports submitting by contractors**
- **Clarification of the clause to specify that the quarterly ARRA reporting requirement is triggered at award, not after the first invoice**
- **Streamlining of the clause to refer contractors to the Frequently Asked Questions (FAQs) on ARRA reporting available online**

DOI is issuing this class deviation in order to implement these and other anticipated changes prior to the next ARRA reporting period in April 2010.

5. **Action Required:**

In accordance with FAR 1.404, I hereby authorize a class deviation from FAR 4.15 and 52.204-11. Bureaus must ensure contracting activities are notified about these changes to ARRA reporting requirements, so that contracting officers can implement them prior to the April 2010 ARRA reporting period. Changes to the FAR coverage are marked in bold on the attachment.

Please disseminate this guidance within your bureau. It will also be available on the web at <http://www.doi.gov/pam/diapr.html>. You may contact Tiffany Schermerhorn of this office on (202) 513-0747 or Tiffany_Schermerhorn@ios.doi.gov if you have any questions regarding this policy issuance.



Debra E. Sonderman, Director
Office of Acquisition and Property Management

Attachment

PART 4--ADMINISTRATIVE MATTERS

Subpart 4.15-American Recovery and Reinvestment Act--
Reporting Requirements

Sec.

4.1500 Scope of subpart.

4.1501 Procedures.

4.1502 Contract clause.

4.1500 Scope of subpart.

This subpart implements section 1512(c) of Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), which requires, as a condition of receipt of funds, quarterly reporting on the use of funds. The subpart also implements the data elements of the Federal Funding Accountability and Transparency Act of 2006, as amended (Pub. L. 109-282). Contractors that receive awards (or modifications to existing awards) funded, in whole or in part by the Recovery Act, must report information including, but not limited to--

- (a) The dollar amount of contractor invoices;
- (b) The supplies delivered and services performed;
- (c) An assessment of the completion status of the work;
- (d) An estimate of the number of jobs created and the number of jobs retained as a result of the Recovery Act funds;
- (e) Names and total compensation of each of the five most highly compensated **executives** for the contractor's **preceding completed fiscal** year; and
- (f) Specific information on first-tier subcontractors.

4.1501 Procedures.

(a) In any contract action funded in whole or in part by the Recovery Act, **where the Recovery Act funding is expected to be \$25,000 or more (including all options)** except classified contracts, the contracting officer shall indicate that the contract action is being made under the Recovery Act, and indicate which products or services are funded under the Recovery Act. This requirement applies whenever Recovery Act funds are used, regardless of the contract instrument.

(b) To maximize transparency of Recovery Act funds that must be reported by the contractor, the contracting officer shall structure contract **actions** to allow for separately

tracking Recovery Act funds. For example, the contracting officer may consider awarding dedicated separate **actions** when using Recovery Act funds or establishing **structures, such as** contract line item numbers (CLINs), to mitigate commingling of Recovery funds with other funds.

(c) Contracting officers shall ensure that the contractor complies with the reporting requirements of 52.204-11, American Recovery and Reinvestment Act-- Reporting Requirements, **which requires contractors to report each calendar quarter on their use of Recovery Act funds using the centralized reporting tool at <http://www.FederalReporting.gov>**. Upon award, contracting officers should inform contractors to immediately register at <http://www.FederalReporting.gov> using the instructions available in the user guide. Contracting Officers shall initiate early and frequent dialogue regarding reporting to ensure a smooth reporting process for both the contractor and the agency.

(d) To assist contractors in completing their report, contracting officers must provide data elements listed at http://www.whitehouse.gov/omb/recovery_faqs_agency_review at time of award in writing to the contractor.

(e) (1) Agencies are responsible for reviewing each contractor report submitted in <http://www.FederalReporting.gov>, in accordance with the timeframes at http://www.whitehouse.gov/omb/recovery_faqs_agency_review, to ensure the information:

(i) Is consistent with contract information (e.g., award date, treasury account symbol, cumulative amount invoiced, obligation amount, awarding and funding agency, Government contracting office, description of deliverables and overall effort, NAICS code, progress, etc); and

(ii) Does not contain significant errors or material omissions as defined in http://www.whitehouse.gov/omb/recovery_faqs_agency_review.

(2) The agency is responsible for validating the contractor's report. However, agencies are not required to validate data for which they would not normally have supporting information, such as the compensation information required of contractors and first-tier subcontractors. The agency shall inform the contractor of any inconsistencies with the contract information, significant errors, or material omissions and require that

the contractor correct the report, or provide a reasonable explanation as to why the information is correct.

(3) Agency reviewers must register at <http://www.FederalReporting.gov> in order to review reports. For information on registration, reporting and reviewing timelines and procedures, contracting officers and agency reviewers should review "Recovery Frequently Asked Questions for Federal Agencies Reviewing Contractor Reports on Recovery Act Funds" available at http://www.whitehouse.gov/omb/recovery_faqs_agency_review/.

(f) If the contractor fails to comply with the reporting requirements or correct the significant errors or material omissions identified by the agency, the contracting officer shall exercise appropriate contractual remedies. Where the agency identifies significant errors or material omissions, which the contractor has failed to adequately explain or correct, the agency must provide such findings in accordance with

http://www.whitehouse.gov/omb/recovery_faqs_agency_review/.

This information will be forwarded to the Recovery Accountability and Transparency Board who may post such instances publicly on its website at

<http://www.recovery.gov.>]

(g) The contracting officer shall make the contractor's failure to comply with the reporting requirements a part of the contractor's performance information under Subpart 42.15.

4.1502 Contract clause.

(a) The contracting officer shall insert the clause at 52.204-11, American Recovery and Reinvestment Act-- Reporting Requirements in all solicitations and contracts funded in whole or in part with Recovery Act funds, **where the Recovery Act funding is expected to be \$25,000 or more (including all options)** except:

(1) Classified solicitations and contracts; and

(2) Contract actions with individuals.

The insertion of the clause at 52.204-11, includes, but is not limited to, Governmentwide Acquisition Contracts (GWACs), multi-agency contracts (MACs), Federal Supply Schedule (FSS) contracts, agency indefinite-delivery/indefinite-quantity (ID/IQ) contracts, or **Blanket Purchase Agreements under FAR 8.4** that will be funded with

Recovery Act funds. Contracting officers shall ensure that this clause is included in any existing contract or order that will be funded with Recovery Act funds. Contracting officers may not use Recovery Act funds on existing contracts and orders if the clause at 52.204-11 is not incorporated.

(b) Contracting officers shall modify existing contracts, funded in whole or in part with Recovery Act funds, where the Recovery Act funding is \$25,000 or more (including all options), to include the clause at 52.204-11, American Recovery and Reinvestment Act--Reporting Requirements.

(c) Contracting officers shall modify Recovery Act contracts funded in whole or in part with Recovery Act funds, where the Recovery Act funding is less than \$25,000 (including all options,) awarded prior to February 25, 2010 to remove FAR clause 52.204-11.

PART 52--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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52.204-11 American Recovery and Reinvestment Act-Reporting Requirements

As prescribed in 4.1502, insert the following clause:

AMERICAN RECOVERY AND REINVESTMENT ACT--REPORTING REQUIREMENTS (FEB 2010 DEVIATION)

(a) *Definitions.* For all definitions related to this clause (e.g., contract, first-tier subcontract, total compensation, executive, job created, job retained, significant error, material omission), see the Frequently Asked Questions (FAQs) available at http://www.whitehouse.gov/omb/recovery_faqs_contractors. These FAQs are also linked under <http://www.FederalReporting.gov>.

(b) This contract requires the Contractor to report on products and/or services, including construction, that are funded, in whole or in part, by the American Recovery and Reinvestment Act of 2009 (Recovery Act). The Contractor shall separately identify Recovery Act funded deliverables in invoices from non-Recovery Act funded deliverables. Section 1512(c) of the Recovery Act requires the Contractor

to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.

(c) To comply with the reporting requirements of this clause, the Contractor must first register at <http://www.FederalReporting.gov>. The Contractors shall register immediately after receipt of contract award. For information on registration, go to <http://www.FederalReporting.gov> and review the User Guide.

(d) For information on the required timelines, the reporting tool and reporting procedures, see the User Guide and other instructions available at <http://www.FederalReporting.gov>.

(e) The Contractor shall review the Frequently Asked Questions (FAQs) for Federal Contractors before each reporting cycle and prior to submitting each quarterly report as the FAQs may be updated from time-to-time. To facilitate Contractor review of the FAQs, updates since the last reporting cycle will be clearly identified. The FAQs are available at http://www.whitehouse.gov/omb/recovery_faqs_contractors. These FAQs may also be found linked under <http://www.FederalReporting.gov>. The FAQs at http://www.whitehouse.gov/omb/recovery_faqs_contractors provide more information on data definitions and the User Guide as well as descriptions of the information required in reports.

(f) The Agency will review reports to identify inconsistencies with contract information, significant errors, and material omissions to the Contractors who shall promptly address agency concerns.

(g) The Contractor's failure to adequately explain or correct concerns regarding significant errors or material omissions will result in those concerns being forwarded to the Recovery Accountability and Transparency Board which may publicly post such information to its website.

(h) Reports from the Contractors for all work funded, in whole or in part, by the Recovery Act are due no later than the 10th day after the end of each calendar quarter, even if work has not started or invoices have not been submitted.

(i) In addition to the basic agency and contract information, the Contractor shall report the following information using the online reporting tool and its instructions available at <http://www.FederalReporting.gov>.

(1) The number of jobs and description of employment impact.

(2) The names and total compensation of each of the five most highly compensated executives for the Contractor's preceding completed fiscal year if--

(i) In the Contractor's preceding fiscal year, the Contractor received--

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.

(3) For first-tier subcontracts valued at less than \$25,000 or any first-tier subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first-tier subcontracts awarded in the quarter and their aggregate total dollar amount.

(4) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is expected to be \$25,000 or more, (including all options) and not subject to reporting under paragraph (3), the Contractor shall require the first-tier subcontractor to provide the information described in (i), (vii), (viii), and (ix) below to the Contractor for the purpose of reporting. The Contractor is not required to verify the total compensation amount provided by its first-tier subcontractors; but, the Contractor shall ensure that its first-tier subcontractors have submitted complete information for their five most highly compensated executives. The Contractor shall advise the first-tier subcontractor that all subcontractor information will be made available to the public as required by the Federal Funding Accountability and Transparency Act, as amended, and section 1512 of the

Recovery Act. The Contractor shall provide, **at a minimum**, detailed information on **its** first-tier subcontracts as follows:

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(vi) Subcontract number (the contract number assigned by the prime Contractor).

(vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(viii) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(ix) Names and total compensation of each of the subcontractor's five most highly compensated **executives**, for the subcontractor's preceding **completed fiscal year** if-

(A) In the subcontractor's preceding **completed fiscal year**, the subcontractor received--

(1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(B) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(End of clause)