



**Member Information**

**Mohave Contracts and the American Recovery and Reinvestment Act of 2009 (ARRA)**

4/21/09, JTP

The American Recovery and Reinvestment ACT (ARRA) is legislation to stimulate the economy. Mohave prepared the information below to answer the questions asked by our members.

The federal government continues to issue guidance for implementing the act. Arizona public purchasing entities will undoubtedly have varying opinions on how this guidance is to be implemented and may require additional items to ensure compliance. However, for the reasons noted below, we believe Mohave contracts may be used for ARRA projects as long as Mohave vendors agree to ARRA-specific performance and documentation requirements.

The information below is provided as an aid to Mohave members. Members should not use the information in lieu of their own thoughtful research into ARRA requirements. Additional information is available at the [recovery.gov](http://recovery.gov) website.

<b>ARRA Requirement</b>	<b>Information for Mohave Members</b>
<p><b>Recipient Reports (Sec. 1512)</b></p> <p>Each recipient of ARRA funds shall submit a report containing the following to the granting agency:</p> <ul style="list-style-type: none"> <li>(1) The total amount of ARRA funds received;</li> <li>(2) The amount of ARRA funds expended or obligated to projects or activities; and</li> <li>(3) A list of projects or activities for which ARRA funds were expended or obligated, including:               <ul style="list-style-type: none"> <li>Name of the project or activity;</li> <li>Description of the project or activity;</li> <li>Evaluation of the status of the project or activity;</li> <li>Estimate of the number of jobs created and number of jobs retained by the project or activity; and</li> <li>For State and local government infrastructure investments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with ARRA funds.</li> </ul> </li> </ul>	<p>Members should anticipate that the reporting requirements will apply in some form. Members may be required to provide the state or other agencies with reporting data, may be required to submit reports, or both.</p> <p>Members may include applicable ARRA data requirements in purchase orders for ARRA funded work under Mohave contracts.</p> <p>Mohave vendors should be prepared to accept such requirements if they desire to perform ARRA funded work under their Mohave contracts. At a minimum, any Mohave vendor receiving ARRA funded work should be prepared to provide to the member an estimate of the number of jobs created and the number of jobs retained by the project or activity.</p>
<p><b>Access of Offices of Inspector General to Certain Records and Employees (Sec. 1515)</b></p> <p>For each awarded contract or grant using ARRA funds, any representative of an appropriate inspector general is authorized:</p> <ul style="list-style-type: none"> <li>(1) To examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local administering agency, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and</li> <li>(2) To interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.</li> </ul>	<p>This requirement appears applicable to any member making an ARRA funded procurement. Members should be prepared to comply with the requirement, which is similar to Arizona provisions already incorporated into Mohave contracts.</p> <p>Members may include this requirement in purchase orders for ARRA funded work under Mohave contracts. Mohave vendors must be prepared to accept such requirements if they desire to perform ARRA funded work under their Mohave contracts.</p>

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<p><b>Protecting state and local government and contractor whistleblowers (SEC. 1553)</b></p> <p>(a) PROHIBITION OF REPRISALS. An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee’s duties, to the 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 (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of:</p> <p>(1) Gross mismanagement of an agency contract or grant relating to covered funds;</p> <p>(2) A gross waste of covered funds;</p> <p>(3) A substantial and specific danger to public health or safety related to the implementation or use of covered funds;</p> <p>(4) An abuse of authority related to the implementation or use of covered funds; or</p> <p>(5) A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.</p>	<p>Members may include this requirement in purchase orders for ARRA funded work under Mohave contracts.</p> <p>Mohave vendors must be prepared to accept such requirements if they desire to perform ARRA funded work under their Mohave contracts.</p> <p>Any Mohave vendor receiving ARRA funded work must comply with the whistleblower protection requirement.</p>
<p><b>Special Contracting Provisions (Sec. 1554)</b></p> <p>To the maximum extent possible, contracts funded under ARRA shall be fixed-price contracts through the use of competitive procedures.</p>	<p>All Mohave contracts are competitively procured. They are fixed price contracts in that pricing is based upon specified pricelists and discounts or firm fixed prices for specified products or services. A quotation referencing the applicable Mohave contract number is a firm fixed price offer to perform the work.</p>
<p><b>Preference for Quick-start Activities (Sec. 1602)</b></p> <p>For infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50% of the funds for activities that can be initiated within 120 days after the date of ARRA enactment.</p>	<p>Mohave contracts are ready for immediate use.</p>
<p><b>Limit On Funds (Sec. 1604)</b></p> <p>State or local governments, or private entities, may not use ARRA funds for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.</p>	<p>Members should be aware of, and comply with, this requirement.</p>

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<p><b>Buy American (Sec. 1605)</b></p> <p>(a) No ARRA funds may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods in the project are produced in the U.S.</p> <p>(b) Subsection (a) shall not apply in cases or categories of cases in which the head of the applicable Federal department or agency finds that:            Applying subsection (a) would be inconsistent with the public interest;            Iron, steel, and relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities and of satisfactory quality; or            Inclusion of iron, steel, and manufactured goods produced in the U.S. will increase cost of the overall project by more than 25%.</p> <p>(c) If the head of a Federal department or agency determines that it is necessary to waive application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.</p> <p>(d) This section shall be applied in a manner consistent with U.S. obligations under international agreements.</p>	<p>Members may include this requirement in purchase orders for ARRA funded work under Mohave contracts.</p> <p>Mohave vendors must be prepared to accept such requirements if they desire to perform ARRA funded work under their Mohave contracts.</p> <p>The federal government has not issued firm ARRA Buy American guidance for state and local governments. However, rules for federal agencies have been proposed in the March 31, 2009, Federal Register. See FAR Case 2009-008, American Recovery and Reinvestment Act (the Recovery Act) – Buy American Requirements for Construction Material, at the following Internet link: <a href="#">FAR Case 2009-008</a>.</p> <p>The Federal Highway Administration (FHWA) indicates that FHWA’s existing Buy America requirements apply to all ARRA funded projects. See 23 CFR 635.410 at the following Internet link: <a href="#">§ 635.410 Buy America requirements</a>.</p> <p>Members may also look for guidance on the federal agency specific websites, which can be accessed via the following Internet link: <a href="#">Recovery.gov agency websites</a>.</p> <p>Any Mohave vendor receiving ARRA funded work must comply with the Buy American requirement.</p>
<p><b>Wage Rate Requirements (Sec. 1606)</b></p> <p>All laborers and mechanics employed by contractors and subcontractors on ARRA funded projects 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 (USC). The Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.</p>	<p>Members may include this requirement in purchase orders for ARRA funded work under Mohave contracts.</p> <p>Mohave vendors must be prepared to accept such requirements if they desire to perform ARRA funded work under their Mohave contracts.</p> <p>Mohave vendors receiving ARRA funded work must comply with the wage rate requirements.</p> <p>Title 40 of the USC essentially restates the requirements of the Davis Bacon Act of 1931. The Davis Bacon Act requires the payment of prevailing wages and a number of administration and reporting requirements regarding wages. Davis Bacon’s \$2,000 project floor does not appear to apply to ARRA.</p> <p>Section 3145 requires the Secretary of Labor to prescribe reasonable regulations for contractors and subcontractors engaged in constructing, carrying out, completing, or repairing public buildings, public works, or buildings or works that are at least partly financed by a loan or grant from the Federal Government.</p>

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<b>ARRA Requirement</b>	<b>Information for Mohave Members</b>
<b>Wage Rate Requirements (cont'd)</b>	<p>Information about the prevailing wage rates may be obtained from the Department of Labor (DOL) District Office in Phoenix.</p> <p>US Dept. of Labor ESA Wage &amp; Hour Division 230 N. First Avenue, Suite 402 Phoenix, AZ 85003-1725 (602) 514-7100 (866) 487-9243</p> <p>The DOL district office may also provide guidance as to where required weekly payroll submissions should be sent.</p> <p>Davis-Bacon and other prevailing wage information is available at the following DOL website: <a href="http://www.dol.gov/esa/whd/programs/dbra/faqs.htm">http://www.dol.gov/esa/whd/programs/dbra/faqs.htm</a>.</p> <p>Mohave contracts include requirements and provisions for paying prevailing wages and compliance with the Davis Bacon Act. Price adjustments to cover the costs associated with such compliance are allowed. Therefore, Mohave contracts can comply with ARRA wage requirements.</p>
<b>National Environmental Policy Act Special Requirements (Sec. 1609)</b> <p>Adequate resources must be devoted to ensuring that applicable environmental reviews under the National Environmental Policy Act are completed on an expeditious basis and that the shortest existing applicable process under the National Environmental Policy Act shall be utilized.</p>	<p>This is included as information for members only. It does not appear applicable to Mohave contracts.</p>