

California ARRA Workshop for Borrowers, Sacramento - Agenda

October 8, 2009

9:00 a.m. – 12:15 p.m.

11001 I Street
Sierra Hearing Room, 2nd Floor
Sacramento, CA 95814

Time	Session
9:00 AM	Welcome and Introduction <i>California and EPA Region 9 Staff</i> <ul style="list-style-type: none">• Purpose of the workshop• Topics to be covered
9:10	SRA and ARRA Background and Summary <i>Sarah McFate, Northbridge Environmental</i> <ul style="list-style-type: none">• Basic overview of SRF requirements and funding process,• Single Audit Act and Disadvantaged Business Enterprise requirements• ARRA introduction and background• Overview of ARRA requirement
9:30	Davis-Bacon Provisions <i>Daniel González-Kreisberg, Northbridge Environmental</i> <ul style="list-style-type: none">• Complying with Davis-Bacon and the minimum wage law• Roles and Responsibilities (EPA Region 9, California, assistance recipients, contractors, and subcontractors)• Determining wage rates• Procedures for tracking and verification that wage rates are met• Working with contractors/subcontractors• Governmental versus non-governmental assistant recipients• Submitting documentation to the state• Oversight and enforcement
10:00	Introduction to Buy American Provisions <i>Jordan Dorfman, EPA Headquarters</i> <ul style="list-style-type: none">• Complying with Buy American• Defining and determining substantial transformation• Categorical/nationwide waivers• Oversight and consequences
10:45	Break
11:00	Incorporating Buy American into SRF Projects <i>Daniel González-Kreisberg, Northbridge Environmental</i> <ul style="list-style-type: none">• Buy American for assistance recipients• Buy American for architecture and engineering firms• Buy American for construction contractors

11:30	<p>Region 9 Waiver Process <i>Sarah McFate, Northbridge Environmental</i></p> <ul style="list-style-type: none"> • Waivers approved to date • Waiver process
11:45	<p>Reporting Requirements <i>Sarah McFate, Northbridge Environmental</i></p> <ul style="list-style-type: none"> • Quarterly reporting requirements • Calculating and reporting jobs created/retained • Reporting on contracts and subcontracts
12:15 PM	End of Workshop

Note: Questions will be taken at the end of every session

SRF and ARRA 101



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD



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

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

General SRF Requirements

- Funding Application
- Priority List ranking
- Planning, design, and permitting
- Financial and technical review
- Environmental review
- Crosscutter review
- Single Audit requirements
- 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

What are the Federal Audit Requirements?

- The Single Audit Act requires an audit if you spend over \$500,000 of Federal funds
- Your audit must address compliance requirements that apply to your project
 - Includes subrecipient monitoring
- To learn more about the audit and compliance requirements of the Single Audit Act go to:

<http://www.whitehouse.gov/omb/rewrite/circulars/a133/a133.html>

The American Recovery and Reinvestment Act of 2009

“A-R-R-A”

“ARRA”

“ARRA”

“Stimulus”

“Recovery Act”

“Cha-Ching!”

- \$6B for 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/water/eparecovery

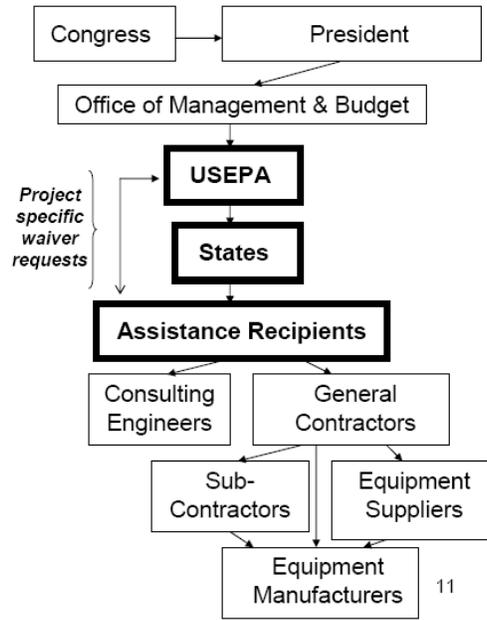
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EPA Office of Inspector General (IG)

- Independent office within EPA tasked with ensuring that the use of ARRA funds is consistent with Federal requirements and free of waste, fraud and abuse.

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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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
- Contracts pay the higher of the two prevailing wages

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 submissions and Statement of Compliance
5. Submit certification to CA Water Board for each week employees are paid
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
- You **cannot** use prevailing wages established by others (DOT, state agencies)
- Current wage rates and notification of pending revisions can be found online at:

www.wdol.gov

Work Function

- Defined by:
 - Construction types:
 - Heavy
 - Building
 - Highway
 - Residential
 - Job types, such as:
 - Carpenter
 - Electrician
 - Iron worker
 - Back hoe operator
 - Bulldozer operator
 - Flagger
 - Laborer

Construction Type

- For water/wastewater projects, these will most commonly be “**heavy**”
- However, if construction occurs within an enclosed structure then it may be considered “**building**”
 - In California many job types associated with water infrastructure projects can be found under this category (pile driver, electrician, dredge dozer operator)
 - Often seen with wastewater treatment facility projects

Notes on Classifications

- A worker may need to be paid at multiple prevailing wages if:
 - They perform **multiple job types** at the same construction site
 - They perform the same job on **different construction types** at the same construction site
- Contractors can pay varying rates based on job and construction type, or always pay the highest applicable rate

Location

- A determination is only valid for a project if it is listed for the county in which the project took place
 - You cannot use the determination from a neighboring county for your project

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

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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:

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

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.

* SUC&1989-001 01/01/1989

	Rates	Fringes
PUMPS		
Installer		
Alameda.....	\$ 7.50	
Alpine.....	\$ 8.00	
Amador.....	\$ 8.00	
Colusa.....	\$ 10.57	2.03
Contra Costa.....	\$ 7.50	
El Dorado.....	\$ 8.00	
Fresno.....	\$ 7.25	1.04
Imperial.....	\$ 8.50	
Kern.....	\$ 7.25	.43

Base Rate + Fringe = Prevailing Wage

Printer Friendly Version

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Notes on Fringe Benefits

- Under ARRA's Davis Bacon requirements, employers can choose to pay fringe benefits by:
 - Providing additional cash wages under the base rate
 - Providing a "bona-fide" benefits plan where benefits are separate
- Does not matter the value of base and fringe, as long as together they equal the prevailing wage

Additional Requirements

- Assistance recipients that are not governmental entities have additional requirements:
 - Must submit all determinations to the CA Water Board for approval before including determination in bids or contracts

If There is No Existing Determination

- You must apply for a project-specific determination
- You may NOT use a wage determination for your job in another construction type or county
- **Information on project-specific determinations was still being finalized at the time of printing – more updated information will be provided during the workshop**

2. Include Wage Determination in Bid Solicitation and Contracts

- The **only way** to “lock-in” a wage determination is to include a reference to that determination in an executed construction contract
- This reference can be:
 - Wage categories and actual rates
 - Wage category citations and dates of access
- If determinations are not in contracts, and DOL raises the rate, then contractors must pay the new, higher rate

No Expiration Date

- 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



Before the Bid Period

- 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 CA Water Board confirming that there is not reasonable time to modify the bid

After the Bid Period

- If a contract is not signed with 90 days of bid closing and DOL has raised the determination, then the higher determination must be paid and incorporated into contracts

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!

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, and in all appropriate languages (English, Spanish, etc)

<h2 style="text-align: center;">EMPLOYEE RIGHTS UNDER THE DAVIS-BACON ACT</h2> <h3 style="text-align: center;">FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS</h3> <p style="text-align: center;">THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION</p> <p>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.</p> <p>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.</p> <p>ENFORCEMENT Contract payments can be withheld to ensure worker and overtime pay due, and liquidated damages may be assessed if pay requirements are not met. Davis-Bacon contract termination and debarment of contractors in 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.</p> <p>APPRENTICES Apprentice rates apply only to apprentices properly registered in approved Federal or State apprenticeship programs.</p> <p>PROPER PAY If you do not receive proper pay, or require further information, contact the Contracting Officer listed on the contract or contact the U.S. Department of Labor's Wage and Hour Division.</p> <p style="text-align: center;">For additional information:  1-866-4-USWAGE (1-866-487-9243) TTY: 1-877-889-5627 WWW.WAGEHOUR.DOL.GOV</p>	<h2 style="text-align: center;">DERECHOS DEL EMPLEADO</h2> <h3 style="text-align: center;">BAJO LA LEY DAVIS-BACON</h3> <h3 style="text-align: center;">PARA OBREROS Y MECÁNICOS EMPLEADOS EN PROYECTOS DE CONSTRUCCIÓN FEDERAL O CON ASISTENCIA FEDERAL</h3> <p style="text-align: center;">LA SECCIÓN DE HORAS Y SALARIOS DEL DEPARTAMENTO DE TRABAJO DE EE.UU.</p> <p>SALARIOS PREVALENTES No se le puede pagar menos de la tasa de pago indicada en la Decisión de Salarios Decididos para el trabajo que está realizando.</p> <p>SOBRETUESTO No se le puede pagar menos de una y media veces la tasa de pago por todas las horas trabajadas en exceso de 40 en una semana laboral. Existen pocas excepciones.</p> <p>CUMPLIMIENTO Se pueden retener pagos por contratos para asegurarse que los obreros reciban los salarios y el pago de horas extras debidas. Se puede imponer multa o penalización si no se cumple con los requisitos del pago de sobretuestos. Los contratos de construcción de Davis-Bacon pueden ser terminados y sus contratistas pueden ser descalificados por un periodo de hasta tres años. El contratista que falsifique los registros de salarios o induzca a otros a falsificarlos puede ser sujeto a procesamiento civil o criminal, multas y/o encarcelamiento.</p> <p>APRENTICES Las tasas de aprendices sólo se aplican a aprendices correctamente inscritos bajo programas federales o estatales aprobados.</p> <p>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 en el contrato.</p> <p style="text-align: center;">o póngase en contacto con la Sección de Horas y Salarios del Departamento de Trabajo de EE.UU.</p> <p style="text-align: center;">Para obtener información adicional:  1-866-4-USWAGE (1-866-487-9243) TTY: 1-877-889-5627 WWW.WAGEHOUR.DOL.GOV</p>
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4. Collect and Review Weekly Payroll and Compliance Statement

- All contractors and subcontracts must submit payroll with accompanying compliance statement to assistance recipients weekly
 - Optional certified payroll form is encouraged
 - Federal compliance statement is required
- Maintain these payrolls and compliances for 3 years after construction ends

4. Collect, Review, and Submit Weekly Payroll and Compliance Statement

- Periodic review of payroll must include:
 - Correctness of classification and rates
 - Fringe benefits payments
 - Hours worked
 - Deductions
 - Disproportionate employment ratios of laborers, apprentices, or trainees to journeymen

5. Submit Certifications to CA Water Board

- Assistance recipients must submit an assurance that Davis-Bacon has been satisfied for each week employees are paid
- California is still developing its process for the Davis-Bacon weekly certification reporting

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				
NAME OF PRIME CONTRACTOR		LAST NAME	FIRST NAME	MI		
NAME OF EMPLOYER		STREET ADDRESS				
SUPERVISOR'S NAME		CITY	STATE	ZIP CODE		
LAST NAME	FIRST NAME	MI	WORK CLASSIFICATION	WAGE RATE		
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 DO YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?		TOOLS YOU USE				
DATE OF LAST WORK DAY BEFORE INTERVIEW (YYYYMMDD)						
DATE YOU BEGAN WORK ON THIS PROJECT (YYYYMMDD)						
THE ABOVE IS CORRECT TO THE BEST OF MY KNOWLEDGE						
EMPLOYEE'S SIGNATURE				DATE (YYYYMMDD)		
INTERVIEWER	SIGNATURE	TYPED OR PRINTED NAME		DATE (YYYYMMDD)		
INTERVIEWER'S COMMENTS						
WORK DEDUCTIONS (WHAT DEDUCTIONS WERE INTERVIEWED)		ACTION (if explanation is needed, use comments section)		YES	NO	
		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	MI	JOB TITLE			
SIGNATURE				DATE (YYYYMMDD)		
<small>AUTHORIZED FOR LOCAL REPRODUCTION STANDARD FORM 1445 (REV. 12/80) Previous edition not valid Prescribed by GSA FPMR (41 CFR) 101-11.6</small>						

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/>

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/>

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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Determining Whether Substantial Transformation Occurred in the U.S.

Substantial transformation occurred in the U.S. if you are able to answer “Yes” to any of the following 3 questions:

Questions	Criteria	Sub questions	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.?	Answer “Yes” to Question 1	N/A		
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)	Answer “Yes” to any of the three sub-questions	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?		
3. Was(/were) the process(es) performed in the U.S. (including but not limited to assembly) complex and meaningful?	Answer “Yes” to any two of five sub-questions	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)?		

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 Water Board:
 - 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



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD



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

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"> • Obtain copies with A/E's of Buy American roles • Review A/E's roles (contract/RFI/RFI) and include Buy American information that will be included in the RFI • Inform recipient that they are required to include a justification 	<ul style="list-style-type: none"> • Obtain and provide with the RFI • Review Buy American roles • Review roles that will be included in the RFI • Review roles that will be included in the RFI • Review roles that will be included in the RFI 	<ul style="list-style-type: none"> • Review roles that will be included in the RFI • Review roles that will be included in the RFI • Review roles that will be included in the RFI
	Documentation <ul style="list-style-type: none"> • Roles that will be included in the RFI • Roles that will be included in the RFI • Roles that will be included in the RFI 	<ul style="list-style-type: none"> • Roles that will be included in the RFI • Roles that will be included in the RFI • Roles that will be included in the RFI 	<ul style="list-style-type: none"> • Roles that will be included in the RFI • Roles that will be included in the RFI • Roles that will be included in the RFI
2. Preparing for bidding	Actions <ul style="list-style-type: none"> • Obtain copies with A/E's of Buy American roles • Review roles 	<ul style="list-style-type: none"> • Review roles that will be included in the RFI • Review roles that will be included in the RFI • Review roles that will be included in the RFI 	<ul style="list-style-type: none"> • Review roles that will be included in the RFI • Review roles that will be included in the RFI • Review roles that will be included in the RFI
	Documentation <ul style="list-style-type: none"> • Roles that will be included in the RFI • Roles that will be included in the RFI • Roles that will be included in the RFI 	<ul style="list-style-type: none"> • Roles that will be included in the RFI • Roles that will be included in the RFI • Roles that will be included in the RFI 	<ul style="list-style-type: none"> • Roles that will be included in the RFI • Roles that will be included in the RFI • Roles that will be included in the RFI
3. Bid process	Actions <ul style="list-style-type: none"> • Review BFP required roles to ensure Buy American roles are included in the RFI • Review roles that will be included in the RFI • Review roles that will be included in the RFI • Review roles that will be included in the RFI • Review roles that will be included in the RFI 	<ul style="list-style-type: none"> • Review roles that will be included in the RFI • Review roles that will be included in the RFI • Review roles that will be included in the RFI • Review roles that will be included in the RFI • Review roles that will be included in the RFI 	<ul style="list-style-type: none"> • Review roles that will be included in the RFI • Review roles that will be included in the RFI • Review roles that will be included in the RFI • Review roles that will be included in the RFI • Review roles that will be included in the RFI
	Documentation <ul style="list-style-type: none"> • Roles that will be included in the RFI • Roles that will be included in the RFI • Roles that will be included in the RFI 	<ul style="list-style-type: none"> • Roles that will be included in the RFI • Roles that will be included in the RFI • Roles that will be included in the RFI 	<ul style="list-style-type: none"> • Roles that will be included in the RFI • Roles that will be included in the RFI • Roles that will be included in the RFI

Note:

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

Buy American Roles and Required Documentation

Project Stage		Assistance Recipients	Architecture and Engineering Firms	Construction Contractors
1. Planning and design	Actions	<ul style="list-style-type: none"> • Work closely with A/E's so BA is included in designs • Include language in contract with A/E's requiring A/E to provide information that may be necessary for design waivers 	<ul style="list-style-type: none"> • Make design decisions that take into account Buy American • Identify components that will likely require a waiver • Help assistance recipients begin the development of necessary waivers 	N/A
	Documentation	<ul style="list-style-type: none"> • Information that may be included in a waiver application 	<ul style="list-style-type: none"> • Information that may be included in a waiver application 	N/A
2. Preparing for bidding	Actions	<ul style="list-style-type: none"> • Work closely with A/E's so BA is included in specs 	<ul style="list-style-type: none"> • Spec component parameters that are American-made • Identify components that will likely require a waiver 	<ul style="list-style-type: none"> • Alert primary vendors you will be bidding on a project that requires American-made goods • Be on the lookout for new vendors, suppliers, or manufacturers of American-made goods
	Documentation	N/A	<ul style="list-style-type: none"> • Records of design decisions made due to performance parameters 	<ul style="list-style-type: none"> • Lists and specifications of American-made goods provided by vendors, suppliers, or manufacturers
3. Bid process	Actions	<ul style="list-style-type: none"> • Ensure RFP requires bidders to comply with Buy American and explains how substantial transformation is defined and applied and how the waiver process works • Be aware of Buy American during bid evaluation • Ask for more information if one bidder is significantly lower than others • Select a winning bidder that you are confident is capable of managing Buy American 	<ul style="list-style-type: none"> • Respond to all requests for clarification 	<ul style="list-style-type: none"> • Identify all iron, steel, and manufactured goods necessary for the project • Estimate prices assuming American-made components if possible (see "Buy American and Bid Package Pricing") • Identify components that will likely require a waiver • Submit requests for clarification if necessary • Have a back-up plan in case a waiver is not received
	Documentation	<ul style="list-style-type: none"> • Clarification provided in response to request for clarification 	<ul style="list-style-type: none"> • Reasoning behind clarification provided in response to requests for clarification 	<ul style="list-style-type: none"> • Clarification received in response to request for clarification • Information that may be included in a waiver application

Buy American Roles and Required Documentation

Project Stage	Assistance Recipients	Architecture and Engineering Firms	Construction Contractors
4. Developing construction contracts	Actions	N/A	<ul style="list-style-type: none"> • Impose compliance certifications and indemnification requirements into all contracts
	Documentation		
5. Procurement	Actions	<ul style="list-style-type: none"> • Assist assistance recipients in developing waiver applications based on component performance parameters 	<ul style="list-style-type: none"> • Ask vendors, suppliers, and manufacturers to provide country-of-manufacture information • Include assistance recipients in all substantial transformation decisions • Assist assistance recipients in developing waiver applications
	Documentation		

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*)

Appendix 3: Sample Buy American Contract Language

THIS IS AN EXAMPLE OF WHAT COULD BE INCLUDED IN ALL CONTRACTS THAT MAY USE ARRA FUNDS. EPA MAKES NO CLAIMS REGARDING THE LEGALITY OF THIS CLAUSE WITH RESPECT TO STATE OR LOCAL LAW. IT IS IMPERATIVE THAT ANY PARTY INSERTING THIS CLAUSE INTO A CONTRACT VERIFY THAT IT IS LEGAL AND ENFORCEABLE ACCORDING TO STATE AND LOCAL LAWS, REGULATIONS, AND ORDINANCES:

The Contractor acknowledges to and for the benefit of _____ (the "State") that it understands that monies made available by the Reinvestment Act of 2009 (ARRA) (or are being made available for a project being funded with monies made available by the 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 the 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.

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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 options	Determine whether there is any other American-made good that is available	If there is a foreign-made product, price that American-made product. If there is not a foreign-made product, price the foreign-made product.	None. Collect documentation from the producer of the foreign good including, where applicable, a bill of materials.
A specific foreign-made product	Foreign-made option with proprietary design	Determine whether there is a functional American-made product that performs the same function as the foreign-made product with a common function	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.	None. Collect the functional bill of materials that product and American-made products with similar functions.
	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 that American-made product. If there is not a U.S. version of the product, price the foreign-made product.	None. Collect documentation of the version that uses an American-made version if available.

Buy American and Bid Package Pricing

Answer questions 1-3 to determine the appropriate pricing for bid and required documentation for a component:

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 options	Determine whether there is any other American-made good that is analogous	If there is an analogous American-made product, price that American-made product	None
			If there is not an analogous American-made good, price a foreign-made product and note the need for a waiver	Collect certification from the producers of all analogous goods indicating that each is foreign made
A specific foreign-made product	Foreign-made option with proprietary design	Determine whether there are functional differences between the product and American-made products with similar function	If there is no function difference between the foreign-made product and the American-made product with a similar function, price the American-made product	None
			If there is a function difference between the foreign-made product and the American-made product with similar function, price the foreign-made product	Outline the functional difference between that product and American-made products with similar functions
	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 that American-made product	None
			If there is not an American-made version of the product, price the foreign-made product	Collect certifications of the unavailability of an American-made version from several vendors

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

Buy American Recordkeeping

Buy American Records

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

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

Documentation for U.S.-Made Components

- Written certifications from manufacturers/suppliers**
- 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%
- Completed Substantial Transformation checklist

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

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? 		

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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 ARRA on de minimis project components

Questions?

Region 9 Buy American Waiver Process



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD



Waiver Request Contents

Recommended Contents

- Waiver request
 - Cover letter with contact information
 - General description and cost of the project
 - General product information
 - Justification for the waiver request
- Supporting documentation

General Product Information

- Description of the foreign and domestic iron, steel and manufactured goods for which the waiver is requested
 - Example: *“APG-Neuros NX100-C060 (100 hp) and APG-Neuros NX150-C060 (150 hp) air bearing turbo aeration blowers plus custom Main Blower Control Panel (MBCP). See following web link to company and product descriptions: www.neuros.com/02product/product_01.htm”*
- Unit of measure for the iron, steel, or manufactured goods in question
- Quantity of I/S/MG for which the waiver is requested
- Cost of the I/S/MG in question
- Time of delivery or availability
 - Example: *“16 weeks following order confirmation, custom fabrication, not including installation or start-up. This lead time and availability will fall within our allowable construction project schedule”*
- Location of the project
- Name and address of the proposed supplier, inc. manufacturing site

Justification for the Waiver Request

- *A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited*
- Identify the basis for the waiver (may be more than one)
 - 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))

Supporting Details: Justification

Written description of the justification for the waiver request, supported by details such as:

- Technical and/or historical basis for selecting the product
- Process used to identify suppliers
- Process for evaluating suppliers
- Rationale for preferring the selected supplier
- Issues related to availability or quality of the products
- Justification for requesting a waiver after construction has initiated, if applicable (last resort!)

Supporting Details: Domestic Alternatives

- Process for identifying domestic alternatives
 - List of contract suppliers
 - Written description of process
- Documentation of availability/non-availability
 - Letters from suppliers/manufacturers stating that:
 1. A domestic version of the product that meets the project specifications is not available, or
 2. The domestic version cannot be supplied within the timeframe required by the project schedule
- Specifications for like domestic products that do not meet project specifications
 - Highlight the reasons why the like product is insufficient for the project

Example: Winnepesaukee River Basin

- Waiver request included detailed description of process for identifying the selected product
 - Pre-bid selection committee of operations, maintenance, and technical staff developed a weighted checklist of critical specifications and manufacturer capabilities that they deemed most important for evaluating bids for high-efficiency turbo blowers
 - RFI published in newspaper and sent directly to four known blower manufacturers

Winnepesaukee Waiver

- Committee identified several priority/mandatory requirements for the selection of the blower
 - Blower package must meet State Fire Marshal certification requirements
 - Manufacturer must demonstrate experience with numerous installed blowers in U.S. WWTP
- Each committee member independently evaluated manufacturers' responses to the RFI using weighted scoring criteria
- Korean manufacturer was the only one to meet mandatory criteria, and scored highest on the evaluation checklist

Supporting Documentation

- Project specs
- Product specs
- Detailed drawings
- Project schedule (if applicable)
- RFP/RFI and advertisements
- List of contacted suppliers
- Relevant communications with prime contractor
- Bids
- Availability/delivery dates
- Evaluation criteria
- Letter from suppliers certifying non-availability of U.S.-made product
- Cost worksheet for 25% waiver

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	
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	349

Review Process

EPA Region 9 Review Process

1. Borrower submits waiver request and supporting documentation to region9waiver@epa.gov
 - Must be in Word document (.doc) format
2. Region reviews request for completeness
3. Region forwards request to contractor for technical review
 - Contractor may conduct research to determine whether a similar U.S.-made product is available, or to decide if the specific product is necessary for the project
4. Contractor provides technical report to Region and EPA HQ
5. Region approves or denies the waiver request
6. Region notifies borrower of the decision
7. Approved waiver is published in the Federal Register

Two-week turnaround goal for review process

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 	<div style="border: 1px solid gray; padding: 10px; text-align: center;"> <p style="font-size: 1.2em; margin: 0;">April 28 Guidance Memo</p> <p style="font-size: 1.1em; margin: 0;">www.epa.gov/water/eparecovery</p> </div>	
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? 		

What Happens If...

- The waiver request is incomplete?
 - *If the waiver request does not have sufficient information for the contractor to perform the technical review, the contractor will send follow-up questions to the technical designers via the Region*
- The waiver request falls under one of the three national waivers?
 - *The Region will take no action. Projects that fall under the national waivers do not need to submit waiver requests but must keep adequate documentation in files.*
 - The waiver request uses the “public interest” justification?
 - *If extremely compelling and broadly applicable justification is provided, the Region will submit these requests to EPA Headquarters for consideration. The Region will not forward a waiver request that uses “public interest of the community” as a blanket justification for the request*
- The technical contractor finds that a similar domestic product is available?
 - *The borrower can contact the supplier to confirm that the product is actually produced in the U.S., meets project specifications, and is available in sufficient quality/quantity when needed for the project*

Status of Region 9 Waiver Requests

- 15 waiver requests submitted for 16 projects
- 7 National waivers
- Technical review complete for 3 projects
- Technical review suspended for 1 projects because applicant is reviewing contract
- Region has 2 requests pending
- Region has had 4 applicants withdraw their request

Questions?

ARRA Reporting Requirements



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD



Primary Reporting Requirements

- Davis-Bacon Prevailing Wage Requirements (already discussed)
- ARRA Section 1512 Requirements

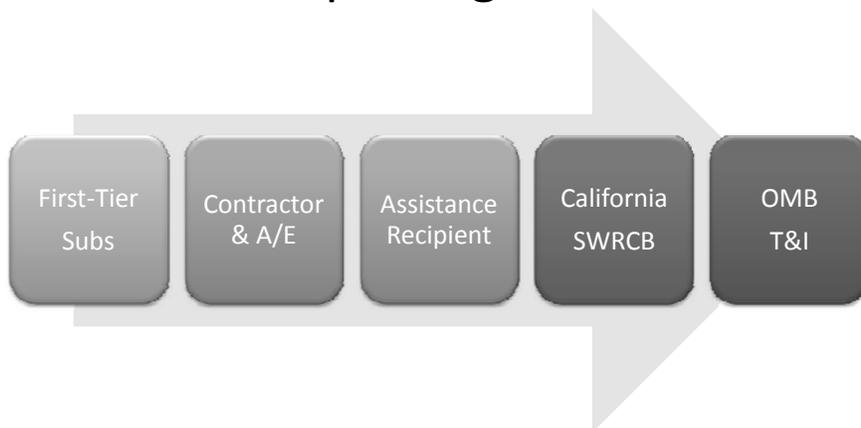
ARRA Section 1512

“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.

Reporting Chain



The CA Water Board will be able to provide much of the reporting data, but some will need to be collected from Assistance Recipients and contractors

Reporting Requirements

	Davis-Bacon		ARRA Section 1512	
Contractors	<ul style="list-style-type: none"> •Certified payrolls •Statement of Compliance 	W W	<ul style="list-style-type: none"> •DUNS or name/zip •Percent completion •Number of jobs created/retained •Narrative description of employment impact 	* * * *
Assistance Recipients	<ul style="list-style-type: none"> •DB Certification form 	TBD	<ul style="list-style-type: none"> •Basic project/recipient information •Highly compensated individuals •Percent completion •Number of jobs created/retained •Narrative description of employment impact 	O O Q Q

Reporting Frequency:
 O: Once
 W: Weekly
 Q: Quarterly
 * As required by assistance recipient

Reporting Responsibility

- Assistance recipients bear the ultimate responsibility for reporting to the CA Water Board
- Assistance recipients can decide how to collect data from contractors
 - Frequency
 - Level of detail
 - Format
- Put it in your contracts!

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

1512 Reporting: Assistance Recipients

- One Time (by Excel document):
 - Assistance recipient DUNS and CCR numbers
 - Contractor DUNS number
 - Basic project information
- Quarterly (by Word document):
 - Project completion status
 - Number of jobs created and retained
 - Description of employment impact
 - Payroll dollars for jobs created/retained

1512 Reporting: 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

California Initial Reporting Form

Instructions: Please provide the data requested below for your Project Name Here (Project), CWSRF Project Number Here. This form should be returned to your Project Manager (PM Name, Email, Phone).

INFORMATION REQUESTED	RECIPIENT DATA
Project Information:	
What project were you to bid?	
Date construction contract executed between recipient and contractor	
Notice to Proceed date	
Total project cost	
Project address	
County in which project is located	
Legislative districts in which the project is located *	
(There may be more than one; include all applicable districts, Senate, Assembly, Congressional)	
Was additional funding required for project? If additional funding is required for the project, state the sources and amounts:	
Methodology used to calculate jobs created/sustained	
Recipient Information:	
Receives DUNS and/or OCR number **	
Name of recipient as it appears in DUNS and/or OCR database	
Mailing address of the recipient	
Legislative districts in which the recipient is located *	
(There may be more than one; include all applicable districts, Senate, Assembly, Congressional)	
DUNS number of recipient's contractor or contractor name and zip code	
Receipt of Federal Funds (complete A-C below)	
A) Did the recipient receive over 80% of their revenue from federal awards last year?	
B) Did the recipient receive over \$25 million in federal awards last year?	
C) Does the public have access to the executive compensation information via the Securities and Exchange Committee or Internal Revenue Service?	
If the answer is "yes" to A and B, and "no" to C, then the recipient must provide information on the five (5) highest paid officers.	
1) Provide Name, Title, and (Compensation, in dollar/timeframe)	
2)	
3)	
4)	
5)	
INFORMATION REQUESTED QUARTERLY ***	
Percent complete (construction activities) and quarter number	
Number of jobs created/sustained directly by project (in labor hours)	
Number of jobs created/sustained by project (in labor hours)	
Total payroll of job hours created/sustained by ARRA funds	
INFORMATION REQUESTED SEMI-ANNUALLY	
Disadvantaged Business Enterprise Requirements	Applicant will be sent forms in April and October each year for reporting Disadvantaged Business Enterprise.
USEFUL LINKS AND INFORMATION FOR COMPLETING THIS FORM	
Please use this website to find your California legislative district(s): http://www.leginfo.ca.gov/youleg.htm	
Please use this website to find your California congressional district(s): http://www.house.gov	
** Data Universal Numbering System (DUNS) or Central Contractor Registration (CCR). Use this website to lookup or obtain a DUNS and/or CCR Number: https://www.tsp.gov/CCNSearch/Search.aspx	
*** Quarters are Federal Fiscal Quarters: Q1=Oct-Dec, Q2= Jan-Mar, Q3=Apr-Jun, Q4=Jul-Sep	

California Quarterly Reporting Form

CWSRF Program ARRA funding recipients are required to provide the following data on a quarterly basis. Failure to provide requested data in a timely fashion may result in loss of funding and repayment of all disbursed funds. Questions should be directed to your Project Manager, as identified in the table below.

BACKGROUND INFORMATION	RECIPIENT DATA
Date Submitted to State Water Board	
CWSRF Project No.	C-6-
CWSRF Project Name	
Agency Name	
Recipient (i.e., person submitting info on behalf of Agency) & Contact Information	Name: E-mail: Phone:
CWSRF Program Project Manager & Contact Information	Name: E-mail: Phone:

Federal Fiscal Year Quarter Being Reported (circle one):
 Q1=Oct-1-Dec 31 Q2= Jan 1-Mar 31 Q3=Apr 1-Jun 30 Q4=Jul 1-Sep 30

* For your initial reporting (i.e., reporting on information through September 30, 2009), combine information for all previous quarters into the "Recipient Data" field below. The start date used to calculate the number of jobs created or retained should be the date on the front of your CWSRF financing agreement, and shall not be earlier than October 1, 2008. For all future quarters, data should be reported only for the quarter referenced above.

INFORMATION REQUESTED (QUARTERLY)

RECIPIENT DATA	RECIPIENT DATA
Percent of total Project construction/implementation complete:	This Quarter: _____
Number of jobs (in full-time equivalents, FTEs)** created or retained this quarter directly by Project	Total: _____
Total payroll dollars associated with the FTEs created or retained this quarter for the Project:	FTEs _____
	\$ _____

**Jobs Created or Retained, in Full-Time Equivalents (FTEs)

Quarterly FTEs
 Enter the number of jobs expressed as full-time equivalents (FTEs) that were created or retained in the United States and outlying areas, in this calendar quarter, for the entire project. This information should be obtained from all project prime contractors for their workforce and the workforces of all of their subcontractors.

How to calculate quarterly FTEs:
 The requirement for reporting jobs as FTEs is a common method for quantifying work in common units to account for part-time and full-time employees. The basic calculation is the total number of hours worked divided by the employer's standard full-time number of hours for the reporting period. Two part-time workers who each work 1040 hours in a year would work a combined 2080 hours. If the standard full-time work schedule for one year is 2080 hours, the total FTEs of those two part-time workers would be 1 (formula: (1040x2)/2080=1).

To report on quarterly FTEs for ARRA, the total labor hours for jobs created or retained will need to be summed for the reporting quarter and divided by the standard number of hours for a full-time schedule in the quarter. The result will be the reportable number of FTEs. If only an annual standard number of hours for a full-time schedule is available, that number will need to be divided by 4 in order to obtain full-time hours for just one quarter. If multiple prime contractors are involved in the project, you may need to have each prime contractor report their FTEs and then sum the FTEs of each contractor together to obtain the total number of FTEs to report.

The following are examples of FTE calculations:
 -If 1 employee worked a full-time schedule of 500 hours in a quarter, the formula would be 500/500 = 1
 -If 2 employees worked a full-time schedule of 500 hours in a quarter, the formula would be (500x2)/500 = 2
 -If 1 employee worked a full-time schedule of 500 hours and 1 employee worked a part-time schedule of 250 hours in a quarter, the formula would be (500+250)/500=1.5
 -If 2 employees worked a full-time schedule of 500 hours and 2 employees worked a part-time schedule of 250 hours in a quarter, the formula would be ((500x2)+(250x2))/500=3

It is important to remember that the calculations will solely be based on the hours worked in one quarter. Therefore, the FTE calculation must be based on total labor hours in the quarter divided by total labor hours for a full-time schedule only for the quarter. Please note the difference between quarterly FTEs and annual FTEs: 1 Quarterly FTE = 25 Annual FTE; 4 Quarterly FTEs = 1 Annual FTE.

Upcoming Quarterly Reporting Deadlines:

Federal Fiscal Year Quarter (Reporting Period)	Quarterly Reporting Deadline (i.e., date when data must be submitted to CWSRF Program Project Manager)
Q4, 2009 (Agreement Start Date – September 30, 2009)	September 17, 2009
Q1, 2010 (October 1, 2009 – December 31, 2009)	December 17, 2009
Q2, 2010 (January 1, 2010 – March 31, 2010)	March 18, 2010
Q3, 2010 (April 1, 2010 – June 30, 2010)	June 17, 2010

Reporting Deadlines

Federal Fiscal Year Quarter (Reporting Period)	Quarterly Reporting Deadline (i.e., date when data must be submitted to CWSRF Program Project Manager)
Q4, 2009 (Agreement Start Date – September 30, 2009)	September 17, 2009
Q1, 2010 (October 1, 2009 – December 31, 2009)	December 17, 2009
Q2, 2010 (January 1, 2010 – March 31, 2010)	March 18, 2010
Q3, 2010 (April 1, 2010 – June 30, 2010)	June 17, 2010

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 description and completion status
 - Job creation/retention narrative and number
 - Payroll information

Quarterly 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

Quarterly Reporting Item #2 Job Creation (Number)

- Report jobs created/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.
- Salaries do **not** need to be paid directly from ARRA funds in order for the job to be counted

Which Jobs Count?

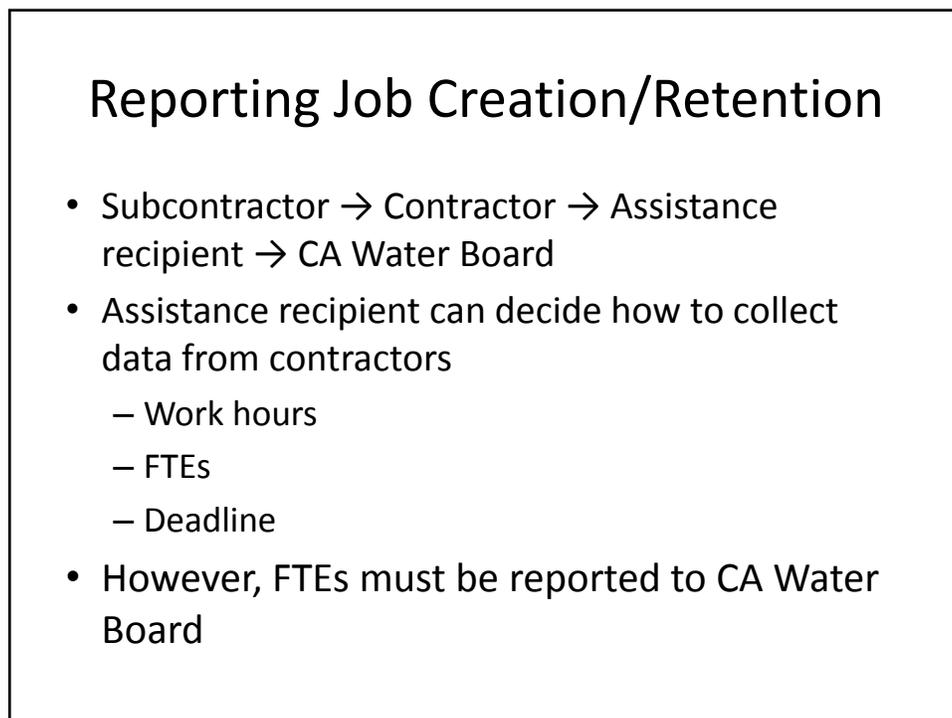
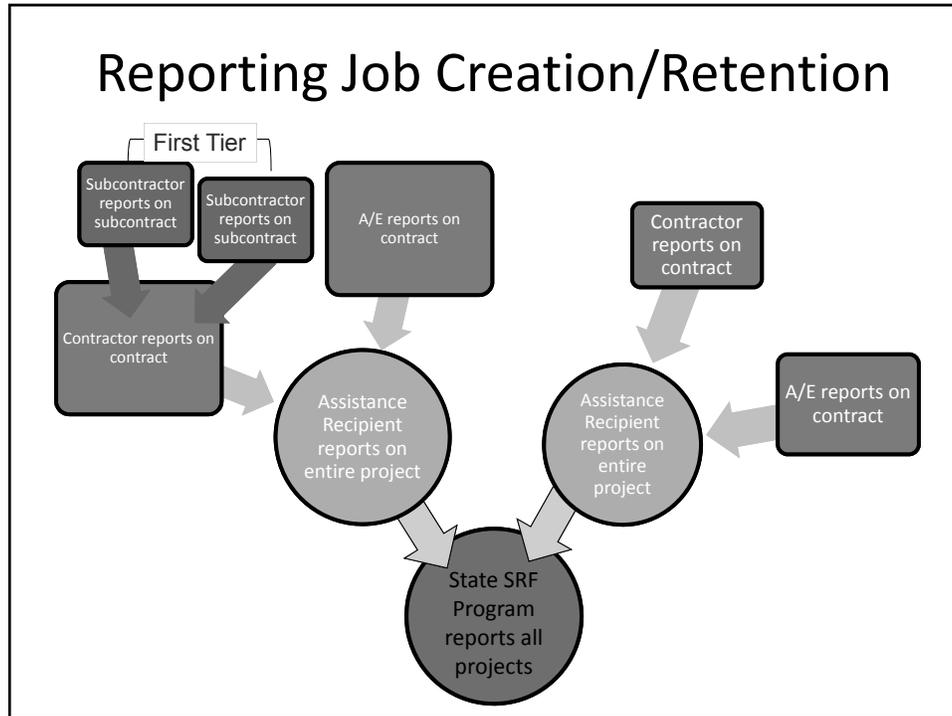
- Direct jobs: Employees directly working on Recovery Act supported projects or activities

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	



Calculating Jobs Created/Retained

- Jobs reported to CA Water Board should be expressed in terms of “full-time equivalents” (FTEs)

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

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

Calculating Jobs Created/Retained

- FTE estimates must be reported each quarter for the project lifecycle

Period	3 rd Qtr 2009	4 th Qtr 2009
(a) Full-Time Schedule	520	520
Full-Time Employee 1	520	520
Full-Time Employee 2	520	520
Part-Time Employee (half time)	260	260
Temporary Employee (520 hrs.)	0	520
(b) Total Hours Worked	1300	1820
Quarterly FTE (b/a)	2.5	3.5

Tracking Work Hours

- Assistance recipients will be collecting weekly payroll records from contractors/subs as part of Davis-Bacon compliance
 - Work hours from payroll records can be used to calculate FTEs
 - Or, assistance recipients can ask contractors to submit an FTE number
- Tracking software such as CertiClear
- Invoices
- Maintain documentation in organized files in case it is requested by CA Water Board or OIG

Created versus Retained

- You will only need to report the combined total of created/retained jobs; two separate reports for created jobs and retained jobs are not required

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
- Optional: Description of calculations, methodology, additional information
- Assistance recipients can write the description, or ask contractors to write it

When Does Reporting Start?

- Reporting begins once the ARRA award is made
 - Assistance Recipient: Loan agreement executed
 - Contractor: Project start
- First report is cumulative for all ARRA activity Feb-Oct
 - Assistance recipients should report any planning/design job creation that occurs prior to construction (if created/retained due to ARRA)
- “Negative” reports are required even if no work was performed during the quarter

When Does Reporting End?

- Contractor: Project completion
- Assistance Recipient: Final ARRA disbursement

What To Do Now: Contractors

- Include reporting requirements in your contracts with subs
- Develop a system for collecting payrolls and FTEs from subs
- Start collecting and tracking job creation data as soon as you begin work on the project
- Consider hiring a third-party project manager to coordinate all elements of ARRA reporting

What To Do Now: Assistance Recipients

- Start collecting and tracking job creation data as soon as you close the ARRA SRF loan
- Include reporting requirements in your contracts
- Develop a system for collecting work hours or FTE data from the prime contractor, A/Es
- Consider hiring a third-party project manager to coordinate all elements of ARRA reporting
- Get a DUNS number
- Register in the CCR

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.

Reporting Recordkeeping

- Dated Assistance Agreement
- Dated Notice to Proceed
- DUNS/CCR registrations (assistance recipient)
- FTE calculations
- Tracking spreadsheets (if used)
- Job reports from sub-contractors/contractors
- Copy of reports to CA Water Board

Questions?