



US Army Corps of Engineers  
Kansas City District



# New Clause Requirements Pertaining to the American Recovery and Reinvestment Act

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April 9, 2009



# ***What contracts are affected?***

- The interim rule amending the FAR to implement the American Recovery and Reinvestment Act (ARRA) of 2009 applies to solicitations issued and contracts awarded on or after March 31, 2009.
- A KO shall modify (on a bilateral basis) an existing contract to include the new clauses if it is going to be used with ARRA funding.



On 31 March 2009, there were several FAR Cases that went into effect for the ARRA. This Presentation discusses the following:

- FAR 2009-012, Whistleblower Protection
- FAR 2009-009, Reporting Requirements
- FAR 2009-011, GAO/IG Access
- FAR 2008-026, GAO Access to Contractor Employees



## Whistleblower Protections:

- It provides that non-Federal employers receiving funds under the Recovery Act are prohibited from discharging, demoting, or discriminating against employees as a reprisal for disclosing certain covered information to certain categories of Government officials or a person with supervisory authority.
- It also sets time periods within which the IG and the agency head must take action with regard to a complaint filed by a contractor employee; establishes procedures for access to investigative files for the IG; and provides remedies and enforcement authority.



## **Whistleblower Protection: New Clause**

- 52.203-15 “Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009”
  - Include in all solicitations and contracts funded in whole or in part with Recovery Act funds.
  - Format for a complaint from an employee, who believes they have been subjected to reprisal, is in 3.907
  - A KO who receives a complaint shall forward it to the Office of the Inspector General, agency legal counsel, or the appropriate official in accordance with agency procedures.



## Whistleblower Protection: Clause Changes

52.203-15, is also being added to 52.212-4,  
52.212-5 (needs to be checked if ARRA),  
52.213-4, and 52.244-6

**Note:** This clause is a mandatory flow down  
clause to subcontractors (52.244-6).



## **Reporting Requirements (for contractors):**

- As a result of the “Jobs Accountability Act”, contractors that receive awards (or modifications to existing contracts) funded in whole, or in part, by the ARRA are to report quarterly on the use of the funds.



## **Reporting Requirements: New Clause**

### 52.204-11 “American Recovery and Reinvestment Act – Reporting Requirements”

- Include in all solicitations and contracts funded in whole or in part with Recovery Act funds.
- COTS and < SAT contracts are covered as well.
- KO shall ensure the contractor complies with clause by verifying a report was submitted via an online reporting tool.
- KO is not to validate the content of the report.
- Reports shall be submitted NLT the 10<sup>th</sup> day after each calendar quarter.





## **Reporting Requirements: Clause Changes**

This requirement has also been included as an item which needs to be checked in 52.212-5 if utilizing ARRA funds.



## **GAO/IG Access to Contractor's Employees:**

Allows Comptroller General and Agency IG to review any records of the contractor or subcontractor regarding ARRA and to interview the contractors officers or employees and subcontractor's employees.



**GAO/IG Access to Contractor's Employees :**  
**Clause Changes:**

**52.212-5 “Contract Terms and Conditions  
Required to Implement Statutes or  
Executive Orders – Commercial Items”**

- When cost info is obtained in accordance with Part 15 to determine price reasonableness, the KO shall insert the clauses prescribed for this purpose in an amendment to the solicitation.



**GAO/IG Access to Contractor's Employees : Clause Changes (New Alternates):**

Commercial contract, you must use 52.212-5 (Alt II) [check applicable clause required if ARRA]

Negotiated procurement, you must use 52.215-2 (Alt 1) and 52.214-26 (Alt 1)

Sealed bid, you must incorporated 52.214-26 (Alt 1)



# ***ID/IQ Contracts***

- For ID/IQ contracts (ex. MATOCs, POCAs, SATOCs, etc.) that will be funded with both ARRA funds and normal funds:
  - Incorporate the normal contract clauses as required, then incorporate the ARRA clauses under the “Special Clauses” section with an explanation of when which is applicable.
  - Clearly identify whether or not the Task Order is funded by ARRA funds or not.



# QUESTIONS?

