Walker Reausaw

William K Walker*
888 17th Street NW, Suite 1100
Washington DC 20006
Tel: 1-202-857-7910
Fax: 1-202-857-7912
Email: wkw@att.net
* Admitted in AK, Ca & DC

Jody A. Reausaw
912 West 6th Avenue
Anchorage AK 99501
Tel: 1-907-277-5297
Fax: 1-907-258-3525
Email: jreausaw@aol.com

Please reply to the DC Office

American Recovery and Reinvestment Act (ARRA):
A Summary and Commentary

On February 17, the American Recovery and Reinvestment Act (ARRA) – H.R. I – was signed by President Obama signed into law. The act provides $789 billion in spending and tax cuts and includes several accountability and transparency provisions.

The Act has several provisions that are very important for tribal and ANC government contractors. These sections are summarized below, with additional comments and explanations.

SEC 1526 – WEBSITE.

This Section establishes a transparency and accountability website, which is expected to significantly increase the amount of available contract information. The new website would require a description of how funds will be spent; announcements of all federal, state, and local contract and grant solicitations; findings from audits, Inspectors General reviews, and the GAO; information about the competitiveness of the contracting process; information about subcontracting opportunities; estimates of jobs created; and much more.

…

Comment: All contracts which awarded under any SBA program, the Buy Indian Act or the Indian Self-Determination Act must be reported in order to comply with the requirements of SEC 1554. Tribal contractors would be well advised to periodically visit the site and assure that all contracting actions have been properly reported. The probable course of events will be that agencies will fail to properly report information, GAO will investigate, and Tribal contractors will be blamed for the failures, with our opponents will herald the report as still another example of program abuse by tribes and ANCs.

SEC. 1554. SPECIAL CONTRACTING PROVISIONS.

"To the maximum extent possible, contracts funded under this Act shall be awarded as fixed-price contracts through the use of competitive procedures. A summary of any contract

awarded with such funds that is not fixed-price and not awarded using competitive procedures shall be posted in a special section of the website established in section 1526."

…..

Comment: This is a potentially troublesome provision because is expresses a policy of discouraging 8(a) sole source contracts of any size. The term "competitive procedures" is defined in 10 USC 2302 (2): "The term "competitive procedures" means procedures under which the head of an agency enters into a contract pursuant to full and open competition. Such term also includes … (D) procurements conducted in furtherance of section 15 of the Small Business Act (15 U.S.C. 644) as long as all responsible business concerns that are entitled to submit offers for such procurements are permitted to compete; …."

This provision limiting 8a sole source contracts "to the maximum extent possible" is something that Chairman Waxman has been pursuing for the past several years. He has finally succeeded. He will undoubtedly attempt to expand the scope of the policy to all federal procurements.

SEC 1610 COMPETITION REQUIREMENTS.

Subsection (a) mandates that all contracts funded by the Act and awarded after the adoption of the Act be procured by full and open competitions, unless "otherwise authorized by statute." The section does not supersede other specific statutory authorizations for procurements, including the Small Business Act, the Buy-Indian Act or the Javits-Wagner-O'Day Act.

Subsection (b) of the Recovery Act allows the Department of the Interior's Bureau of Indian Affairs, the Department of Health and Human Services' Indian Health Service, and the Department of Housing and Urban Development to use existing self-determination contracting authorities with Indian tribes. However, it also requires the appropriate Secretary to "incorporate provisions to conform the agreement with the provisions of this Act regarding the timing for use of funds and transparency, oversight, reporting, and accountability, including review by the Inspectors General, the Accountability and Transparency Board, and Government Accountability Office, consistent with the objectives of this Act."

In their Agency-wide Recovery Act plans, DOI, HHS, and HUD are required to identify how they will incorporate these provisions into tribal self-determination contracts that are used for Recovery Act funds. To assist these agencies, OMB will convene a meeting for the agencies to discuss how to incorporate appropriate transparency and accountability provisions into tribal self-determination contracts.

....

Subsection (a) authorizes the award on any type of 8a contract. The tribal and ANC exemptions from the competitive thresholds are preserved. However, SEC 1554 states that as a

matter of policy, all forms of sole source contracts are to be minimized and under SEC 1526, all contracting actions must be reported.

…….

ADDITIONAL PROVISIONS OF INTEREST

Wage Rate Requirements – Section 1606 requires all contractors and subcontractors that receive ARRA funding, either directly or indirectly, to pay their laborers and mechanics the prevailing wage under the Davis-Bacon Act. Because the provision applies to all "projects" funded by the ARRA, not just construction projects, this could be interpreted as a substantial expansion of the application of the Davis-Bacon Act.

3% Government Contracting Withholding Delay – Section 1511 (Division B) provides a one-year delay in the implementation of the 3% withholding of payments to businesses that sell goods or services to federal, state, and certain local governments. Under the delay, the effective date of the 3% withholding will begin for payments made after December 31, 2011.

Comment: The requirement for a 3% percent withholding of contract payments would have a devastating impact on all tribal contractors if it even implemented. The government will withhold 3% of contract payments for taxes. However, there is no provision for a prime contractor to withhold any amounts due a subcontractor.

Increase in Maximum SBA Surety Bonds – Section 508 provides an increase in the maximum SBA surety bond amount to $5M, (previously set at $2M). SBA also has authority to issue a bond up to $ 10M if a contracting officer of a Federal agency certifies that such a guarantee is necessary.''.

Comment: This is a provision that both NCAI and NACA strongly advocated to the Obama transition team.

Buy America Provisions – Section 1605 requires the use of American steel, iron, and manufactured goods in construction, alteration, maintenance, and repair projects funded by the ARRA, unless to do so violates U.S. obligations under international agreements, or other exceptions are applied.

E-Verify – A provision that would have required the use of E-Verify by companies receiving ARRA-funded projects was included in the House-passed version of the bill but was deleted from the final version.