



American Recovery & Reinvestment Act of 2009

SRF Program Under ARRA Overview

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ARRA and the SRF

- Two SRF Programs
 - CWSRF (1988)
 - DWSRF (1997)
- Programs started with seed money from Congress
 - Annual Appropriations Continue (Declining)
 - February 17, 2009 SRF programs received a boost in funding via ARRA

ARRA and the SRF

- Primary Objective of ARRA
 - Preserve and create jobs and promote economic recovery
- Why use the SRF
 - Established program with a solid history of success
 - State leadership
 - List of ready to construct projects

ARRA and the SRF

- Additional Provisions
 - Short time line for signing contracts and initiating construction
 - 50% by June 17, 2009 (goal)
 - 100% committed to projects by Feb 17 2010
 - Projects under construction, or
 - Signed contracts for construction
 - 50% of allotted funds for additional loan subsidies
 - Principal forgiveness (Free Money)
 - 20% “Green” Infrastructure
 - Buy American
 - Iron, Steel and Manufactured Goods

ARRA and the SRF

- Additional Provisions
 - Buy American
 - Iron, Steel and Manufactured Goods
 - Davis Bacon Act
 - Wage Rules
 - Unprecedented transparency
 - Additional reporting requirements
 - Information will be provided on internet
 - Jobs preserved and created



ARRA and the SRF

- Comprehensive Priority list
- Develop Intended Use Plans
 - Public noticed April 19, 2009
 - Finalized June 8, 2009
- Currently working with:
 - 42 CWSRF Projects
 - 27 DWSRF Projects

ARRA and the SRF

- Total \$ Available
 - CWSRF \$171 million (\$40 Million ARRA)
 - DWSRF \$55 million (\$19.5 Million ARRA)
- Future \$???
 - From other states that do not use their allotment by February 17, 2010
 - Projects that withdraw or can not meet the deadlines established in the IUP
 - Second Stimulus ?????
 - SRF annual appropriates

ARRA and the SRF

Show me the money...



www.scdhec.gov/srf

South Carolina's State Revolving Fund Web site for low-interest loans on wastewater and drinking water construction.

- ◆ See if your project would qualify.
- ◆ Find out how to apply for a loan.
- ◆ Read about other funded projects.
- ◆ Contact staff.



Buy American Provisions For ARRA

South Carolina SRF Workshop
June 24, 2009

Background

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 US. 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
- Section 1605(d) provides that this requirement must be implemented “consistent with US obligations under international agreements”

Waiver Determination

- Agency head may provide a waiver if finds that:
 - Applying Buy American is inconsistent with public interest (§1605(b)(1))
 - US iron, steel, and manufactured goods are not produced in sufficient and reasonably available quantities or of satisfactory quality (§1605(b)(2))
 - Inclusion of US iron, steel, and manufactured goods will increase cost of overall project by > 25% (§1605(b)(3))

Buy American Waiver Process

- SRF assistance recipient (or State on recipient's behalf) requests waiver
- State SRF Program may participate in preparation or review of requests
- 5-Step process for reviewing individual case waivers (where approved)
 1. Once Region finds request package is complete, initial technical review by contractor/evaluation by Regional office
 2. Coordination with Cross-Agency Working Group
 3. OARM Concurrence (after RA tentative approval)
 4. Signature by Regional Administrator
 5. Publication in Federal Register

National Waivers

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

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”

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)

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

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

De Minimis Waiver, continued

- Assistance recipients would determine and retain relevant documentation
- Assistance recipients would include in reports to the State:
 - Types/categories of items to which this waiver is applied
 - total cost for each type/category
 - calculations of the total cost of materials used to determine the dollar value of goods to which they have applied the waiver

De Minimis Waiver, continued

- The waiver text identifies the following as characteristics needed for items to be covered:
 - “Country of manufacture and the availability of alternatives are not readily or reasonably identifiable prior to procurement”
 - “Use of literally thousands of miscellaneous ...components” (different items of miscellaneous character)
 - “Generally low cost”
- “Not readily identifiable” is essential: “EPA has found that it would be inconsistent with the public interest ... to require that the national origins of these components be identified”

Key Issue: Manufactured Goods

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)]

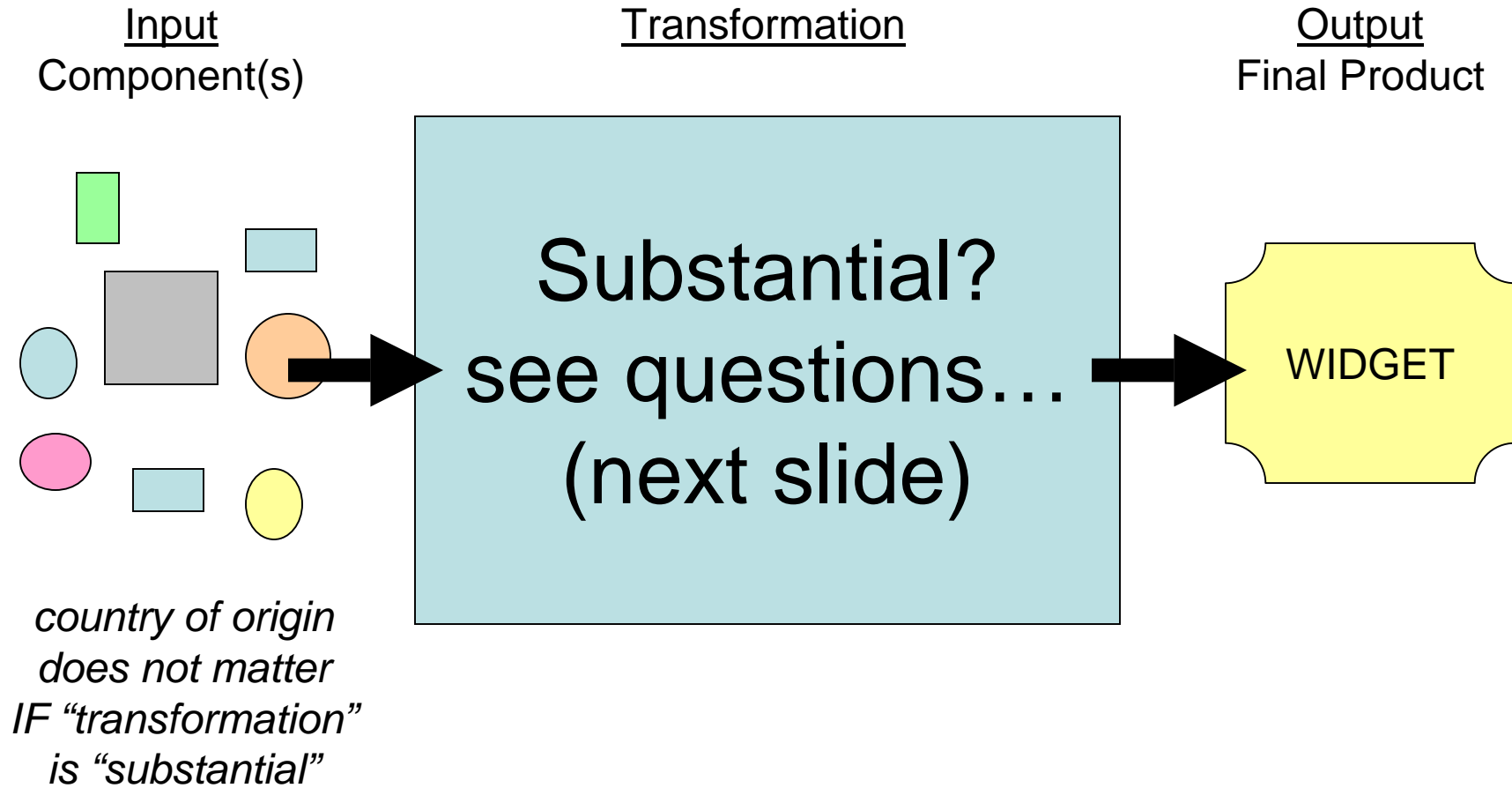
“Substantial Transformation”

- “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

Basic Principles in “Substantial Transformation” Analysis

- Determination of whether “substantial transformation” has occurred is always case-by-case under questions/criteria
- 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.”

Transformative Process



Applying “Substantial Transformation” Analysis: Assistance Recipients’ Role

- SRF assistance recipients are responsible to comply with §1605 (applies to “project”)
- Statutory expectation is that recipients will Buy American (§1605(a)) to comply – in OMB Guidance, waivers are “exceptions”
- Recipients, in conjunction with consultants, contractors, and others, are responsible to decide if products are US-made per §1605(a)

Applying “Substantial Transformation” Analysis: EPA Role

- EPA does not make “substantial transformation” (ST) or US/foreign origin determinations
- EPA §1605 role is to review waiver requests when recipient believes it cannot comply by buying US-made good, and do compliance oversight

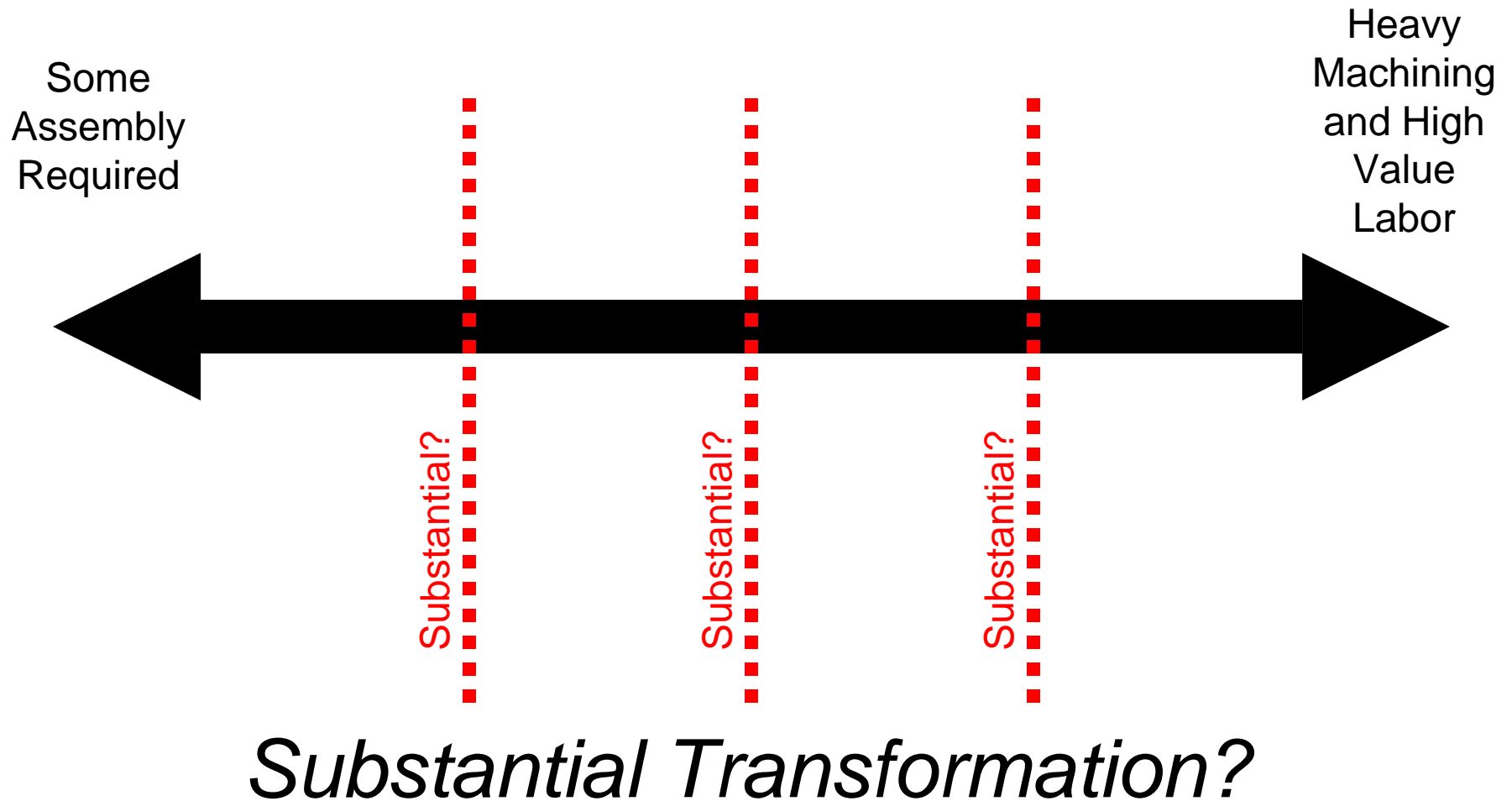
Summary of State Buy American Role

- Ensure recipients have adequate documentation in project files to demonstrate all applicable means of BA compliance
 - For US-made goods: verification of US production (as stated in sample certification point 2 in EPA 4/28/09 BA memo)
 - For items covered by a categorical (e.g., nationwide) waiver: the documentation must include all elements specified in and required by the waiver for an item or project to be covered
 - For any component that has been granted a waiver: FR notice of project specific waiver, and/or
 - For items subject to an international agreement
 - Communication from applicable state or municipal party to the agreement that recipient and item(s) are covered, and
 - Verification of country of origin

Substantial Transformation Concerns For States

- Be cautious regarding recipient requests to consult on substantial transformation
 - States have direct responsibility to ensure BA compliance of recipients
 - Recognize tension between State role for compliance and discretionary provision of BA technical assistance
 - Don't advise unless you have sufficient information to be confident that recipient compliance is demonstrated

Has “Manufacturing” Occurred in the United States?



Questions for Determining Whether Substantial Transformation Has Occurred in the US

Question	Yes	No
<p>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 US? (If the answer is yes, then this is clearly manufactured in the US, and the inquiry is complete)</p>		
<p>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></p>		
<p>3. Was(/were) the process(es) performed in the US (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></p>		

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?		

To Answer Question 3, Ask the Following:

Question	Yes	No
3. Was(/were) the process(es) performed in the US (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)?		

How to Apply the Substantial Transformation Questions

Substantial Transformation has occurred in the US if answer yes to either Question 1, 2, or 3

- If answer to any of 2a, 2b, or 2c is yes, then answer to Question 2 is yes
- If answer to at least two of 3a, 3b, 3c, 3d, or 3e is yes, then answer to Question 3 is yes

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)

Can “Substantial Transformation”
Occur On-site?

Can “Substantial Transformation” Occur On-site?

- OMB “manufactured good” definition: a “good brought to the construction site” suggests that only construction occurs onsite, and test is as to origin of goods as they arrive onsite
- However, established interpretations of “substantial transformation” test provide that manufacturing occurs in the U.S. wherever the test is met in the U.S.
- Can reconcile these by maintaining the distinctions made in each test

“Substantial Transformation” May Occur On-site IF...

- Manufacturer brings all components of the good to the site and always does so in normal course of business
 - Ensures that this is not an attempt to game BA 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)

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 State or EPA, that this good is US-produced?
- If have reasonable doubt, and US-made good meeting recipient's needs is not available, then should apply for waiver
- For recipients considering use of goods claimed to be US-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

Project Specific Waivers

Limited US Sourcing Issues & Availability Waivers

- *How should assistance recipients respond to situations where only one or perhaps two companies manufacture a particular product in the US but currently have a small share of the US market?*
 - Buy American provisions may properly increase demand for goods manufactured by domestic monopoly producers with a relatively small share of the current US market, as no waiver is required for their use
 - However, EPA expects that access to availability waivers will minimize potential for monopolistic or unfair trade practices by balancing this against ARRA's clear imperative for expeditious construction
 - This balanced approach offers US producers a fair opportunity for a realistic, timely increase in production, while enabling assistance recipients and contractors to obtain necessary goods for construction within ARRA's expeditious time frames

Availability Waivers

- *What if a good is produced by both US and non-US manufacturers, but the assistance recipient has reason for concern that the US-produced good may not be available in a sufficient quantity and in a timely manner as to meet the “expeditious construction” and other timing requirements of ARRA?*
- Availability waivers can be justified if assistance recipient provides adequate documentation of:
 - Good-faith efforts to seek and inability to obtain firm and satisfactory commitment by any US producer to deliver a sufficient quantity of the good in a timely manner as specified in construction documents for project
 - Firm and satisfactory commitment by a non-US producer for timely delivery of a sufficient quantity

Availability Waivers, continued

- A large number of manufactured goods are needed for any ARRA funded SRF project
- These goods differ greatly in the:
 - Extent to which they are US-manufactured, and
 - Presence or absence of competition as among US producers
- ARRA requirements
 - “Contract or construction” provision makes timing crucial
 - To complete construction expeditiously to create economic stimulus (Sec. 1602)
 - These requirements properly enable assistance recipients to demand timely delivery, as essential feature of “availability”

**Be alert for
attempts to game
the Buy American
requirements!**

Documentation

- The April 28 guidance memo suggested that assistance recipients require certification from contractors to demonstrate Buy American compliance
- Fraud and abuse will be investigated by the Office of Inspector General (OIG)
- Communicate any concerns in this regard to: www.epa.gov/oig/hotline/how2file.htm

Role of OIG

- The OIG has a prominent role under the Act, which includes education, training, outreach, audit, evaluation and investigative activities
- Section 1515 of ARRA allows the OIG:
 - (1) To examine any records of the contractor or grantee, any of its subcontractors, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant
 - (2) To interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions

For More Information

- www.epa.gov/recovery/
- www.epa.gov/safewater/dwsrf/
- www.epa.gov/owm/cwfinance/cwsrf/index.htm
- www.epa.gov/water/eparecovery/docs/04-29-2009_BA_waiver_process_final.pdf
- www.epa.gov/oig/hotline/how2file.htm

ARRA Davis-Bacon Compliance

South Carolina SRF Workshop

June 24, 2009

Davis Bacon Applicability

- *ARRA requires Davis Bacon wage rates be applied to two types of employees: mechanics and laborers*
- *DOL issues wage determinations based on locality*

ARRA Davis-Bacon Compliance

- *Davis-Bacon is a condition of the contract and the contractor's payment may be withheld for failure to comply.*
 - *This requirement is not optional*
- *The wage decision must be posted at the job site.*
- *The Davis Bacon Act poster (WH-1321) must be posted at the job site.*

Davis-Bacon Compliance

- *Contractor and subcontractor employees must be:*
 - **Certified payrolls** – Utilize Form WH-347 (updated 12/2008)
 - OMB No: 1215-0149 - This form has been made available for the convenience of contractors and subcontractors to submit weekly.
- *Certified Payrolls must be **submitted weekly***
- *Labor Interviews will be conducted throughout the project period.*
 - *see Identification from the employees being interviewed*
 - *call people off the job for a short period.*

Davis-Bacon Compliance

- *The first certified payroll must be:*
 - *submitted as #1 and start when the contractor and any subcontractors mobilize.*
 - *If there are weeks where no work is done, the certified payroll **MUST** be submitted as NO WORK and signed in blue ink.*
 - *The final certified payroll must be marked **FINAL** in blue ink.*

Q&A



American Recovery and Reinvestment Act Fraud Prevention

*...American's Protecting
America's Future*

South Carolina SRF Workshop
June 24, 2009



What is the intent of the American Recovery and Reinvestment Act?

The purposes of the American Recovery and Reinvestment Act are to:

- preserve and create jobs and promote economic recovery.
- assist those most impacted by the recession.
- provide investments needed to increase economic efficiency by spurring technological advances in science and health.
- invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.
- stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.



Why are you here?

Because we rely on you!!!

Preventing and detecting fraud is a team effort.

- Project officers
- Engineers/Inspectors
- Accountants
- Law Enforcement Agencies



What is the EPA Office of Inspector General?

The Inspector General Act of 1978, as amended, created the Office of Inspector's General in Federal Agencies to conduct audits and investigations to prevent and detect fraud, waste, and abuse and promote economy and efficiency in government programs.

The EPA OIG provides audit, evaluation, and investigative services with the mission and goals of improving environmental quality and human health.



How does the OIG Contribute to Good Government?

The IG's work is conducted in accordance with applicable Federal laws, and EPA rules, regulations, policies, and procedures.

They educate EPA officials and other federal, state, local, and tribal leaders receiving EPA funding how to detect and report fraud, waste, and abuse.

The IG maintains a Hotline for the public to report fraud, waste, and abuse.



What is the role of the OIG under ARRA?

The OIG has a prominent role under the Act, which includes education, training, outreach, audit, evaluation and investigative activities.

Sec. 1515. of the Act allows the OIG:

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.



How does OIG accomplish its Mission?

The OIG has access to EPA files and records, as well as those of State, local, tribal and non-profit agencies, contractors and sub-contractors, grantees and sub-grantees, that administer or spend EPA funds.

EPA Criminal Investigators have the authority to:

- Administer and Take Oaths
- Serve Subpoenas
- Make Arrests
- Execute Search and Seizure Warrants



ARRA Reporting Requirements

Recipients of ARRA funding must begin reporting on the use of funds on July 15, 2009.

10 days after each quarter ends, you must report:

- The total amount of recovery funds received.
- The amount funds expended or obligated for all projects or activities for which recovery funds were expended, including:
 - Name of the project or activity.
 - Description of the project or activity.
 - Completion status of the project or activity.



More reporting requirements

- An estimate of the number of jobs created and the number of jobs retained by the project.
- The purpose, cost, and reason for funding infrastructure investments through the SRF.
- Detailed information on contracts and subcontracts.

For more detail about your reporting requirements, please visit:


www.recovery.gov



Why Monitor My Project?

As a recipient of ARRA funds, you must monitor your project because:

- You are responsible for completing the project according to the approved plans and specifications.
- It helps protect the Federal, state and local investment.
- The responsibility to monitor the project begins when the loan or grant is made.
- Monitoring reduces the opportunity for fraud, waste and abuse.
- Federal law requires an audit if you spend over \$500,000 of Federal funds annually...**let us walk you through some of the audit requirements.**



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. One of those requirements is “Subrecipient Monitoring.”
- Here’s a website to learn more about the audit and compliance requirements of the Single Audit Act:

www.whitehouse.gov/omb/circulars/a133

Let’s talk about subrecipient monitoring...



How Do I Monitor My Project?

Monitoring involves **management, financial, and technical** staff working together to:

- Prepare and review contract documents to meet project requirements and specifications.
- Perform Due diligence--know something about your contractors (engineers, construction contractors, consultants and others) that are involved in your project:
 - Financial background
 - Past performance
 - Experience and expertise



How Do I Monitor My Project?

Management involvement:

- Coordinating and overseeing all aspects of the project:
 - Selecting the right people for the right jobs.
 - Overseeing the procurement process.
 - Developing and maintaining good working relationships with the local community, contractors, and Federal and state officials.
- Monitoring should start the day the grant or loan is awarded and includes:
 - Background checks on contractors and consultants.
 - Being involved in the project from start to finish.
- Don't be afraid to question your contractors--it's your project and your money.



How Do I Monitor My Project?

Financial monitoring:

- Involves reviewing billings and invoices from contractors, subcontractors, engineers, and suppliers
- Things to look for:
 - **Incorrect labor rates**--are you paying for a senior engineer, but getting the services of someone who is less qualified?
 - **Charges for labor**--are the number of labor hours reasonable for the number of people working on the project?
 - **Charges for materials**--are you paying too much or paying for materials that don't meet contract specifications?
 - **Charges for equipment**--were you billed for unused or unnecessary equipment?
 - **Documentation**--are the costs documented? Are any documents missing or altered? Are receipts, invoices, and statements reasonable?



How Do I Monitor My Project?

Technical monitoring:

- Involves conducting on-site inspections, reviewing progress billings from contractors and engineers, and coordinating construction results with financial data and payment requests
- Things to look for:
 - **On-site inspections**--is construction in accordance with plans and specifications? Are contractors using appropriate construction methods? Are change orders appropriate?
 - **Contractor billings**--are billings in line with project completion and milestones? Do materials meet project specifications? Do contractors and subcontractors comply with the Davis Bacon and Buy American Acts, as required by the ARRA?
 - **Coordination with financial staff**--are you working with the financial staff to ensure contractors are paid appropriately?



How does the State monitor my project?

- During-the-Award Monitoring
 - Review financial and performance reports.
 - Audit reports, reimbursement requests, construction reports, engineering reports
 - Site visits to review financial and program records and observe operations
 - Inspections, reviews, procedures
 - Regular Contact with borrowers and inquiries concerning project activities



Can monitoring prevent and detect fraud, waste and abuse?

Now that you know what Monitoring involves, what if you suspect a problem?

- Is it an error?
- Or do you suspect fraud, waste or abuse?



Can monitoring prevent and detect fraud, waste and abuse?

While an incorrect labor or equipment charge or misstated invoice might be an indicator of fraud, they could also be the result of weak internal controls or poor business practices.

Weak internal controls are also opportunities for fraud.



So, What is Fraud?

Simply put, fraud is:

Lying, cheating, and stealing in the performance of a government grant, contract or loan.

There is a fine line between *Fraud* and a *Mistake*...

That line is **Intent!**



What are the Elements of Fraud?

- A Representation
- About a Material Point
- Which is False and Intentional
- Which is Acted Upon
- To the Victim's Damage



What is a Representation?

A ***Representation*** in the SRF is a claim from the community to the state for reimbursement of project costs incurred. It is supported by billings and invoices from the prime contractor and subcontractors, engineering firms, consultants and other parties involved in the project.



What is a Material Point?

- A ***Material Point*** is a specific issue to which evidence is presented in determining guilt regarding an alleged wrongdoing.
- A contractor's claim is ***Material*** because of a contractual relationship with the community and the ability to make claims for reimbursement for costs incurred using SRF funds.



What does False and Intentional Mean?

- A claim may be ***False*** if it does not represent the contractors actual incurred costs.
- It is ***Intentional*** if the contractor knowingly claims costs which are not actually incurred.

Remember...the line between a mistake and
fraud is

intent!



How is it Acted Upon?

- A False Claim is ***Acted Upon*** when the contractor submits a reimbursement request to the community.
- The community relies on the claim to be true and accurate, and makes payment based on the representation.



Who are the Victims of SRF Fraud?

- As taxpayers, we are all victims of SRF fraud
- Here's why:
 - When fraud occurs, the Community pays for something it did not receive.
 - The contractor received more money than was entitled.
 - The SRF paid the Community for those fraudulent costs.



Now that I know what fraud is, how can it affect my project?

The most common frauds in the SRF involves construction and engineering contracts, and here are a few types of frauds:

False Statements and Claims

False billings/Cost mischarging

Conflicts of Interest

Product Substitution

Bribery and Kickbacks

Bidrigging--Conspiracy or Collusion



What are False Claims and Statements?

A False Claim is **knowingly** presenting a claim for payment that is not true or accurate.

It also includes **knowingly** making or using false records or statements to obtain payment by the government.

The most common cases involve situations when contractor's overcharge for goods or services.

However, knowingly **failing to test** a product (as required by government specifications) or using **substandard** (not meeting specifications) **or defective products** are also false claims or statements.

For example, think of the thousands of different pumps, valves, pipes, electrical components, and other materials in a treatment plant--then think of what could happen if those parts are substandard or defective.



What is Cost mischarging?

Cost mischarging is including the costs for one project on a different project (or both).

Examples are:

- Charging for employees not working on the project.
- Ghost Employees (employees who don't really exist).
- Charging for employee rates not commensurate with their expertise
- Billing an employee's time to multiple contracts.

Can an employee really work 38 hours per day on a project...?



What are Conflicts of Interest?

- A **Conflict of Interest** occurs when an individual or organization has an interest that might compromise their reliability.
- **Conflicts of Interest** may occur when an individual or corporation is in a position to exploit a professional or official capacity in their personal or corporate benefit.
- **Conflicts of Interest** exist even if no improper act results from it, and can create an appearance of impropriety that can undermine confidence in the conflicted individual or organization.

For example, a purchasing manager of an organization has a duty to perform their work with loyalty to that employer, thus choosing sellers who offer the best products at the lowest prices, but might be tempted to have the organization buy, from the manager's sibling, products that are not as good or as cheap.



Here's a few more examples

- A member of the City Council owns a building supply company providing materials to a contractor working on an SRF construction project.
- Purchasing materials or services from a firm where a relative is the controlling party.
- Gifts from business associates to influence decision making. Gifts may include cash or non-tangible things such as airline tickets, vacations, golf outings, etc.



How do I deal with a Conflict of Interest?

○ **Avoidance**

- The best way to handle conflicts of interests is to avoid them entirely.

○ **Disclosure**

- Disclose any interests that could compromise your integrity and give the appearance of a conflict of interest.

○ **Recusal**

- Those with a conflict of interest should not make decisions where such a conflict exists. The need for recusal varies depending upon the circumstance.

For example, the board of a government agency is considering hiring a consulting firm, and a partner of one of the firms under consideration is a close relative of a board member. That board member should not vote on which firm is to be selected, and to minimize any conflict, the board member should not participate in any way.



What is Product Substitution?

Product substitution is supplying goods or services that do not meet contract specifications.

For example, a contractor:

- *Delivers goods which do not conform to contract requirements without informing the government.*
- *Uses foreign made products where domestic products are required (**Buy American Act**)*
- *Uses products that do not meet specifications.*
 - *Thinner-wall pipe than specified.*
 - *Roofing: 20 year vs. 40 year.*
 - *Electrical: Substandard pumps, panels, switches.*

Effects:

- *Paying for something not received (pay for a Cadillac but get a Chevy).*
- *Increased maintenance costs (shorter useful life-20 year roof vs. 40 year).*
- *Health, safety, environmental (sewage pump failure causes overflow).*



What are Bribery and Kickbacks?

Bribery is offering, giving, receiving, or soliciting something of value to influence the actions of an official as part of their public or legal duty. It alters the behavior or decisions of the person receiving the bribe.

Example--a Contractor approaches the Public Works Director about an upcoming project, and offers him money in exchange for an advance copy of the bid package. The Director agrees, resulting in an unfair advantage to the contractor.

Kickback is the result of when a government employee receives or solicits something of value to influence the outcome.

Example-- the Public Works director approaches a contractor and promises to award the contract in exchange for money or something else of value.



What is Bidrigging?

Bid rigging is collusion between two or more competitors. It is a form of price fixing. It typically involves an agreement in which one party of a group of bidders will be designated to win the government bid.

These frauds generally involve:

Subcontract bid-rigging--the conspirators agree not to submit bids, or submit inflated bids, in return for being awarded subcontracts from the successful bidder.

Bid suppression--some conspirators agree not to bid so that another conspirator can win the contract.

Complementary bidding--also called cover bidding--submitting a bid knowing it is too high or has unacceptable conditions.

Bid rotation--bidders "take turns" being the successful bidder.



Do these frauds occur in the SRF?

False billings and altered invoices:

The project was funded by the SRF, requiring the loan to be repaid by the community over 20 years. The prime contractor was investigated for altering the billings of several subcontractors for labor and materials costs. The prime contractor then billed the community for the inflated costs, resulting in the community paying an additional \$200,000 because of the false invoices and billings.



Do these frauds occur in the SRF?

Collusion and Conspiracy:

A regional water board received an SRF loan for a sewer project. The Board hired an engineering firm to manage the project, and turned control over to the engineer.

The project engineer advised the community to hire a specific contractor, even though the contractor had filed for bankruptcy and had a poor work history (The community did not do a background check on the contractor). The contractor abandoned the project before completing the work, resulting in over \$500,000 in SRF and community funds expended for work that was not performed.



Case Example


- \$10 million project--Engineer told County to hire contractor who was \$3 million under next lowest bid
- No involvement by subrecipient-let engineer and contractor do project
- No oversight by state
- Problems
 - Incomplete work
 - Poor construction-102 of 116 manholes not installed correctly
 - Improper slope and grade of collection system
 - Connected 16" pipe with duct tape
 - Product substitution



What are Fraud Indicators?

Fraud indicators may result from weak internal controls, and lead to opportunities to commit fraud. Here's some "Red Flags" to watch for:

- Circumvention of competitive bidding requirements (bribery/kickbacks/bidrigging).
- Contractor claims containing altered, missing or inadequate documentation (false claims).
- A contractor's inability to provide supporting documentation (product substitution, false statements).
- Questionable transactions or agreements with related parties (conflicts of interest).
- Contractor's timesheets that exceed reasonable periods of time in a workday (cost mischarging).



So you suspect fraud... what do you do next?

What you should do:

- discuss your concerns with the OIG.
- seek answers to your questions in the normal course of business.
- cooperate with the OIG and expect to be contacted and involved.

What you should not do:

- change your normal course of business unless otherwise directed.
- tip off subjects of actual or pending investigation.
- protect someone who may be committing fraud.



Making a Referral

- Anyone may call and discuss concerns.
- Referrals can be based on hearsay, something that does not seem right, and inconsistencies.
- Your concerns do not need to be a “sure thing” to be referred to OI. You do not have to “prove” your case.
- Many investigations begin from referrals from concerned citizens and state, local and contractor employees.



Key Documents

- Copy of Contracts
- Contractor billings and invoices
- Engineering records and project file reviews
- Original mailing envelopes/fax transmissions
- Reimbursement requests
- State claims to EPA
- Electronic Funds Transfers and Checks



Whistleblower protections

The ARRA prohibits reprisals against a “whistleblower” of state and local government and contractor employees:

An employee of a non-Federal entity receiving ARRA funds, may not be discharged, demoted, or discriminated against for disclosing any information the employee reasonably believes is evidence of:

- gross mismanagement or gross waste of ARRA funds;
- a substantial and specific danger to public health or safety related to the implementation of the ARRA funds;
- an abuse of authority related to the implementation of the funds; or
- a violation of law, rule, or regulation related to a contract, grant, or other award of ARRA funds.



How do I Get Help?

Contact the OIG

OIG Hotline

1-888-546-8740

www.epa.gov/oigearth.hotline.htm



OIG Regional Offices

Northeastern Resource
Center

Arlington, VA

(703) 347-8740

Eastern Resource Center

Atlanta GA

(404) 562-9857

Central Resource Center

Chicago IL

(312) 886-3108

Western Resource Center

San Francisco, CA

(415) 947-4507

Questions

