

**GUIDANCE FOR MODIFICATIONS
AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)**

This guidance is for contracting officers who are obligating ARRA funds on existing contracts.

1. All contracts obligating ARRA funds shall include the applicable contract language referenced in Flash 2009-28 if this language has not already been added to the subject instrument. The modification incorporating the ARRA unique terms and conditions must be added by a bilateral modification to the contract.
2. ARRA funding has unique tracking and reporting requirements. The Recovery Act funds must remain segregable from obligation through costing and disbursement. Recovery Act funds must be disbursed by September 30, 2015. Contracting Officers should so notify their impacted contractors.
3. Contracting Officers should emphasize to contractors that the approved Small Business Subcontracting Plans apply to all ARRA funded work. If adding \$550,000 or more the Contracting Officer shall request a revised Plan and goals.
4. If the prime contractor is subcontracting work funded by the Recovery Act the Contracting Officer should inform the prime of our preference for competitive fixed price subcontracts where possible and document; by letter to the prime or by a Memorandum for the Record.
5. Any change orders issued for work funded by ARRA should be by modification; letter authorizations should be rare and only done in response to unusual circumstances. If authorization is by letter the Contracting Officer must document by memorandum their justification.
6. The Contracting Officer will document any change order issued; in particular addressing the rationale for determining the work to be within the scope of the subject contract. The Contracting Officer is advised to consult with their Counsel on potential cardinal changes.
7. If not issuing a bilateral supplementary agreement all change orders shall have a not-to-exceed ceiling. When issuing a single modification with multiple changes the Contracting Officer should consider if a single not-to-exceed value should be used or individual values associated with each of the changes.
8. Each undefinitized change order modification shall contain a definitization schedule. The Contracting Officer is authorized to establish the not-to-exceed ceiling value(s) at the lesser of 50% of the independent government cost estimate for the subject action or funding for six (6) months of contractor performance.

- i. In summary, a modification for an undefinitized change order shall contain the following:
 1. Dates for submission of the contractor's price proposal including required cost or pricing data.
 2. A date for the start of negotiations.
 3. A target date for definitization, which shall be the earliest practicable date for definitization. (The negotiation schedule should provide for definitization of the contract within 180 days after the date of the un-priced change order/ modification or before completion of 40 percent of the work to be performed, which ever occurs first.
 4. A ceiling price limiting the Government's maximum liability shall be established. The ceiling price shall be the estimated amount necessary to cover the contractor's requirements for funds before definitization, but it shall not exceed 50 percent of the estimated cost of the change order/modification. The ceiling price should be separately identified in the un-priced change order/modification from the pricing structure of the basic contract.
 5. Direction to provide change order accounting in accordance with the FAR clause 52.243-6, Change Order Accounting, for changes expected to exceed \$100,000.
 - ii. If the contract does not contain the FAR clause 52.243-6, Change Order Accounting, it should be added to the contract.
 - iii. All un-priced change orders/modifications that are estimated to exceed the HCA's delegated procurement authority require the advanced review and approval or waiver of MA-621 in accordance with established procedures. Separate review and approval or waiver of the definitization of any un-priced change orders/modifications are also required.
9. When requesting proposals from the contractor the Contracting Officer should stress the need for cost, performance, and schedule realism.
10. For existing Management and Operating (M & O) contracts, the following guidelines should be followed:
- a. Each modification that obligates ARRA funds should include the specific scope of work or work authorization that is to be associated with the ARRA or identify the work authorization that has the ARRA scope in it.
 - b. A separate work authorization(s) should be issued for any work funded by ARRA.

- c. Each work authorization associated with the obligation of ARRA funds should identify the specific work scope that the ARRA funds will be used for and that the contract clauses in the contract per Flash 2009-28.
- d. The work authorization should include the estimated cost of the work, the work schedule, and the metrics that will be used to measure successful performance of the work.
- e. The modification or work authorization must specify deliverables and schedule or milestone requirements.
- f. The modification or work authorization must specify performance outcomes and measures that will be used to assess performance of the work. These performance outcomes and measures may subsequently be incorporated into fee incentives, through the Performance Evaluation Management Plan (PEMP), Award Fee Plan, or other similar document.

11. For non- M&O contracts, the following guidelines should be followed:

- a. There must be a new CLIN added for the ARRA work if the contract uses a CLIN structure. If the contract does not use a CLIN structure, the work must be described so it is separate and distinctly identifiable.
- b. No fee shall be paid to the contractor for work funded by the Recovery Act, including provisional, prior to the definitization of the change order.
- c. Specify the delivery schedule or milestone requirements in Section C or J to assess performance of the work funded by the Recovery Act. These performance outcomes and measures may subsequently be incorporated into fee incentives, through the Performance Evaluation Management Plan (PEMP), Award Fee Plan, or other similar document.
- d. Section C, or a Section J attachment, must specify the deliverables associated with the Recovery Act Work.
- e. As applicable, Section F must be modified to reflect a revised period of performance.
- f. The contractor may invoice costs for both Recovery Act work and other work in the same invoice. However, the contractor shall separately identify costs in its invoices that pertain to the work funded by the Recovery Act. Recovery Act costs shall also be segregated in the invoice so as to identify those costs associated with each applicable appropriation.
- g. For incremental funding actions that are being used to meet the contractual funding profile, the modification should include the specific scope of work that is to be associated with the ARRA funds including the work schedule, and the metrics that will be used to measure successful performance of the work.
- h. For actions that are being used to accelerate work that is already priced in the contract, the ARRA modification should include the specific scope of work that is to be accelerated including the new work schedule and the metrics that will be used to measure successful performance of the work.
- i. For modifications that are adding supplemental work within the scope of the contract that was not priced when the contract was awarded or added

by a previously priced and definitized modification, the modification should include the specific scope of work that is to be added including the work schedule and the metrics that will be used to measure successful performance of the work.

- j. If the ARRA funds involve the exercise of a priced contract option, the modification should exercise the option in accordance with FAR 17.2, identify that the option is being funded by ARRA funds, and provide the work schedule and the metrics that will be used to measure successful performance of the work. However, if the ARRA funds are being used to accelerate part of work contained in an un-exercised but priced contract option, the modification should include the specific scope of work that is to be associated with the ARRA funds including the work schedule, and the metrics that will be used to measure successful performance of the work. The modification should include the specific work that is to be added including the work schedule. This case needs to identify whether this work is being deleted from the option and moved into the base period of performance effort or if the contracting officer is only exercising part of an option (note this would have to be a bilateral agreement). In this case the estimated cost and fee of the base period and the option would have to be adjusted appropriately.
- k. If ARRA funds will be used to perform work beyond the scope of the contract and a change order is not appropriate the Contracting Officer must insure that FAR Part 6 requirements are met, as applicable, before issuing the contract or modification.
- l. The contracting officer may issue more than one modification to obligate ARRA funds. For example, the contracting officer may decide that it is expeditious to issue one modification for ARRA funding and to issue a second modification that falls after FAR Part 6 requirements have been met.
- m. Contracting officers should follow FAR, DEAR, and the guidance issued by the Director, Office of Contract Management, dated April 1, 2008, titled "Contract Change Order Administration of Department of Energy Prime Contracts" in issuing, pricing, and negotiating all change orders.
- n. For CPAF contracts, field offices may want to consider structuring PBIs for ARRA funded work.