



# American Recovery and Reinvestment Act of 2009

## Are you prepared for the Risk?

### Addressing Increased Performance Risk, Accountability and Compliance Rules for Construction Contractors and Architect/Engineering (A/E) Firms Doing Business with the Federal Government

With the passing of the American Recovery and Reinvestment Act of 2009 (the Recovery Act), billions of dollars have been directed to federal and state agencies to fund infrastructure projects throughout the United States. This funding comes at a time when major changes have been made to Government contracting regulations which have increased Governmental reliance on contractor compliance and ethics. This increased regulation and scrutiny makes it imperative that contractors have proper procedures and policies in place and are able to demonstrate their compliance with these new, as well as all, Government regulations when performing a contract that is Recovery Act funded. At Navigant Consulting, Inc., we have extensive experience in assisting companies that do business with the Federal Government. Our Government construction contract specialists have the experience and know-how to find practical, cost-effective and compliant solutions to the challenges present in this complex business and regulatory climate.

### The Recovery Act and You

The Recovery Act represents unprecedented federal spending totaling \$787 billion for federal and state agency programs and projects across the United States. The funding program includes over \$150 billion in potential funding for infrastructure projects (highways, roadways, bridges, and transit). The Recovery Act represents multi-billions of dollars in cash flow to federal and state agencies, such as State Departments of Transportation, U.S. Army Corps of Engineers, Federal Highway Administration, Transportation Security Administration, General Services Administration and Federal Emergency Management Agency. As the level of federal stimulus funding is unprecedented, the Administration has mandated that these projects must adhere to a higher level of transparency, accountability and compliance monitoring. As a result, contractors benefiting from Recovery Act funds must also comply with the increased transparency, accountability and compliance requirements.



What does this mean for the construction industry? As one of the largest purchasers of construction and A/E services in the world, selling to the Federal Government has always been a risky, yet potentially lucrative business. Participating in the Government procurement process has always required knowledge of, and compliance with, complex cost accounting and pricing regulation. Contractors looking to benefit from the Recovery Act will find that these requirements have been significantly expanded and Government and public scrutiny of contractors magnified. Under such demanding circumstances, contractors seeking work on Recovery Act projects will realize increased compliance and performance risks.

In addition, during the past several years, the federal contract environment has seen major new regulations increase the requirement for contractor's ethics programs, expand federal False Claims Act requirements, heighten awareness of conflict of interest relationships, mandate disclosure of probable offenses and demand more transparency and accountability. A Government Accountability Office (GAO) report critical of the Defense Contract Audit Agency's (DCAA) auditing standards has put even more pressure on contractors to have compliant internal control systems. Now, even a single defect in a contractor's internal control system can render the entire system "inadequate." Additionally, contractors are now required to have compliance and ethics programs in place if they receive a contract greater than \$5 million with a performance period greater than 120 days. This comes with the requirement to affirmatively report instances of certain crimes and civil frauds when the contractor has "credible evidence." These requirements bring a high degree of additional performance risks to the contractor. Noncompliance can result

in significant penalties including: withholdings of amounts due (in part or in whole), civil fines, restrictions on bidding on other work, contract rescission, criminal penalties and fraud allegations, reputational damage and, at worse, suspension or debarment.

The Recovery Act puts a new focus on Government contracting compliance. Beyond adding increased oversight and compliance requirements, it has expanded Government access to construction companies' records and employees, increased flow down requirements to subcontractors, enhanced whistleblower protection, mandated compliance with Buy American provisions and expanded Davis-Bacon wage requirements.

If you or your client are proposing on projects funded by the Recovery Act, or are expanding into the federal contracting marketplace, Navigant Consulting professionals can assist in bridging the compliance gap. Our professionals are experienced in the rules and regulations of the Government contract environment. Using a disciplined methodology, our professionals assist construction contractors, A/E firms and their counsel in evaluating their internal control systems and compliance risk for performing Federal Government contracts. Our analysis assists clients in identifying gaps in their control environment, while providing them with a proactive plan to manage their risk in performance of Recovery Act funded contracts or any federally funded contract. Our specialists are equally experienced in developing integrated schedules to not only enhance your ability to monitor performance, but to also ensure compliance with the expanded contract reporting requirements found in the Recovery Act. This experience, combined with our professionals who have years of project management expertise, provides our clients with the ability to successfully perform in today's Government contract environment.

## **Our Services Assist Clients in the Following Areas:**

### **The Recovery Act: Additional Requirements**

- » Stricter record keeping and reporting
- » Increased data transparency and access
- » Job reporting and registration
- » Davis Bacon Act compliance
- » Buy American Provision compliance
- » National Environmental Policy Act (NEPA) compliance

### **Government-Regulated Procurement Services**

- » Perform process reviews of FAR purchasing system requirements, policies and procedures
- » Conduct gap analysis between practices and requirements
- » Implement compliant cost accounting and cost/schedule systems
- » Consult on management and internal controls to ensure compliance
- » Assist with contract administration, prime contract and subcontractual arrangements, and control systems
- » Develop emergency procurement procedures
- » Confirm compliance with e-verify mandate
- » Confirm compliance with business ethics mandate

### **Consultation on Cost Allowability Matters**

- » Consult on compliance with applicable cost principles, including FAR & OMB Circular A-122
- » Prepare and review incurred cost submissions
- » Respond to audit reports

### **Consultation on Cost Accounting Standards**

- » Prepare and review disclosure statements
- » Assess CAS compliance
- » Evaluate cost accounting systems
- » Assess cost accounting changes and prepare cost impact statements

### **Risk Management and Compliance Reviews**

- » Create, review and monitor internal controls
- » Evaluate critical business processes, e.g.,
  - › Cost estimating and cost accumulation systems
  - › Material management and accounting systems
  - › Purchasing and billing systemscorporate governance

### **Other Services**

- » Proposal assistance
- » Consultation on Truth-in-Negotiations Act compliance
- » Special investigations
- » Expert testimony

**Contact »**

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**About Navigant Consulting**

Navigant Consulting, Inc. (NYSE: NCI) provides customized services and support to address critical business issues and enhance stakeholder value. With more than 1,900 consultants in offices throughout North America, Europe and Asia, we help clients respond to industry and market factors that create uncertainty and corporate exposure. The result is conflict resolution, optimized performance and effective risk mitigation for clients.



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