

ARRA Impact on Private Transportation Contractors
Robert E. Latham, Executive Vice President
Associated Pennsylvania Constructors
May 13, 2010

According to the American Institute of Architects, a weak economy and continued difficulties with construction financing, in 2009, slowed investment in nonresidential buildings by U.S. businesses, nonprofit institutions, and government agencies. Construction of buildings, which began to slow in the second half of 2008, moved into a downward spiral toward the end of the year. This industry saw no relief in 2009, but the decline will moderate somewhat as we move through 2010. The 2009 AIA Consensus Construction Forecast Panel projected a 16 percent decline in nonresidential construction activity in 2009, and an additional drop of almost 12 percent in 2010.

	2008 \$	Forecast	
		2009 Percent	2010 Change
Non-residential total			
Commercial		-15.8	-11.6
Industrial		-0.8	-28.4

AIA Consensus Construction Forecast

American Recovery Act stimulus program spending helped to cushion the downturn in the institutional sector, but will do little to help with commercial or industrial facilities. Funding allocations to the public works construction sector for activities such as streets and highways, bridges, water and sewer, and conservation projects are significant, but they are much more modest for buildings. Residential and nonresidential building stimulus projects are estimated to total as much as \$35 to \$40 billion over the next two years. For a \$400 billion a year sector, spending at this level will help, but unfortunately not much for the private side of the market.

In the Commonwealth, the impact of ARRA has been to hold together an industry that would be in serious shape without the influx of funds. As you can observe from the table below, ARRA provided a one-year spike in PennDOT's program even as other opportunities disappeared.

PennDOT Project Lettings CY – Central Office		
	<u>Dollars</u> (in thousands)	<u>No. of Contracts</u>
2005	\$1.419	708
2006	\$1.697	850
2007	\$2.025	749
2008	\$1.970	747
2009	\$2.724	1143
2010 (Projected)	\$1.800 (\$655 Million, 363 projects (thru 4/29/10 bid opening))	800 (estimated)
2011 (Projected)	\$1.500	(PennDOT has not released an official projection)

Going forward, jobs will be a constant theme. The construction industry faces an unemployment rate hovering around 25 percent and right now we are looking at a declining public market in the face of a stagnant commercial market. Certainly, additional funding for infrastructure is needed and crucial.

It is important to consider that employment levels in the construction industry is a “lagging economic indicator”. It is also seasonal. Therefore, future employment levels will reflect current market trends. So, we can see that with a decline in PennDOT's construction program and a stagnant private sector, employment prospects in the fall of 2010 and throughout 2011 will be grim.

Contractors required to submit duplicate employment reports - Below is guidance provided by FHWA to states regarding employment reporting requirements.

Monthly Employment Report (Form: FHWA-1589)

This form is a guide for the States in providing employment information on each Recovery Act project. Monthly employment information on each Recovery Act project is used by States for meeting the reporting requirements of Sections 1201 and 1512. In order for States to fulfill their reporting obligations, the States must collect and analyze certain employment data for each Recovery Act funded contract. The data requirement in Recovery Act extends beyond the number of workers at the work site and, therefore, FHWA has produced a form for guidance to the States. This data to be reported is identified below and will be used by the States in developing Form 1587, which is to be submitted to FHWA. Since States may not currently collect this data, the States should develop a new specification for each Recovery Act-funded contract in order to obtain this information from contractors and consultants. In doing so, the States should use the provided model form and require the reporting of this data from the prime contractor or consultant. The prime contractor or consultant shall complete a report for each month from the date of the Notice to Proceed until completion of the contract or September, 2012 whichever occurs sooner. This report is only required for contracts that use Recovery Act funds. States should require contractors and consultants to provide the required information for their own workforce as well as the workforce of all subcontractors that were active on their Recovery Act funded project(s) for the reporting month. It will be up to each State to determine when they obtain the necessary data from their contractors or consultants, keeping in mind that the summary form is due from the State to the FHWA Division no later than the 20th day of each month for the preceding month's data.

It is the State DOT's responsibility to report the number of jobs on projects managed by funding recipients, such as other state agencies or local governments. The State DOT must make arrangements with each Recovery Act funding recipient to assure each recipient reports the required data in a timely manner.

The States shall require the following data be provided by each contractor, consultant and funding recipient working on an Recovery Act project. The primary contractor or consultant for each project shall be responsible for reporting their firm as well as all sub-contractors data.

Employment data: The prime contractor or consultant will report the direct, on-the-project jobs for their workforce and the workforce of their sub-contractors active during the reporting month.

These jobs data include employees actively engaged in projects who work on the jobsite, in the project office, in the home office or telework from a home or other alternative office location. This also includes any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the Recovery Act funded project. This does not include material suppliers such as steel, culverts, guardrail, and tool suppliers. States should include in their reports all direct labor associated with the Recovery Act project such as design, construction, and inspection. The States reports should include their own project labor, including permanent, temporary, and contract project staff. States are asked not to include estimated indirect labor, such as material testing, material production or estimated macro-economic impacts. FHWA will be estimating all indirect labor based on the information provided in this form along with other FHWA data.

How ARRA Employment Reporting is Burdensome on Contractors

ARRA Report Should Have Been Coordinated with USDOL Wage and Hour Payroll Reports – Form WH-347

Contractors are required to submit reports to public owners such as PennDOT. In the case of PennDOT , contractors are required to submit weekly payroll reports Form WH-347, which has been made available for the convenience of contractors and subcontractors required by their Federal or Federally-aided construction-type contracts and subcontracts to submit weekly payrolls. Properly filled out, this form will satisfy the requirements of Regulations, Parts 3 and 5 (29 C.F.R., Subtitle A), as to payrolls submitted in connection with contracts subject to the Davis-Bacon and related Acts. These reports include: Employee’s name, work classifications, Hours worked daily, total hours, rate of pay, gross amount earned, and other payroll information.

Further, the Copeland Act (40 U.S.C. § 3145) requires contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) Regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project. This system has been in place for sometime and contractors have processes to ensure their compliance.

So, you can imagine the frustration when faced with a new form which is essentially asking for the same information for roughly the same time frame however, the information is demanded by the Department by,

- Calendar Month, not four week increments related to payroll period;.
- Received by the 5th of the months so, the Department has can turn it over to the FHWA by the 20th of the month.

There is still much confusion among contractors regarding requirements.

- Office personnel related to each ARRA project not necessarily working specifically on that project exclusively. (If an HR Officer handles a payroll for and entire company that includes an ARRA project, should their hours/minutes related to that project be reported? How?);
- What does a prime contractor do if a subcontractor is late with data? Terminate them? What if the subcontractor is a Disadvantaged Business Enterprise?

Contractors now may look forward to the arrival of auditors from the USDOT Office of Inspector General, State Auditor General's Office, and the Office of the Comptroller to determine whether the above was properly reported.

In summary, there are three key experiences the construction industry has encountered with ARRA.

- The one-year boost in the program created by ARRA was handled very well by PennDOT and was a needed lifeline to the industry;
- The anticipated drop in future PennDOT lettings will result in layoffs of workers hired to accomplish ARRA projects because the private market will not recover in time to fill the gap.
- Federal ARRA employment reporting requirements were needlessly burdensome as they could have been coordinated with USDOT Wage and Hour Reports.
