

**COLORADO PROCUREMENT GUIDANCE  
TO STATE AGENCIES REGARDING  
THE USE OF FUNDS RECEIVED  
UNDER THE AMERICAN RECOVERY AND  
REINVESTMENT ACT (ARRA)**



**PREPARED BY THE STATE PURCHASING OFFICE**

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## **A. GENERAL INFORMATION**

This guidance summarizes existing federal guidance and is being issued to assist state agencies when awarding contracts and grants, and making purchases using funds made available under the American Recovery and Reinvestment Act of 2009, Pub.L.111-5 (ARRA or the Act). Unless superseded by Federal guidance, agencies will follow existing procedures set forth in the Colorado Revised Statutes, the State Procurement Code and Rules, Executive Orders, and Directives of the State Purchasing Office (SPO). This Guidance may prove useful to local governmental entities and political subdivisions, however, such entities should also seek their own legal counsel in these matters.

The Act sets forth guidelines agencies must follow when using ARRA funds, some of which may vary from Colorado law. Two of these differences include payment of federal prevailing wage and domestic preference. Agencies must follow federal law and guidance regarding its application when State and federal laws conflict. This guidance will note these conflicts to enable agencies to make adjustments to their procurement procedures, when necessary, and to ensure compliance with the Act. Any questions about which law applies to a specific purchase should be directed to the SPO or your agency legal counsel.

All contracts and grants involving the use of ARRA funds must include certain provisions required by the Act in addition to the standard terms and conditions typically used by state agencies for contracts, grants, and other types of agreements involving the use of federal funds.

Our task will be to administer contracts that include the reporting tools, monitoring procedures, and accountability requirements that will help prevent fraud, waste, and abuse of these funds.

Agencies should put in place the internal controls that will support the requirements of ensuring that ARRA funds are spent properly, efficiently, and effectively, and are meeting the intended goal. This will require the oversight of contracts by an adequate number of trained purchasing and grant personnel. In light of the Act's mandate for high levels of accountability and transparency, special attention should be given to maintaining strong internal controls over ARRA program funds. The high risk associated with the award and expenditure of ARRA program funds merits increased oversight by State agencies.

Much of the guidance provided herein comes from the Federal Office of Management and Budget guidance and requirements to Federal Agencies (M-09-15, April 3, 2009 and M-09-21, June 22, 2009) and the Federal Registry Vol. 74 Rules and Regulations (March 31, 2009, pages 14622-14651). We expect that Federal guidance and requirements provided to federal agencies will trickle down to first tier recipients of the ARRA funds. We encourage State agencies to become familiar with the details of these requirements.

This guidance is presented in five sections:

- A. General Information
- B. Goals
- C. Planning Principles
- D. Evaluating and Awarding Contracts and Grants
- E. Supplemental Contract Elements Specific to ARRA

## **B. GOALS**

The goals of the Act include the following:

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

Agencies are to manage and expend ARRA funds so as to achieve these goals, including commencing expenditures and activities as quickly as possible, consistent with prudent management. Contract planning, evaluation, and award must align with these goals.

Colorado has been selected as one of sixteen core states which will be monitored by the General Accounting Office (GAO) over the next three years to provide an analysis of the use of funds under the ARRA.

## **C. PLANNING PRINCIPLES**

Agencies that award contracts and competitive grants involving ARRA funds should plan carefully in order to:

1. Mitigate vendor's schedule, cost, and performance risk;
2. Define contract and grant requirements that deliver meaningful and measurable outcomes consistent with agency plans and the goals of the Act;
3. Obtain maximum competition;
4. Explore opportunities for small businesses to compete for agency contracts or grants and to participate as subcontractors and subgrantees;
5. Find appropriate opportunities for contractors employing people who are blind or severely disabled;
6. Expeditiously award contracts and grants;
7. Apply sufficient and adequately trained workforce to responsibly plan, evaluate, award, and monitor contracts and grants;
8. Ensure an adequate number of qualified government personnel are available to perform these functions during the acquisition life-cycle;
9. Provide appropriate oversight at critical decision points.
10. Use and require sub-recipients of ARRA funds to use the funds in a manner that maximizes job creation and economic growth: and
11. Assure that all sub-recipients of ARRA funds can report essential information as may be required under the ARRA.

## **D. EVALUATING and AWARDING CONTRACTS and GRANTS**

ARRA funding requires specific considerations in evaluating and awarding contracts. Agencies are required to incorporate all of the following considerations into their evaluation and award processes for contracts and grants. Please note that there may be additional requirements specific to certain federal funding streams, and agencies must consult specific ARRA grant requirements before applying principles and procedures.

### **1. Prohibited Use of ARRA Funds**

In determining competitive grants, agencies should note that the following projects are specifically prohibited under ARRA Section 1604: casino or other gambling establishments, aquariums, zoos, golf courses, or swimming pools. Project applications for all or part of one of these categories must be denied.

### **2. Availability of Funding**

Programs supported with temporary federal funds made available by the ARRA will not be continued with state financed appropriations once the temporary federal funds are expended.

### **3. Use of Competition**

According to the federal planning principles for awarding contracts, agencies are required, to the maximum extent possible, to use competitive procedures to award funds while also making awards expeditiously. While these two principles may often conflict, they are not mutually exclusive. Agencies are expected to follow existing procedures when making a non-competitive procurement using ARRA funds. Non-competitive procurements (e.g. sole source or brand specific) are not encouraged as such purchases may not maximize the benefit of federal funding. The April 3, 2009 OMB Guidance on ARRA referenced the President's Memorandum of March 4, 2009 on Government Contracting, which stated that "...agencies shall not engage in noncompetitive contracts except in those circumstances where their use can be fully justified and where appropriate safeguards are in place to protect the taxpayer" and that procurement practices "should promote competition to the maximum extent possible." Therefore, in those circumstances where an agency determines that it must use a non-competitive contract, the agency must fully justify this action and provide evidence in the contract file that appropriate action has been taken to protect the taxpayer. Remember, the benefits of competition are well established. Competition saves money for the taxpayer, improves contractor performance, curbs fraud, and promotes accountability for results.

It is understood that time is of the essence in awarding ARRA contracts and grants. Accordingly, the SPO has created expedited process timelines for projects using ARRA funds. Please refer to the process description, [Appendix 3](#), at the end of this guidance.

### **4. Publication of Non-Competitive procurements**

Non-competitive awards are required to be posted on the Colorado Recovery Act Website. Any non-competitive award must be approved consistent with Appendix 7, Non-Competitive Sourcing Justification, in addition to any other approvals. Refer to publication requirements

under ARRA in the Federal Register, March 31, 2009; [http://federalconstruction.phslegal.com/uploads/file/FR\\_14636\(1\).pdf](http://federalconstruction.phslegal.com/uploads/file/FR_14636(1).pdf) Please use the form, Appendix 7, at the end of this guidance.

## 5. Use of Small Purchase Discretionary Authority

Agencies should be judicious in using small purchase discretionary authority to make purchases with ARRA funds. The ARRA requirements outlined in this document apply to all projects/purchases using ARRA funds, regardless of dollar amounts. The **single quote delegation** will generally not apply as all ARRA procurements should be competitively bid.

If an agency still chooses to proceed with a discretionary purchase, the following guidelines must be observed:

- 1) All the ARRA requirements outlined in this document, including ‘Buy American’ must be complied with.
- 2) When utilizing discretionary authority, agencies must request a minimum of two quotes. Be sure to document the requests for quotes. If a minimum of two quotes are requested the purchase will be considered to have been made competitively.
- 3) Agencies shall include the ARRA required terms and conditions outlined later in this document in any small purchase encumbrance document created using ARRA funds. Please refer to Appendix 2, at the end of this guidance.

## 6. Waiver of Procurement Code Requirements

SB 09-297, to be codified at CRS §24-103-206.5, permits a waiver of one or more of the provisions of the Procurement Code to the extent the waiver is necessary to expedite the use of ARRA funds in a transparent and accountable manner or if strict adherence to the Code would substantially impede the State’s ability to expend the moneys in a manner or within the time required by the Act. A waiver may be granted upon the written approval of the State Attorney General and the State Purchasing Director following receipt of a waiver request that includes: the basis and scope of the waiver; the specific Code provision requested to be waived; and the alternative selection process to be used. If a waiver is granted, the agency must include the waiver in the agency’s contract file and ensure that it is posted on the Colorado Economic Recovery website.

## 7. Measurement and Alignment

Agencies must structure their bidding processes to result in meaningful and measurable outcomes that are consistent with agency plans, and promote the goals of the Act. The evaluation criteria for award must include those that bear on the measurement and likelihood of achieving these outcomes.

## 8. Fixed Price Contracts

Expenditure contracts are grouped into two broad categories: fixed-price contracts and cost-reimbursement contracts. The specific contract types range from firm-fixed-price, in which the contractor has full responsibility for the performance costs and resulting profit (or loss), to cost-

plus-fixed-fee, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive contracts, in which the contractor's responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in contract performance. (Please note that generally the OSC does not approve incentive contracts.)

To the maximum extent possible, contracts using ARRA funds shall be awarded as fixed-price contracts. The objective is to ensure reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance. Agencies must select a contract type that supports requirements for meaningful and measurable outcomes consistent with agency plans and the goals of the Act. Fixed-price contracts provide maximum incentive for the contractor to control costs and perform effectively and impose a minimum burden upon the State agency. These contracts expose the government to the least risk and, if necessary, can accommodate market fluctuations or other contingencies using economic price adjustments.

The SPO maintains a variety of State Price Agreements which are fixed-priced general distribution contracts that have been awarded through competitive selection. These contracts may be used to purchase supplies and services using ARRA funds. These contracts are listed on the State Procurement BIDS website at: <http://www.gssa.state.co.us/SPAagree>.

## **9. Construction of Public Buildings and Public Works – Domestic Preferences**

The ARRA requires agencies using ARRA funds for the construction, maintenance, or repair of a public building or public work to use iron, steel, and manufactured goods produced in the United States unless the requirement is waived by the appropriate federal agency.

## **10. Small and Disadvantaged Business Enterprises (M/WBE)**

The Act mandates that agencies provide opportunities for small businesses and disadvantaged business enterprises to the maximum extent practicable. Agencies must provide practicable opportunities for small and disadvantaged businesses to compete and participate as prime and subcontractors while ensuring that the agency procures supplies and services at fair market prices. When selecting a purchase for small and disadvantaged businesses, the agency should match the contract opportunity with the ability and capability of the small or disadvantaged business.

A small business in Colorado is defined as a business with fewer than 500 employees CRS § 24-4-102(18). Some businesses may have obtained a certification as a disadvantaged business enterprise which includes minority and women owned businesses however, the State only requires that the business self-certify as a small or minority or woman owned business. Additionally, except for CDOT's federally funded construction projects, goals for small and disadvantaged businesses are not set on State projects or other State acquisitions.

If you need assistance in this area please contact the ARRA Staff.

## **11. Employment of People with Disabilities**

The Act encourages the procurement of supplies and services provided by organizations employing people with work-limiting disabilities. Colorado's Set Aside Program for Persons with

Severe Disabilities (CRS § 24-103-801, et. seq.) has identified certain certified non-profit entities who may bid on certain State services solicitations listed on the State Set-Aside List.(See materials provided by the SPO to all Purchasing Directors on 4/10/09). See also CRS § 24-30-1203.

## **12. Contract Financing, and Structuring Contract Deliverables**

One of the ARRA planning principles is the mitigation of risks with respect to schedule, cost, and performance. State agencies normally do not consider a vendor's contract financing in fixed-price contracting. However, tight credit markets may make it difficult for some contractors to secure the cash flow they need to fund their operations. Agencies should give special attention to structuring contract deliverables to promote the economic stimulus goals (including expenditure timeframes) of the Act. This may include structuring contract line items to allow invoicing and payment based upon interim or partial deliverables, milestones, percent-of-completion, etc. Ensuring consideration of contractor cash flow during the planning phase will mitigate schedule and performance risks to the State and reduce costs to the contractor associated with financing in a tight credit market.

## **13. Contract Surveillance/Administration**

Contract surveillance and administration are critical components to the successful tracking of ARRA expenditures and monitoring of deliverables. In most cases, the agency will continue to fill the role of Contract Administrator for ARRA contracts. The individuals charged with contract compliance should be carefully chosen for their knowledge of the program, proximity to the deliverables and experience with the subject matter of the contract. These individuals will play an important role in the day-to-day surveillance and supervision of the contract including:

1. Approving payments,
2. Timely documenting vendor performance issues,
3. Monitoring contract compliance, cost, schedules and deliverables,
4. Completing a vendor rating and contract closeout,
5. Documenting the acceptance of deliverables and timely inspections,
6. Identifying and helping to remedy deficiencies related to contract performance.

State agencies should ensure that these persons have clear guidance as to their roles and responsibilities and that they receive adequate training before undertaking these roles.

## **14. Reporting**

In addition to current State reporting requirements, procurement officers will be required to report data and statistics on the following:

1. Competitively bid contracts;
2. Non-competitive contract awards;
3. Contract types & type of projects;
4. Contract award recipients; and
5. Amount of awards.

Section 1512 of the ARRA establishes detailed reporting requirements. Please see Federal Register, Volume 74, No. 61, April 21, 2009, pages 14824-14828 which can be found at <http://edocket.access.gpo.gov/2009/pdf/E9-7317.pdf>. Comments on these reporting requirements were due by May 1, 2009 and final reporting requirements should be published in late August or September 2009. OMB will distribute additional guidance on June 15, 2009 to address primary and subrecipient reporting.

Additional OMB guidance was issued on June 22, 2009 that clarified certain reporting requirements for recipient, subrecipients and vendors. This guidance can be found at [http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-21.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf) and Supplement 1: List of Programs Subject to ARRA Section 1512 Recipient Reporting at [http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-21-supp1.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21-supp1.pdf) and Supplement 2: Recipient Reporting Data Modelment 2, Recipient Reporting Data Model at [http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-21-supp2.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21-supp2.pdf)

See also Appendix 9, Office of the State Controller, Alert No. 185, General Information on ARRA Funds Tracking <http://www.colorado.gov/dpa/dfp/sco/Alerts/175-200/Alert185.pdf> and Alert No. 186, which interprets the OMB requirements <http://www.colorado.gov/dpa/dfp/sco/Alerts/175-200/Alert186.pdf>.

The data elements described in the April 21, 2009 Federal Register and required to be reported are separated into five sections described as follows:

General Section - Award and Award Recipient Information This section requires specific identifying information about the federal agency award and the recipient and information about the due dates of reports.

Section 1- Project/Activity Information This section requests brief general information about the project and the funds expended.

Section 2 – Additional Project/Activity This section specific descriptive information about the project and about jobs created or retained as a result of the ARRA award.

Section 3 – Subrecipient Information This section requests specific information about first-tier subcontract or subaward that is over \$25,000.

Section 4 – Subawardee or Subcontract Award Information – Aggregated This section requests information about subcontract/subawards that are less than \$25,000; or, any subcontracts/subawards awarded to an individual irrespective of the dollar amount; or subcontracts/subawards to an entity (other than an individual) which had gross income under \$300,000 in the previous fiscal year.

Some agencies have or may receive reporting requirements from the awarding federal agency. Any further guidance regarding the specific data required or the method for submission of the information will be provided as soon as it becomes available.

## **15. False Claims Act**

The State shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

## **16. Ethics**

It is critical that transparency and integrity is a cornerstone of this process. The risk of fraud and abuse grows when the distribution of millions of dollars is mixed with new programs, new requirements, and new staffing. To add more accountability, the SPO has provided a Conflicts of Interest and Non-Conflict Certification Form which may be used by any agency. The form can be found at [Appendix 5](#) at the end of this guidance.

## **E. SUPPLEMENTAL CONTRACT ELEMENTS SPECIFIC to ARRA**

Agencies should use standard contract terms and conditions where applicable. If ARRA requirements conflict with these standard terms and conditions, the agency must amend and supplement its terms to ensure compliance with the requirements of the Act. Agencies must ensure that contract terms and conditions comply with Sections 1511, 1512, 1515, 1553, 1604, 1605, 1606 and 1609 of the Act. All contracts, both new and existing, involving the use of ARRA funds must include provisions similar to those set forth in this Section. Specific language for use in your solicitation for these requirements can be found in [Appendix 2](#). Specific language for use in contracts for these requirements can be found in [Appendix 8](#), State of Colorado Supplemental Provisions for Contracts and Grants Using Funds Provided under the American Recovery and Reinvestment Act of 2009.

### **1. Buy American Requirement**

The Buy American provision in Section 1605 of Division A, Title XVI of the ARRA requires that all “iron, steel and manufactured goods used in the construction, alteration, maintenance or repair of a “public building or public work funded in whole or in part by funds made available under the ARRA be “produced in the United States,” unless this requirement is waived by the appropriate federal agency.

Iron and steel are “produced in the United States” if all of the manufacturing processes, except metallurgic processes involving refinement of steel additives, take place in the United States. However, iron or steel used as components or subcomponents of manufactured goods used in an ARRA-funded project do not have to be “produced in the United States.” Manufactured goods are “produced in the United States” if the manufacturing occurs in the United States (there is no requirement about the origin of the components or subcomponents of the manufactured goods).

As used in Section 1605, "steel" means any alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements. "Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been --- (1) processed into a specific form and shape; or (2) combined with other raw material into a "good" that has different properties than the properties of individual raw materials. "Public building or public work" means a public building or a public work of the federal government or any State or local governments, or any multi-State regional or interstate entities which has governmental functions.

The ARRA also provides that the Buy American requirement in Section 1605 "shall be applied in a manner consistent with United States obligations under international agreements." As a practical matter, this means that for state construction contracts valued at \$7,443,000 or more, iron, steel, and manufactured goods may be purchased if they are produced in the United States or produced in any of the following countries: Aruba, Austria, Belgium, Bulgaria, Chile, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, United Kingdom, Australia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Morocco, or Peru.

The "exception" to the Buy American requirement for obligations under international agreements does not extend to: dredging; the use of federal funds to states for mass transit and highway projects; or the purchase of construction grade steel, motor vehicles or coal. Consequently, if using ARRA funds in connection with these activities or for construction grade steel, motor vehicles or coal, only items produced in the United States may be procured.

The Buy American requirement may be waived by a federal agency in the following circumstances only: (1) application of the Buy American requirement would be inconsistent with the public interest; (2) iron, steel and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; (3) or inclusion of iron, steel or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

The request for a waiver must be submitted before funds are awarded by the federal agency or obligated by the State. The process for requesting a waiver, including information that must be provided to a federal agency in support of a request for waiver, is further described in Federal Register, Volume 77. Rules and Regulations; (April 23, 2009, pages 18450-18463) and on pages 139-141 of the federal Office of Management and Budget's April 3, 2009 guidance.

## **2. Whistleblower Protections**

Section 1553 of Title XV of Division A of the ARRA prohibits all non-federal recipients of ARRA funds, including the State of Colorado, and all contractors and grantees of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of (1) a gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a

violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds. The State and any employer receiving ARRA funds must post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

This term must be included in all subcontracts or sub-grants involving the use of funds made available under the ARRA.

### **3. Wage Requirements**

Pursuant to §1606 of the Act, all laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. The Secretary of Labor's determination regarding the prevailing wages applicable in Colorado is available at <http://www.gpo.gov/davisbacon/co.html>. (GEO should see DOE Guidance on Weatherization Contracts)

### **4. Publicizing Contract Actions**

All contract solicitations funded in whole or in part with ARRA funds will be posted on the State BIDS website.

### **5. Reporting Requirements**

Not later than ten calendar days after the end of each calendar quarter, the State must submit a report that contains, at a minimum, the information specified in Section 1512 of Division A, Title XV of the ARRA. It is imperative that all contracts involving the use of ARRA funds include requirements that the Vendor supply the State with the necessary information to submit these reports to the federal government in a timely manner. More detail will follow regarding the timing and submission of reports.

All contracts funded in whole or in part with ARRA funds shall contain a provision stating that the contractor/awardee's failure to provide complete, accurate, and timely reports shall constitute an "Event of Default". Upon the occurrence of an Event of Default, the state department or agency may terminate the contract upon 30 days prior written notice if the default remains uncured five calendar days following the last day of the calendar quarter, in addition to any other remedy available to the state department or agency in law or equity.

### **6. Inspection of Records**

Pursuant to §1515 of the Act, State agencies shall permit the United States Comptroller General or his representative or the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1998 or his or her representative (1) to examine any records that directly pertain to, and involve transactions relating to contracts funded in whole or in part with ARRA funds; and (2) to interview any officer or employee of the State or any of its subcontractors/subgrantees regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

## **7. Non-Discrimination**

State agencies shall comply with Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and other civil rights laws applicable to recipients of Federal financial assistance.

## **8. Publications**

State agencies and any contractor/awardee shall include the Colorado Recovery logo on all project signage and are encouraged, to the extent possible, to use the logo on any other publications in connection with the activities funded by the State through funds made available by the ARRA.

## **9. Conflicting Requirement**

If the ARRA requirements conflict with State of Colorado requirements, then the ARRA requirements will control.

## **10. Job Opportunity Posting Requirements**

The State agencies or any recipient shall post notice of job opportunities created in connection with activities funded in whole or in part with ARRA funds in the Connecting Colorado Job Site, <http://www.connectingcolorado.com/>.

## **11. Compliance with National Environmental Policy Act**

In accordance with ARRA § 1609, the state agencies, contractors/grantees and sub-contractors/sub-grantees must comply with any applicable environmental impact requirements of the National Environmental Policy Act of 1970, (NEPA).

## **12. Fraud Prevention**

By establishing an effective fraud prevention program, State agencies can provide reasonable assurance that ARRA funds benefit intended recipients. A well-designed fraud prevention program will minimize waste and abuse and should consist of preventive controls, detection, monitoring, investigations, and prosecutions. These controls prevent ineligible individuals and questionable firms from gaining access to government funds in the first place.

In February 2009, the National Procurement Fraud Task Force (NPFTF) published a white paper ([\*A Guide to Grant Oversight and Best Practices for Combating Grant Fraud\*](#), Washington, D.C.: February, 2009) that identified best practices and made recommendations for agencies to consider in preventing fraud, waste, and abuse in grants they administer. These recommendations included enhanced certifications, increased training, improved communications with grant recipients, increased information sharing concerning potential fraud, and rigorous oversight of how grant dollars are spent after they are awarded. We recommend that agency personnel access and read that report.

### 13. Risk Considerations

Risk identification and mitigation is a critical component to the contract process. For complete details of the 'Governance, Risk Management and Program Integrity' requirements, see the Federal Office of Management & Budget guidance letter of April 3, 2009 (M-09-15), Section 3. We encourage agency personnel to read the entire context of those sections to learn how to better identify and mitigate risks associated with grant funds. The following acquisition process questions should prove helpful.

1. Do new requests for proposals issued under the ARRA initiatives contain the necessary language to satisfy the requirements of the Act?
2. Are contracts awarded in a prompt, fair, and reasonable manner?
3. Do new contracts using ARRA funds have the specific terms required?
4. Are awarded contracts using ARRA funds transparent to the public? Are the public benefits of the funds used under these contracts reported clearly, accurately and in a timely manner?
5. Are ARRA funds used only for authorized purposes; and is the potential for fraud, waste, error, and abuse minimized and/or mitigated?
6. Do projects funded under the ARRA avoid unnecessary delays and cost overruns?
7. Are there any performance issues identified with regard to (potential) contractor? Have actions been taken to address the performance issues?

### 14. Grant and Cooperative Agreements

The ARRA will change the way the State of Colorado will reports federal grant information to the federal government. As a result, grant agreements must require the recipients (the State) and first-tier sub-recipients to:

1. Maintain current registrations in the Central Contractor Registration (CCR) database. <http://www.ccr.gov/>. Please note that a Dun & Bradstreet Data Universal Numbering System (DUNS) Number is required for such registration. In order to obtain a DUNS number, an entity may contact Dun & Bradstreet at (866) 705-5711 or go to: <http://fedgov.dnb.com/webform/displayHomePage.do>;
2. Report quarterly on project activity status in addition to any reporting requirements that currently apply to recipients of federal funds;
3. Follow Buy American guidelines (section 1605 of the ARRA);
4. Implement wage rate requirements (section 1606 of the ARRA).; and
5. Ensure proper accounting and reporting of ARRA expenditures in Single Audits.

Grant agreements must also include any terms needed to implement agency/program specific provisions and general provisions of the ARRA. For complete details of the "Grants and Cooperative Agreements" requirements, see the Federal Office of Management & Budget guidance letter of April 3, 2009 (M-09-15), Section 5 and Appendix 9.

<http://www.recovery.gov/sites/default/files/m09-15.pdf>

Please see Appendix 4 of this document for some excerpts pertinent to grant requirements.

## APPENDICES

### **Appendix 1 – Useful Internet Sites/Links**

Colorado Recovery site - <http://www.colorado.gov/recovery>

SPO intranet site - <http://www.colorado.gov/dpa/dfp/spo/index.htm>

Federal Recovery site - <http://www.recovery.gov/>

NASPO Recovery site - <http://www.naspo.org/content.cfm/id/stimulus>

Council of State Governments ARRA Web site - <http://www.staterecovery.org/>

The American Recovery and Reinvestment Act -  
<http://www.recovery.gov/?q=content/act>

OMB Guidance Memo (2/17/2009):  
[http://www.naspo.org/documents/initial\\_omb\\_guidance\\_090218.pdf](http://www.naspo.org/documents/initial_omb_guidance_090218.pdf)

OMB Guidance Memo (04/03/2009):  
[http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-15.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-15.pdf)

OMB Memo M-09-18: Payments to State Grantees for Administrative Costs of Recovery Act Activities (May 11, 2009).  
[http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-18.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-18.pdf)

Section 1512 Guidance from the Federal Register, April 1, 2009  
<http://www.smartpdf.com/register/2009/Apr/01/14824B.pdf>

Additional OMB guidance was issued on June 22, 2009 that clarified certain reporting requirements for recipient, subrecipients and vendors. This guidance can be found at  
[http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-21.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf)

Publication requirements under ARRA in the Federal Register, March 31, 2009;  
[http://federalconstruction.phslegal.com/uploads/file/FR\\_14636\(1\).pdf](http://federalconstruction.phslegal.com/uploads/file/FR_14636(1).pdf)

Estimates of Job Creation from the American Recovery and Reinvestment Act of 2009 from the Executive Office of the President, Council of Economic Advisers. (May 2009)  
[http://www.whitehouse.gov/assets/documents/Job-Years\\_Revised5-8.pdf](http://www.whitehouse.gov/assets/documents/Job-Years_Revised5-8.pdf).

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site ([www.gao.gov](http://www.gao.gov))

## **Appendix 2 – Solicitation Terms for ARRA Acquisitions**

### **Instructions:**

These clauses are to be used in all solicitations funded in whole or in part with Recovery Act funds.

### **Terms and Conditions for ARRA Funded Contracts**

#### **a.) Sub-Recipients Requirements**

Contractor shall include these terms, including this requirement, in any of its subcontracts or subgrants in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

#### **b.) Reporting & Registration Requirements (Section 1512)**

Division A, Title XV, Section 1512 of the ARRA outlines reporting requirements. Not later than ten calendar days after the end of each calendar quarter, the State must submit a report that, at a minimum, contains the information specified in Section 1512 of the ARRA. It is imperative all contracts involving the use of ARRA funds include requirements that the Contractor supply the State with the necessary information to provide these reports in a timely manner.

The Contractor's failure to provide complete, accurate, and timely reports shall constitute an "Event of Default". Upon the occurrence of an Event of Default, the state department or agency may terminate this contract upon 30 days prior written notice if the default remains uncured within five calendar days following the last day of the calendar quarter, in addition to any other remedy available to the state department or agency in law or equity.

#### **c.) Buy American Requirement (Section 1605)**

##### **I. Required Use of American Iron, Steel, and Other Manufactured Goods**

(a) **Definitions.** As used in this Section I:

"Designated Country" means Aruba, Australia, Austria, Belgium, Bulgaria, Chile, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, the United Kingdom, Australia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and Morocco.

"Designated country iron, steel, and/or manufactured goods" mean iron, steel and/or a manufactured good that:

- (1) Is wholly the growth, product or manufacture of a Designated Country; or
- (2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in a Designated Country into a new and different manufactured good distinct from the materials from which it was transformed.

"Domestic iron, steel and/or manufactured good" is iron, steel and/or a manufactured good that:

- (1) Is wholly the growth, product or manufacture of the United States; or
- (2) 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. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of goods occurs in the United States.

"Federal Agency" means the department or agency of the federal government that awarded funds to the State

of Colorado from the ARRA that finance the project described in this solicitation.

“Foreign iron, steel and/or manufactured good” means iron, steel and/or manufactured good that is not domestic or designated country iron, steel and/or manufactured goods.

“Manufactured good” means a good brought to the construction site for incorporation into the building or work that has been--

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

“Public building” and “public work” means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) ***Domestic preference.***

(1) This term and condition implements:

(i) Section 1605(a) of Division A, Title XVI of the ARRA by requiring that all iron, steel, and manufactured goods used in the public building or public work are produced in the United States; and

(ii) Section 1605(d) of Division A, Title XVI of the ARRA, which requires the application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of Section 1605 of the ARRA do not apply to designated country iron, steel, and/or manufactured goods procured for projects with an estimated value of \$7,433,000 or more.

(2) The Contractor shall use only domestic or Designated country iron, steel and/or manufactured goods in performing work funded in whole or in part with funds available under the ARRA, except as provided in subparagraphs (3) and (4) of this paragraph (b).

(3) The requirement in paragraph (2) of this Section does not apply to the material listed by the Federal Agency as follows: **[List applicable excepted materials or indicate “none”]**

(4) The Federal Agency may add other iron, steel, and/or manufactured goods to the list in paragraph (b) (3) of this Section if the Federal government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of section 1605 of the ARRA would be inconsistent with the public interest.

(c) ***Request for determination of inapplicability of Section 1605 of the ARRA.***

(1)(i) Any Bidder’s request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b) (4) of this Section shall include adequate information for Federal Agency evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this term and condition.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this Section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor's request for a determination submitted after ARRA funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the Contractor does not submit a satisfactory explanation, the Federal Agency need not make a determination.

(2) If the Federal Agency determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the ARRA applies, the State will amend the contract to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended contract shall reflect adjustment of the contract amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the State shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Agency determines that an exception to section 1605 of the ARRA applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) **Data.** To permit evaluation of requests under subparagraph (b)(4) of this Section based on unreasonable cost, the Bidder shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON				
	Description	Unit of Measure	Quantity	Cost (Dollars)*
	<b>Item 1:</b>			
	Foreign steel, iron, or manufactured good	_____	_____	_____
	Domestic steel, iron, or manufactured good	_____	_____	_____
	<b>Item 2:</b>			
	Foreign steel, iron, or manufactured good	_____	_____	_____
	Domestic steel, iron, or manufactured good			
<p><b>[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]</b>  <b>[Include other applicable supporting information.]</b>  <b>[* Include all delivery costs to the construction site.]</b></p>				

**II. NOTICE of Required Use of American Iron, Steel, and Other Manufactured Goods**

**REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

(a) **Definitions.** “Designated country iron, steel and/or manufactured goods,” “domestic iron, steel and/or manufactured goods”, “Federal Agency”, “Foreign iron, steel and/or manufactured good”, “Manufactured good,”

“public building and public work,” and “steel,” as used in this Section, are defined in Section I..

(b) **Requests for determinations of inapplicability.** A prospective Bidder requesting a determination regarding the inapplicability of section 1605 of the ARRA should submit the request to the Federal Agency in time to allow a determination before submission of applications or proposals. Bidders should provide a copy of this request to DMB. The prospective applicant shall include the information and applicable supporting data required by paragraphs (c) and (d) of Section I of this solicitation in the request. If Bidder has not requested a determination regarding the inapplicability of Section 1605 of the ARRA before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal. The Federal Agency is the sole entity authorized to make determinations regarding the inapplicability of Section 1605 of the ARRA.

(c) *Evaluation of project proposals.*

If the Federal Agency determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the State will evaluate a project requesting an exception to the requirements of section 1605 of the ARRA by adding to the estimated total cost of the project 25 percent of the project cost, if foreign iron, steel, or manufactured goods are used in the project based on unreasonable cost of comparable manufactured domestic iron, steel, and/or manufactured goods.

d) Alternate project proposals.

(1) When a project proposal includes foreign iron, steel, and/or manufactured goods, other than designated country iron, steel and/or manufactured goods, not listed in paragraph (b)(3) of the Section 6.022, the Bidder also may submit an alternate proposal based on use of equivalent domestic iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the Bidder shall submit a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of Section I of this solicitation for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Agency has not yet determined an exception applies.

(3) If the Federal Agency determines that a particular exception requested in accordance with paragraph (b) of Section I of this solicitation does not apply, the State will evaluate only those proposals based on use of the equivalent domestic or designated country iron, steel, and/or manufactured goods, and the Contractor shall be required to furnish such domestic or designated country items.

#### **d.) Wage Rate Requirements (Section 1606)**

All laborers and mechanics employed by contractors and subcontractors on projects funded in whole or in part with funds available under the ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40 of the United States Code. (See ARRA Sec. 1606). The Secretary of Labor's determination regarding the prevailing wages applicable in Colorado is available at <http://www.gpo.gov/davisbacon/co.html>. (GEO should seek DOE Guidance on Weatherization contracts.)

#### **e.) Inspection & Audit of Records**

The Contractor shall permit the United States Comptroller General or his representative or the appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1998 or his representative (1) to examine any records that directly pertain to, and involve transactions relating to, this contract; and (2) to interview any officer or employee of the Contractor or any of its subcontractors/subgrantees regarding the activities funded with funds appropriated or otherwise made available by the ARRA.

#### **f.) Whistle Blower Protection for Recipients of Funds**

Contractor shall not discharge, demote or otherwise discriminate against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract or grant relating to Covered Funds; (2) a gross waste of Covered Funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of Covered Funds; an abuse of authority related to implementation or use of Covered Funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to Covered Funds.

In this Subsection, "Covered Funds" shall have the same meaning as set forth in Section 1553(g)(2) of Division A, Title XV of the ARRA.

(a) Recipient must post notice of the rights and remedies available to employees under Section 1553 of Division A, Title XV of the ARRA. (For Colorado employees see the State Personnel Employee Protection Act CRS §24-50-101 et. seq. and obtain the complaint form at [www.colorado.gov/dpa/spb/docs/WhistleblowerComplaint.doc](http://www.colorado.gov/dpa/spb/docs/WhistleblowerComplaint.doc))

(b) The Contractor shall include the substance of this clause including this paragraph (b) in all subcontracts.

### **g.) Funding of Programs**

The Contractor acknowledges that the programs supported with temporary federal funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, will not be continued with state financed appropriations once the temporary federal funds are expended.

### **h.) Fixed Price - Competitively Bid**

Contractor, to the maximum extent possible, shall award any subcontracts funded, in whole or in part, with ARRA funds as fixed-price contracts through the use of competitive procedures.

### **i.) Segregation of Costs**

Contractor shall segregate obligations and expenditures of ARRA funds from other funding. No part of funds made available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be comingled with any other funds or used for a purpose other than that of making payments for costs allowable under the ARRA.

### **j.) Publication**

All contract solicitations funded in whole or in part with ARRA funds will be posted on the State BIDS website <https://www.gssa.state.co.us/VenSols>. All contracts resulting from the ARRA will be published on the State of Colorado's Recovery Web site, [www.colorado.gov/recovery](http://www.colorado.gov/recovery).

Contractor shall include the Colorado Recovery logo on all signage or other publications in connection with the activities funded by the State of Colorado through funds made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

### **k.) Non- Discrimination**

The Contractor shall comply with Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and other civil rights laws applicable to recipients of Federal financial assistance.

### **l.) Prohibition on Use of Funds**

None of the funds made available under this contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, swimming pools, or similar projects.

### **m.) False Claims Act**

The Contractor shall promptly refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds.

#### **n.) Conflicting Requirements**

Where ARRA requirements conflict with existing state requirements, ARRA requirements control.

#### **o.) Job Opportunity Posting Requirements**

Contractor shall post notice of job opportunities created in connection with activities funded in whole or in part with ARRA funds in the Connecting Colorado Job Site, <http://www.connectingcolorado.com/>.

#### **p.) Compliance with National Environmental Policy Act**

In accordance with ARRA § 1609, the state agencies, contractors/grantees and sub-contractors/sub-grantees must comply with any applicable environmental impact requirements of the National Environmental Policy Act of 1970, (NEPA).

### Appendix 3 – Expedited Process for Solicitations Using ARRA Funds

**Expedite the Request for Proposal process-** Good project management practices can be used in the RFP process to reduce the overall RFP process timelines. With adequate agency management support and leadership, the responsible purchasing entities should be able to better direct the RFP process and meet agreed to deadlines. Below is a traditional RFP schedule, compared to a schedule using some project management best practices.

RFP Process- Planning Schedule	Typical	Project Management
◇ <b>Begin preparation of RFP, IFB</b> (30 days before issuing RFP/IFB)	-180 days	<b>82 days from Effective Date</b> <b>(7-14 days before issuing RFP/IFB)</b>
◇ <b>Advertise &amp; Issue Solicitation</b> (30 days to receipt of proposals )	-150 days	<b>68 days</b> <b>(21 days to receipt of proposals)</b> <i>Inquiry Period is tight and Pre-proposal Meetings may be difficult without adding more time</i>
◇ <b>Receipt of Bids/Proposals</b> (allow 20 days evaluation/award)	-120 days	<b>47 days</b> <b>(allow 14 days evaluation/award)</b> <i>Time for clarifications and discussions with offerors may push out the dates. Keep number of evaluators to minimum if possible to better administer the process</i>
◇ <b>Contract Award, Negotiations</b> <b>Contractor review and sign</b> (allow 30 days to prepare contract)	-90 days	<b>33 days</b> <b>(allow 21days to prepare contract, and for internal approvals/corrections and get contractor signature)</b>
◇ <b>Submit Contract for Internal Review</b> (allow about one month for internal approvals/corrections)	-60 days	Combined with cell above
◇ <b>Route to Personnel, Purchasing/State Buildings</b> (allow 12 days for review by Department of Personnel offices)	-24 days	<b>12 days</b> <b>(allow 7 days for review by Department of Personnel offices)</b>
◇ <b>Route to Attorney General's and Controller's Office</b> (Allow 12 days for review by Controller and AGO at Controllers request)	-12 days	<b>5 days</b> <b>(Allow 5 days for Controller and AGO review/approval)</b>
◇ <b>Performance Begins (Effective Date)</b>	0 days	<b>0 days</b>

The use of Project Management best practices to reduce the schedule for conducting the RFP process assumes that adequate purchasing staff as well as program staff are available to engage to accomplish the desired results. There are four simple project management steps that when used will contribute to reducing the schedule for the RFP process: **1. Proper Scoping 2. Planning 3. Execution 4. Control.**

**Appendix 4 – Grants and Cooperative Agreements (Excerpts from OMB Guidance, Section 5 and Appendix 9, 4/3/09)**

“5.1 Are there actions, beyond standard practice, that agencies must take while planning for competitive and formula grant awards under Recovery Act?”

**Yes.**

(1) Determining Grant Objectives and Evaluation Criteria for Award

Agencies should structure grants to result in meaningful and measurable outcomes that are consistent with agency plans and that promote the goals of the Recovery Act. The evaluation criteria for award should include those that bear on the measurement and likelihood of achieving these outcomes, such as jobs creation and preservation.

(2) Competition

Although the Recovery Act calls on agencies to commence expenditures and activities as quickly as possible consistent with prudent management, this statement, by itself, does not constitute a sufficient justification to support award of a federal grant on a non-competitive basis. Agencies are expected to follow the same laws, principles, procedures, and practices in awarding discretionary grants with Recovery Act funds as they do with other funds. Agencies should review their internal policies with a goal towards promoting competition to the maximum extent practicable. In conducting this review, agencies may want to consider the appropriateness of limited competitions among existing high-performing projects versus full and open competitions.

(3) Existing Grants

Ultimately, agencies must determine what award method(s) will allow recipients to commence expenditures and activities as quickly as possible consistent with prudent management and statutory requirements. Agencies may consider obligating funds provided under the Recovery Act on an existing grant, including, but not limited to, a continuation or renewal grant. Because Recovery Act funds must be tracked and accounted for separately, supplements to existing agreements are not recommended as there is a greater risk that the grant recipient will be unable to track and report Recovery Act funds separately. Also, agreements must spell out the assignment of agency roles and responsibilities to fulfill the unique requirements of the Recovery Act. These include, but are not limited to, report development and submission, accurate and timely data reporting, and special posting requirements to agency Web sites and Recovery.gov.

(4) Timeliness of Awards

Agencies need to assess existing processes for awarding formula allocations and announcing, evaluating and awarding discretionary grant opportunities to comport with the objective to make awards timely.

5.4 Are Federal agencies expected to initiate additional oversight requirements for grants, such as mandatory field visits or additional case examinations for error measurements, to comply with grant rules and regulations?

**Yes.**

Agencies must take steps, beyond standard practice, to initiate additional oversight mechanisms in order to mitigate the unique implementation risks of the Recovery Act. At a minimum, agencies should be prepared to evaluate and demonstrate the effectiveness of standard monitoring and oversight practices.

(1) Performance Management and Accountability

Agencies must adapt current performance evaluation and review processes to include the ability to report periodically on completion status of the program or activity, and program and economic outcomes, consistent with Recovery Act requirements.

Agencies, in consultation with the Inspectors General, shall establish procedures to validate the accuracy of information submitted on a statistical basis and/or risk based approach as approved by OMB.

(2) Internal Controls Assessment

Consistent with normal practices, agencies must use appropriate internal control assessments to assess the risk of program waste, fraud, and/or abuse. Using the aforementioned risk assessments, agencies must have defined strategies, developed with input from the Inspector General for the agency, to prevent or timely detect waste, fraud, or abuse.

Also, consistent with Section 3 of this Guidance, agencies should initiate additional measures, as appropriate, to address higher risk areas.

5.9 Are there terms and conditions, beyond standard practice, that must be included in competitive and formula grant agreements under the Recovery Act?

Agencies must:

- Use the agency's standard award terms and conditions on award notices, where applicable, unless they conflict with the requirements of the Recovery Act. In the case where the Recovery Act requirement conflicts with an agency's standard award term or condition, the agency's award term or condition should be modified, as necessary, to ensure compliance with the Recovery Act requirement.
- Ensure other award terms needed to implement the agency/program-specific provisions and general provisions of the Recovery Act are included on awards. Note that OMB has issued standard award terms for agencies to use in implementing Sections 1512, 1605 and 1606 for grants, cooperative agreements, and loans. Agencies must ensure that they use any terms and conditions that implement other Recovery Act provisions, where applicable and as appropriate, such provisions in Sections 1511, 1515, 1553, 1604, and 1609.
- Ensure that there is an award term or condition requiring first tier sub-awardees to begin planning activities, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR). Prime recipients and Federal agencies must establish mechanisms to meet Recovery Act data collection requirements. Agencies should work with prime recipients to ensure that DUNS and CCR requirements for first tier sub-awardees are met no later than the first time Recovery Act data requirements are due.

- Make clear that that any funding provided through the Recovery Act is one-time funding.
- Include the requirement that each grantee or sub-grantee awarded funds made available under the Recovery Act shall promptly refer to an appropriate inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. ”

## **Appendix 5 - Conflicts of Interest and Non-Conflict Certification**

### **Conflicts of Interest and Non-Conflict Certification**

The State of Colorado prohibits any business entity or person to be awarded a contract if they have an "Organizational Conflict of Interest" with regard to this solicitation and the resulting contract.

An Organizational Conflict of Interest exists when a person or business entity has an unfair competitive advantage because of other activities or relationships with other persons. No person or business entity who was engaged by the State of Colorado in preparing the original Request for Proposal solicitation or who had access prior to the solicitation to procurement sensitive information related to this procurement including but not limited to Requirements, Statements of Work, or Evaluation Criteria will be eligible to directly submit or participate in the submittal of a proposal for this solicitation. The State of Colorado considers this to be an Organizational Conflict of Interest. For purposes of this solicitation, organizational conflict of interest means that because of other activities or relationships with other persons, a person or business entity has an unfair competitive advantage. All offerors who wish to participate in this solicitation must certify that no organizational conflict of interest exists by completing and signing this certification.

#### **Organizational Conflicts of Interest Prohibition and Non-Conflict Certification**

The offeror warrants that, to the best of his/her/its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. The responder agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the State of Colorado, which must include a description of the action, which the successful offeror has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State of Colorado may, at its discretion, cancel the Contract award. In the event the successful responder was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the contracting officer, the State of Colorado may terminate the Contract for default. The provisions of this clause must be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the State of Colorado's rights.

#### **Organizational Conflict of Interest - Offeror's Signature and Certification**

The undersigned on behalf of the offeror hereby certifies that the information contained in this certification is accurate, complete, and current.

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Signature and date

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Typed or Printed Name

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Title

---

Company Name and Address

**Appendix 6 - Coding Requirements Established for the American Reinvestment and Recovery Act of 2009 (ARRA) Monies**

Office of the State Controller

**Alert # 184**



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TO:           Controllers and Chief Fiscal Officers of State Departments  
              And Higher Education Institutions and Boards

FROM:        David J. McDermott, State Controller

DATE:         May 13, 2009

SUBJECT:     Coding Requirements Established for American Reinvestment and Recovery Act  
              of 2009 (ARRA) Monies  
              Compensated Absences Liability – Percentage of Employees Expected to Retire  
              Under PERA  
              Electronic Funds Transfers (EFT) for Employee Reimbursements

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**Coding Requirements Established for the American Reinvestment and Recovery Act of 2009 (ARRA) Monies**

The final data elements from OMB for ARRA reporting have not been provided at this time. However, because agencies are receiving and spending ARRA funds, it is necessary to put the following coding structure in place without delay. The following requirements are based on the best information available at this time; if additional information from OMB mandates a change in these requirements, we will notify you in subsequent alerts.

Two new funds have been established for ARRA reporting purposes. Fund ARG – ARRA Primary Fund and Fund ARP – ARRA Secondary Fund have been created on COFRS. Multiple funds are necessary to segregate ARRA grant activity within a single agency code by fund category (FCAT) for normal financial reporting purposes. In order to establish which ARRA fund to use, agencies must determine whether the grant is part of a governmental or propriety fund activity. Grants accounted for as governmental activities (i.e., General Fund, special revenue funds, etc.) should default to fund ARG – ARRA Primary Fund. If your agency has ARRA grant activity in multiple governmental funds that fall under a single agency code, all General Fund activity would be recorded in ARG. The additional non-General Fund ARRA activity would be recorded in ARP if it is contained within one FCAT. Please use ARP – ARRA Secondary Fund as the default fund for all proprietary activity. For example:

- Agency YAA receives ARRA grants related to Fund 100 (governmental, FCAT G1) and Fund 526 (proprietary, FCAT E6). The Fund 100 activity would use ARG and the Fund 526 activity would use ARP.
- Agency YAA receives ARRA grants related to Fund 116 (governmental, FCAT RA) and Fund 282 (governmental, RZ). Since neither of these are General Fund, you may put activity for either fund in ARG and record the other fund's activity in ARP. This treatment would also apply if your agency had two proprietary funds receiving ARRA monies.
- Agency YAA receives ARRA grants related to Fund 254 (governmental, FCAT RZ) and Agency YBA receives ARRA grants related to Fund 441 (governmental, FCAT RZ). Because the activity exists under two unique agency codes, each agency may use ARG.
- Agency YAA receives ARRA grants related to Fund 100 (governmental, FCAT G1), Fund 116 (governmental, FCAT RA) and Fund 282 (governmental, RZ). Similarly, if multiple FCATs occur in proprietary funds call your FAST Specialist.

Fund classifications by FCAT are located in the Fiscal Procedures Manual beginning on page 95.

If an agency does not directly operate in an ARRA fund, all ARRA activity must be moved into the ARRA fund at least monthly. Since federal reporting is required within ten (10) days after each calendar quarter close, all quarterly activity must be recorded in these funds within six (6) calendar days after the end of a calendar quarter.

In addition to the funds, multiple series of long bill line items have been developed to track appropriated versus non-appropriated activity by direct ARRA grants as well as subrecipient ARRA grants. The subrecipient activity is further separately designated as coming from either another Colorado state agency (Subrecipient Internal) or as a pass-thru from an entity that is not part of the primary government of the state (Subrecipient External). The primary government of the state does not include component units of the state. The following table outlines the long bill line item coding structure that has been developed.

<b>Long Bill Line Item</b>	<b>Legislative Action</b>	<b>Type of Activity</b>
SNxxx	Non-Appropriated	Direct Federal ARRA Grant
SBxxx	Non-Appropriated	Received as Subrecipient from Another Colorado State Agency (Internal)
SAxxx	Non-Appropriated	Received as a Subrecipient from an Entity that is not a Colorado State Agency (External)
44xxx – 44999	Non-Appropriated	Reserved for Specific Purposes, including but not limited to FMAP monies at DHCPF
48xxx – 49899	Appropriated	Direct Federal ARRA Grant
45xxx – 46999	Appropriated	Received as Subrecipient from Another Colorado State Agency (Internal)
47xxx – 47999	Appropriated	Received as a Subrecipient from an Entity that is not a Colorado State Agency (External)

For transfer activity, agencies should determine intra- versus interfund attributes based on the fund category (FCAT) of the fund that would have been used to record the activity had a specific ARRA fund not been created. For example, if the activity would have normally been recorded in fund 100, treat the transfers as if the ARRA fund is part of the fund 100 fund category, G1. In this instance a transfer of ARRA monies to another program operating in fund 100, the general fund, would be treated as an intrafund transfer. The OSC will split and classify the ARG and ARP funds back into the appropriate fund category based on the activity for financial reporting purposes.

It has been determined that in reporting on ARRA monies, the state needs to report expenditure and balance sheet information at the level of Catalog of Federal Domestic Awards (CFDA) number and Federal grant identification number. Discussions with the Controller's Forum indicate that such information may be available in the COFRS Grants Module. However, the availability and reliability of that information is dependent on certain setup and coding processes being followed.

After discussions with the Controller's Forum, we have established the following coding policies that apply to the tracking of ARRA monies through the Grants Module. Using a GM transaction, please create a unique agency-defined grant number for grants related to ARRA monies. This unique grant number will allow us to tie the activity on the general ledger to the Grants Module tables. Please be sure that the GM transactions contain a CFDA number and the Federal grant identification number from the award document. The Federal grant identification number should be entered in the Major Grant Number field for the first 12 characters, and then in the Federal ID Number field for the remaining characters, if needed. Please do not include any spaces in these fields. The GM transaction may be used to modify grant information on existing AGNT and AGN2 tables. In the near future, the OSC will provide a general Grants Module training session for those agencies that use COFRS but do not currently use the Grants Module to track their grants.

Separate arrangements and requirements will be developed for agencies and institutions that feed aggregated information to COFRS and cannot access the Grants Module, such as Higher Education and the Department of Transportation. The OSC will continue to work directly with the agencies/institutions on reporting requirements.

Please contact Brenda Shelinbarger for assistance in setting up long bill line item coding at [brenda.shelinbarger@state.co.us](mailto:brenda.shelinbarger@state.co.us) or 303-866-4165. For any other questions please contact your FAST Specialist.

### Compensated Absences Liability – Percentage of Employees Expected to Retire Under PERA

In conjunction with PERA's latest actuarial valuation, PERA's actuary, Cavanaugh Macdonald Consulting LLC, has provided the Office of the State Controller with the percentage of state employees expected to retire with PERA benefits. Eighty-three and three tenths percent (83.3%) of State Troopers and fifty-six percent (56.0%) of other State Division members are expected to retire with PERA benefits. Please note that these percentages are slightly different than those used in the prior year (Fiscal Year 2007-08), and they must be used in computing the sick leave related portion of your Fiscal Year 2008-09 compensated absences liability. You may refer to Chapter 3, Section 3.13 of the April 2009 Fiscal Procedures Manual for more information

on computing the compensated absences liability accrual. Please contact your FAST Specialist if you have any questions.

### Electronic Funds Transfers (EFT) for Employee Reimbursements

The following requirements do not apply to Higher Education Institutions that do not pay employees using CPPS. After June 30, 2009, and after the effective date of the revised Travel Fiscal Rule 5-1, all employee reimbursements are required to be processed via EFT. You will receive an email and ALERT notification of the effective date of Fiscal Rule 5-1. The banking information for processing reimbursement EFTs after June 30, 2009, will be based on the employee's primary banking information as identified in CPPS. For employees currently reimbursed via EFT (based on COFRS vendor file banking information) this could mean that the reimbursement after June 30 will go to a different bank account than the current reimbursements that are based on COFRS banking information. For agencies that currently reimburse employees with miscellaneous vendor codes, vendor records will need to be established under the employees' ID numbers by June 30, 2009, in order to process the reimbursement as an EFT. **GIVEN THE IMPORTANCE THAT EMPLOYEES PLACE ON PROMPT RECEIPT OF REIMBURSEMENTS, IT IS ESSENTIAL THAT ALL DEPARTMENTS IMMEDIATELY BEGIN INFORMING THEIR EMPLOYEES OF THIS CHANGE.** This will be of particular importance to frequent travelers. Please let your FAST representative know if you have any questions.

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**Appendix 7 - Non-Competitive Sourcing Justification**

**State of Colorado – American Recovery and Reinvestment Act Non-Competitive Sourcing Justification**



A major premise for ARRA Funded Procurements is that it is expected competition will always be sought when awarding contracts and grants. If the Group II Procurement Authority in the State Agency /Institution has determined that an award utilizing partial or total ARRA funds is to be made on a non-competitive basis, prior to award, approval must be received. The Colorado ARRA Staff will collect the proper information and rationale and post on the State of Colorado Recovery Act Website. This is in addition to the regular sole source determination process. Group I Agencies must submit to the State Purchasing Office any prospective procurement situations that they believe may be non-competitive for review and further guidance.

**TYPE or CLEARLY PRINT ALL INFORMATION**

(Attach Additional Pages as Needed)

You MUST complete this form before beginning any procurement where the basis for vendor selection is:

- ✓ Only one product or service can reasonably meet your need, AND
- ✓ Only one vendor can reasonably provide that product or service.
- ✓ Meets State Procurement Rule criteria R24-103-205(01) and an Intent to Sole Source Posting has been made on BIDS
- ✓ ARRA Funding is the source of funding for all or part of the expenditure

Department: \_\_\_\_\_ Division: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_ RX, PO or Contract #: \_\_\_\_\_

Phone: \_\_\_\_\_ FAX: \_\_\_\_\_

Department Requesting Official Name: \_\_\_\_\_

Department Requesting Official Signature: \_\_\_\_\_

**A. Describe in detail the products and /or services to be procured and how they meet your needs.**

Vendor Name: \_\_\_\_\_ FEIN #: \_\_\_\_\_

Vendor Address: \_\_\_\_\_ Phone: \_\_\_\_\_

**B. Have you procured products and/or services from this vendor in the past 2 years? Is this a modification or change order of existing contract? If Yes explain**  No  Yes

Start Date: \_\_\_\_\_ End Date: \_\_\_\_\_

Estimated Total Dollars for this Procurement: \$ \_\_\_\_\_

Provide estimated cost breakdown of supplies and/or services covered by this procurement:

Supplies \$ \_\_\_\_\_ Service s \$ \_\_\_\_\_

C. Attach a detailed explanation that this requirement for goods or services can not be solicited competitively – what is the basis for your identifying this as non-competitive? **Please Note: If Approved, this explanation will be available to the public on the Colorado Recovery Act website, so do not include any proprietary information or information that would compromise national security.**

D. Do you have an actual or potential conflict of interest in this purchase request?

No  Yes

✓ If yes, please explain on an attached sheet.

E. What negotiation took place with the prospective awardee?

Disclose pricing and any terms and conditions that are more beneficial to the State. Since competition has not taken place, how is pricing deemed fair & reasonable per §24-103-403? Please see the attached guide on cost and pricing analysis.

F. If applicable, explain any timing constraints established under the ARRA which need to be considered in relation to this specific expenditure.

Approved \_\_\_\_\_  
Colorado State Purchasing Director or Delegated Representative Date \_\_\_\_\_

Approved \_\_\_\_\_  
Colorado ARRA Director or Authorized Representative Date \_\_\_\_\_

## **Use of ARRA Funded Non-Competition Form/Summary of Price and Cost Analysis Requirements:**

Any non-competitive ARRA funded procurement requires a written determination by the head of a purchasing agency, or a designee, of the basis for the approval and Colorado Economic Recovery and Accountability Board (CERAB) approval. This form is designed for review and approval of requests for non-competitive procurements.

This form should be completed and approved before an award leading to execution of an agreement with a vendor where a competitive process (documented quote, sealed bid, or competitive sealed proposal) is not proposed to be used.

The price or cost analysis (§24-103-403) should be included with the procurement file before execution of a purchase order or when the contract is routed for approval.

The methods of price cost analysis are explained in Chapter 5 of the *Colorado Contract Procedures and Management Manual*. Normally, price analysis is not done in competitive solicitations where “adequate competition” exists, because the competitive process takes care of the “fairness and reasonableness” of prices. However, in a situation where no price competition exists, some analysis must be done to insure that the requirements of the controller’s statute are met, i.e., that prices or rates are “fair and reasonable.”

Common methods of price/cost analysis include:

a. Comparison of prices and rates to established catalog prices or market prices. In a sole source situation, there commonly are similar prices or rates, e.g., those on price agreements, that can serve as a guide to fairness or prices or rates proposed by a sole source provider. In some cases, e.g., some utilities, prices and rates are set by law or regulation (utility tariff rates).

b. Historical prices or rates for similar items or services procured in the past also serve as a guide to fair and reasonable prices.

c. In either case, even though neither historical or market prices involve the identical service, some analysis can often be done which evaluates the differences in the types of services or goods, and concludes that the nature of the differences warrant the differences in pricing. In other cases, judgments must be made that proprietary aspects of the service or commodity warrant expenditure of the prices or rates in excess of what is customary.

d. In cases where neither historical or catalog prices exist, cost analysis must be used. Vendors can be asked to provide summary level detail of materials and labor costs, as well as markups and other indirect cost rates included in the price. Technical judgments concerning labor hours can be applied to labor hour rates to evaluate the reasonableness of the overall price. Reasonable profit, of course, is another element of price. The Procurement Rules require the submission of cost or pricing data for noncompetitive acquisitions exceeding \$50,000, for ARRA funded procurements, cost or pricing data is required for all dollar levels.

## Appendix 8 - Supplemental Provisions for Contracts and Grants and Related Guidance

### State of Colorado Supplemental Provisions for Contracts, Grants, and Purchase Orders Using Funds Provided under the American Recovery and Reinvestment Act of 2009 As of 8-21-09

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with ARRA Funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
  - 1.1. **“ARRA”** means the American Recovery and Reinvestment Act of 2009, (Public Law 111-5).
  - 1.2. **“ARRA Funds”** means any funds that are expended or obligated from appropriations made under ARRA.
  - 1.3. **“ARRA Project”** means a project or program funded directly by or assisted, in whole or in part, by ARRA Funds.
  - 1.4. **“Contract”** means the contract to which these Supplemental Provisions are attached and includes a grant contract or a loan contract.
  - 1.5. **“Contracting Entity”** means a Prime Recipient, a Subrecipient, or a Recipient Vendor.
  - 1.6. **“Contractor”** means the party or parties to the Contract other than the Prime Recipient and includes a grantee, subgrantee, or a borrower. For purposes of ARRA reporting, Contractor is either a Subrecipient or a Recipient Vendor under this Contract.
  - 1.7. **“Entity”** means a governmental body; legally recognized for profit or nonprofit business organization, such as a corporation, limited liability company, or partnership; or sole proprietor and excludes individual recipients of Federal assistance.
  - 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282).
  - 1.9. **“Prime Recipient”** means a Colorado State Agency or Institution of Higher Education that receives ARRA Funds directly from a Federal Agency in the form of a grant, loan, or cooperative agreement.
  - 1.10. **“Subcontractor”** means an Entity engaged by Contractor to provide goods or perform services in connection with this contract.
  - 1.11. **“Subrecipient”** means a non-Federal Entity receiving ARRA Funds through a Prime Recipient to support the performance of the ARRA Project for which the ARRA Funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
  - 1.12. **“Supplemental Provisions”** means these Supplemental Provisions for Contracts and Grants Using Funds Provided under the American Recovery and Reinvestment Act of 2009, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado Agency or Institution of Higher Education.
  - 1.13. **“Vendor”** means a dealer, distributor, merchant or other seller providing goods or services

required for a project or program funded by ARRA. A Vendor is not subject to all the terms and conditions of the Federal award, and all program compliance requirements do not pass through to a Vendor. However, a Vendor may be subject to selected program compliance requirements. See §22 of these Supplemental Provisions.

**1.13.1 “Recipient Vendor”** means a Vendor that receives ARRA Funds from a Prime Recipient.

**1.13.2 “Subrecipient Vendor”** means a Vendor that receives ARRA Funds from a Subrecipient.

- 2. Compliance.** Contractor shall comply with all applicable provisions of ARRA and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3. ARRA Contracts and Subcontracts.** Contractor shall include these Supplemental Provisions in all of its contracts and subcontracts using ARRA Funds, in whole or in part, and shall provide written notification of revisions hereto to all parties to such contracts or subcontracts in accordance with §2 above. Contractor shall ensure that all subcontractors comply with applicable provisions of ARRA.
- 4. Debarred or Suspended Entities.** Contractor shall not enter into any contract or subcontract in connection with this Contract with a party that has been debarred or suspended from contracting with the Federal Government or the State of Colorado. See Excluded Parties List System at <https://www.epls.gov/>.
- 5. Conflict of Laws.** In the event of a conflict between the laws of the State of Colorado or these Supplemental Provisions and ARRA, ARRA shall control.
- 6. Whistle Blower Protection. ARRA §1553.** Contractor shall not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosures by the employee of information that the employee reasonably believes is evidence of: (a) gross mismanagement of a contract or grant relating to ARRA Funds; (b) a gross waste of ARRA Funds; (c) a substantial and specific danger to public health or safety related to the implementation or use of ARRA Funds; (d) an abuse of authority related to implementation or use of ARRA Funds; or (e) a violation of law, rule, or regulation related to a contract, including the competition for or negotiation of a contract or grant, awarded or issued relating to ARRA Funds. Contractor shall post a notice of the rights and remedies available to employees under ARRA §1553 in all workplaces where employees perform work that is funded in whole or in part by money authorized under the ARRA. A sample notice can be found at [www.recovery.gov/?q=content/whistleblower-information](http://www.recovery.gov/?q=content/whistleblower-information). Contractor specifically acknowledges that Contractor and its employees are aware of and shall abide by the provisions of ARRA §1553. Contractor shall include the language and requirements of this subsection ("Whistleblower Protection under §1553 of the ARRA") in all of its contracts and agreements with employees, subcontractors and anyone else who performs work on behalf of Contractor.
- 7. False Claims Act. 31 U.S.C. §§3729-3733.** Contractor shall refer promptly to an appropriate Federal Inspector General any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.
- 8. Reporting of Fraud, Waste, and Abuse.** Contractor shall also refer promptly to the Colorado Office of the State Controller (OSC) any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has committed a criminal or civil violation of laws pertaining to fraud, waste, and abuse involving ARRA Funds. The OSC shall report such incidents of misconduct to the appropriate State Agency and appropriate Federal authority. Contact information

for reporting fraud, waste, and abuse to the OSC is located at  
[http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA\\_Main\\_Page.htm](http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA_Main_Page.htm)

- 9. Inspection of Records. ARRA §§902, 1515.** Contractor shall permit the United States Comptroller General and his or her representatives or any representative of an appropriate Inspector General appointed under §3 or §8G of the Inspector General Act of 1978, as amended (5 U.S.C. App.) to: (a) examine any records of the Contractor or any of its Subcontractors that directly pertain to, and involve transactions relating to this Contract or any contract or subcontract using ARRA Funds; and (b) interview any officer or employee of Contractor or any of its Subcontractors regarding such transactions. Contractor shall permit the State of Colorado, the Federal Government or any other duly authorized agent of a governmental agency with jurisdiction to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's or such Subcontractor's records during the term of this Contract and for a period of three years following termination of this Contract or final payment hereunder, whichever is later, to assure compliance with these terms or to evaluate Contractor's performance hereunder.
- 10. Wage Rate Requirements – Davis-Bacon Wage Determinations. ARRA §1606.** Contractor and its Subcontractors shall pay all laborers and mechanics employed on ARRA Projects by Contractor or any of its Subcontractors at wage rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40 of the United States Code. The Secretary of Labor's determination regarding the prevailing wages applicable in Colorado is available at <http://www.gpo.gov/davisbacon/co.html>.
- 11. Job Opportunity Posting Requirements. Governor's Executive Order D 01409.** Contractor shall post notice of job openings created by ARRA funded projects on the Colorado Department of Labor and Employment job website, <http://www.connectingcolorado.com>. In the performance of this duty, Contractor and any of its Subcontractors shall post jobs on Connecting Colorado Job Site that clearly designates the job opening as an ARRA job in a form and manner prescribed by the Colorado Department and Labor and Employment.
- 12. Buy American Requirement - Construction. ARRA §1605.** All iron, steel and manufactured goods used in any ARRA Project for the construction, alteration, maintenance, or repair of a public building or public work shall be produced in the United States in a manner consistent with United States obligations under international agreements. This requirement can be waived only by the awarding Federal Agency in limited situations.
- 13. Environmental and Preservation Requirements. ARRA §1609.** Contractor shall comply with all applicable Federal, State, and Local environmental and historic preservation requirements and shall provide any information requested by the awarding Federal Agency to ensure compliance with applicable laws, including National Environmental Policy Act, as amended (42 U.S.C. 4321-4347) and National Historic Preservation Act (16 U.S.C. 470 et seq.).
- 14. Non-discrimination.** Contractor shall comply with Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1688), the Age Discrimination Act of 1975 (42 U.S.C.6101-6107), and other civil rights laws applicable to recipients of Federal financial assistance.
- 15. Identification and Registration Information.** If Contractor is a Subrecipient, Contractor shall obtain a Dun & Bradstreet DUNS number (or update the existing DUNS record), and register with the Central Contractor Registration (CCR), the primary registrant database for the Federal government.
- 16. Fixed Price – Competitively Bid. ARRA §1554.** Contractor, to the maximum extent possible, shall award subcontracts as fixed-price subcontracts under this Contract using competitive bid procedures. Contractor shall provide to its Contracting Entity a summary of any contract or subcontract awarded

using ARRA Funds that is not fixed-price or not awarded using competitive procedures.

- 17. Publication.** Contractor shall include the Colorado Recovery logo on all project signage, and is encouraged, to the maximum extent possible, to use the logo on all other publications in connection with the activities funded by the Prime Recipient that use ARRA funds.
- 18. Prohibition on Use of Funds. ARRA §1604.** ARRA funds shall not be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
- 19. Enforceability.** If Contractor fails to comply with all applicable Federal and State requirements governing the use of ARRA funds, the State of Colorado may withhold or suspend, in whole or in part, funds awarded under the ARRA project, or recover misspent funds following an audit pursuant to §9, above. The remedy under this provision shall be in addition to all other remedies provided to the State of Colorado for recovery of misspent funds available under all applicable State and Federal laws.
- 20. One Time Funding.** Contractor acknowledges and understands that ARRA Projects will not be continued with funds appropriated by the State of Colorado after ARRA Funds are expended or are no longer available.
- 21. Segregation of Costs.** Contractor shall segregate obligations with respect to and expenditures of ARRA Funds from other sources of funding. ARRA Funds shall not be comingled with any other funds or used for a purpose other than the payment of costs allowable under ARRA.
- 22. Reporting. §1512, FFATA §2.** Contractor shall report to its Contracting Entity the data elements required in §23 if Contractor is a Subrecipient or in §24 if Contractor is a Recipient Vendor. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions, as the cost of producing such reports shall be deemed included in the Contract price. The reporting requirements in §§23 and 24 are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract. The State may provide written notice to Contractor of any such change in accordance with §2 above, but such notice shall not be a condition precedent to Contractor's duty to comply with revised OMB reporting requirements. The Colorado Office of the State Controller shall provide summaries of revised OMB reporting requirements as well as reporting templates for Subrecipients and Recipient Vendors at:  
[http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA\\_Main\\_Page.htm](http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA_Main_Page.htm)
- 23. Subrecipient Reporting.** If Contractor is a Subrecipient, Contractor shall report to its Contracting Entity as set forth below.
  - 23.1 Initial Reporting.** A Subrecipient shall report the following data elements to its Contracting Entity upon the effective date of the contract:
    - 23.1.1** Subrecipient DUNS Number
    - 23.1.2** Congressional District of Subrecipient
    - 23.1.3** Primary Place of Performance Information, including: Street Address, State, Country, City, Zip code + 4
    - 23.1.4** Subrecipient Officers' Names (Top 5) if all three criteria are met: 1) 80% or more of Subrecipient's annual gross revenue is from Federal contracts, 2) Subrecipient's annual gross revenue from Federal contracts is \$25 million or more, and 3) Subrecipient's officer names are not publicly available. See page 19 of Recipient Reporting Data Model V3.0 for Quarter Ending September 30, 2009 at  
[http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA\\_Main\\_Page.htm](http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA_Main_Page.htm).
    - 23.1.5** Subrecipient Officers' Total Compensation (Top 5) if criteria in §23.1.4 met

**23.2 Monthly Reporting.** A Subrecipient shall report to its Contracting Entity no later than the 25<sup>th</sup> day of each month the following inception-to-date data elements as of the end of the prior month:

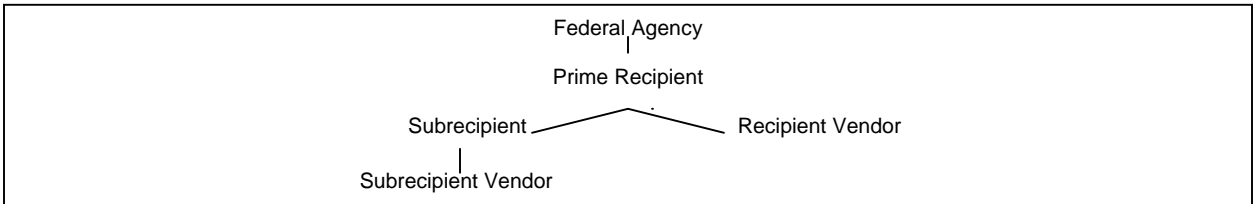
- 23.2.1** Job Creation Narrative for both the Subrecipient and the Subrecipient's Vendors
- 23.2.2** Number of Jobs Created or Retained for both the Subrecipient and the Subrecipient's Vendors
- 23.2.3** SubAward number or other identifying number assigned by the Subrecipient to each Subrecipient Vendor (this number *cannot* be a personal identifying number such as a social security number or federal employer identification number)
- 23.2.4** Vendor name and Zip code + 4 of Vendor's Headquarters for each Subrecipient Vendor; the Subrecipient Vendor's DUNS number may also be provided if available
- 23.2.5** Subrecipient shall establish reporting deadlines for its Subrecipient Vendors.

**24. Recipient Vendor Reporting.** A Recipient Vendor shall report to its Contracting Entity no later than the 25<sup>th</sup> day of each month the following inception-to-date data elements as of the end of the prior month:

- 24.1.1** Job Creation Narrative
- 24.1.2** Number of Jobs Created or Retained

**25. Event of Default.** Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

**26. Reporting Framework – see chart below.**



**Guidance for Adding  
Supplemental Provisions for  
Contracts, Grants, and Purchase Orders Using Funds  
Provided under the  
American Recovery and Reinvestment Act of 2009  
As of 8-21-09**

## **Summary**

The Office of the State Controller prepared the Supplemental Provisions based on ARRA, OMB Guidance, and the Recipient Reporting Data Model V3.0. Because it is likely that OMB Guidance will be updated, we included paragraph #2 - Compliance and paragraph #22 - Reporting. The Supplemental Provisions will allow the State greater flexibility to make changes without having to amend the contract, grant, or purchase order.

## **Three Situations**

1. **Existing ARRA Contract, Grant or Purchase Order** – Agencies and institutions of higher education shall execute an amendment to an existing ARRA contract, grant or purchase order to add the Supplemental Provisions. The amendment shall state that the Supplemental Provisions are retroactively effective upon the execution of the existing original ARRA contract, grant or purchase order, with the exceptions of paragraph #11 - Job Opportunity Posting Requirements and paragraph #17 - Publication, which are effective with the execution of the amendment.
2. **New ARRA Contract, Grant or Purchase Order** – Attach the Supplemental Provisions to the new ARRA contract, grant, or purchase order, and include immediately following the Special Provisions and before the signature page. Also list the Supplemental Provisions first in the order of precedence clause.
3. **Revisions to OMB Guidance** – Send a letter to the contracting entity (Contractor, Grantee, or Vendor) advising the contracting entity of the revisions, and refer the Contracting entity to the Office of the State Controller (OSC) ARRA website: [http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA\\_Main\\_Page.htm](http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA_Main_Page.htm)

## **State Architect Form Contracts**

Agencies and institutions of higher education shall continue to use approved forms, for design and construction and follow policies and procedures from the Office of the State Architect. The Supplemental Provisions shall be attached to those forms for ARRA contracts.

## **Reporting Templates for Subrecipients and Recipient Vendors**

The OSC has drafted reporting templates for Subrecipient and Recipient Vendor reporting. See paragraphs #22, #23, and #24. These formats will be posted to the OSC ARRA website.

## **Questions?**

Call Bob Jaros 303 866-3765 or email at [bob.jaros@state.co.us](mailto:bob.jaros@state.co.us)

**Appendix 9 - OSC Tracking Requirements for ARRA (OSC's Alerts # 185 and 186)**



Office of the State Controller

## Alert # 185

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TO:            Controllers and Chief Fiscal Officers of State Departments  
                  And Higher Education Institutions and Boards

FROM:         David J. McDermott, State Controller

DATE:         July 10, 2009

SUBJECT:      ARRA Funds – SEFA Reporting Requirements  
                  New ARRA Grant Tracking Requirements  
                  ARRA Oversight Costs: Recent Guidance from Health and Human  
                  Services Division of Cost Allocation (DCA)  
                  Revised Fiscal Rule 5-1: Travel Effective July 1, 2009  
                  EFT Travel Reimbursement COFRS Programming Changed  
                  on July 6, 2009  
                  Lease-Purchase Threshold Increased with Passage of HB09-1218

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### ARRA Funds – SEFA Reporting Requirements

Guidance from the President's Office of Management and Budget (OMB) states that expenditures for federal awards under the American Reinvestment and Recovery Act (ARRA) must be reported separately in the Schedule of Expenditures of Federal Awards (SEFA). Therefore, when preparing your Exhibit K for FY08-09 and subsequent years, ARRA expenditures must be reported on a separate line from non-ARRA monies and the Federal Program Name (Footnote Reference F on the Exhibit K) must begin with the prefix "ARRA-". This will allow the Office of the State Controller (OSC) to properly report these funds on the statewide SEFA report. For purposes of the Exhibit K (SEFA), only the expenditures (including internal pass through expenditures) of the primary state recipient are reported. Please note that this is consistent with OSC's historical SEFA reporting, but differs from the ARRA reporting requirements outlined below.

When passing ARRA money through to external subrecipients, agencies are required to notify external subrecipients of the requirement to specifically identify ARRA funding in their SEFA in the manner described above.

Please contact Hollie Turtle (303-866-3894 or [hollie.turtle@state.co.us](mailto:hollie.turtle@state.co.us)) or Karoline Clark (303-866-3811 or [karoline.clark@state.co.us](mailto:karoline.clark@state.co.us)) if you have any questions.

### New ARRA Grant Tracking Requirements

The most recent ARRA guidance issued by the OMB requires the state to ensure that it prevents duplication in reporting of ARRA expenditures. To meet this requirement, state agencies entering grant information on the COFRS Grants Module shall create separate Grant

Master records (each with a unique Internal Grant Number) for the following two categories of grant activity:

- Category 1 is ARRA funds received directly from the federal government, from another state agency, or from an external pass through source **that are passed through to another state agency**. This condition is known as an internal subrecipient pass through. For purposes of this classification, any payment to another state agency shall be considered a subrecipient pass through and included in this category unless the other state agency operates in an Internal Service Fund type. Examples of the Internal Service Fund exception include printing purchased from Division of Central Services and computing services purchased from the Governor's Office of Information Technology.
- Category 2 is all other ARRA grant activity, which includes amounts passed through to external subrecipients, paid to external vendors, or expended on internal costs such as payroll. The purchase of goods or services where the other state agency is an Internal Service Fund type acting in a vendor capacity should also be included in this category.

This requirement is effective immediately for any ARRA grant added to COFRS. In addition, for ARRA grant activity recorded prior to the date of this alert that includes a mix of Category 1 and Category 2 payments, state agencies must split the grant into two Grant Masters and record a JV transaction to reclassify any internal subrecipient (Category 1) activity to the new grant by the close of Period 1 in Fiscal Year 2009-10. This requirement applies for each Federal Award Number and CFDA number combination.

COFRS will provide a single character field in the AGN2 table for agencies to mark whether the Grant Master is related to Category 1 or Category 2. The field will be titled "Passed to an Internal Subrecipient" (or similar) and will default to "N". If the moneys are being passed to another state agency (including Higher Education or CDOT) the field value should be changed to "Y". For federal ARRA reporting purposes, the state will only report those Internal Grant Numbers where the "Passed to Internal Subrecipient" field is "N". Note that this treatment of internal subrecipients and internal vendors as subrecipients is specific to ARRA reporting and is not consistent with the Exhibit K (SEFA) reporting outlined above. The "Passed to an Internal Subrecipient" field may not be available in COFRS at the date of this Alert; however, that does not affect the requirement to establish two Grant Masters for each activity if an internal subrecipient pass through is involved. Agencies must ensure that the "Passed to an Internal Subrecipient" field is set to the appropriate value when the field is added to the AGN2 table.

As a result of the above requirements, agencies that spend a portion of the ARRA monies they receive and pass a portion through to another agency are required to have two separate Grant Master records to account for their ARRA activity. As previously required, any agency (except Internal Service Fund types) receiving ARRA grant monies from any source (direct from the federal government, from an external nonfederal party, or from another state agency) must use the Grants Module if they record their normal accounting transactions directly on COFRS.

#### **ARRA Oversight Costs: Recent Guidance from Health and Human Services Division of Cost Allocation (DCA)**

A bill is under consideration in Congress to require 0.5 percent of ARRA funds received by a state to be made available to fund the oversight costs, which are defined as reporting and auditing activities related to the prevention and detection of fraud, waste, and abuse of ARRA funds. A final determination has not been made but it is likely that the state will participate in the

0.5 percent recovery of ARRA oversight costs; information is being gathered to make that determination. However, for planning purposes be aware that the DCA has recently issued an FAQ on implementation of the 0.5 percent recovery. That FAQ requires state agencies to prepare a supplemental ARRA Indirect Cost Rate Proposal (ICRP) or supplemental ARRA SWCAP Public Assistance Cost Allocation Plan (PACAP) if they receive an allocation of statewide ARRA oversight costs or incur their own ARRA oversight costs (not administrative costs). It should also be noted that the ARRA oversight costs can only be recovered through this process and must be excluded from the state's regular Statewide Cost Allocation Plan and from state agencies' regular ICRP's or PACAP's. In light of the state's likely participation in the 0.5 percent recovery process, state agencies should begin holding 0.5 percent of the ARRA moneys received in order to support recovery of the ARRA oversight costs. Please contact Bhavna Punatar (303-866-4344 or [bhavna.punatar@state.co.us](mailto:bhavna.punatar@state.co.us)) if you have any questions.

## Alert # 186



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TO:            Controllers and Chief Fiscal Officers of State Departments  
                  and Higher Education Institutions and Boards

FROM:         David J. McDermott, State Controller

DATE:         August 4, 2009

SUBJECT:      American Recovery and Reinvestment Act (ARRA) Policies and Additional ARRA  
                  Grant Tracking Requirements

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### Additional ARRA Policies and Grant Tracking/Reporting Requirements

#### **General Information**

The Colorado Economic Recovery and Accountability Board (CERAB) staff, the Governor's Office of Information Technology (OIT), and the Office of the State Controller (OSC) continue to design the data accumulation and reporting system for ARRA; at the same time additional guidance has become available from the President's Office of Management and Budget (OMB). The OSC is finalizing provisions for ARRA contracts and Purchase Orders entered into by the state and is preparing a comprehensive description of the state's ARRA process for distribution to program, purchasing, contracts, and accounting staff. The following establishes certain policies and additional coding currently identified as necessary for the implementation. (Note: Prospectively, the term "Internal Recipient" will be used instead of the term "Internal Subrecipient" and the term "Subrecipient" will only be used to indicate payments and grant responsibility passed through to or received from entities outside the state primary government.)

#### **OSC Website of ARRA Information**

The OSC has prepared a website that accumulates guidance, resources, and other valuable information on the ARRA. The website can be found at:

[http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA\\_Main\\_Page.htm](http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA_Main_Page.htm)

and is located under the Contracts section of the OSC website.

#### **ARRA Section 1512 Reporting Responsibilities**

The State Controller, the Chairman of the CERAB, and the Chief Information Officer have determined that all ARRA Section 1512 data for the state's primary government (as defined for the state's Comprehensive Annual Financial Report) will be reported to FederalReporting.gov (the federal government's ARRA data accumulation website) in a single submission by OIT. **Therefore, no state agency or Higher Education Institution (HEI) is allowed to submit data to FederalReporting.gov except OIT, and agencies and HEI shall not register with FederalReporting.gov.** Current plans are for agencies and HEI's to have two opportunities to review their ARRA data; 1) a report of the data submitted by the agencies will be available on the Financial Data Warehouse (FDW) prior to the state's submission on the 10<sup>th</sup> day of the month following the quarter end, and 2) on the 11<sup>th</sup> day of the month following the calendar close Recovery.gov will show the data submitted to FederalReporting.gov. From the 11<sup>th</sup> day to the 17<sup>th</sup> day, state agencies and HEI's will submit any changes to OIT; OIT will make the

corrections and resubmit the state's quarterly ARRA report if state agencies or HEI's submit significant changes. Due to time constraints, the FDW report in 1) above may not be available at the first data submission in October 2009. The policies in this paragraph are driven by the current information available about limitations in logon and access controls of the FederalReporting.gov system.

### **Use of the Contract Management System for ARRA Data Accumulation**

The primary government of the State of Colorado will use its recently implemented Contract Management System as the repository of most of the nonfinancial ARRA Section 1512 reportable information except for HEIs, CollegenInvest, and the Colorado Department of Transportation. Documentation relating to, and training on the use of, CMS for this purpose will be provided. Due to the eventual sunset of ARRA reporting requirements, all ARRA information entered into CMS will be kept separate from the Senate Bill 07-228 required contracts information by using two unique contract types; 1) PR - Prime Recipient, which must be entered when grant is received, and 2) SR – SubRecipient, which must be entered when the subrecipient contract is executed and updated as additional information becomes available. By segregating these ARRA contract type records from the other CMS records, the integrity of the CMS system will be maintained after ARRA spending and reporting has been completed.

### **Data Validation Requirements**

As noted, the state will report all ARRA Section 1512 Reporting Data Elements to FederalReporting.gov for the state's primary government through a single location in OIT. The state will report the same information on its local website [www.Colorado.gov/Recovery](http://www.Colorado.gov/Recovery) in addition to other ARRA expenditures not required to be reported under ARRA Section 1512, such as, Federal Medical Assistance Percentages (FMAP), Unemployment Insurance, etc. Prime recipient agencies (including HEI's, CollegenInvest, and CDOT) are required to review their information on Recovery.gov between the 11<sup>th</sup> and 17<sup>th</sup> day of the month following the calendar quarter close (referred to by OMB as the first data correction period) and report any needed changes to OIT. State agencies (other than HEI's, CollegenInvest, and CDOT) that request changes to data on FederalReporting.gov must enter matching changes to the PR and SR records on CMS, and HEI's, CollegenInvest, and CDOT must ensure their subsequent submissions to OIT reflect any changes requested of OIT in the data correction period.

### **Requirements to Prevent Duplication of Data**

Recent OMB guidance has stressed that it is the ARRA prime recipient's responsibility to ensure there is no duplication of reporting between prime recipients and subrecipients. This responsibility applies at the FederalReporting.gov level. In order to ensure Colorado will not duplicate ARRA reporting, the State Controller's policy requires that the state will neither delegate responsibility for ARRA Section 1512 reporting to any subrecipient, nor will it accept a delegation of ARRA Section 1512 reporting responsibility from an external prime recipient (that is, any external entity other than the federal government). The implication of this policy is that state agencies are required to gather from their subrecipients the 1512 reporting data elements not commonly known in making the payment to the subrecipient. These elements include, but may not be limited to; subrecipient's Congressional District, predominant place of performance information (state, location zip code, county, location name, Congressional District, area of benefit), officer names and compensation information (when applicable), subrecipient DUNS number, estimates of jobs created or retained (and related jobs narrative), and the subrecipient's vendors' names and related zip codes (that is, vendors paid by the subrecipient). Except for the jobs count and narrative, state agencies (other than HEI's, CollegenInvest, and CDOT) will enter this information into the Contract Management System (CMS) using an SR contract type, which will be linked to the related PR record entered by the Prime Recipient (if one exists in CMS). Another implication of this policy is that state agencies receiving ARRA

funds from an entity outside the state's primary government (other than the federal government) will provide the subrecipient data elements information to the external entity from which the state agency received the grant award. When the state acts as a subrecipient (as described in the prior sentence), the COFRS coding requirements (LBLE = SAxxx, or 47xxx to 47999) still apply, but grant information will not be entered into, or reported from, CMS for submission to FederalReporting.gov. Agencies acting as a subrecipient from an external entity will set the "1512 Reportable" indicator (discussed below) on COFRS to "N".

### **COFRS Coding Required to Identify Subrecipient Payments**

New OMB guidance requires the state to segregate and report payments to subrecipients distinct from other payments. In order to ensure this is possible, state agencies and HEI's are required for ARRA tracking to use **only Object Codes 51xx, 5781, and 5791 for all payments to subrecipients**. Object Code 5791 should only be used for a payment to an individual when that individual is required to carry out grant compliance responsibilities. Individuals that are beneficiaries of grant dollars should not be recorded in object code 5791. Correct use of the above object codes is essential to the state's ability to report the proper amount of funds expended to subrecipients.

### **COFRS Indicator for Designating ARRA Data Reportable Under Section 1512**

Since the issuance of Alert #185, OMB has clarified its intent in excluding entitlement and nondiscretionary grants from Section 1512 reporting. States are not required to provide the 1512 data elements to the federal government for programs included in Division B of the ARRA because OMB deems the federal agency reporting of obligations to these programs as sufficient. OMB has not provided a list of these excluded programs, but instead has provided a list of programs subject to 1512 reporting; the most recently revised list (dated July 13, 2009) can be found at: [http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-21-suppl1.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21-suppl1.pdf). The programs list excludes Medicaid, Unemployment Insurance, and financing activity related to Build America Bonds and Qualified School Construction Bonds, and potentially other ARRA funds. Although the state does not have to report expenditures and other 1512 data elements to FederalReporting.gov for these grants, it has elected to report these expenditures on its local recovery website [www.Colorado.gov/Recovery](http://www.Colorado.gov/Recovery). As a result, COFRS coding and tracking requirements apply to Division B programs, while the CMS tracking and reporting requirements do not. In order for OIT to identify ARRA programs subject to 1512 reporting, OIT will add an indicator to the COFRS AGN2 table titled "1512 Reportable" (or similar). The field will default to "N", and must be changed to a "Y" for any reportable prime recipient or internal recipient ARRA grants. The excluded programs (Medicaid, UI, etc.) will carry "N" values in this indicator as will ARRA grants state agencies receive in a subrecipient capacity from entities outside the state's primary government.

### **No Subrecipient Record in CMS for Commitments Under \$25,000**

In order to comply with the ARRA Section 1512 data reporting requirements, payments to individuals and payments to subrecipients and vendors, where the commitment is under \$25,000, must be reported in three categories separate from total expenditures and separate from expenditures to vendors or subrecipients where the contract or grant amount is over \$25,000. One implication of this requirement that affects state agencies (except HEI's, CollegenInvest, or CDOT) is that SR contract types must not be entered into CMS for subrecipient contracts (grants) or purchase orders not exceeding \$25,000.

### **Requirement to Report Jobs and Other Nonfinancial Information to the Provider of Funds**

Prime recipients (not internal recipients or external subrecipients) are responsible for reporting estimates of jobs created or retained and related narratives at the grant ID level. Under the state's policy not to delegate reporting to subrecipients, the subrecipient's estimates of jobs

created or retained and related narratives must be transmitted ultimately to the prime recipient for aggregation and reporting in the CMS Prime Recipient (PR) record. Agencies are required to gather the jobs estimates related to subrecipients' spending (including the subrecipients' vendors' job creation) along with their own jobs estimate related to their own spending (other than to the subrecipient) **and transmit this information to whomever provided the ARRA grant funds.** This information must proceed up the internal recipient chain until it reaches the prime recipient. In addition to the jobs information, there are other data elements where reporting is the prime recipient's responsibility but for which only the internal recipient can know the information. Therefore, internal recipient state agencies must provide any ARRA Section 1512 information requested by either the prime recipient or by another internal recipient providing the ARRA funds. This policy is similar to the Circular A-133 reporting required of subrecipients. For ARRA funds, it is expected in most instances that the internal recipient chain will involve only two agencies and rarely involve three or more agencies. Because the reporting period is short, agencies should transmit this information using the most expeditious media of their choice (email, spreadsheet, etc.). Except for reporting by the prime recipients, the state will not use CMS for tracking jobs and other nonfinancial information (by internal recipients) because automated aggregation of the narrative data elements would not be meaningful, and including internal recipient jobs estimates (not related to external subrecipients) would require an additional separate contract type in CMS.