



32nd ANNUAL COMMUNITY TRANSPORTATION CONFERENCE
The Foundations of Community Transportation

American Recovery and Reinvestment Act (ARRA)

Compliance Management

November 8, 2010



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Objectives

- o **NC Office of Economic Recovery & Investment**
- o **Required ARRA Contract Provisions**
- o **Potential Problem Areas**
- o **Conditions That Allow Problems**
- o **ARRA Compliance Checklist**
- o **Compliance Documentation & Recordkeeping**



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NCOERI

The NC Office of Economic Recovery & Investment is a temporary office that coordinates and monitors North Carolina's use of the federal stimulus funds. The office helps ensure that the funds are put to use quickly and efficiently, and with the transparency and accountability that North Carolinians expect. It is a part of the NC Office of Governor.

<http://www.ncrecover.gov/>



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Required ARRA Contract Provisions

Reporting Requirements – Per Title XV, Section 1512 of the ARRA, the State shall require that the Contractor provide reports and other employment information as evidence to document the number of jobs created or jobs retained from the Contractor’s own workforce and any sub-contractors.

Posting with the Local Employment Security Commission (ESC) – The Contractor is to post with ESC all positions for which it intends to hire workers as a result of being awarded the contract.



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Required ARRA Contract Provisions (cont.)

ARRA Section 902 – Provides the U.S. Comptroller General and his representatives the authority to examine any records and interview any person regarding the contract.

Authority of the Inspector General – Section 1515(a) of the ARRA provides authority for any representatives of the U.S. Inspector General to examine any records or interview any person regarding the contract.



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Required ARRA Contract Provisions (cont.)

Buy American – Section 1605 of the ARRA requires that iron, steel and manufactured goods used in public buildings or public works projects be manufactured in the United States. FTA funded projects follow the Buy America requirements (49 CFR Part 661).

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Required ARRA Contract Provisions (cont.)

Wage Rate Provision – Section 1606 of the ARRA requires that all laborers and mechanics employed by contractors and subcontractors using ARRA funds be paid wages at rates not less than the prevailing wage rate under the Davis-Bacon Act. This applies to contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works.

Prevailing Wage Rate website: <http://www.wdol.gov/>



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Required ARRA Contract Provisions (cont.)

Availability and Use of Funds – Per Section 1604 of the ARRA, contractors agree not to undertake or make progress toward any activity using recovery funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the Recovery Act.



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Required ARRA Contract Provisions (cont.)

Whistleblower Provisions – Per Section 1553 of the ARRA, protection is provided for State, Federal and contract employees.

Outsourcing outside the USA – ARRA funds cannot be used for outsourcing outside of the United States (without specific prior written approval from the agency issuing the contract).



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Required ARRA Contract Provisions (cont.)

Federal, State and Local Tax Obligations – Contractors and subcontractors self-certify that all Federal, State and local tax obligations have been or will be satisfied prior to receiving ARRA funds.

Anti-Discrimination and Equal Opportunity – ARRA funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders.



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Required ARRA Contract Provisions (cont.)

Office of State Budget and Management Access to Records – NCOERI requires that the contractors and subcontractors agree to allow the Office of State Budget and Management internal auditors and state agency internal auditors access to records and employees pertaining to the performance of any contract awarded by a public agency..

Ethics Policy – It is unlawful for any vendor or contractor to make gifts or to give favors to any State employee of the Governor’s Cabinet Agencies (which includes NCDOT).



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Required ARRA Contract Provisions (cont.)

Source: http://www.ncrecover.gov/library/pdf/OERI_Directive3.pdf



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Potential Problem Areas

Theft – fraudulent purchases or travel documents and paying for merchandise not received.

Bribery – Contractor pays inspector to overlook substandard materials.

Kickbacks – buying products from one vendor without competitive pricing with staff receiving personal payment or gifts from vendor.

Fraud – 1. Inspector allows substandard work and receives payment.
2. Padded payrolls.



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Potential Problem Areas (cont.)

- Conflicts of Interest** –
1. Project supervisor allows family members to receive funds from grants.
 2. Employee is part-owner in contractor, or subcontractor company.
 3. Staff members talking with contractor about job opportunity.
 4. Staff receiving gifts from contractors or grant recipients.
 5. Exercise caution to avoid any appearance of conflict of interest.



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Potential Problem Areas (cont.)

- Waste** – 1. Failing to secure the most competitive prices by sole source purchase.
2. Failure to take advantage of discounts and volume purchasing.
 3. Unnecessary change-orders and exceeding budgeted appropriations.

High Risk – Advance payment for goods and services (waste potential).



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Potential Problem Areas (cont.)

High Risk/Fraud – Request for payments in cash or checks made payable to cash.

Violation of Whistleblower Law – ARRA provides broader protection to any non-federal employee working on ARRA Projects which includes prohibition of reprisal when an employee reports waste, fraud or abuse.



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Conditions That Allow Problems

Only one person can approve payment requests.

Lack of internal controls, separation of duties.

Lack of budget/account discipline such as not updating budget accounts with each transaction, failure to follow encumbrance accounting principles, irregular or infrequent reconciling of financial accounts.



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Conditions That Allow Problems (cont.)

Lack of training for staff on job requirements and expectations.

The existence of prior audit findings that impact project management.

High staff turnover in key positions or vacant positions in key management positions.

Inadequate documentation with payment requests.



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Conditions That Allow Problems (cont.)

Failure to aggressively follow up on complaints.

Failure to gain knowledge on how the grant funds flow through the system and checkpoints.

Payment to vendors not normally part of the project.



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ARRA Compliance Checklist

- ✓ No commingling of ARRA funds with other funds.
- ✓ Promptly resolve outstanding audit questions and issues.
- ✓ ARRA funds must not be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools, or similar projects.
- ✓ New competitive bids are expected to be used to maximum extent feasible for purchase of goods, services, or construction projects. Existing contracts should not be used except in unusual circumstances and as approved by the NC Office of Economic Recovery & Investment (OERI).



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ARRA Compliance Checklist (cont.)

- ✓ Bid specifications should be written to allow competitive bidding. If competitive bid process is waived, justification documentation must be a part of the file and available for public inspection.
- ✓ Contracts awarded by the state or other public agencies using ARRA funds may not be outsourced outside the U.S. without specific prior approval from the respective federal agency.
- ✓ Contractors and subcontractors for ARRA-funded projects must provide documentation certifying that all federal state and local tax obligations have been or will be satisfied prior to receiving ARRA funds.



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ARRA Compliance Checklist (cont.)

- ✓ Contractors must post with the Employment Security Commission all positions for which they intend to hire workers in accordance with the Office of Economic Recovery & Investment directives.
- ✓ Public agencies using recovery funds for procurement of bids for goods, services, and construction projects exceeding \$5,000 must advertise the opportunity in a local newsprint outlet including minority and women-owned outlets.
- ✓ Selection of projects for grant awards should be based on a merit based evaluation using criteria established for the respective program, publicly announced, and made a public record.

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ARRA Compliance Checklist (cont.)

- ✓ Selected contractors shall be checked against national and state debarment lists.

<https://www.epls.gov/> (federal)

<http://www.doa.state.nc.us/PandC/actions.asp> (state)

- ✓ Recipients shall avoid awarding of funds to parties where the staff involved could have a conflict of interest.



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ARRA Compliance Checklist (cont.)

- ✓ Agencies using ARRA funds are required to use their best efforts to notify at least one Historically Underutilized Business (HUB) (HUB, MBE, WBE, DBE) of the opportunity to participate by submitting a bid. Executive Order 13 (Support for Historically Underutilized Businesses) was signed by Governor Perdue on May 7, 2009.



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Compliance Documentation & Recordkeeping

Be sure to keep accurate & complete documentation and files.

Be sure to consolidate all file information that belongs together.

Be sure to index files and make written references to information that may be found in other file locations.



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Compliance Documentation & Recordkeeping (cont.)

Force Account documentation (using your own labor force) :

- Maintain documentation showing the employee name, title, rate of pay, hours worked and date.
- Maintain documentation showing equipment used and hourly or daily rate.
- Maintain documentation showing name of materials/supplies used, date used and cost.



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QUESTIONS ?

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