



OBM

OhioDAS

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**TO: Executive Sponsors
Agency ARRA Team Members**

**FROM: J. Pari Sabety, Director, Office of Budget and Management
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SUBJECT: ARRA Procurement Guidance – OBM Guidance Memo #8

A. General Information

This guidance summarizes existing federal guidance and is being issued to assist agencies when awarding contracts and grants, and making purchases using ARRA funds. Unless otherwise authorized, agencies will follow existing procedures set forth in the Ohio Revised Code and Ohio Administrative Code, Executive Orders, and DAS Directives. While this guidance generally addresses contracts, procurements and competitive grants, formula grants are also subject to the reporting requirements in section E1 on page 5.

The Recovery Act sets forth guidelines agencies must follow when using ARRA funds, some of which may vary from Ohio law. Some 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 agency legal counsel.

When an agency receives notice that its application for ARRA funds has been approved, the agency must determine whether subsequent contracts may be awarded by the agency or through DAS. For example, most agencies may purchase supplies and services up to \$50,000 under direct purchase authority or DAS may grant the local administration authority to administer public construction projects up to \$1.5 million. Regardless of the agency administering the contract, certain contract considerations and terms apply universally for ARRA funded projects.

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.

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 agencies 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; and
9. Provide appropriate agency oversight at critical decision points.

D. Evaluating and Awarding Contracts and Grants

ARRA funding requires specific considerations in evaluating and awarding contracts. Agencies are to incorporate all of the following considerations into their evaluation and award processes for contracts and grants. Sample contract language is included as Attachment B.

Please note that there may be additional requirements specific to certain federal funding streams, and agencies must consult the 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. Use of Competition

According to the planning principles for awarding contracts, agencies are expected to maximize competition and award 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. In those circumstances where an agency must use a non-competitive contract, the agency must fully justify this action and provide evidence that appropriate action has been taken to protect the taxpayer.

Unless otherwise authorized in law, sole source purchases must be approved by the state Controlling Board in accordance with existing procedures. Brand specific purchases are addressed in the following section.

It is understood that time is of the essence in awarding ARRA contracts and grants. Accordingly, DAS and OBM have created expedited process timelines for projects using ARRA funds. Please refer to the process diagram, Attachment A, at the end of this guidance.

3. Brand Specific Purchases

As set forth in Ohio law [OAC 123:5-1-10(I)], a brand specification may only be used when at least one of the following conditions exist:

- The identified brand name supplies or services will satisfy the state's needs in the most cost-efficient manner;
- The identified brand name supplies or services are necessary to protect the health and well-being of clients of the state;
- Emergency conditions will not permit acceptance of an alternate brand name supply or service;
- A minimum of two qualified authorized stocking distributors are available to provide the required brand name supply or service.

4. Measurement and Alignment

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

5. Fixed Price Contracts

Contract types 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.

To the maximum extent practicable, contracts using Act 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 should select a contract type that supports requirements for

meaningful and measurable outcomes consistent with agency plans for, 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 contracting parties. These contracts expose the government to the least risk and can accommodate market fluctuations or other contingencies using economic price adjustments. Fixed-priced contracts are described in the FAR, Subpart 16.1, located at the following address:

http://acquisition.gov/far/current/html/Subpart%2016_1.html

DAS maintains a variety of 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 website at: www.ohio.gov/procure. Click on Current Contracts and then on GDC (General Distribution Contracts).

6. Construction of Public Buildings and Public Works – Domestic Preferences

ARRA requires agencies using ARRA funds for the construction, maintenance, or repair of a public building or public works to use iron, steel, and manufactured goods made in the United States unless the federal agency providing the ARRA grant determines that one of the following conditions exists:

- Applying the preference would be in conflict with public interest,
- Iron, steel, and manufactured goods are not produced in the United States in sufficient and reasonably available quantities or of satisfactory quality.
- 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.

A contractor seeking a waiver from the above-referenced “Buy American” requirement must apply to the granting federal agency for such waiver. Although when a federal agency waives the above-referenced requirements, the federal agency must file a detailed written justification in the Federal Register explaining the waiver, an agency should include a notification requirement from the contractor.

When using stimulus funds for the construction of public building and public works, agencies should refer contractors to the Federal Register / Vol. 74, No. 60, March 31, 2009 / Rules and Regulations; Part 25 – Foreign Acquisition, Sub-Part 25.6 ARRA – Buy American Act – Construction Materials.

In addition, a state agency shall provide the above-referenced “Buy American” requirements in all ARRA funded construction contracts. An agency may find those requirements in ARRA section 1605, FAR Case 2009-08.

7. *Buy Ohio

Provided a specific ARRA grant does not prohibit the state from following normal procurement practices (in this case “Buy Ohio” consideration) an agency should apply the following procurement practice:

Ohio law requires that state agencies consider whether the bidder is offering supplies or services produced in Ohio and whether the bidder is an Ohio based company (R.C. 125.11). To that end, an agency, when evaluating price proposals, shall provide an Ohio based company (including bidders from border states), and

companies from other states offering Ohio produced products, a five (5) percent cost preference over non-Ohio based companies offering American made products not produced in Ohio (OAC 123:5-1-06, OAC 123:5-1-11).

In computing the above-preference, the agency shall deduct five percent from the bid price of those bidders described above, before comparing those bid prices with those non-Ohio based bidders offering American made products not produced in Ohio.

Please note that although the agency shall deduct five (5) percent from an Ohio based bidder's proposed price, the actual contract price for the company awarded the contract is the offered price.

In addition to the "Buy Ohio" preference described above, state law requires an agency to consider products produced in America. As such, an agency may not award a contract to a bidder offering supplies or services not produced in America unless the agency receives only one bid for supplies or services produced in America and that one bid exceeds the bid price of a bidder offering non-American produced product by six (6) percent.

Please note that this exception is not applicable to procurement of steel, iron, or manufactured goods for ARRA funded construction projects (described in Section 6, above).

Please refer to the Department of Administrative Services' "State Procurement Handbook." The agency may find the above-referenced handbook at www.ohio.gov/procure.

8. Small and Disadvantaged Business Enterprises; *MBE/EDGE

The Act mandates that agencies provide opportunities for small businesses and disadvantaged business enterprises to the maximum extent practicable. Agencies should 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.

Executive Order 2008-13S and Ohio Revised Code 125.081 established guidelines for agencies to follow when selecting purchases for MBE set aside or EDGE participation. Agencies must set aside approximately 15% of their intended purchases for competition by certified minority business enterprises (MBEs) only. The Executive Order establishes a goal of conducting 5% of an agency's business with EDGE certified companies. MBE and EDGE companies are certified by the DAS Equal Opportunity Division and are listed on their website at <http://das.ohio.gov/Eod/MBESearch/index.asp>.

As a general rule, contracts awarded with ARRA funds are included in each agency's total spending amounts, and will be reflected in each agency's quarterly MBE and EDGE scorecards.

9. *Employment of People with Disabilities

The Act encourages the procurement of supplies and services provided by organizations employing people with work-limiting disabilities pursuant to the Javits-Wagner-O'Day Act. Ohio law identifies the following qualifying organizations:

- DAS Office of Procurement from Community Rehabilitation Programs
- Rehabilitation Services Commission, Bureau of Services for the Visually Impaired

Ohio law mandates that agencies make purchases from these organizations when required supplies and services are available through these programs.

10. Contract Financing, and Structuring Contract Deliverables

One of the planning principles is to mitigate the vendor's schedule, cost, and performance risk. Agencies should give special attention to structuring contract deliverables to promote the economic stimulus goals (including expenditure timeframes) of the Act.

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.

Alternatives to contract financing include structuring contract line items to allow invoicing and payments 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 government and reduce costs to the contractor associated with financing in a tight credit market.

11. *DAS Term Contracts

Agencies may make purchases using ARRA funds from existing federal and state contracts. Some state contracts are identified as indefinite-delivery/indefinite quantity (ID/IQ) contracts. DAS contracts in this category include but are not limited to General Distribution Contracts (GDCs), Multiple Award Contracts (MACs), State Term Schedules (STSs) and Master Maintenance Agreements (MMAs). If an agency obligates funds under the Recovery Act on an existing DAS contract, it must report the purchase as a "Recovery" action per FAR Section 4.605(c) and Subpart 5.7.

E. Required Supplemental Terms for ARRA Contracts

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, 1515, 1553, 1604 and 1609 of the Recovery Act. The full text of the Act is available at: <http://fdsys.gpo.gov/fdsys/pkg/BILLS-111hr1ENR/pdf/BILLS-111hr1ENR.pdf>

Following are contract elements that should be contained in any state contract that is funded through ARRA. Please note that there may be additional contract terms unique to particular funding streams.

1. Timely and Accurate Reporting

The Act requires periodic reporting on projects using ARRA funds to ensure accountability and transparency on all activities associated with the purchase. The Office of Budget and Management has and continues to

issue guidance memos to assist state agencies when using ARRA funds. These memos are posted on the OBM website at: <http://obm.ohio.gov/>. The following guidance memos are relevant to reporting requirements:

- Guidance Memo #3 - Preliminary Reporting Guidance
- Guidance Memo #5 – Risk Management
- Guidance Memo #6 – Award Notices and Cash Receipts
- Guidance Memo #7 – Ohio ARRA Hub & Reporting Requirements

Furthermore, Attachment C at the end of this guidance is a template form for subcontractors and subgrantees using ARRA funds. Your agency should attach these reporting forms to contract and grant agreements along with program-specific instructions on returning completed report forms to the agency. Agencies will be responsible for entering the reporting data for subcontractors and subgrantees into SharePoint in a timely fashion.

2. Job Posting

All jobs created with ARRA funds are required to be posted on www.ohiomeansjobs.com and at the closest ODJFS One-Stop location (see <http://jfs.ohio.gov/workforce/jobseekers/onestopmap.stm>). A detailed description on how to post these jobs is included as Attachment D.

The Act requires reporting of all jobs created and all jobs retained with ARRA funds. The federal Office of Management and Budget defines jobs created as “those positions created and filled, or previously existing unfilled positions that are retained as a result of Recovery Act funding.” Positions retained are “those previously existing filled positions that are retained as a result of Recovery Act funding.” A job cannot be reported as both created and retained. It is not necessary to post an unfilled position if a laid-off worker is being recalled to re-fill that position, but the position, when filled, must still be reported as a position created.

On the OhioMeansJobs website, please use the “Quick Job Post” screen under the “Employers” heading. When an employer posts a job on OhioMeansJobs, the posting has a job post number. All grantees, contractors, and subcontractors will use this number to meet certain reporting requirements of the previous section.

3. Accessibility to Records and Project Sites

The Act requires that each contract and grant awarded using ARRA funds must include a provision to allow certain access to information by the U.S. Comptroller General and the Inspector General. This access includes the examination of records of contractors and subcontractors, and ability to interview any employees or officers associated with the contracts.

4. Equal Opportunity Laws and Principles

The Act requires all contractors and subcontractors and subgrantees to comply with federal and state laws pertaining to civil rights and discrimination. Bidding documents must include language that references both federal and Ohio laws. Among the applicable federal laws are:

- Title VI & Title VII of Civil Rights Act of 1964
- Equal Pay Act of 1962
- Age Discrimination in Employment Act of 1967
- Title IX of Educational Amendments of 1972

- Section 504 of the Rehabilitation Act of 1973
- Age Discrimination Act of 1975
- Title I & Title V of Americans with Disabilities Act of 1990
- Fair Housing Act
- Fair Credit Reporting Act
- Equal Educational Opportunities Act
- Uniform Relocation Act

Among the applicable Ohio laws and provisions are:

- Ohio Revised Code § 122.71, § 125.111, §153.59, § 4112.01, § 4112.02
- Governor's Executive Order 2007-10S

5. Prevailing Wage

The Act requires that all contractors and subcontractors pay not less than the prevailing wage under the Davis-Bacon Act to all laborers and mechanics on projects funded directly by or assisted in whole or in part by ARRA funds. The agency must communicate this requirement to contractors and subcontractors and issue the appropriate federal wage rates to them. Once this is completed, Ohio's prevailing wage rates do not apply and the agency is exempt pursuant to ORC 4115.04(B)(1). The project then becomes a federal project administered by a state agency.

In the event that the contract work does not lie within the purview of the Davis-Bacon Act, then the agency must apply Ohio prevailing wage law, in accordance with ORC sections 4115.03 to 4115.06.

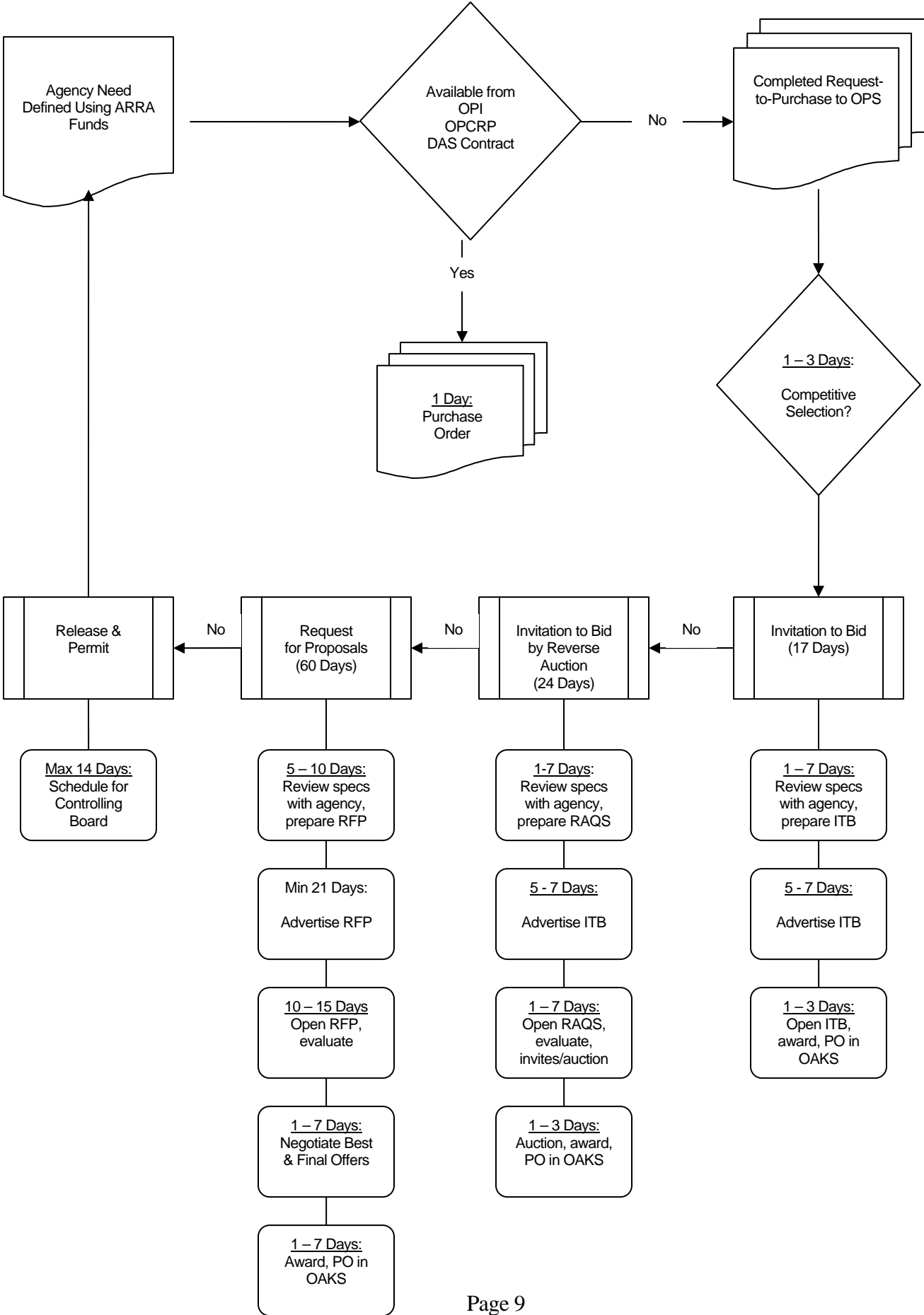
6. Whistleblower Protections

The Act contains new language regarding whistleblower protections that prohibit non-federal employers from discharging, demoting, or discriminating against an employee as a reprisal for disclosing information. Contracts and grant agreements using ARRA funds must include reference to these revised provisions, which are contained in ARRA section 1553, FAR Case 2009-012.

It is likely that this guidance will continue to develop as more ARRA requirements become known and understood. We will continue to issue guidance on an ongoing basis. Thank you for your continued cooperation.

**Indicates Ohio Specific Procurement Considerations*

Expedited Process for Contracts Using ARRA Funds



Subrecipient Information

For any first-tier subcontract or subaward funded in whole or in part under the Recovery Act, that is over \$25,000 and not subject to aggregate reporting under Section 4, the recipient shall provide detailed information as follows:

1. Subrecipient DUNS Number

Provide the 9 digit Data Universal Numbering System (DUNS) number or Central Contractor Registration plus 4 extended DUNS Number

2. Award Number or Other Identifying Number

Provide the grant/award number (if any) assigned to the subrecipient award by the state agency

3. Subrecipient Name

Provide the legal name of subrecipient as registered in the Central Contractor Registration (www.ccr.gov).

4. Subrecipient Location

Physical location as listed in the Central Contractor Registration. For congressional district, use the format: 2 characters State Abbreviation—3 characters District Number, e.g., CA-005 for California 5th district, CA-012 for California 12th district, NC-13 for North Carolina's 13rd district. If the program/project is outside the US, enter 00-000.

5. Subrecipient Type

Select from the categories to the Right

- State Government.
- County Government.
- City or Township Government.
- Special District Government.
- Regional Organization.
- U.S. Territory or Possession.
- Independent School District.
- Public/State Controlled Institution of Higher Education.
- Indian/Native American Tribal Government (Federally Recognized).
- Indian/Native American Tribal Government (Other than Federally Recognized).
- Indian/Native American Tribally Designated Organization.
- Public/Indian Housing Authority.
- Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education).
- Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education).
- Private Institution of Higher Education.
- Individual.
- For-Profit Organization (Other than Small Business).
- Small Business.
- Hispanic-serving Institution.
- Historically Black Colleges and Universities (HBCUs).
- Tribally Controlled Colleges and Universities (TCCUs).
- Alaska Native and Native Hawaiian Serving Institutions.
- Non-domestic (non-US) Entity.
- Other.

6. Amount of Subcontract or Subaward

Provide the cumulative amount of cash disbursed to the subawardee or subcontractor as of the reporting period end date. (To be provided by the State)

7. Total Amount of Subcontract or Subaward

Provide the anticipated total amount of cash to be disbursed to the subawardee or subcontractor by the expiration date of the subaward or subcontract, respectively.

8. Date that Subcontract or Subaward was Signed

(mm/dd/yyyy)

9. Subcontract/ Subaward Grant Period

Indicate the project/grant period established in the subaward document during which sponsorship begins and ends. For multi-year awards for a project/grant period (e.g., 5 years) that are funded in increments known as budget periods or funding periods, please provide the total project/grant period, not the individual budget period or funding period

10. Primary Location

Provide physical location of primary place of performance.

11. Five Most Highly Compensated Officers of the Entity: Provide Name and Total Compensation (1)

Provide the names and total compensation of the five most highly compensated officers of the subrecipient entity if—
(1) the recipient in its preceding fiscal year received—
(a) 80 percent or more of its annual gross revenues in Federal awards; and
(b) \$25,000,000 or more in annual gross revenues from Federal awards; and
(2) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 [26 USC § 6104].
"Total compensation" means the cash and noncash dollar value earned by the executive during the subrecipient's past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):
(i). Salary and bonus.
(ii). Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R.
(iii). Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
(iv). Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
(v). Above-market earnings on deferred compensation which are not taxqualified.
(vi). Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

12. Five Most Highly Compensated Officers of the Entity: Provide Name and Total Compensation (2)

13. Five Most Highly Compensated Officers of the Entity: Provide Name and Total Compensation (3)

14. Five Most Highly Compensated Officers of the

Entity: Provide Name and Total Compensation (4)

**15. Five Most Highly Compensated Officers of the
Entity: Provide Name and Total Compensation (5)**

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Subawardee or Subcontract Award Information—Aggregated

For subcontracts or subawards valued at less than \$25,000 or any subcontracts or subawards awarded to an individual, or subcontracts or subawards awarded to an entity other than an individual which in the previous tax year had gross income under \$300,000, the recipient shall only report the aggregate number of such first tier subawards and subcontracts awarded in the quarter and their aggregate total dollar amount.

**16. Total number of Subcontractors and
Subawardees less than \$25,000/ Award and
Awarded to Individuals**

To be answered by State Agencies

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**17. Total Amount of Subcontractors and Subawardees
less than \$25,000/ Award and Awarded to
Individuals**

To be answered by State agencies

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Supplemental Terms and Conditions for Projects Funded in Whole or in Part with Moneys from the American Recovery and Reinvestment Act of 2009 (ARRA)

ARRA FUNDED PROJECT

Funding for this contract has been provided through the American Recovery and Reinvestment Act of 2009 (ARRA), and is subject to the reporting and operational requirements of ARRA. All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or state entities. The state has the right to cancel, terminate, or suspend the contract if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.

I. ACCESSIBILITY TO RECORDS AND PROJECT SITES

A. Comptroller General of the United States Authority to Inspect

Pursuant to Section 902 of ARRA the Comptroller General of the United States and his representatives have the authority to:

- (1) Examine any records of the contractor (vendor, bidder) or any of the subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) Interview any officer or employee of the contractor or any of the subcontractors, or of any State or local government agency administering the contract, regarding such transactions; and
- (3) Designate a time and place to examine those records and interview those officers and employees described above.

B. Inspector General Authority to Inspect

Pursuant to Section 1515(a) of ARRA, an Inspector General or any representative of an Inspector General has the authority to:

- (1) Examine any records of the contractor (vendor, bidder) or any of the subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) Interview any officer or employee of the contractor or any of the subcontractors, or of any State or local government agency administering the contract, regarding such transactions; and
- (3) Designate a time and place to examine those records and interview those officers and employees described above.

C. **contractor** (vendor, bidder) shall include **verbatim** in all of the contractor's agreements with its subcontractors from whom the contractor acquires goods or services in its execution of the ARRA funded Work, the language provided in Parts A and B of this Section.

II. TIMELY AND ACCURATE REPORTING

The contractor shall comply with all reporting requirements outlined in Section 1512 of ARRA including the following:

Quarterly report detailing:

- The amount of ARRA funds received
- The amount of ARRA funds expended or obligated
- Detailed list of all projects or activities for which the ARRA funds were expended
- An estimate of the number of jobs created and the number of jobs retained by the project or activity
- Detailed information concerning subcontracts or sub-grants including the state Ohio

In addition, the contractor shall provide the contractor's unique nine-digit number issued by Dunn and Bradstreet (DUNS number).

The contractor shall complete and provide to the state the "OBM, Ohio Sub-Grantee and Sub-Recipient Spending Report in Compliance with ARRA Sec. 1512".

III. EQUAL EMPLOYMENT OPPORTUNITIES

In addition to the state's equal employment opportunity requirements set forth in the contract, by the signature affixed to this bid, the contractor and any subcontractor agrees that they comply with all of the following federal laws for employment, discrimination, etc. The State may consider the failure to comply with any of the below listed laws, rules, and executive orders as a breach of contract and may result in termination of the contract.

Federal Laws:

- Title VI & Title VII of Civil Rights Act of 1964
- Equal Pay Act of 1962
- Age Discrimination in Employment Act of 1967
- Title IX of Educational Amendments of 1972
- Section 504 of the Rehabilitation Act of 1973
- Age Discrimination Act of 1975
- Title I & Title V of Americans with Disabilities Act of 1990
- Fair Housing Act
- Fair Credit Reporting Act

- Equal Educational Opportunities Act
- Uniform Relocation Act

IV. JOB POSTINGS

The contractor shall post all jobs created resulting from the award of the contract and the use of ARRA funds and all jobs retained resulting from the award of the contract and the use of ARRA funds on www.ohiomeansjobs.com, and on <http://jfs.ohio.gov/workforce/jobseekers/onestopmap.stm>. For purposes of this contract, and as defined by the Federal Office of Management and Budget ,“jobs created” are those positions created and filled, or previously existing unfilled positions that are retained as a result of ARRA funding. “For purposes of this contract, “jobs retained” are those previously existing filled positions that are retained as a result of ARRA funding.

V. PROTECTIONS FOR INDIVIDUALS REPORTING COMPLIANCE ISSUES

- A. Pursuant to Section 1553 of ARRA, the Contractor and all subcontractors are prohibited from discharging, demoting, or otherwise discriminating against any contractor or subcontractor employee as a reprisal for disclosing the following information that the employee reasonably believes is evidence of:
1. gross mismanagement of the contract relating to funds for the Project;
 2. gross waste of ARRA funds;
 3. 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 the implementation of or use of ARRA funds; or
 5. a violation of law, rule, or regulation related to the contract (including the competition for or negotiation of the contract) relating to ARRA funds;
- B. The Inspector General shall receive investigate all complaints alleging a violation of the terms in part A of this section;
- C. All employers receiving ARRA funds shall post notice of employee rights as described above in conspicuous locations with other required employee rights information.

VI. CONSTRUCTION PROJECTS

For those construction projects for which the state uses ARRA funds for the construction, alteration, maintenance, or repair of a public building, the following conditions apply:

A. Buy American

1. Products: Pursuant to Section 1605 of ARRA, all steel, iron, and manufactured goods used in the construction project must be produced in the United States;
2. Exception: The requirement set forth in part 1 of this section shall not apply only if the appropriate federal agency determines one of the following:
 - (a) The application of the requirement in part 1 of this section would be inconsistent with the public interest;
 - (b) That (1) an insufficient amount of steel, iron, or relevant manufactured goods were produced in the United States or (2) that a reasonable amount of steel, iron, or relevant manufactured goods were available or (3) that a reasonable amount of the available steel iron, or relevant manufactured goods of satisfactory quality were not available;
 - (c) That by applying the requirement set forth in part 1 of this section would increase the **overall cost of the project** by more than twenty-five percent (25%);
3. A contractor and subcontractors must comply with the above requirement unless the contractor or subcontractor provides a waiver from the appropriate federal agency stating that at least one of the above-referenced exceptions applies. A contractor may seek an exception to the Buy American requirements by appealing to the appropriate federal agency pursuant to rules and regulations in 2CFR Part 176 Volume 74, No 77;
4. The State and the contractor shall apply the Buy American requirements set forth in this section in a manner consistent with United States obligations under international agreements.

B. Prevailing Wage Rates and Labor Standards

1. The contractor and subcontractors shall pay all laborers and mechanics employed by contractor or subcontractors on the Project not less than the prevailing wage determined under the “Davis-Bacon Act” (USC 276a-a5) for similar work in the civil subdivision for which the laborers and mechanics perform the work. In addition, the Contractor and subcontractors shall pay all laborers and mechanics overtime compensation in accordance with the provisions of the “Contract Work Hours and Safety Standards Act” (40 U.S.C. 327-333).
2. The contractor and subcontractors shall comply with all regulations issued pursuant to the above-referenced Acts and with all applicable federal and state laws and regulations.

Connecting Low Income Ohioans With Job Opportunities – Guidance for Recipients

Governor Ted Strickland has required that all jobs created with American Recovery and Reinvestment Act dollars be posted on **OhioMeansJobs.com** and with the closest county department of job and family services One-Stop center.

Employers are responsible for reporting and posting every job created and for reporting positions retained. The U.S. Office of Management and Budget defines jobs or positions created as “those new positions created and filled, or previously existing unfilled positions that are retained as a result of Recovery Act funding.” Positions retained are defined as “those previously existing filled positions that are retained as a result of Recovery Act funding.” A job cannot be reported as both created and retained. It is not necessary to post an unfilled position if a laid-off worker is being recalled to re-fill that position.

Here are some basic instructions for posting ARRA-funded jobs.

How to Post Job Opportunities on OhioMeansJobs.com

- Step 1:** Go to www.OhioMeansJobs.com.
- Step 2:** From the home page, on the left-hand side under “Employers,” select the third option, labeled “Quick Job Post.”
- Step 3:** On the “Quick Job Post” screen, fill out the fields under “General Information” and “Contact Information.”

Helpful Hints:

- Be sure to read the “Quick Post Terms and Conditions” by clicking on the underlined terms and conditions line in the top blue box.
- Fields denoted in **RED** are mandatory.
- You must enter start and end dates for how long you would like the position to be posted. The system defaults to a 30-day posting. However, you may post positions for as little as 1 or as long as 90 days.
- In the “Desired Skills/Duties” field, you may cut and paste from other documents.
- To post multiple job openings for the same job description, we suggest that you state the number of openings in the “Job Title” or “Desired Skills/Duties” fields.
- Once you post a job, it is not possible for you to edit it. If you need assistance with a job opportunity after you have posted it, you may contact us at the following e-mail address and phone number:
 - E-mail: omj-help-desk@jfs.ohio.gov

- Phone: 1-888-296-7541. After calling and selecting your desired language, select Option #2, then Option #1, and finally Option #3 to speak with a customer service representative.

Step 4: Once you have completed entering the required information, scroll to the bottom of the page and click on “Save.”

Step 5: On the “Job Post Complete” page, you will receive a job post number and will be given the opportunity to print the page or the job posting. Please record the job post number for later reporting.

Helpful Hints:

- Select the “Print this Page” option. This will enable you to keep track of both your posting and your job post number. You will need this number if you ever need to contact us and for later reporting.
- If you do need to contact us, you may do so at the following e-mail address and phone number:
 - E-mail: omj-help-desk@jfs.ohio.gov
 - Phone: 1-888-296-7541. After calling and selecting your desired language, select Option #2, then Option #1, and finally Option #3 to speak with a customer service representative.
- Your job posting will take a few hours to appear on **OhioMeansJobs.com**.
- No matter what method you selected under the “Contact Information” section, you can register on **OhioMeansJobs.com** at any time and use Monster.com tools to search more than 4.5 million resumes, free of charge.

Step 6: From the “Job Post Complete” page, click on the nearest One-Stop location.

Step 7: On the map of Ohio, select the county in which the job opportunity has been posted. You will be given a name and number for the One-Stop Center serving that county. Please call to see whether they have additional posting requirements or if they rely solely on the **OhioMeansJobs.gov** system.

You have now successfully posted your job on **OhioMeansJobs.com**. Thank you for your cooperation and for your participation in Ohio’s recovery.

In addition to posting jobs on **OhioMeansJobs.com** and the nearest One Stop, Governor Strickland is encouraging all employers to take advantage of the Work Opportunity Tax Credit (WOTC) as well as to reach out to low-income populations regarding new job opportunities. For those employers interested in either the WOTC and/or establishing a plan to target low-income populations, please find additional information below.

The Work Opportunity Tax Credit (WOTC)

The Work Opportunity Tax Credit Program (<http://jfs.ohio.gov/wotc/>) is a federal program that provides Ohio employers with a tax credit against their federal tax liability for hiring individuals from 11 target groups of disadvantaged job seekers.

Tax credits range from \$1,200 to \$2,400 for all WOTC target groups. Employers may receive a maximum credit of up to \$9,000 per eligible employee for the Long Term IV-A target group.

Target Groups

- 1) A member of a family that is receiving or recently received Temporary Assistance to Needy Families (TANF)
- 2) Veteran
- 3) Formerly Incarcerated
- 4) A resident of one of the federally designated Empowerment Zone (EZ), Enterprise Communities (EC) or Renewal Communities (RC), or a Rural Renewal County (RRC) (Crawford, Monroe, Paulding, Seneca and Van Wert Counties)
- 5) Vocational Rehabilitation Referral - An applicant who has a physical or mental disability that results in a substantial handicap to employment
- 6) Food Stamp Recipient
- 7) Supplemental Security Income (SSI) Recipient
- 8) Long Term TANF Recipient
- 9) Summer Youth - Age 16 but not yet 18 years old on hire date

Two New Target Groups Added Under ARRA:

- 10) Disconnected Youth – ages 16 to 24, not regularly attending school, not regularly employed and lacking sufficient skills to be employable
- 11) Unemployed Veteran - received unemployment insurance for not less than 4 weeks during the previous year ending on the hire date.

We advise employers to include the two WOTC Forms (8850 & 9061) in their hiring packets (application papers). Both of which can be downloaded at the following site:

<http://jfs.ohio.gov/wotc/index.stm>

Reaching out to Low-Income Ohioans

Firms are encouraged to reach out to the county Job and Family Services in their community, as well as their local One Stop, to connect new jobs with low-income Ohioans. Below you will find links to each of the county Job and Families Services as well as Ohio's One Stops.

County Job and Family Services

<http://www.jfs.ohio.gov/County/cntydir.stm>

Ohio's One Stops

<http://jfs.ohio.gov/workforce/jobseekers/onestopmap.stm>