

# ARRA CONTRACT CHECKLIST

## ARRA Contract Checklist

Summary checklist of ARRA provisions that, if not observed by the Sponsor and or consultant, could have a direct and material effect on their contract compliance.

### **REPORTS ON USE OF FUNDS. (Sec. 1512)**

This section of the ARRA referred to as the “Jobs Accountability Act” sets forth certain reporting requirements.

### **SINGLE AUDIT REGULATION**

#### **U.S. Comptroller General (sec. 902) & Office of Inspector General (Sec. 1515 (a))**

(1) to examine any records of the contractor or any of its 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) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.”

### **LIMIT ON FUNDS. (Sec 1604)**

Funds may not be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pools.

### **BUY AMERICAN. (Sec. 1605)**

Projects for the construction, alteration, maintenance, or repair of public building or public work must use, steel, and manufactured goods produced in the United States, unless this requirement is waived by the Federal grantor agency.

### **WAGE RATE REQUIREMENT. (Sec. 1606)**

All labors and mechanics employed by contractors and subcontractors must paid wages at not less than prevailing rates on projects of similar character in the locality.

## Provisions and Information

On February 17, 2009, President Obama signed Public Law 111-5. The Act requires that with this new additional funding commonly referred to as Economic Recovery (ER) funding that there will be an unprecedented level of transparency and accountability so Americans know where their tax dollars are going and how they are being spent.

### **1. Sponsor Certifications Prior to Grant Offer**

Due to the scrutiny this program will receive, it is appropriate to add one additional level of oversight. Accordingly, to ensure that all projects have the highest potential to quickly result in job creation, all ER grant offers are required to be based upon bids prior to Grant Offer. In addition to assuring that no ER

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funds are sitting idle awaiting design and/or bid, there is the added benefit of having a motivated and interested third party, the contractor, urging the project forward.

Accordingly, the sponsor shall be required to certify to the following items prior to Grant Offer:

- Project bid status, complete with a copy of the bid tabulation;
- Identification of requisite waiver requests to the Buy American Preference Requirement;
- Commitment to the issuance of a Notice to Proceed within 30 days of Grant Offer.
- Certain certifications as required by the ARRA.

These certifications are contained with *Attachment 1 – Sponsor Certifications* and must be included in the grant file prior to issuance of a Grant Offer.

## **2. Program Reporting Requirements and Certification**

Congress has specifically mandated that both the sponsors report on the uses of funds provided under the ARRA to (a) assure transparency and oversight of the distribution of the funding, and (b) assure the effective administration of the ER funds as envisioned by Congress.

As to transparency and oversight reporting (Sec 1512), the sponsors are required by statute, not later than 10 days after the end of each calendar quarter, to submit a report that contains information as detailed within *Attachment 2 – Transparency and Oversight Requirements*. If an error is subsequently revealed by the agency or the sponsor on this reporting requirement, contact the agency to determine the correct process and timing to correct.

As to the effective administration reporting (Sec. 1201(c)), each sponsor is required by statute to submit the first of the periodic reports required under this subsection not later than 90 days after the date of enactment of this Act and shall submit updated reports not later than 180 days, 1 year, two years, and

three years after such date of enactment and shall contain the information that is detailed in *Attachment 3 – General Reporting Requirements*.

## **4. Buy American**

The Act specifically requires compliance with Buy American. While Buy American is a part of the “usual” contract requirements, including it as a separate section in the legislation signals the Congressional intent that grant recipients use United States’ (US) goods to the maximum extent possible. However, the Act also requires that this provision be applied in a manner consistent with US obligations under international agreements.

## **5. Federal Register Notices of Buy American Waivers**

For any waiver that is issued to the Buy American requirements, a federal register notice must be published listing the airport, the project, information about the waiver itself and the reason that the

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waiver was issued. This includes times when the waiver is based upon the cost of the components and subcomponents produced in the US is 60 percent or more of the cost of all of the components and subcomponents of the facility and equipment and final assembly of the equipment or facility was in the US. Accordingly, so as to assure adequate time to process any waiver requests, the sponsor is required to provide requests for waiver to the Buy American Preference Requirement (BAPR) (49 USC 50101) along with its certification of bid status and commitment to Notice to Proceed schedule. The sponsor should be mindful of these requirements so as to take appropriate action, such as highlighting in all bidding documents and making the bidders aware during pre-bid conferences.

## 6. ARRA Wage Rate Requirements

The Department of Labor's (DOL) interpretation of the ARRA provision on the Federal wage rates is that the ARRA **does not** increase the scope of the Davis-Bacon provisions for ARRA projects beyond how GDOT normally applies it. Accordingly, grant administration of the ARRA wage rate requirements will apply Davis-Bacon in the same manner as it is applied for normal AIP. DOL is the agency charged with interpreting this section and GDOT is relying on their interpretation. DOL plans to issue additional guidance concerning how the Davis-Bacon applies to projects funded by ARRA, but doesn't anticipate any significant changes from how it is normally applied.

## 7. Special Grant Conditions

The legislation requires a level of program reporting that does not currently exist in "normal" funding. To this end, the majority of the additional requirements, such as interim reporting of expenditures, jobs created or preserved, project status reports, etc., will be included as a requirement of the Sponsor and will be so noted within the grant agreement. More specifically, the following Special Conditions are to be included in each Grant Offer for ER funding:

## 8. Heightened Program Oversight

There is every expectation that the ER program will have an unprecedented level of oversight by the agency, Department, OIG, GAO, OMB and the public. Accordingly, to assure the Administration's commitment to transparency, GDOT and the airport sponsor must be fastidious in its grant documentation and overall record keeping..

## 9. Miscellaneous Issues

- **Supplemental Language** - Supplemental guidance will be issued as necessary based upon subsequent OMB directives.
- **Special Contracting Provisions (Sec. 1554)**

To the maximum extent possible, contracts funded under this Act shall be awarded as fixed-price contracts through the use of competitive procedures. A summary of any contract awarded with such funds that is not fixed-price and not awarded using competitive procedures shall be posted in a special section of the website established in section 1526.

### Attachment 1

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## *Sponsor Certifications*

The Sponsor hereby certifies to the following:

1. The funding request contained in this grant application is based upon competitive bids that were received on (date to be inserted) and the associated bid tabulation is hereby attached to this certification.
2. The Sponsor hereby acknowledges the agency's need to approve and issue, as appropriate, any waiver to the Buy American Preference Requirement (BAPR) (49 USC 50101). Additionally, the Sponsor understands that any waiver request issued to the BAPR under the American Recovery and Reinvestment Act of 2009 requires specific information related to the waiver request, if granted, to be published in a Federal Register Notice. Accordingly, so as to not delay the processing of the subsequent Grant Offer and resulting contract documents between the Sponsor and the lowest responsible bidder, attached hereto are all Request for Waiver to the BAPR necessary to complete this project.
3. The Sponsor further certifies that it will issue a Notice to Proceed to the contractor (or equipment supplier in the case of equipment acquisition) within 30 days of acceptance of a Grant Offer.
4. Pursuant to Title XV, Subtitle A, section 1511 of the American Recovery and Reinvestment Act (Pub. L. 111-5 (Feb. 17, 2009) ("ARRA"), I \_\_\_\_\_\*, hereby certify that the infrastructure investment funded by ARRA has received the full review and vetting required by law and that I accept responsibility that such investment is an appropriate use of taxpayer dollars. I further certify that the specific information required by section 1511 concerning each such investment (a description of the investment, the estimated total cost, and the amount of ARRA funds to used) is enclosed or is provided on the \_\_\_\_\_(Sponsor named website)\_\_\_\_\_website, available to the public at [http://...(insert link) ...] and linked to Recovery.gov.

I understand that the Sponsor making application for ARRA funding may not receive ARRA infrastructure investment funding unless this certification is made and posted.

*\* In accordance with section 1511 of ARRA, the Certifying Official may be either the mayor, or other chief executive, as appropriate.*

\_\_\_\_\_  
(Name of Sponsor)

\_\_\_\_\_  
(Signature of Sponsor's Designated Official Representative)

**By:** \_\_\_\_\_  
(Typed Name of Sponsor's Designated Official Representative)

**Title:** \_\_\_\_\_  
**Attest:** (Typed Title of Sponsor's Designated Official Representative)

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## Attachment 2

### *Transparency and Oversight Requirements*

**REPORTS ON USE OF FUNDS. (Sec. 1512)**

*A section of the ARRA referred to as the “Jobs Accountability Act” sets forth certain reporting requirements.*

**AGENCY REPORTS** – *Not later than 30 days after the end of each calendar quarter, recipient shall make the information in reports submitted by the sponsor above publicly available by posting the information on a website.*

**COMPLIANCE** – *As a condition of receipt of funds under this Act, recipient shall require any sponsor receiving ER funds to provide the information required in **SPONSOR REPORTS** section above.*

**REGISTRATION** – *Sponsors required to report information elements to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282) (as noted in **SPONSOR REPORTS** above, must register with the Central Contractor Registration database or complete other registration requirements as determined by the Director of the Office of Management and Budget.*

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## Attachment 3

### **General Reporting Requirements**

#### **PERIODIC REPORTS (Sec. 1201(c))**

**GENERAL** – Notwithstanding any other provision of law, each sponsor shall submit to recipient periodic reports on the use of the funds provided by the ARRA. Such reports shall be collected and compiled by recipient and transmitted to Congress. The sponsors shall take appropriate action to ensure the accuracy and consistency of such reports.

**CONTENTS OF REPORTS** – For each grant receiving funding under the ARRA, the sponsor shall include in the periodic reports information tracking-

(A) the amount of Federal funds appropriated, allocated, obligated, and outlayed under the appropriation;

(B) the number of projects that have been put out to bid under the appropriation and the amount of Federal funds associated with such projects;

(C) the number of projects for which contracts have been awarded under the appropriation and the amount of Federal funds associated with such contracts;

(D) the number of projects for which work has begun under such contracts and the amount of Federal funds associated with such contracts;

(E) the number of projects for which work has been completed under such contracts and the amount of Federal funds associated with such contracts;

(F) the number of direct, on-project jobs created or sustained by the Federal funds provided for projects under the appropriation and, to the extent possible, the estimated indirect jobs created or sustained in the associated supplying industries, including the number of job-years created and the total increase in employment since the date of enactment of this Act; and

(G) for each covered program report information tracking the actual aggregate expenditures by the sponsor for projects eligible for funding under the program during the period beginning on the date of enactment of this Act through September 30, 2010, as compared to the level of such expenditures that were planned to occur during such period as of the date of enactment of this Act.

**TIMING OF REPORTS.**—Each grant recipient shall submit the first of the periodic reports required under this subsection not later than 90 days after the date of enactment of this Act and shall submit updated reports not later than 180 days, 1 year, 2 years, and 3 years after such date of enactment.

## Attachment 4

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## *Davis-Bacon Act vs. ARRA Wage Rate Requirements*

<b>Davis-Bacon Act Requirements (40 U.S.C. 276a-276a-7)</b>	<b>American Recovery and Reinvestment Act of 2009 Wage Rate Requirements</b>
Applies to “every contract... which requires or involves the employment of mechanics and/or laborers.”	Applies to “all laborers and mechanics employed by contractors and subcontractors.”
Applies to contracts “to which the United States or the District of Columbia is a party.”	Applies to “ ... projects funded directly by or assisted in whole or in part by and through the Federal Government”
Workers must be “employed directly upon the site of the work.”	No requirement for direct employment on the site of work.
Applies to “every contract in excess of \$2,000... ”	No minimum dollar value.
Applies to “every contract... for construction, alteration, and/or repair, including painting and decorating...”	“Projects” (not specific to construction, alteration, and/or repair).
Work conducted on “public buildings or public works of the United States or the District of Columbia”	No limitation to Public Buildings or Public Works of the U.S. or D.C.
Work conducted “within the geographical limits of the States of the Union or the District of Columbia”	No geographical limits.
Must pay wage rates not less than those determined by the Secretary of Labor to be prevailing for type of work, labor category and location.	Must pay wage rates not less than those determined by the Secretary of Labor in accordance with 40 USC 3141 – 3148 (Wage Rate Requirements).