



**Purchasing Directive:
General Guidelines**

<u>Purchasing Directive Reference:</u>	<u>Issue Date and Version:</u>
Overview & Initial Understanding of the ARRA	05/07/2009 – v1

I. Purpose:

The purpose of this Purchasing Directive is to provide general guidelines regarding the procurement of goods and/or services by State of Georgia governmental entities utilizing funds distributed pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA) and to address the applicability of the State Purchasing Act (O.C.G.A. 50-5-50 et seq.) to such purchases. This Purchasing Directive does not provide an exhaustive analysis of the ARRA and its requirements and is no substitute for careful review of the ARRA requirements in collaboration with the Georgia Department of Administrative Services (DOAS) and other governmental partners. DOAS, through its State Purchasing Division, will provide additional or updated guidance as a supplement to this Purchasing Directive as necessary. Questions or comments regarding this Purchasing Directive should be submitted to Tim Gibney, Assistant Commissioner of Procurement (contact information at close of this document).

II. Applicability:

This Purchasing Directive applies to all State of Georgia governmental entities of the executive branch subject to DOAS’ procurement authority pursuant to the State Purchasing Act, including but not limited to certain state offices, agencies, departments, boards, bureaus, commissions, institutions and universities & colleges. This Purchasing Directive may also be used as a general guide for other governmental entities such as state authorities, local governmental entities and other organizations as appropriate.

III. Background:

The ARRA is providing certain Georgia state governmental entities with an infusion of money to assist in stimulating the economy and supporting our infrastructure and programmatic needs. The ARRA also establishes unprecedented levels of transparency, oversight and accountability to ensure citizens know how, when and where tax dollars are spent in the economic recovery effort and that fraud and waste do not occur. Additional

information regarding the ARRA, including a list of Georgia programs identified to receive ARRA funds, can be found at <http://www.recovery.gov/>.

IV. General Guidelines:

Each state entity utilizing ARRA funds has an obligation to ensure that the use of the funds facilitates achievement of the stated purposes of the ARRA, including commencing expenditures of ARRA funds as quickly as possible consistent with prudent management. In addition to managing and expending funds in accordance with the purposes of the ARRA, each state entity must ensure the establishment and management of state contracts occurs in accordance with all applicable federal and state law. To the extent ARRA funds will be expended for goods and/or services which are subject to the provisions of the State Purchasing Act, the state entity must comply with DOAS' procurement rules.

A. Efficient and Prudent Management

To ensure efficient and prudent management of ARRA funds, the state entity should contact DOAS' State Purchasing Division (SPD) as soon as possible. SPD can assist the state entity in determining the applicability of the State Purchasing Act as well as facilitating the state entity's contact with other state entities providing assistance with the management of ARRA funds. Working in partnership with these state entities will yield the best results in terms of planning and executing the proper steps to utilize and manage ARRA funds.

B. Applicability of the State Purchasing Act

As noted earlier, notwithstanding the fact ARRA funds may be utilized, the state entity must still comply with the provisions of the State Purchasing Act for the purchase of goods and/or services governed by that act. In other words, the use of federal funds does not create an exemption to the State Purchasing Act. DOAS has published procurement rules through the *Georgia Procurement Manual* (GPM) to effectuate the purposes of the State Purchasing Act. DOAS maintains the GPM online at: <http://www.doas.georgia.gov/StateLocal/SPD/Policies/Pages/Home.aspx>. To the extent it appears provisions of the GPM are in conflict with federal provisions, the state entity should contact Tim Gibney, the Assistant Commissioner of State Purchasing (contact information at close of this document), to resolve the conflict. In addition to the GPM, DOAS maintains other procurement tools which are available on its website as noted below.

For those state entities (or purchases) which are not subject to the State Purchasing Act, the state entity should follow its best practices with respect to procurement while complying with that state entity's applicable code and administrative rules in order to procure and contract with the best valued suppliers in delivering products and services using ARRA funding. Please note DOAS allows all state and local governmental entities to utilize the Georgia Procurement Registry for public advertisement of solicitations.

1. Procurement Resources.

In addition to the GPM, DOAS offers many resources to facilitate the procurement process, including standard solicitation templates, contract templates and online solicitation tools such as eQuote. These resources may be accessed online at the home page for SPD at <http://doas.ga.gov/StateLocal/SPD/Pages/Home.aspx>. For direct access to SPD's official forms and contract templates, please access the following link: <http://doas.ga.gov/StateLocal/SPD/Seven/Pages/Home.aspx>.

2. Public Advertisement.

The Georgia Procurement Registry (GPR) is the official site for posting public notices of procurement opportunities. DOAS facilitates a supplier registration process which allows registered suppliers to receive email notification of certain procurement opportunities posted to the GPR. Suppliers should be provided with the following *Team Georgia Marketplace - Resources for Suppliers* link to facilitate registration: (<http://doas.ga.gov/TGM/Pages/TGMSuppliers.aspx>)

C. ARRA Procurement Considerations

Federal law regarding the appropriate use of ARRA funds has several implications for the state procurement process, including:

- Building solicitation specifications and requirements so that they adhere to ARRA regulations such as the Buy American provision,
- Ensuring the evaluation and award process correctly implements the ARRA regulations,
- Utilizing effective contract administration tools to ensure the goods and services delivered by the awarded vendors are in compliance with the contracts (and thereby mitigate risk to the state entity and the State of Georgia), and
- Demonstrating compliance with all applicable requirements of the ARRA, as well as the requirements of any specific federal programs.

The tasks noted above must be taken into consideration during the planning stages. The following subsections of this document provide high-level information regarding each of the tasks (including references to provisions of the ARRA); however, the state entity should engage with DOAS and other supporting state entities to discuss the applicability of the following information.

1. Building solicitation specifications and requirements so that they adhere to ARRA regulations such as the Buy American provision.

The ARRA imposes several requirements with respect to the procurement of certain goods and services. For example, Section 1605 of the ARRA imposes a mandate that certain manufactured products must be produced in

the United States. Projects for the construction, alteration, maintenance, or repair of a public building or public work must use iron, steel, and manufactured goods produced in the United States. During discussions with state entities establishing public works contracts, DOAS will address this mandate and its correct application, including the definition of US-made products as well as cost-based waivers to this requirement.

With respect to some services, the ARRA imposes wage rate requirements. For example, Section 1606 of the ARRA imposes a requirement that all laborers and mechanics employed by contractors and subcontractors must be paid wages at not less than prevailing rates on projects of similar character in the locality.

To ensure compliance with the ARRA requirements, the state entity should consult with DOAS as well as other supporting state entities. NOTE: The Office of Management and Budget (OMB) has stated in previous conversations that the OMB issued regulations for Title 2 regarding federal assistance to states would likely be similar to the Federal Acquisition Regulation (FAR), the primary regulation for use by all federal executive agencies in their acquisition of supplies and services with appropriated funds. The FAR is issued under the joint authorities of the Administrator of General Services, the Secretary of Defense, and the Administrator for the National Aeronautics and Space Administration. While the FAR is only applicable to federal executive agencies, these federal provisions establish insight into the interpretation of certain federal requirements as well as the standard of conduct for federal executive agencies. The six FAR postings as of April 3, 2009 cover the following topics and may be used by the state entity for reference purposes:

- a. Publicizing Contract Actions:
<http://edocket.access.gpo.gov/2009/pdf/E9-7019.pdf>
- b. Reporting Requirements:
<http://edocket.access.gpo.gov/2009/pdf/E9-7025.pdf>
- c. Whistleblower Protections:
<http://edocket.access.gpo.gov/2009/pdf/E9-7020.pdf>
- d. GAO Access to Contractor Employees:
<http://edocket.access.gpo.gov/2009/pdf/E9-7030.pdf>
- e. Buy American Requirements for Construction Material:
<http://edocket.access.gpo.gov/2009/pdf/E9-7031.pdf>
- f. GAO/IG Access: <http://edocket.access.gpo.gov/2009/pdf/E9-7029.pdf>

2. Ensuring the evaluation and award process correctly implements the ARRA regulations.

The evaluation and award stages are two critical areas of the procurement process. To ensure an effective evaluation and award process and proper award, the state entity must identify the key evaluation factors and overall evaluation strategy (as well as negotiation strategy as expressly permitted and delegated by SPD) during the planning stage of the procurement. Accurately identifying the ARRA requirements early on during the planning stages will ensure the evaluation process identifies suppliers for contract award consistent with the ARRA requirements.

For those state entities subject to the State Purchasing Act, contract award must be publicly announced and all participating suppliers will have an opportunity to review and, if desired, contest the results of the award process. DOAS' experience reviewing and answer challenges filed by participating suppliers with respect to state contract awards indicates the most common supplier challenges involve challenges to the evaluation process. Therefore, all state entities must take steps to carefully manage this process.

3. Utilizing effective contract administration tools to ensure the goods and services delivered by the awarded vendors are in compliance with the contracts.

By implementing effective contract administration tools, the state entity will ensure the desired goods and services are delivered in accordance with the requirements of the contract. Managing the supplier's contract performance and ensuring the protections afforded by the contract are observed (such as receiving required bonds and certificates of insurance) will mitigate risk to the state entity as well as the State of Georgia. The GPM (Chapter 6) includes several provisions regarding effective contract administration which should be reviewed by the state entity.

4. Demonstrating compliance with all applicable requirements of the ARRA, as well as the requirements of any specific federal programs.

As noted earlier, the ARRA establishes unprecedented levels of transparency, oversight and accountability to prevent waste or fraud and to empower the public with easy access to information regarding the spending of ARRA funds. The Recovery Accountability and Transparency Board (RATB) is responsible for overseeing all funds under the ARRA and facilitating the public's access to spending information through Recovery.gov. The RATB has been tasked with ensuring swift and immediate action to prevent fraud, waste, and mismanagement of ARRA funds.

Both the procurement process (from the planning stage to contract execution) and contract administration must be managed to ensure proper documentation of the state entity's compliance with the ARRA. With respect to contract administration, it is critical for the state entity to include contract provisions which will effectively enforce the state entity's rights, including, but not limited to, the state entity's right to access and audit contract records.

- **Right to Access and Audit Records:** The right to audit the supplier's books is a standard contract clause and a fundamental concept of contract administration. All state entities have a responsibility to verify the information that suppliers report to them and to ensure that funds are expended properly. This is especially important when there is a high degree of risk involved due to the type of contract or service, a high degree of liability exists for the state, or the potential for severe consequences in the event of poor vendor performance. Because the records are the property of the vendor, the contract must include an agreement that the agency has access to and can audit those records. The ability of agencies to audit vendor records should also extend to the records of any subcontractors. DOAS' contract templates include both a record retention requirement and right to audit which may be used by a state entity as a reference in developing its own audit provision within the state entity's contract.

D. State of Georgia Government Ethics

In order to maintain public trust and promote transparency in government, an ethics policy has been established by Governor Perdue to ensure the highest ethical standards within the State of Georgia. Governor Perdue's 2003 Executive Order may be viewed at the following link:

http://gov.georgia.gov/exorders/2003/jan/01_13_03_01.pdf

IV. Contact Information:

The State Purchasing Division is prepared to provide you assistance in accomplishing the procurement activity. Contact can be made directly to Tim Gibney at tim.gibney@doas.ga.gov or at 404.656.0934.