

**Advisory on Monitoring**

The American Recovery and Reinvestment Act of 2009 (ARRA) subjects taxpayer dollars spent under the Act to unprecedented transparency and accountability. To ensure that accountability requirements are met, my office is conducting reviews of recipients of ARRA funds. To determine whether ARRA funds have been spent appropriately, my office considers the following:

• Were funds awarded and distributed in a prompt, fair, and reasonable manner?

• Is the public clear on the identity of the recipients and how the funds have been used?

• Are the benefits from the use of funds being reported clearly, accurately, and timely?

• Are funds being used for authorized purposes?

• Are adequate steps being taken to prevent instances of fraud, waste, and abuse?

• Are projects avoiding unnecessary delays and cost overruns?

• Do programs meet specific goals and targets?

As an entity managing ARRA funds, the preceding points can be assured by implementing a monitoring program. A monitoring program ensures that a contractor performs according to the terms in the contract, increases the effectiveness of the contract, and reduces the potential for negative results or outcomes. Insufficient monitoring may result in a contractor’s poor performance; noncompliance with rules and regulations; absence of oversight of funds; and, failure to implement corrective actions. Insufficient monitoring also constrains an entity’s ability to identify contractor risk and determine the level of review necessary.

The level of monitoring will depend on many factors including the entity’s monitoring personnel; the quantity of the entity’s contracts; complexity of work contracted; amount of dollars awarded; and the potential risk that the services are not performed. In the case that your office does not have designated monitoring personnel, incorporate suggested monitoring practices in other activities to ensure contractor compliance.

This advisory includes a monitoring guide, created in collaboration with representatives from the Inspector General’s Office, CalFire, CalEMA, and the Department of Public Health. It includes suggested steps for monitoring, including: Notification/Education, Initial Certification/Assurance, Contracting/Purchasing, Initial Risk Assessment, Routine Monitoring, Extended Monitoring, Follow-Up/Corrective Action, and Close-Out/Final Certification.

This guide is not comprehensive and is not legal advice. It is intended as a helpful resource in providing information and guidance regarding the ARRA funding. Please contact Linda Ellis, Audit Supervisor, a[t Linda.Ellis@inspectorgeneral.ca.g](mailto:Linda.Ellis@inspectorgeneral.ca.gov)ov with questions or suggestions for adding to this guide.

Done this 19th day of April, 2010. LAURA N. CHICK

Inspector General

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**COMPONENTS**

**1. NOTIFICATION/EDUCATION**

From the onset, your entity’s interaction with contractors will impact the ARRA funds disbursements and the delivery of services/products. Establishing open lines of communication with potential and existing contractors, providing ARRA and specific Federal program requirements, general contract terms, and educating the contractor early on in the process will help provide a better understanding of the contract’s terms and conditions, as well as the areas measured by monitoring and auditing agencies.

Be proactive. Provide and communicate to contractors:

• Clear expectations

o Include in the solicitation document

o Detailed statement of work

o Purpose of the contract, performance measures/goals, entity’s methods for monitoring

performance, deliverables, and other requirements

o Contract contains contractor’s responsibilities (activities, products, and timetables for completion)

o Clear, concise, and unambiguous

o Always in writing

• Performance measures and goals

o Include in the solicitation document

o Quality and quantity of services provided

o Outcomes (quality and quantity or result of the service)

o Output (process and units of the service)

o What, how, and when data will be collected by the contractor and to whom the data will

be submitted

Education within your entity is also important. Even if your entity does not have monitoring staff, incorporate the following components in your program administration and accounting areas:

• Contract requirements

• Entity’s programs

• Entity-specific processes

• Fraud red flags

• ARRA terms and conditions

• Reporting and calculation requirements

These **requirements** are applicable to all entities using ARRA funds. For program-specific requirements, please refer to the applicable Federal department.

|  |  |
| --- | --- |
| DESCRIPTION | Reference |
| **Qualifications - Federal** |  |
| Data Universal Numbering System (DUNS) Number | [Federal M-09-19](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-19.pdf) |
| Registered in Central Contractor Registry | [ARRA Section 1512](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf) |
| Buy American - Iron, Steel and Manufactured goods  are produced in the U.S. | [ARRA Section 1605,](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf)  [Recovery Act Bulletin 09-11](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_09-11.pdf) |
| Prevailing wage rate (Davis-Bacon Act) | [ARRA section 1606,](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf)  [Recovery Act Bulletin 09-11](http://www.recovery.ca.gov/Content/Documents/Recovery_Act_Bulletin_09-11.pdf) |
| Fixed-price contracting | [ARRA section 1554](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf) |
| Contract is not fixed-price – register in website special  section | [ARRA section 1526](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf) |
| Whistleblower Protection | [ARRA Section 1553,](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf)  [Recovery Act Bulletin 09-05,](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-5.pdf) [Recovery Act Bulletin 09-11,](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_09-11.pdf) [Whistleblower Information](http://www.recovery.gov/Contact/ReportFraud/Pages/WhistleBlowerInformation.aspx) |
| Compliance with National Environmental Policy Act | [ARRA Section 1609](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf) |
| Segregation of ARRA funds from other funds | [Recovery Act Bulletin 09-02](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-02.pdf) |
| Identifying ARRA funds separately | [Recovery Act Bulletin 09-02](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-02.pdf) |
| Inspection of records | [ARRA Section 902 & 1515,](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf)  [Recovery Act Bulletin 09-11](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_09-11.pdf) |
| Prohibition on use of ARRA funds | [ARRA Section 1604,](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf)  [Recovery Act Bulletin 09-11](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_09-11.pdf) |
| Enforceability | [Recovery Act Bulletin 09-11](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_09-11.pdf) |
| Sub-recipient (contractor) requirements | [OMB A-133](http://www.whitehouse.gov/omb/circulars_a133/) |
| Reporting requirements | [ARRA Section 1512](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf)**\*** |
| Availability of funding | [ARRA Section 1603](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf) |
| Non-Discrimination | [ARRA Section 1608](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf) |
| **Additional qualifications - California** |  |
| ARRA fund related contract advertising in the  California State Contracts Register (CSCR) must contain  “Recovery Act Funded” within the bid comment field of the contract. | [Recovery Act Bulletin 09-03,](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-03.pdf) [SAM MM 09-03](http://www.documents.dgs.ca.gov/osp/sam/mmemos/MM09_03.pdf) |
| House all ARRA information on the Recovery.ca.gov | [Recovery Act Bulletin 09-04](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-04.pdf) |
| Collusion prevention | [Recovery Act Bulletin 09-05,](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-5.pdf)  [US Dept of Justice Collusion Red Flags](http://www.usdoj.gov/atr/public/criminal/red_flags_collusion.htm) |
| Conflict of interest prevention | [Recovery Act Bulletin 09-05,](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-5.pdf)  [CA Attny General - Conflict of Interest](http://ag.ca.gov/publications/coi.pdf)  [Manual](http://ag.ca.gov/publications/coi.pdf) |
| Fraud awareness training | [Recovery Act Bulletin 09-05,](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-5.pdf)  [ARRA Fraud Red Flags](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-5_attachment.pdf) |
| Disburse federal funds within three days of drawing  the funds | [Recovery Act Bulletin 09-10](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_09-10.pdf) |

**\***Recovery Act Bulletins for 1512 reporting include [09-08,](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_09-08_final.pdf) [09-12,](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_09-12.pdf) [09-17,](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_09-17.pdf) [09-19,](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_mandatory_data_09-19.pdf) [09-27,](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_09-27.pdf) and [09-30](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_09-30.pdf)

**2. INITIAL CERTIFICATION/ASSURANCE**

An initial certification or assurance process should be completed prior to finalizing the contract with the contractor. This prequalification step ensures that the contractor can fulfill all contractual requirements, including ARRA requirements, and has the qualifications to perform under the contract.

The initial certification/assurance process can be achieved through a checklist similar to Attachment A. Entity personnel would complete the form which includes reviewing, verifying, and attaching the contractor’s individual certifications of ARRA requirements. Please refer to your Federal department for program-specific requirements.

[ARRA Section 1511](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf) requires that any recipient of funding used for infrastructure investment must complete a certification. The certification information must be uploaded in the California ARRA Accountability Tool (CAAT). For guidance on the Section 1511 certification, see [Recovery Act Bulletin](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_1511_certification_09-21_final_website.pdf)

[09-21.](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_1511_certification_09-21_final_website.pdf)

**3. CONTRACTING/PURCHASING**

Separate contracts are required for sub-recipients, grantees, or contractors receiving ARRA funds that have other existing contracts. All ARRA contracts must be registered in the Federal Central Contract Registry and possess a [Data Universal Numbering System (DUNS) number.](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-19.pdf)

In addition to your entity and related federal departments’ existing mandatory contract terms, the following supplemental terms and conditions must be included in any ARRA contract:

A. ARRA Funded Project

B. Enforceability, funds can be taken away

C. Prohibition on use of ARRA funds

D. Allowable/disallowable expenses

E. Administrative/overhead expense limits

F. Required use of American iron, steel, and other manufactured goods

G. Wage rate requirements

H. Detailed budget

I. Inspection of records subject to audit

J. Record retention

K. Whistleblower protection

L. False claims act

M. Reporting requirements

Contract terms should include:

• 10% retention clause for payments to subcontractors

• Requirement for regular programmatic reports to be provided at designated intervals

• Reporting method

• An outline of the required report contents

• Report template in the appendix

• Entity individual who should receive the report

• Actions the entity will take if a report is incomplete or delinquent

In addition, dispute resolution procedures should be included in the contract to address, mitigate, and resolve problems before they escalate. Clear, concise contract language should limit the potential for dispute. Resolution of minor disagreements between the service provider and the monitors should be documented and filed in the monitor’s work papers. When an issue is significant, the resolution procedures should:

• Require notification to the entity’s procurement office and provide written notification with a timetable for resolution to the contractor. If not resolved, the program section and/or procurement office should be notified

• Detail and indicate the level of noncompliance at which a contractor will receive notification of potential contract termination

• Detail the required procedures for the contractor’s appeal and describe the administrative action taken by the entity

• Settle appeals by negotiation or arbitration

For more information on the terms and conditions listed above, see [DGS broadcast re ARRA Contracts](http://www.documents.dgs.ca.gov/pd/delegations/pac081009.htm) and the [DGS contract supplement.](http://www.documents.dgs.ca.gov/pd/poliproc/ARRATand%20C081009final.pdf) The DGS website, [State Contracts Homepage,](http://www.pd.dgs.ca.gov/contracts/default.htm) provides further information on contracts.

**4. INITIAL RISK ASSESSMENT**

For monitoring purposes, risk is defined as the probability or likelihood of an event or action having an adverse effect on an entity. The “Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009” from the Federal Office of Management and Budget ([OMB 2-18-09](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-10.pdf)) states that risk mitigation actions must address:

• Audits and investigations of ARRA funds to identify and prevent wasteful spending and minimize waste, fraud, and abuse

• Qualified personnel overseeing ARRA funds

• Competitive awards maximized

• Timely award of dollars

• Timely expenditure of dollars

• Cost overruns minimized

• Improper payments minimized

Risk assessments provide information about trends in contractors’ activities and identify which contractors require monitoring and establish what level of monitoring is needed. The entity can provide a template to the contractor for self-certification (Attachment B – Contractor’s Self Assessment). Upon its receipt, the entity reviews the results to determine high-risk areas that require follow-up or more in-

depth review. Assessing contractor compliance based on a self certification includes reviewing:

• Contractor’s reporting compliance

o Accuracy

o Timeliness

• Contractor’s audit history

o Findings from prior audits still outstanding

o Any current findings from independent single audits

o Any current findings by other audit agencies

In addition, the outcome of the risk assessments (specific risk areas) will identify those contractors that require more in-depth oversight and monitoring.

• Review the contract file:

o Signed contract and purchase order

o Contract modifications

o Contract administration plan

o Contingency plan

o Sources solicited

o Evaluation method and award

o Meeting minutes

o Contract correspondence

o On-site visit reports

o Performance reports

o Records of complaints and contractor disputes

o Invoices and vouchers

• Review of fund disbursements should include:

o Size of the funds awarded

o Funds not being disbursed timely or too quickly

o Comparison of funds awarded vs. funds spent

o Meets timeline in the contract

o Comparison of funds reported to funds disbursed

o What the funds have been distributed to

• Review of internal controls should include:

o Contractor has documented policies and procedures

o Designated people are doing what they agreed to (e.g., signing reports, requesting

funds)

o Segregation of duties is adhered to

• Review of industry trends:

o Incorporate issues from other contractor’s findings

o “Lessons learned” – add questions from other results of monitoring

**5. ROUTINE MONITORING**

**Key Components for Successful Monitoring**

An effective monitoring program is essential to ensure ARRA funds are utilized as required by the American Recovery and Reinvestment Act, follow related Federal circulars and laws, and follow the terms and conditions as stipulated in the contract. As the prime recipient, you are responsible for your contractor’s uses and disbursement of the funds and/or the effectiveness of the program.

Even if your entity does not have staff designated for oversight and monitoring, most of these monitoring concepts can and should be incorporated into your program administration and accounting policies.

Successful monitoring systems include**:**

• Good work practices

• Consistent processes

• Written policies and procedures

• Separation of duties

• Contract files containing all pertinent documentation

• Master list of contractors

• On-site monitoring

• Access rights to records/right to audit

**A. PRE-SITE VISIT MONITORING**

Pre-site monitoring is recommended prior to on-site monitoring visits and is effective in entities without staff specifically assigned to ongoing monitoring. Pre-site monitoring can be accomplished through a list of requirements, identified topics, or probative questions introduced on a checklist, survey, questionnaire, or interview. The contractor’s responses to the requirements, identified topics, or questions help reduce or indicate that further monitoring is required.

The pre-site monitor instrument should contain general and program-specific questions that will provide the monitors with key information. If your entity has a current pre-monitoring instrument, please

review it to ensure that ARRA-related requirements have been incorporated.

Attachment C provides an example of questions for pre-site monitoring for procurements or contracts for services that help determine what additional monitoring steps should be taken. Once the contractor returns the completed questionnaire to the entity (prime recipient), the entity’s monitors review the responses to determine what additional actions are needed. Additional actions may include a letter

with recommended action plans, a schedule for obtaining additional information, and/or follow-up

monitoring site visits.

Status reports that provide a summary of planned and completed activities are another example of a pre-site monitoring tool. Consideration should be made for the complexity of the contracted services, the contract value, and the potential of (poor) performance risk to the entity. Early intensive monitoring in the contract period is beneficial to ensuring good performance on the contract. The status report

should focus on:

• Deliverables

• Milestones

• Performance measurements

• Contract modifications

• Summary of invoices submitted and paid

• Contract renewal dates

• Individual responsible and method for monitoring each contract aspect

• Detailed line item budgets

**B. ON-SITE MONITORING**

On-site monitoring may incorporate one or more activities to gather information for the monitor’s review. Interviews, documentation review, observation, contractor questionnaire, and analysis performed by the monitor are examples of some of these activities. A checklist of tasks to be performed provides the monitor the structure needed to gather information for compiling a written report detailing findings of the review. Methodology and the checklist of tasks to be performed will depend on the nature of the contract and program and the utilization of ARRA funds.

Attachment D lists questions to consider during your on-site visit. These questions solicit general and ARRA-specific answers. Incorporating a value/grading/ranking system for the questions helps identify contractors that require further ongoing monitoring and will provide information about those contractors that have been placed on probation, had payments withheld, and/or had contracts

terminated.

If appropriate, notify the contractor about the pending on-site visit and required documentation. This

will facilitate the monitoring process and progress.

In general, an on-site monitoring visit will verify that:

• All documents associated with the ARRA funds are maintained together and readily accessible

• Prior audit finding corrective actions have been implemented

• Persons of authority and identified for designated responsibilities (in the contract) are present and performing their delegated duties

• The objectives of the grant are being accomplished

• Written policies and procedures for management functions and program operations are maintained and up-to-date

• Written policies and procedures are not being ignored or overridden

• Adequate equipment and asset management procedures are in place

**I. FISCAL**

• Invoice review

o Submitted timely

o Line item or fixed fee

o Services/product description

o Match to purchase order

o Approval process

o Verify that invoice expenses are allowable per contract requirements

• Cash Management

o Perform a budget to actual comparison

o Analyze cash on hand

o Review the contractor’s policy and use of cash advances

o Review the contractor’s policy on cash advances and how the cash advance is recovered

o Evaluate the reconciliation procedures

o Verify that there are safeguards for credit/debit cards, petty cash fund, other cash

transactions

• Budget changes should

o Be approved by appropriate entity representative

o Be documented in a contract amendment

o Be included in the contract file

• Cost allocation analysis

o List disbursement information (date, check number, vendor, amount, and notes)

o Review written cost allocation plan (CAP) and the cost pools

o Review occupancy costs

o Confirm direct and common costs are identified and separate

o Verify allocation base for each cost pool

o Validate most recent allocation was done in accordance with the CAP

o Verify cost pool is reduced to zero monthly

• Subcontracts

o List contract information (agency, dates, award, and amount)

o Select sample of contracts – expand if there are issues

o Verify that the sub-contracts have cover page, terms and conditions (including ARRA),

attachments/forms, program plan (CAP), budget, modifications

o Review the subcontractor budgets for consistency with CAP, proper invoices, line item budget detail, cost reimbursement or fixed fee stated, cost per unit if fixed fee

o Confirm that the contractor is maintaining and updating the list of subcontractors, has separate subcontractor files, tracks payments, monitors subcontractor’s disbursements and services, follows up on finding resolutions

o Review invoices (see above)

• Direct Labor

o Select a sample of employees charged to the program

 Confirm written job descriptions

 Verify labor costs are charged to the proper award and time period

 Review timesheets for

• Timely preparation

• Signed by employee and supervisor

• Account for all the employee’s time

• Calculation is correct

• Timesheet matches wages paid

• One timesheet per pay period per employee

• Other Direct Costs

o Select a sample of direct costs

 Compare costs to invoices and purchase orders

 Verify that purchase order approval was prior to purchase date

 Confirm that invoice was verified, approved, cancelled

 Validate the cost is program related

 Review justification for equipment purchase and determination as the best option

 Recalculate computations on purchase order and invoice

 Review cost for reasonableness and necessary for the program

 Analyze the line code postings and invoices

• Reporting

o Verify that the accounting system and financial reporting use the same basis (i.e., cash vs. accrual)

o Review the submitted financial reports to the contractor’s accounting system

o Subcontractor information reported agrees with actual contractor’s subcontractor files

**II. PROGRAMMATIC**

Verify results in the Federal reports to contractor’s documentation

• Services outlined in the contract have been delivered

o Utilizing surveys, questionnaires, and/or checklists

 Survey recipients of delivered services

 Interview service providers

 Visual observation (e.g., construction completed; training documentation/media)

 Review contractor’s files using a formatted questionnaire/checklist

**III. ADMINISTRATIVE**

Review contractor’s progress and documentation

• Contractor submits required documentation timely

• Comparison of projected and actual fund disbursements

• Analysis of outputs and outcomes

• Jobs calculations and reporting

For program-specific questions and activities, please refer to your Federal department.

**6. EXTENDED MONITORING**

The on-site monitoring process may not provide comprehensive, and/or final results, and additional monitoring will be needed to determine whether the contractor is meeting their contract requirements. Because contract requirements may be different for each contractor, extended monitoring action, if needed, must incorporate specific activities that relate to the outcomes and results of the on-site monitoring visits. An extended monitoring process, once established, should:

• Identify and document the specific contractors who need further monitoring

o List the areas that require additional monitoring

o Develop monitoring activities for those areas

o Complete the extended monitoring timely

• Include random sampling techniques for reviewing areas that have multiple records. Using a set pattern (e.g. reviewing every 10th record) provides a good representation of that area

o Purchase orders

o Invoices

o Disbursements

o Timesheets

o Payroll records

o Report calculations

• Document lessons learned

o Communication is vital for both the monitors and the contractors. It will ensure that corrective action is monitored and taken.

 Serves as a reminder for monitors to “check” other contractors

 Alerts contractors who can initiate corrective action where needed

o Updates to program guideline changes are essential to the program’s future activity in negotiating, contracting, monitoring, and reporting. It ensures that consistency will continue in the program, procedures, and reports.

• Errors on monitor’s behalf do occur

o Review the monitoring results to the contractor’s records

o Update monitoring report and, if applicable, audit resolution tracking system

**7. FOLLOW UP/CORRECTIVE ACTION**

Your entity has the responsibility for following up on the corrective action recommendations for your entity and contractors. An active follow-up/corrective action process communicates the expectation of performance according to the contract and the importance of implementing the corrective action. It also ensures that the corrective action has been implemented.

• An audit finding tracking system should include the following:

o Document audit resolution process and procedures

o Assignment of audit findings to appropriate personnel to resolve findings

o Contractor’s responses about corrective actions recorded and tracked

o Periodic review to determine when audit findings have been outstanding for over six

months

o Findings analyzed

 Same finding(s) for different contractors

• Is contract unclear?

• Is contract incomplete?

• Does contract contain any conditions that cannot be met?

• Is the program communicating expectations?

• Is the program providing guidance?

 Contractor’s prior finding(s) have not been resolved – or have returned

 Multiple significant findings for an individual contractor – contractor is ignoring terms and conditions

• Consequences if the contract goals are not achieved include:

o Liquidated damages – calculate the entity’s loss for poor performance and deduct that loss from payments to the contractor

o Partial takeover of operations – entity takes over operation in non-compliant areas and reduces payments by new operating costs

o Contract termination – used when the contractor has been given a clear warning about non-compliance and does not take corrective actions

• Evaluate audit findings to determine if findings should be disclosed in the state entity financial records

In the event that a contractor does not agree with and/or implement the corrective action(s) within the specified timeframe, the entity has the responsibility to act immediately in enforcing ARRA requirements. These types of actions should be stipulated in the contract and include:

• Strict oversight, dispute resolution, alerting other state entities, and discontinuing future contracts.

• Withhold payments until the monitors have verified that the contractor has made the corrections.

• In the event that the contractor ignores higher risk areas, the entity cancels the contract and replaces it with the “runner-up.”

**8. CLOSE OUT/FINAL CERTIFICATION**

A comprehensive monitoring program includes contract close out and certification of the contractor’s performance. This process should be documented and performed at the close of all contracts. Close out reviews provide insight on both the contractor’s performance and the entity’s monitoring methods. It can be accomplished by:

• Completing a checklist that is tailored to address and review the contracted services

o All invoices paid

o All property returned

o All deliverables/reports accepted

o All report calculations verified

o No lawsuits pending

o Pending corrective actions/findings resolved

o If applicable, contract audit completed

o No outstanding changes or amendments

o All security badges/keys returned

o All disallowed costs settled

• Performing a final site inspection to verify actual performance (e.g. construction completion)

o Visual observation of completed work

o Review and verification of contractor’s documentation pertaining to the contract

o Verification of accuracy in the contractor’s calculations and reporting

Results from the close out process provide the entity with information about past performance and facilitate improvement for future contracting and monitoring:

• Contractor performance evaluation

• Determine if contractor has adequately fulfilled contract terms

• Identify those contracts with negative performance

• Include a financial audit if determined that risks make it necessary

• Entity’s contract monitoring methods evaluation

• Contractor has adequate understanding of expectations

• Policies and procedures sufficiently address issues that arose during the contract period

• Contract administration plan allowed the agency to properly and quickly assess the contractor

• Entity personnel have the skills to monitor the contractor

• Incentives and penalties improved the contractor’s performance when they were used

• If applicable, dispute resolution procedures were adequate

**ATTACHMENT A**

**ARRA Bid Solicitation and Construction Contract Review Checklist**

|  |  |
| --- | --- |
| **PROJECT INFORMATION** | |
| **Project Name:** | |
| **Project Number:** | |
| **Data Universal Numbering System (DUNS) Number:** | |
| **Principal Contact:** | |
| **Principal Contact Email/Phone:** | |
|  | |
| **BID TIMELINE** | |
| **Bid Advertise Date: Bid Closing Date: Bid Award Date:** | |
| **INITIAL BID REVIEW** | |
| **Bid Documents Received Date:** | **Bid Checklist Completed** |
| **Bid documents Reviewed** | **Review Comments Emailed to applicant** |
| **Final Bid documents issued as: Advertisement Draft Addendum Change Order** | |
| **Additional Comments:** | |
| **INITIAL BID REVIEW COMPLETED BY: Date:** | |
| **Please “cc” your bid review comments to** *[YOUR STATE DEPARTMENT]* **and include the following within the subject line: *“ARRA-BID REVIEW COMMENTS-[PROJECT NAME]-[PROJECT NUMBER]”*** | |

**CONTRACTOR SELECTION REVIEW**

**Certification Forms Received Date:**

**Certification Forms Reviewed and Complete**

Buy American Certification

Certification of Non-Segregated Facilities

DBE Information Form

DBE Verification of Qualification

DBE Subcontractor Utilization form

**Any contractor complaints filed against them?**

**Additional Comments:**

DBE Subcontractor Performance Form Debarment Certification Nondiscrimination Clause

Non-collusion affidavit

EEO Certification

Contractor Liability Insurance Certificate

**Properly Bonded?**

**CERTIFICATION REVIEW COMPLETED BY: Date:**

Please attach this completed form to the top of the **Bid Solicitation Checklist**, all **email correspondence** and the completed **certifications,** and submit to *[Department contact name]* for filing.

**ATTACHMENT B**

**CONTRACTOR’S SELF ASSESSMENT**

|  |  |  |  |
| --- | --- | --- | --- |
| **Financial recordkeeping/reporting**  1. Do you have an accounting manual with clear and comprehensive procedures?  2. Do you have an existing standard financial recordkeeping system used to account for grant/contract funds?  3. Are the financial records maintained, reviewed, and up-to-date?  4. Do the book of accounts contain sufficient information and reflect proper accounting treatment of financial transactions, including:  • Bank account and cash balances?  • Disbursement details, including date, payee, name, account, expense classification, and other relevant information?  • Segregation of ARRA funds?  • Comparison of outlays against budgets?  • Accrual of expenditures to match costs to their proper period?  6. Do you issue financial statements?  7. Are the financial statements audited by an independent accountant?  **Cash Management**  8. Is a separate bank account being maintained for ARRA  funds?  9. Is segregation of duties documented? (Please submit a copy) | **YES** | **NO** | **N/A** |

|  |  |  |  |
| --- | --- | --- | --- |
| 10. Are bank accounts reconciled monthly? (Please submit the latest copy)  11. Are bank reconciliation statements reviewed?  12. Are disbursements properly authorized prior to check issuance or cash outlay?  13. Is staff responsible for handling cash fully bonded? (If not, is there an appropriate alternative assurance for the security of the funds?)  **Documentation**  14. Are disbursements supported by invoices, receipts, or similar documents?  15. Are receiving reports and inventory records used as evidence for receipt of commodities and supplies?  16. Are conversions of currencies properly calculated and completely documented?  17. Are cost-share or matching funds properly accounted for, recorded, and documented?  **Procurement/Commodity tracking**  18. Do you have written policies and procedures for procurement of goods and services?  19. Do you have a fixed assets listing containing information to identify items acquired by grant/contract funds?  20. Do you require competitive bidding for all major procurement? | **YES** | **NO** | **N/A** |

|  |  |  |  |
| --- | --- | --- | --- |
| 21. Is the bidding process adequately documented?  22. Are the functions for solicitation and evaluation of bids separate from selection of the winning bid?  23. Do written agreements contain provisions which allow for legal remedies in case of breach of contract and for termination in case of default or other similar instances?  24. Do you have a recordkeeping system for monitoring sub- contractor-related activities that is appropriately and adequately documented?  **Reporting**  25. Are financial, program, and other relevant reports prepared, reviewed, and approved properly and submitted in accordance with contract’s prescribed timetable?  **Personnel/Payroll**  26. Do you have a personnel manual?  27. Do you require all of your employees to sign a code of conduct or conflict of interest statement?  28. Do you have a reporting system, including proper review and approval of time allocation?  29. Are salary rates in accordance with relevant local employment and labor laws and regulations?  30. Are all qualified employees extended all fringe benefits required by local employment and labor laws and regulations? | **YES** | **NO** | **N/A** |

**ATTACHMENT C**

**PRE SITE MONITORING QUESTIONNAIRE**

1. Do you have written policies and procedures for your administrative staff?

2. Do you have written policies and procedures in place for procuring property or services?

3. Do you have policies and procedures in place to verify bidders are not debarred or suspended?

4. Do your procedures include provisions to ensure that you used the most economical means of procurement?

5. Have you documented your internal controls?

6. Are all documents associated with the ARRA contract maintained together and accessible?

7. Are actions taken on a regular basis to assure that small business, women’s business enterprises and labor surplus area firms are used when possible?

8. Have you communicated the “Recovery Act Red Flags” to the appropriate personnel within your organization?

9. Do you have the “Know Your Rights under the Recovery Act” poster in plain sight?

10. Do you have a written code of conduct for employees who award or administer contracts to ensure there is no conflict of interest?

11. Do you ensure that the procurement of all “competitive contracts” are obtained through full and open competition and free from unreasonable requirements?

12. If any contract was over $100,000, which of the following methods of procurement did you use? (Competitive proposals, Non-competitive proposals [sole-source], other.)

13. Did you use a non-competitive proposal? If yes:

a. Was justification for sole-source procurement documented in writing?

b. Was the procurement related to emergency work or public safety? c. Was the non-competitive proposal authorized by this department? d. Did you solicit a number of sources?

e. Was the item available from only one source?

14. If the contract was $100,000 or under, did you obtain two or more qualified bids?

15. What type(s) of contract(s) did you use under this grant?

a. Time and Materials?

b. Lump Sum?

c. Unit price?

d. Cost plus fixed fee?

e. Cost plus percentage?

f. Other?

**ATTACHMENT C**

**PRE SITE MONITORING QUESTIONNAIRE**

16. Do you have a procedure in place to ensure contractors perform in accordance with terms, conditions, and specifications of their contracts and purchase orders?

17. Do you have a policy in place that requires contractors to obtain fidelity bonding insurance

(bonding) for key individuals?

18. Do you have written contract protest procedures in place?

19. Do your contracts contain administrative, contractual, or legal remedies for contractor violations or breach of terms, and provide for sanctions and penalties?

20. Do your contracts contain:

a. A termination for cause and for convenience clause allowing contract termination?

b. Provisions for access to the contractor’s records related to the contract?

c. Notice that records should be retained for three years after the final grant payment is made and all pending matters are closed?

21. Do your contracts contain provisions for compliance with the:

a. Davis Bacon and Related Acts?

b. Copeland Anti-Kickback Act?

c. Contract Work Hours Safety Standards Act?

d. Clean Air Act?

e. Clean Water Act?

f. Provisions for Equal Employment Opportunity?

g. EPA regulations?

22. If you have contracts that exceed $100,000 for construction or facility improvements, did the contractor(s):

a. Submit a bid guarantee with their proposal?

b. Secure a payment bond covering 100 percent of the contract price?

c. Secure a performance bond covering 100 percent of the contract price?

23. Do you maintain all procurement and contract documentation for at least three years after the final expenditure report is made and all pending matters are closed?

**ATTACHMENT D**

**ON-SITE MONITORING QUESTIONNAIRE**

**ARRA FUNDING COMPLIANCE**

Federal

 All purchases of iron, steel, and manufactured goods were produced in American ([ARRA section](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf)

[1605](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf))

• Documentation has been collected to show the component is American-made

o Substantial transformation checklist (STE)

o STE checklist completed by vendor or supplier

o STE checklist completed by manufacturer

o Certification from manufacturer

o Certification from vendor

o Shipping manifest or bill of lading

o Invoice

o Cut sheet

• Verification of invoice to certifications from manufacturer and vendor

• Verification that components are the same general character and type as described in the documentation (purchase order, invoice)

• Country of origin labeling is consistent with the documentation

 Confirm that the project is in compliance with Davis-Bacon requirements ([ARRA section 1606,](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf) [Fact Sheet #66 The Davis-Bacon and Related Acts (DBRA))](http://www.dol.gov/whd/regs/compliance/whdfs66.pdf)

• Payroll records indicate employees are paid weekly

• Contractor has submitted certifications of Davis-Bacon compliance for all weeks of construction

• Conduct wage interviews

• Davis-Bacon wage poster ([WH-1321](http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf)) in all relevant languages is posted in a conspicuous place at the construction site

• Applicable Davis-Bacon wager determinations are posted at the construction site

 Employees know about Whistleblower protection([ARRA section 1553,](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf) [Recovery Act Bulletin](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-5.pdf)

[[RAB] 09-05,](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-5.pdf) [Whistleblower Information](http://www.recovery.gov/Contact/ReportFraud/Pages/WhistleBlowerInformation.aspx) )

 The ARRA Whistleblower poster posted at the work site ([ARRA section 1553,](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf) [Whistleblower poster](http://www.recovery.gov/Contact/ReportFraud/Documents/Whistleblower%2BPoster.pdf))

 ARRA funds have not been used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool ([ARRA section 1604](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf))

 Have employees received fraud awareness training? ([RAB 09-05,](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-5.pdf) [ARRA Fraud Red Flags](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-5_attachment.pdf))

 Are ARRA-funded contracts separate from other-source funded contracts? ([ARRA section 1551,](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf) [RAB 09-02](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-02.pdf))

 Have adequate resources been devoted to ensuring that applicable environmental reviews are completed according to the National Environmental Policy Act? ([ARRA section 1609](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&amp;docid=f%3Ah1enr.pdf))

**ATTACHMENT D**

**ON-SITE MONITORING QUESTIONNAIRE**

 Is the contractor familiar with the False Claim Act? ([US Department of Justice](http://www.justice.gov/usao/pae/Documents/fcaprocess2.pdf))

 Compliance with non-discrimination laws ([US Equal Employment Opportunity Commission](http://www.eeoc.gov/facts/qanda.html))

 Job opportunity posting requirements ([US Department of Labor](http://www.dol.gov/oasam/programs/osdbu/sbrefa/poster/matrix.htm)) California

 Have ARRA funds been identified separately from other Federal funds? ([RAB 09-02](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-02.pdf))

 Have ARRA funds been recorded and maintained in separate accounts? ([ARRA section 1551*,*](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-02.pdf)

[RAB 09-02](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-02.pdf))

 Does “Recovery Act Funded” appear within the bid comment field when contract advertising in

CA State Contracts Register? ([RAB 09-03,](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-03.pdf) [SAM MM 09-03](http://www.documents.dgs.ca.gov/osp/sam/mmemos/MM09_03.pdf))

 How many vendors competed for this award?

 Has the US Justice Department’s guidance for detecting collusion in bidding for ARRA funds been reviewed and communicated to the appropriate personnel and contractors? ([RAB 09-05,](http://www.recovery.ca.gov/Content/Documents/Recovery_Act_Bulletin_9-5.pdf) [US](http://www.justice.gov/atr/public/criminal/red_flags_collusion.htm)

[Dept of Justice Collusion Red Flags](http://www.justice.gov/atr/public/criminal/red_flags_collusion.htm))

 Has the Office of Attorney General’s manual on conflicts of interest been reviewed and communicated to the appropriate personnel and contractors? ([RAB 09-05,](http://www.recovery.ca.gov/content/newsroom/recoveryactbulletins/documents/Recovery_Act_Bulletin_9-5.pdf) [CA Attorney General](http://ag.ca.gov/publications/coi.pdf)

[- Conflict of Interest Manual](http://ag.ca.gov/publications/coi.pdf))

**FEDERAL AGENCY AUDITS EMPHASIS**

Internal Controls

 Is an internal control structure in place?

 Are internal controls documented?

 Are short cuts being taken?

 Aware of weak controls? Document the corrections.

 Are the internal controls adequate and working in protecting the ARRA funds?

 Is there a clear separation of duties?

Reporting accuracy

 Is Section 1512 report data reviewed prior to and following the submission of data?

 Is it quality data?

 Is the data complete?

 Is the data accurate?

 Is data reported timely?

Anti-fraud program and processes (Questions for fraud awareness, whistleblower protection, no collusion, no conflict of interest, and false claim acts were asked in prior sections)