

**State of Colorado
Supplemental Provisions for
Contracts, Grants, and Purchase Orders Using Funds
Provided under the
American Recovery and Reinvestment Act of 2009
As of 8-21-09**

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with ARRA Funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
 - 1.1. **“ARRA”** means the American Recovery and Reinvestment Act of 2009, (Public Law 111-5).
 - 1.2. **“ARRA Funds”** means any funds that are expended or obligated from appropriations made under ARRA.
 - 1.3. **“ARRA Project”** means a project or program funded directly by or assisted, in whole or in part, by ARRA Funds.
 - 1.4. **“Contract”** means the contract to which these Supplemental Provisions are attached and includes a grant contract or a loan contract.
 - 1.5. **“Contracting Entity”** means a Prime Recipient, a Subrecipient, or a Recipient Vendor.
 - 1.6. **“Contractor”** means the party or parties to the Contract other than the Prime Recipient and includes a grantee, subgrantee, or a borrower. For purposes of ARRA reporting, Contractor is either a Subrecipient or a Recipient Vendor under this Contract.
 - 1.7. **“Entity”** means a governmental body; legally recognized for profit or nonprofit business organization, such as a corporation, limited liability company, or partnership; or sole proprietor and excludes individual recipients of Federal assistance.
 - 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282).
 - 1.9. **“Prime Recipient”** means a Colorado State Agency or Institution of Higher Education that receives ARRA Funds directly from a Federal Agency in the form of a grant, loan, or cooperative agreement.
 - 1.10. **“Subcontractor”** means an Entity engaged by Contractor to provide goods or perform services in connection with this contract.
 - 1.11. **“Subrecipient”** means a non-Federal Entity receiving ARRA Funds through a Prime Recipient to support the performance of the ARRA Project for which the ARRA Funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
 - 1.12. **“Supplemental Provisions”** means these Supplemental Provisions for Contracts and Grants Using Funds Provided under the American Recovery and Reinvestment Act of 2009, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado Agency or Institution of Higher Education.
 - 1.13. **“Vendor”** means a dealer, distributor, merchant or other seller providing goods or services required for a project or program funded by ARRA. A Vendor is not subject to all the terms and conditions of the Federal award, and all program compliance requirements do not pass through to a Vendor. However, a Vendor may be subject to selected program compliance requirements. See §22 of these Supplemental Provisions.
 - 1.13.1 **“Recipient Vendor”** means a Vendor that receives ARRA Funds from a Prime Recipient.
 - 1.13.2 **“Subrecipient Vendor”** means a Vendor that receives ARRA Funds from a Subrecipient.

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- 2. Compliance.** Contractor shall comply with all applicable provisions of ARRA and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3. ARRA Contracts and Subcontracts.** Contractor shall include these Supplemental Provisions in all of its contracts and subcontracts using ARRA Funds, in whole or in part, and shall provide written notification of revisions hereto to all parties to such contracts or subcontracts in accordance with §2 above. Contractor shall ensure that all subcontractors comply with applicable provisions of ARRA.
- 4. Debarred or Suspended Entities.** Contractor shall not enter into any contract or subcontract in connection with this Contract with a party that has been debarred or suspended from contracting with the Federal Government or the State of Colorado. See Excluded Parties List System at <https://www.epls.gov/>.
- 5. Conflict of Laws.** In the event of a conflict between the laws of the State of Colorado or these Supplemental Provisions and ARRA, ARRA shall control.
- 6. Whistle Blower Protection. ARRA §1553.** Contractor shall not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosures by the employee of information that the employee reasonably believes is evidence of: (a) gross mismanagement of a contract or grant relating to ARRA Funds; (b) a gross waste of ARRA Funds; (c) a substantial and specific danger to public health or safety related to the implementation or use of ARRA Funds; (d) an abuse of authority related to implementation or use of ARRA Funds; or (e) a violation of law, rule, or regulation related to a contract, including the competition for or negotiation of a contract or grant, awarded or issued relating to ARRA Funds. Contractor shall post a notice of the rights and remedies available to employees under ARRA §1553 in all workplaces where employees perform work that is funded in whole or in part by money authorized under the ARRA. A sample notice can be found at www.recovery.gov/?q=content/whistleblower-information. Contractor specifically acknowledges that Contractor and its employees are aware of and shall abide by the provisions of ARRA §1553. Contractor shall include the language and requirements of this subsection ("Whistleblower Protection under §1553 of the ARRA") in all of its contracts and agreements with employees, subcontractors and anyone else who performs work on behalf of Contractor.
- 7. False Claims Act. 31 U.S.C. §§3729-3733.** Contractor shall refer promptly to an appropriate Federal Inspector General any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.
- 8. Reporting of Fraud, Waste, and Abuse.** Contractor shall also refer promptly to the Colorado Office of the State Controller (OSC) any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has committed a criminal or civil violation of laws pertaining to fraud, waste, and abuse involving ARRA Funds. The OSC shall report such incidents of misconduct to the appropriate State Agency and appropriate Federal authority. Contact information for reporting fraud, waste, and abuse to the OSC is located at http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA_Main_Page.htm
- 9. Inspection of Records. ARRA §§902, 1515.** Contractor shall permit the United States Comptroller General and his or her representatives or any representative of an appropriate Inspector General appointed under §3 or §8G of the Inspector General Act of 1978, as amended (5 U.S.C. App.) to: (a) examine any records of the Contractor or any of its Subcontractors that directly pertain to, and involve transactions relating to this Contract or any contract or subcontract using ARRA Funds; and (b) interview any officer or employee of Contractor or any of its Subcontractors regarding such transactions. Contractor shall permit the State of Colorado, the Federal Government or any other duly authorized agent of a governmental agency with jurisdiction to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's or such Subcontractor's records during the term of this Contract and for a period of three years following termination of this Contract or final payment hereunder, whichever is later, to assure compliance with these terms or to evaluate Contractor's performance hereunder.

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- 10. Wage Rate Requirements – Davis-Bacon Wage Determinations. ARRA §1606.** Contractor and its Subcontractors shall pay all laborers and mechanics employed on ARRA Projects by Contractor or any of its Subcontractors at wage rates not less than those prevailing on projects of a character similar in the locality, as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40 of the United States Code. The Secretary of Labor’s determination regarding the prevailing wages applicable in Colorado is available at <http://www.gpo.gov/davisbacon/co.html>.
- 11. Job Opportunity Posting Requirements. Governor’s Executive Order D 01409.** Contractor shall post notice of job openings created by ARRA funded projects on the Colorado Department of Labor and Employment job website, <http://www.connectingcolorado.com>. In the performance of this duty, Contractor and any of its Subcontractors shall post jobs on Connecting Colorado Job Site that clearly designates the job opening as an ARRA job in a form and manner prescribed by the Colorado Department and Labor and Employment.
- 12. Buy American Requirement - Construction. ARRA §1605.** All iron, steel and manufactured goods used in any ARRA Project for the construction, alteration, maintenance, or repair of a public building or public work shall be produced in the United States in a manner consistent with United States obligations under international agreements. This requirement can be waived only by the awarding Federal Agency in limited situations.
- 13. Environmental and Preservation Requirements. ARRA §1609.** Contractor shall comply with all applicable Federal, State, and Local environmental and historic preservation requirements and shall provide any information requested by the awarding Federal Agency to ensure compliance with applicable laws, including National Environmental Policy Act, as amended (42 U.S.C. 4321-4347) and National Historic Preservation Act (16 U.S.C. 470 et seq.).
- 14. Non-discrimination.** Contractor shall comply with Title VI and Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1688), the Age Discrimination Act of 1975 (42 U.S.C.6101-6107), and other civil rights laws applicable to recipients of Federal financial assistance.
- 15. Identification and Registration Information.** If Contractor is a Subrecipient, Contractor shall obtain a Dun & Bradstreet DUNS number (or update the existing DUNS record), and register with the Central Contractor Registration (CCR), the primary registrant database for the Federal government.
- 16. Fixed Price – Competitively Bid. ARRA §1554.** Contractor, to the maximum extent possible, shall award subcontracts as fixed-price subcontracts under this Contract using competitive bid procedures. Contractor shall provide to its Contracting Entity a summary of any contract or subcontract awarded using ARRA Funds that is not fixed-price or not awarded using competitive procedures.
- 17. Publication.** Contractor shall include the Colorado Recovery logo on all project signage, and is encouraged, to the maximum extent possible, to use the logo on all other publications in connection with the activities funded by the Prime Recipient that use ARRA funds.
- 18. Prohibition on Use of Funds. ARRA §1604.** ARRA funds shall not be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.
- 19. Enforceability.** If Contractor fails to comply with all applicable Federal and State requirements governing the use of ARRA funds, the State of Colorado may withhold or suspend, in whole or in part, funds awarded under the ARRA project, or recover misspent funds following an audit pursuant to §9, above. The remedy under this provision shall be in addition to all other remedies provided to the State of Colorado for recovery of misspent funds available under all applicable State and Federal laws.
- 20. One Time Funding.** Contractor acknowledges and understands that ARRA Projects will not be continued with funds appropriated by the State of Colorado after ARRA Funds are expended or are no longer available.
- 21. Segregation of Costs.** Contractor shall segregate obligations with respect to and expenditures of ARRA Funds from other sources of funding. ARRA Funds shall not be comingled with any other funds or used for a purpose other than the payment of costs allowable under ARRA.

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22. Reporting. §1512, FFATA §2. Contractor shall report to its Contracting Entity the data elements required in §23 if Contractor is a Subrecipient or in §24 if Contractor is a Recipient Vendor. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions, as the cost of producing such reports shall be deemed included in the Contract price. The reporting requirements in §§23 and 24 are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract. The State may provide written notice to Contractor of any such change in accordance with §2 above, but such notice shall not be a condition precedent to Contractor's duty to comply with revised OMB reporting requirements. The Colorado Office of the State Controller shall provide summaries of revised OMB reporting requirements as well as reporting templates for Subrecipients and Recipient Vendors at:
http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA_Main_Page.htm

23. Subrecipient Reporting. If Contractor is a Subrecipient, Contractor shall report to its Contracting Entity as set forth below.

23.1 Initial Reporting. A Subrecipient shall report the following data elements to its Contracting Entity upon the effective date of the contract:

23.1.1 Subrecipient DUNS Number

23.1.2 Congressional District of Subrecipient

23.1.3 Primary Place of Performance Information, including: Street Address, State, Country, City, Zip code + 4

23.1.4 Subrecipient Officers' Names (Top 5) if all three criteria are met: 1) 80% or more of Subrecipient's annual gross revenue is from Federal contracts, 2) Subrecipient's annual gross revenue from Federal contracts is \$25 million or more, and 3) Subrecipient's officer names are not publicly available. See page 19 of Recipient Reporting Data Model V3.0 for Quarter Ending September 30, 2009 at http://www.colorado.gov/dpa/dfp/sco/contracts/ARRA/ARRA_Main_Page.htm.

23.1.5 Subrecipient Officers' Total Compensation (Top 5) if criteria in §23.1.4 met

23.2 Monthly Reporting. A Subrecipient shall report to its Contracting Entity no later than the 25th day of each month the following inception-to-date data elements as of the end of the prior month:

23.2.1 Job Creation Narrative for both the Subrecipient and the Subrecipient's Vendors

23.2.2 Number of Jobs Created or Retained for both the Subrecipient and the Subrecipient's Vendors

23.2.3 SubAward number or other identifying number assigned by the Subrecipient to each Subrecipient Vendor (this number *cannot* be a personal identifying number such as a social security number or federal employer identification number)

23.2.4 Vendor name and Zip code + 4 of Vendor's Headquarters for each Subrecipient Vendor; the Subrecipient Vendor's DUNS number may also be provided if available

23.2.5 Subrecipient shall establish reporting deadlines for its Subrecipient Vendors.

24. Recipient Vendor Reporting. A Recipient Vendor shall report to its Contracting Entity no later than the 25th day of each month the following inception-to-date data elements as of the end of the prior month:

24.1.1 Job Creation Narrative

24.1.2 Number of Jobs Created or Retained

25. Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

26. Reporting Framework – see chart below.

