



DEPARTMENT OF  
GENERAL SERVICES

**DIVISION OF PURCHASES AND SUPPLY**

Serving Government. Serving Virginians.

# *ARRA Stimulus Procurement Bulletin*

## *Non-technology Goods and Non-Professional Services*

### *Procurements*

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The *ARRA Procurement Stimulus Bulletin* is published periodically to provide agencies with guidance regarding the *American Recovery and Reinvestment Act (ARRA)* procurement requirements. These bulletins have the force and effect of the *Virginia Public Procurement Act (VPPA)* and the *Agency Procurement and Surplus Property Manual (APSPM)* and are effective on the date of issue.

#### **Questions?**

[ARRAPROC@dgs.virginia.gov](mailto:ARRAPROC@dgs.virginia.gov)

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## **Overview**

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### **Introduction**

Agencies and institutions have begun receiving federal funds for economic recovery pursuant to the *ARRA*. The *ARRA* carries stringent procurement and reporting requirements to ensure accountability and to allow accurate and transparent reporting. This is the first of what the Division of Purchases and Supply anticipates being a series of bulletins to provide information essential to the proper procurement of *ARRA* funded requirements.

DPS will distribute these bulletins to agency and institution procurement officers and will post them along with other important *ARRA* procurement documents on the eVA Home Page under a section on *ARRA*. New bulletins will be issued as procurement guidance becomes available.

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**Applicability of VPPA, APSPM, and this Bulletin to ARRA Funding Execution**

ARRA funding is subject to the VPPA and APSPM and this Bulletin if the following applies:

The VPPA applies to all governmental procurement transactions from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party.

The APSPM implements the VPPA for non-technology goods and services and applies to all agencies and institutions that fall within the authority of DGS/DPS.

A “procurement transaction” means all functions that pertain to the obtaining of any goods or services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

A “public contract” means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

Public bodies are encouraged to consult their legal counsel if there are questions concerning the applicability of the VPPA to a particular ARRA funding grant.

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## Procurement Accountability

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**Objectives**

Agencies must include the following accountability objectives in the agency procurement process governing procurements using ARRA funds—

- Mitigate schedule, cost, and performance risk;
- Define contract requirements that deliver meaningful and measurable outcomes consistent with agency plans and the goals of the Recovery Act;
- Obtain maximum practicable competition;
- Maximize opportunities for small business to compete for agency contracts and to participate as subcontractors;
- Use supplies and services provided by nonprofit agencies employing people who are blind or severely disabled;
- Expeditiously award contracts using available streamlining flexibilities;
- Apply sufficient and adequately trained workforce to responsibly plan, evaluate, award, and monitor contracts;
- Ensure resources are available and perform diligent contract administration of all contracts until completion and appropriate agency oversight is provided at critical decision points.

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**Competition**

To the maximum extent possible, ARRA funded contracts are to be awarded as fixed price contracts through the use of competitive procedures (ARRA Sec 1554). Although the Recovery Act calls on agencies to commence expenditures and activities as quickly as possible consistent with prudent management, this statement by itself does not constitute a sufficient justification to support award of an ARRA funded contract on a non-competitive basis. Agencies are expected to follow the same laws, principles, procedures, and practices in awarding non-competitive contracts with ARRA funds as they do with other funds. Competition is the cornerstone of the Commonwealth's procurement system. The benefits of competition are well established. Competition saves money for the taxpayer, improves contractor performance, curbs fraud, and promotes accountability for results. Agencies shall not engage in non-competitive contracts except in those circumstances where their use can be fully justified and where appropriate safeguards are in place to protect the taxpayer. A summary of any contract awarded with ARRA funds that exceeds the APSPM single quote threshold and is not fixed-price or not awarded using competitive procedures shall be posted on the eVA website, Virginia Business Opportunities (VBO), upon contract award.

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## Contracting Process

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### Procurement Process

Agencies shall use existing procedures in the *Virginia Public Procurement Act (VPPA)* and the *Agency Procurement and Surplus Property Manual (APSPM)* for award of contracts using *ARRA* funding or the modification of existing contracts to add *ARRA* funded requirements.

Agencies must pay particular attention to Federal agency guidance received with *ARRA* funding that may include Federal *ARRA* specific special terms and conditions or guidance on the conduct of a procurement using *ARRA* funding in addition to the guidance provided in this bulletin.

Agencies shall include the procurement accountability and competition objectives previously mentioned in this bulletin in the planning and execution of all *ARRA* funded procurements and must comply with the *VPPA, Section 2.2-4300(C)* in the conduct of procurements:

“To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning the details of competition, that the rules governing contract awards be made clear in advance of the competition, that specification efforts reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered.”

### Schedule

Although the *Recovery Act* calls on agencies to commence expenditures and activities as quickly as possible consistent with prudent management, this statement by itself does not constitute a sufficient justification to support award of an *ARRA* funded contract on a non-competitive or emergency basis or jeopardize procurement integrity through hasty and non-prudent actions. *ARRA* procurement schedules must and can be met with agencies following the same laws, principles, procedures, and practices in awarding contracts with *ARRA* funds as they do with other funds, supplemented with any *ARRA* Federal procurement guidance.

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**Advertising**

All *ARRA* funded procurement solicitations exceeding \$50,000 shall be advertised on *eVA*, *Virginia Business Opportunities (VBO)*, as required by the *Virginia Public Procurement Act (VPPA)* for a period of not less than ten (10) calendar days. The ten (10) days is a minimum and agencies shall advertise procurements for a sufficient time so as not to restrict competition.

A summary of any contract awarded with *ARRA* funds that is above the single quote threshold and not fixed-price or is awarded using non-competitive, sole source, or emergency procedures shall be posted on the *eVA* website, *Virginia Business Opportunities (VBO)*, under the *ARRA* Procurement Category upon contract award.

Procurements will be posted on the *VBO* using the *ARRA* Procurement Category similar to the way a *Public-Private Educational Facilities and Infrastructure Act (PPEA)* procurement is posted. Instructions can be found at the *eVA* Home Page *ARRA* Informational Section.

**Small Business Preference**

Agencies shall maximize opportunities for small, woman-owned, or minority-owned businesses to compete for agency contracts and to participate as subcontractors. Procurement solicitations shall be structured to permit maximum *SWaM* participation and shall be advertised for a sufficient time so as not to restrict competition or preclude *SWaM* businesses from participating.

Small business set-aside procedures required in the *APSPM* shall be followed.

**Non-Competitive, Sole Source, and Emergency Procurements or Non-Fixed Price Type Contracts**

The *VPPA* and the *APSPM* allow for Sole Source procurements and specific exemptions to competitive requirements. These procurements and any other procurements above the single quote threshold for which only a single vendor is solicited are considered to be non-competitive. *ARRA* section 1554 requires that “To the maximum extent possible, contracts funded under this Act shall be awarded as fixed-price contracts through the use of competitive procedures.”

*APSPM* Chapters 8 and 9 provide guidance on processing the justification and approvals required by the *VPPA* for sole source and emergency procurements.

A summary of any contract awarded with *ARRA* funds that is above the single quote threshold and not fixed-price or is awarded using non-competitive, sole source, or emergency procedures shall be posted on the *eVA* website, *Virginia Business Opportunities (VBO)*, under the *ARRA* Procurement Category upon contract award.

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**Special Terms and** *ARRA* funded procurements require certain special terms and conditions to be

**Conditions** included in all procurements. These Ts & Cs are available on the *eVA* Home Page under the *ARRA* Informational Section and have been developed based on the Federal *ARRA* guidance and in consultation with the Office of the Virginia Attorney General.

Individual Federal agencies issuing *ARRA* funding may have additional Ts & Cs that may have to be included. Guidance received with the funding must be carefully reviewed by agencies

**Order of Precedence** Any conflict between Commonwealth Ts & Cs or requirements and Federal *ARRA* Ts & Cs or requirements, the Federal *ARRA* rules take precedence. Notwithstanding the foregoing, in the event that Federal *ARRA* requirements governing *ARRA* funds conflict with the *VPPA*, an agency may comply with these conflicting Federal *ARRA* requirements only upon the written determination of the Governor that acceptance of the grant funds is in the public interest (*Code of Virginia 2.2-4343(B)*).

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## Reporting

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**Procurement Information Reporting** The Virginia Department of Accounts is the lead on reporting *ARRA* data to the Federal Government. DOA *ARRA Stimulus Bulletins, Volumes 2009-01 and 2010-01*, were issued on April 10, 2009 and July 30, 2009 respectively, and additional guidance as needed will be forthcoming. These Bulletins and other *ARRA* information can be found at the DOA Home Page, [www.doa.virginia.gov](http://www.doa.virginia.gov)

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## Post Award Audit

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**Contract Audits** The Federal Government will audit selected *ARRA* contracts. If the procurement process was not conducted properly, *ARRA* funding can be withdrawn by the Federal government after the fact and the Commonwealth may be responsible for providing the funding. It is important that all *ARRA* procurements be conducted with this potential impact in mind.

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## Point of Contact

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**DPS Assistance** Agencies are encouraged to contact the Division of Purchases and Supply with any issues or questions in processing *ARRA* procurements. The best method to initially contact DPS for assistance with *ARRA* procurements is an email to [ARRAPROC@dps.virginia.gov](mailto:ARRAPROC@dps.virginia.gov) with the details.