


January 5, 2010

**MANAGEMENT DIRECTIVE # 3(b)**

TO: Senior Management Team for Recovery

FROM: Dempsey Benton, Director   
Office of Economic Recovery and Investment

SUBJECT: Contract Provisions for the Procurement of Goods, Services and  
Construction Projects Including Design Services and Internal Procurement  
Directives

This is the second amendment to Management Directive #3 issued by the Office of Economic Recovery and Investment (OERI) on May 5, 2009. The first amendment, Management Directive #3(a), was distributed by OERI on October 5, 2009.

**Use of Recovery Funds**

Public agencies, contractors and subcontractors are specifically prohibited from using American Recovery and Reinvestment Act (ARRA) funds for travel outside the service area or county in which the project is located. The only exceptions are where travel is specifically mandated by the Recovery Act, the awarding federal agency specifically directs such travel or it is a performance requirement of the grant.

**Historically Underutilized Businesses (HUBs) Participation**

In Management Directive #3, OERI directed ARRA recipients to encourage HUB participation and report monthly to OERI when there is new information regarding HUB utilization. The Governor issued Executive Order # 13 on May 7, 2009 which sets a 10% aspirational goal for Executive Branch state agencies' purchases of goods and services to be derived from HUBs. It also orders the HUB office to work with each Executive Branch state agency to develop a plan to achieve participation by and opportunities for HUBs in the state procurement process. All ARRA sub-recipients should work with the awarding state agency to develop a plan to facilitate awareness and provide opportunities for HUBs in pursuing ARRA funds and should adhere, at a minimum, to the Governor's 10% aspirational goal.

Title VI of the Civil Rights Act of 1964 mandates that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex, or national origin. All ARRA recipients should comply with these federal laws in the use of ARRA funds.

OERI continues to encourage recipients of ARRA funds to provide opportunities to small and historically underutilized businesses when awarding contracts and purchasing goods and services. OERI directs adherence to the HUB plans sub-recipients create with the awarding state agencies and continued submission of monthly reports to OERI when there is new information regarding HUB utilization. Recipients of ARRA funds should continue to comply with any and all related state and federal laws, rules, regulations and guidance.

#### **Temporary Personnel Funded by ARRA**

Pursuant to the authority in 25 N.C. Admin. Code 1A.0104, the State Personnel Director issued an exception to the rules for temporary personnel promulgated by the State Personnel Commission. North Carolina state agencies and departments are now permitted to employ temporary personnel funded under the ARRA for a term greater than 12 months as long as the ARRA funding is available.

#### **Minimum Purchasing Threshold**

Recovery funds shall only be used for the payment of goods, services and construction activities that are in accordance with OERI Management Directives #3, 3(a) and 3(b).

OERI recognizes that public entities across the state have different thresholds for their small purchasing programs and varying formal and informal advertising requirements are in place. Regardless, competition is a fundamental component of procurement under the ARRA. Where ARRA funds will be used for the payment of goods, services and construction activities, some form of competition must be sought. The use of electronic purchasing means is encouraged, as it provides statewide transparency and access to Recovery-funded procurement opportunities.

Where ARRA purchases are \$5,000 or more, entities must use the Statewide Interactive Purchasing System (IPS) and must advertise in local newsprint outlets, including minority and women owned outlets, in accordance with OERI Management Directive #3. The IPS and advertising requirements apply to the procurement of goods and services, as well as to construction-related activities.

#### **Establishing contracts using new procurement processes**

Competition is the preferred method for obtaining goods, services and construction requirements using Recovery funds. Recovery funds must not be used to purchase goods and services from existing term, convenience or agency specific contracts without the specific prior approval of the agency establishing the contract. Public agencies using Recovery funds are expressly prohibited from expanding the scope of existing contracts to accommodate the purchase of additional goods, services and construction projects or activities. Exceptions to using new purchasing procedures can be made where necessary and justified with prior approval by OERI.

**Federal and State Debarment Lists**

All state agencies should be checking potential ARRA contractors against federal and state lists of debarred organizations. The Department of Administration's Division of Purchase and Contract website <http://www.doa.state.nc.us/pandc/> has the listings for such a review. Using the contractor's DUNS number is a way for the agency to check for contractors which may be trying to operate under a different name.

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