



STATE OF NORTH CAROLINA
DEPARTMENT OF STATE TREASURER

State and Local Government Finance Division
and the Local Government Commission

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Memorandum #1115

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TO: Officials of Local Governments and Public
Authorities and Their Independent Auditors

FROM: Sharon Edmundson, Director
Fiscal Management Section

SUBJECT: The American Recovery and Reinvestment Act of 2009
Fiscal Management Issues

Congress has recently passed the American Recovery and Reinvestment Act of 2009 (ARRA) and that act has been signed into law by the President. ARRA contains many provisions intended to improve the marketability of local government debt, make funds available for local governments and public authorities, and delay contractor withholding requirements for certain governments. This memorandum will address fiscal management issues related to ARRA. A subsequent memorandum will address debt management issues.

The Governor has established the Office of Economic Recovery and Investment (ORI) to oversee the use of ARRA funds by the State and local governments in North Carolina. This agency will be led by Dempsey Benton, former director of the Department of Health and Human Services. ORI will serve as a clearing house for information and will coordinate reporting efforts for all funds going to local governments. Federal agencies are expecting quarterly reports on the use of ARRA funds. ORI will need to receive information from local units on the use of ARRA funds to complete these reports. Over \$6 billion in grants will be received by the State and a large share of that amount will be passed on to the local governments. A website has been established at <http://www.ncrecovery.gov/> to keep local units informed of the activities of the ORI and provide additional information about grants and loans available under ARRA.

In addition to funds passing through State agencies, ARRA makes a number of direct grants from Federal agencies available to local units. Any local government that receives a direct grant from a Federal Agency should inform the ORI of the grant and supply a copy of the grant agreement to ORI.

Potential applicants to federal agencies for direct grants need to obtain a DUNS (Data Universal Numbering System) number if the unit does not already have one. Units that have received federal grants in the past three years should already have a DUNS number; it is required to be on the Data Collection Form that these units must file annually. A DUNS number is a unique number that identifies an organization and helps track the distribution of grant money. It could take as long as three weeks to receive a DUNS number. Please refer to LGC memorandum #1114 for more information on requesting a DUNS number. If a unit is not sure if they have a DUNS number, they can call Dun and Bradstreet at 1-866-705-5711 to get that information.

To the extent permitted under federal and State procurement and bidding laws, units should attempt to hire North Carolina companies to perform services with ARRA funds. There should be a good faith effort to use historically underutilized businesses when possible.

Any jobs created with ARRA funds must be posted with the Employment Security Commission. This requirement includes jobs created by private companies which provide contracted services for units. These contracts should include this job posting requirement as well as the requirement to report to ORI the number of jobs saved and the number of jobs created by the contract. Local units must be prepared to report the number of jobs saved and/or created by contractors with ARRA funds and any jobs created within the unit of government.

Contracts for services should clearly establish performance expectations that can be measured and that are time bound and results oriented. Contractors should submit progress reports for each project. Each unit should designate a person to oversee the contracts and approve invoices for payment under the contracts. Contracts should contain monetary penalties for failure to complete a project or reach agreed upon milestones. State agencies that pass funds through to local governments should have standard contracts available for local units to use that contain all necessary provisions. If pro forma contracts are not available, local units should ask the appropriate State agencies to review contracts before the contracts are executed.

Most projects funded with ARRA grants will be subject to the requirements of the Davis Bacon Act and the "Buy American" provisions of ARRA. The Davis Bacon Act also will apply to projects financed with all forms of debt to be discussed in a later memorandum with the exception of Build America Bonds and Recovery Zone Facility Bonds. Buy American provisions require that all of the iron, steel and manufactured goods used in a project be produced in the United States. A Federal agency may grant a waiver of this requirement for a project if it would be against the public interest, would increase costs by more than 25% or there is not a sufficient supply of satisfactory materials.

Both the North Carolina League of Municipalities (NCLM) and the North Carolina Association of County Commissioners (NCACC) have links on their respective websites to provide more information about grants and loans and the impact of the stimulus bill on North Carolina governments. The NCLM link is <http://www.nclm.org/stimulus.htm> while the link for the NCACC is <http://www.ncacc.org/stimulus.html>. In addition, various State agencies have information about ARRA grants and loans on their websites.

Budgeting, Accounting and Auditing Requirements

Local governments must budget all grants and loans received under the ARRA. This requirement is true for both grants passed through the State and direct grants from a Federal Agency. Typically operating grants would be included in the annual budget. We recommend that grants that are for capital projects that will not be completed by the end of the fiscal year be budgeted in a grant or capital project ordinance rather than in the annual budget. Proceeds of debt must be budgeted in a capital project fund and we recommend that a capital project ordinance be used if the project will go beyond the end of the fiscal year.

Federal and State officials have established accountability over ARRA funds as a high priority. Local governments and states will have to report to the federal government how funds have been used and the number of jobs created and jobs saved with ARRA funds. Therefore, local units must budget and account for ARRA funds in a way that tracks all receipts and expenditures of those funds by project. Placing ARRA funds in a pool of funds, using that pool for multiple purposes and then allocating a share of those expenditures back to the ARRA dollars will not be sufficient. Units that have an accounting system that can track these revenues and expenditures separately from all other sources are not required to establish separate accounting funds for ARRA grants. However, units that do not have this capacity should place these grants in separate accounting funds. While our office encourages units to maintain a minimum number of funds, the need to establish public accountability justifies this practice during the fiscal years that ARRA funds are in use.

There may be units of local government that need to fund projects with ARRA grants or loans but do not feel they have adequate accounting systems and internal controls in place to be certain that they can comply

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with the requirements of ARRA. We encourage those units to contact their council of governments or county government to seek assistance in accounting for and maintaining internal controls over these funds. If these units are unable to find assistance, please contact our office.

At a minimum ARRA funds will be subject to the Single Audit requirements at both the State and Federal levels. However, there have been discussions at the Federal level to require additional audit requirements beyond Single Audit requirements. We will inform local units and their auditors of further developments as they occur.

Units should be aware of all requirements of grants and loans of ARRA funds, both those from the State and directly from Federal agencies, before applying for and expending those funds. Also, units that pass funds through to sub recipients should be certain the sub recipients are aware of grant requirements and have a system of tracking ARRA receipts and expenditures. Failure to properly use ARRA funds may result in recipients having to repay funds. This requirement should be clearly stated in all agreements with sub recipients.

Section 1511 of ARRA includes a one year delay of the application of withholding a percentage of payments to government contractors. The original requirement, set to go into effect for payments made after December 31, 2010, is now effective for payments made after December 31, 2011. Governmental entities that make qualifying payments in total of \$100,000,000 or more annually must comply with the requirements of the statute. Payments subject to withholding (qualifying payments) include any payment to any person providing any property or services unless exempted as follows: 1) payroll or other payments already subject to withholding; 2) payments of interest; 3) payments for real property; 4) payments to another governmental entity subject to this statute, any tax-exempt entity or any foreign government; 5) payments made in connection with a public assistance or public welfare program for which eligibility is determined by a needs or income test; or 6) payments to any government employee not otherwise excludable.

As we have more information on these topics we will make it available to local units. If you have any questions on items discussed in this memo thus far, please contact Sharon Edmundson at 919-807-2380 or sharon.edmundson@nctreasurer.com.