

AUDIT ALERT:

American Recovery and Reinvestment Act Readiness & Governance

October 7, 2009

Summary

The City and County of Denver's Office of the Auditor has assessed the City's readiness to receive and expend American Recovery and Reinvestment Act (ARRA) funding. We reviewed the Recovery Act's transparency and accountability requirements, general provisions, and the City's proposed internal controls to comply with those requirements.

As a result of our preliminary review, we developed recommended actions to assist the City in monitoring ARRA funding. City agencies should designate specific personnel responsible for reporting, ensure they receive proper training, and that documented procedures are in place in order to comply with Federal reporting guidance. Also, the ARRA Management Group should make certain the City's stimulus website contains accurate ARRA information and is easily accessible for the public.

The Auditor's Office will continue to monitor the City's progress and as programs are funded, we will perform audits of the City's compliance with Recovery Act requirements. In addition, the Auditor's Office is currently conducting an audit examining the City's Grant Process, which will assess specific performance measures for the entire process.

Overview

The City and County of Denver's Office of the Auditor has assessed the City's readiness to receive and expend American Recovery and Reinvestment Act (ARRA) funding.¹ We also evaluated ARRA governance requirements.

Colorado is one of 16 states where the United States Government Accountability Office (GAO) will conduct ARRA audits. Monies received by these 16 states represent about two-thirds of the total amount of federal assistance available. Due to this additional scrutiny and the increased public exposure risks involved with ARRA funding, the Auditor's Office

¹ *American Recovery and Reinvestment Act of 2009*, Public Law 111 – 5, 111th Cong., 17 February 2009 [hereinafter ARRA].

Office of the Auditor
Audit Services Division
City and County of Denver



Dennis J. Gallagher
Auditor

recognized the need to analyze the City's internal control environment and tracking approach for stimulus funds, criteria used to apply for and expend these funds, and the performance measurement system being utilized to ensure these funds have the intended beneficial impacts on the community.

We reviewed the Recovery Act's transparency and accountability requirements, general provisions, and the City's proposed internal controls to comply with those requirements. Specifically, we assessed whether internal controls in place address the Recovery Act's requirements or whether there is a need for additional or enhanced controls. Additionally, auditors held a collaborative meeting with GAO analysts who are reviewing the State of Colorado's ARRA monitoring process.

Background

The Recovery Act is an economic stimulus package enacted by Congress and signed into law by President Barack Obama on February 17, 2009 at the Denver Museum of Nature and Science. The Recovery Act was intended to provide a stimulus to the U.S. economy in the wake of the economic downturn. The measures included in the Act nominally amounted to approximately \$787 billion.

The Act includes federal tax cuts, expansion of unemployment benefits and domestic spending in education, health care, infrastructure, and the energy sector. According to <http://www.Recovery.gov>, the Federal Government's central ARRA tracking website, goals of the Act include but are not limited to the following:

- Save and create more than 3.5 million (59,000 in Colorado) jobs over the next two years;
- As part of the \$150 billion investment in new infrastructure, enact the largest increase in funding of our nation's roads, bridges, and mass transit systems since the creation of the national highway system in the 1950s;
- Provide an \$800 Making Work Pay tax credit for 129 million working households, and cut taxes for families through an expansion of the Child Tax Credit; and
- Require unprecedented levels of transparency, oversight, and accountability.

The City of Denver is in the process of applying for stimulus funds. The Recovery Act does not allow ARRA funds to be used to alleviate the City's general fund budget obligations. ARRA funds awarded will help support various projects throughout the City. The Recovery Act states that all federal funding should be expended or obligated by September 30, 2010.

The ARRA grant process begins with agencies identifying funding needs and funding sources. For federal grant awards, the City can be a prime or sub-recipient. When a city agency obtains grant funds directly from a federal agency, the city agency is considered a prime recipient. When funds are granted to a city agency through a non-federal entity, such as the State of Colorado, the city agency is considered a sub-recipient. Prime recipients of federal funds have more responsibilities for grant administration, monitoring and reporting than sub-recipients. The City has received grants as both a prime and sub-recipient.

Once the City identifies grants and the application process begins, Executive Order 15 requires a form to be completed and submitted to the Budget and Management Office and other select agencies for review. Once the Agency receives notification of the award, the contract process for grant agreement begins. In accordance with Executive

Order 8 and Denver Revised Municipal Code (D.R.M.C.) § 20-52, prior to acceptance of any grant, City Council approval is required when the grant-in-aid is more than \$500k, when it requires a matching contribution from the City, or when approval has been required through written request of a Council Member. If sub-recipients or vendors are used to administer the grant, a contract must be executed. The Recovery Act requires monitoring of sub-award entities.

Summary of Grants spreadsheets are posted to the City's stimulus website periodically. These spreadsheets contain information regarding ARRA grants received by the City including, awarded amount, expenditure progress, grant descriptions and estimated jobs created and retained data. According to the most recent *Summary of Grants* spreadsheet provided to the Auditor's Office, the City had received \$54.94 million in grant allocations and was continuing to apply for additional funding. The City's ARRA website is located at <http://www.denvergov.org/stimulus>. Additional information on ARRA funds and projects taking place at the Denver International Airport (DIA) can be found at <http://www.flydenver.com/diabiz/stats/financials/amerirecovery.asp>.

Oversight

The City uses a decentralized internal control structure for grant administration. The Controller's Office manages the City's fiscal rules, while each agency is responsible for ensuring that grant programs have sufficient internal controls. The City's Fiscal Rule 9.1 establishes guidelines for application, receipt, management and financial accounting of Federal grants. The fiscal rule requires recipient agencies to have policies and procedures that address internal controls and grant management processes.

The City has established an ARRA Oversight Committee for monitoring stimulus funds.² The committee has been reviewing information put together by the City's ARRA Management Group.³ This management group receives ARRA grant information from city agencies through email and a city agency working group. Agencies are encouraged but not required to attend the working group meetings held by the ARRA Management Group.

No central point of contact or subject matter expert has the task of monitoring ARRA compliance but rather, city agencies are responsible for complying with ARRA requirements on a grant-by-grant basis. According to the Office of Management and Budget (OMB), Federal Agencies are required to designate a "Senior Accountable Official" for recovery activities. This could be considered as a best practice for the City to ensure compliance and transparency of the City's ARRA funds.⁴

The following table summarizes the oversight compliance requirements, provisions and guidance for the Recovery Act along with the City's established or proposed internal

² The ARRA Oversight Committee consists of representatives from the following organizations: Mayor's office, Non-profit community, Business community, City Administration, Auditor's office, Governor's office, State Representative, Congresswoman DeGette's office, Senator Udall's office, Senator Bennet's office, Neighborhoods, and Denver City Council.

³ The ARRA Management Group consists of members from the Mayor's Office, Department of Finance, City Attorney's Office, and Technology Services.

⁴ Peter R. Orszag, Office of Management and Budget, *MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES: Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, (Washington, D.C.: M-09-15, April 3, 2009), § 5.4.

controls to address them. In this report, these tables are used to specifically show the key accountability and transparency requirements and general provisions for recipients and OMB guidance for federal agencies that may be relevant to the City's compliance with the Recovery Act. As OMB or federal agencies provide further guidance there may be additional requirements, or those listed in the tables may change.

Significant Oversight Recovery Act Transparency and Accountability Requirements and Associated City and County of Denver Internal Controls

Compliance Requirement	City Procedure	Status
Recovery Act Requirements		
Mayor shall certify that the infrastructure investment has received the full review and vetting required by law and that the Mayor accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Certification shall be posted on a website and linked to Recovery.gov (ARRA, § 1511).	Certification for Denver International Airport (DIA) projects were certified and posted on DIA's stimulus website. Certification for the City's other infrastructure projects were certified by the Governor and posted on the State's website.	Implemented – Certification for the City is not posted on the City's website, but rather on DIA's website.
Whistleblower Protection - An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties (ARRA, § 1553).	D.R.M.C., Article VII, §§ 2-106 – 2-110 provides protection for whistleblowers and notes examples of appropriate reporting authorities. The City does not have a fraud hotline at this time.	Implemented
Additional Requirements the Federal Agencies may require of Prime Recipients		
Agencies must take steps, beyond standard practice, to initiate additional oversight mechanisms in order to mitigate the unique implementation risks of the Recovery Act. Use internal control assessments to assess the risk of program waste, fraud and abuse in grants (OMB, M-09-15, § 5.4).	A few agencies have developed additional procedures. In addition, the ARRA Management Group developed an Agency Reporting Policy. Specific internal control assessments have yet to be performed. The ARRA Management Group believes this is the	Partially Implemented

Compliance Requirement	City Procedure	Status
	responsibility of city agencies.	
Agencies should not use funds to pay fixed costs (OMB, M-09-15, § 4.8).	Oversight of costs is the responsibility of the agencies.	TBD
Agencies must ensure they comply with provisions of the Recovery Act when they pay for administrative costs. In general, Recovery Act funds should not be used for Telecommunications services or IT desktop support, or for the incidental administrative costs, e.g. paper for copy machines (OMB, M-09-15, § 4.9).	Oversight of costs is the responsibility of the agencies.	TBD

Contract Requirements

The City made limited changes to its contracting process as a result of the Recovery Act. Generally, the City's Municipal Code and Executive Orders were sufficient to address ARRA requirements. However, either the City or the grant recipient is responsible for implementing specific grant or contract requirements, such as certifying infrastructure projects and *Buy American* clauses, as applicable.

As a possible best practice, the OMB indicates that, "agreements must spell out the assignment of agency roles and responsibilities to fulfill the unique requirements of the Recovery Act. These include, but are not limited to, report development and submission, accurate and timely data reporting, and special posting requirements to agency web sites and Recovery.gov."⁵ In addition, OMB recommends agencies actively monitor contracts to ensure that performance, cost, and schedule goals are met.⁶

The City Attorney's Office (CAO) works in conjunction with the agency working group and the ARRA Oversight Committee in providing legal guidance and advice on ARRA information and related projects. Though there have been noted delays in the City's overall contracting process, the CAO attempts to coordinate with agencies and City Council to expedite the approval of ARRA grants in order to meet designated timelines.

The following table summarizes the contract compliance requirements, provisions and guidance for the Recovery Act along with the City's established or proposed internal controls to address them.

⁵ OMB, M-09-15, § 5.1(3).

⁶ OMB, M-09-15, § 6.3.

Significant Contract Recovery Act Transparency and Accountability Requirements and Associated City and County of Denver Internal Controls

Compliance Requirement	City Procedure	Status
Give special attention to contractor responsibility determination in awarding contracts (OMB, M-09-15, § 6.2).	A responsible contractor is defined in the D.R.M.C., Article IV, § 20-61 (f).	Implemented
	Risk Management is covered in Executive Order 8.	Implemented
Fixed Price Contracts – To the maximum extent possible, contracts funded under this Act shall be awarded as fixed-price contracts through the use of competitive procedures (ARRA, § 1554).	Competitive selection process is covered in D.R.M.C., Article IV, § 20-56.	Implemented
	Competitive bids are covered in City Executive Order 8.	Implemented
	D.R.M.C., Article IV, § 20-62. Note: Fixed price contracts are not required, but contracts should be reviewed for 'best value' to the City.	Implemented
	The <i>Summary of Grants</i> spreadsheet shows if an RFP was issued.	In Progress
Payment of not less than the prevailing wage to "all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the [Recovery Act.]" (OMB, M09-15 § 1.7).	D.R.M.C., Article IV, § 20-76.	Implemented
Buy American – None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless certain requirements are met (ARRA, § 1605).	The City is working to incorporate "Buy American" clauses into RFPs, sub-contracts, and applicable grant agreements.	In Progress

Reporting

All recipients of ARRA funds are required to report on certain elements about funds received. Reporting occurs within 10 days after the end of each calendar quarter, the first deadline being October 10, 2009.

Reporting correct data on or before the deadline is essential for city agencies. According to guidance issued by the OMB, no waivers will be granted and extensions will only be granted for extraordinary circumstances, i.e. a natural disaster. Non-compliance with reporting requirements are considered violations of the grant agreement. Penalties for non-compliance can include termination of the grant and debarment from future grants.

Since reporting has not occurred thus far, auditors conducted an initial assessment of reporting preparation and found that generally city agencies are prepared to report on ARRA funds.

For example, a few agencies have detailed review and reporting processes in place, such as the Department of Environmental Health, Denver International Airport and the Denver Police Department. These departments utilized several techniques to develop their review processes. These include:

- Viewing all Federal informational webinars on reporting requirements;
- Regular communication with grantor;
- Coordinating with all agencies receiving funding and establishing a reporting structure;
- Planning for reviewing and verifying data; and
- Having a central person for the whole agency designated to monitor ARRA funds.

However, some agencies are still unclear about specific reporting requirements. Additionally, some weaknesses have been identified in data quality review processes. For example, while observing ARRA working group meetings, auditors noted that with only a month left before the first reporting cycle, some agencies were still confused as to whether they were a prime or sub-recipient of funds. Additionally, some agencies did not know if reporting should commence from when the grant was awarded or when they start expending funds.

Data review processes varied greatly between agencies interviewed. A few agencies addressed all internal control requirements, others addressed a portion of the required controls, while others had no review process in place.

The following table summarizes the reporting compliance requirements, provisions and guidance for the Recovery Act along with the City's established or proposed internal controls to address them.

Significant Reporting Recovery Act Transparency and Accountability Requirements and Associated City and County of Denver Internal Controls

Compliance Requirement	City Procedure	Status
Separate Funding Accounts – Recovery Act funds shall be established in distinct funding accounts so they can be tracked	The Budget and Management Office is assigning ARRA grants	Implemented

Compliance Requirement	City Procedure	Status
separately (ARRA, § 1552).	unique fund numbers and grant ID numbers in PeopleSoft.	
Agencies must register on FederalReporting.gov, the nationwide data collection system in order to submit reports. Reporting must commence the same quarter the award is made. The OMB 06/22/09 guidance contains more detailed information on reporting. ⁷ See also OMB 09/11/09 guidance. ⁸	Registration is delegated to the agencies. All agencies surveyed were registered if it was required at that time.	Implemented
No later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to FederalReporting.gov that contains (ARRA, § 1512 & the City's Agency Reporting Policy): <ul style="list-style-type: none"> o The amount of recovery funds received and amount expended or obligated. o A detailed list of all projects or activities to include project name, description, completion status and estimates of the number of jobs created and jobs retained. o Detailed information on any sub-grants or contracts awarded. (OMB, M-09-21, § 2.1)	Reporting is delegated to the agencies.	TBD
Recipients of Recovery Act funds are required to perform data quality reviews for material omissions and significant reporting errors. At a minimum, recipients should establish internal controls to ensure data quality, completeness, accuracy and timely reporting of all amounts funded by the Recovery Act (OMB, M-09-21, § 4.1 and § 4.3).	Two days before submitting reports to grantor and no later than the 8 th day following the end of the quarter, the ARRA Management Group will review reports and compare data to PeopleSoft financials. Most agencies interviewed had internal plans for data review.	In Progress

⁷ Peter R. Orszag, Office of Management and Budget, MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES: *Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009*, (Washington, D.C.: M-09-21, June 22, 2009), § 2.5 and § 3.2.

⁸ Peter R. Orszag, Office of Management and Budget, MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES: *Improving Recovery Act Recipient Reporting*, (Washington, D.C.: M-09-30, September 11, 2009).

Compliance Requirement	City Procedure	Status
	However, various agencies did not address all internal control aspects required.	
Recipients using ARRA funds for infrastructure projects are subject to additional reporting requirements (OMB, M-09-21, § 2.1).	Only two agencies currently have infrastructure projects.	TBD

Stimulus Website

Although the City is not required to develop a new website dedicated to stimulus efforts, the OMB established the following best practices for the display of ARRA information:

- Agencies should have a prominent link to their Recovery Act page from their home page and from other relevant sections of their site where visitors are likely to look for this information.
- Content should be written in plain language and follow government-wide best practices for plain language.
- Agencies should ensure that all content, including printable reports, is accessible to people with disabilities and meets requirements of Section 508 of the Rehabilitation Act of 1973.
- Agencies should ensure that large documents are presented in a way for users to easily scan their contents and download them.
- To ensure maximum transparency and accountability, agencies should provide contact information for the person or office responsible for maintaining their agency's Recovery Act content.⁹

The City maintains an ARRA website; however, it is not linked to the City's homepage. This is because the City's homepage is constantly updating. Currently, the City's ARRA website is not linked to any department websites. Instead, visitors must type in the direct URL, www.denvergov.org/stimulus, or search for "stimulus" using the search bar located in the upper right-hand corner.

Auditors noted that the City's stimulus website is not always updated in a timely manner. According to the website, "As Denver receives funds and as programs and projects progress, this page will be updated. Please check back regularly for additional information." However, as of October 2, 2009, the grants listed on the website do not match all grants listed in the latest *Summary of Grants* spreadsheet posted on the website. Additionally, the total amount of ARRA funds received as stated on the latest *Summary of Grants* spreadsheet differs from the total displayed on the website. Also, information posted about the Oversight Committee meetings is not always up to date.

Further, there appears to be some mathematical errors with the data on the City's website. When auditors computed award amounts for the formula, competitive, and overall total grants listed on the website, all three amounts displayed were incorrect.

⁹ OMB, M-09-15, Appendix 2.

Auditors also noted the *Summary of Grants* spreadsheet has variations each time it has been posted that could be interpreted as inaccurate without additional explanatory information. Some variations noted included decreasing or increasing award amounts over time and decreasing total grant fund amounts.

Compliance Requirement	City Procedure	Status
Website linked to the federal Recovery.gov website (OMB, M-09-15, § 2.2).	Denvergov.org/stimulus created & maintained by the Mayor's Office.	Implemented

Recommended Actions

This initial Audit Alert is intended to provide a current assessment of the City's control and governance environment prior to the first ARRA reporting phase. As a result of our preliminary review, we offer the following recommended actions to assist the City in monitoring ARRA funding:

- City agencies should ensure that documented procedures are in place for data review addressing data quality, completeness, accuracy and timely reporting.
- City agencies should designate specific personnel responsible for reporting and ensure such persons view Federal training webinars and review published Federal reporting guidance.
- The ARRA Management Group should place a permanent link to the City's stimulus website on the homepage or on a related department website, such as the Mayor's Office or Budget Management Office. In addition, a link should be established between the City and DIA's ARRA websites.
- The ARRA Management Group should verify accuracy of information presented on the City's ARRA website prior to display or clearly notate that information presented is estimated as of the date of upload.

Next Steps

The Auditor's Office will continue to monitor the City's progress and as programs are funded, we will perform audits of the City's compliance with Recovery Act requirements. Upon completion of audit testing, we will identify and report additional issues related to ARRA funding. In addition, the Auditor's Office is currently conducting an audit examining the City's Grant Process, which will assess specific performance measures for the entire process.

We would like to thank the city personnel that we have interacted with up to this point for their cooperation. We encourage all city personnel to work together and to continue their commitment to ensure the City and County of Denver complies with ARRA funding requirements.

Contact

If you have any questions, please contact me at 720-913-5029.

A handwritten signature in black ink, appearing to read "K. Memmott". The signature is fluid and cursive, with a large initial "K" and a long, sweeping tail.

Kip Memmott, MA, CGAP, CICA
Director of Audit Services

Purpose of Audit Alerts

To quickly communicate significant audit issues or concerns about fraud, waste, or abuse which have come to the attention of the Division through an audit or otherwise which require immediate action or review by management.

Distribution

Honorable John Hickenlooper, Mayor
Honorable Members of the City Council
Members of the Audit Committee
ARRA Oversight Committee
Claude Pumilia, Chief Financial Officer
David Fine, City Attorney
Stephanie Adams, Manager of Performance Initiatives, Budget and Management Office
Kelli Bennett, Accounting Manager, Controller's Office
Amy Mueller, Deputy Chief of Staff, Mayor's Office
Shaun Sullivan, Assistant City Attorney, City Attorney's Office