PL 93-638 AWARD PROCESS FOR AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

NILAH DEVANEY
NWRO, AWARDING OFFICIAL
503-872-2867 E-Mail: nilah.devaney@bia.gov
ARRA OVERVIEW ON DEADLINES

• FEBRUARY 17, 2010, AWARD DEADLINE FOR ELIGIBLE PROJECTS

• TRIBES HAVE LESS THAN 99 WORKING DAYS TO SUBMIT ELIGIBLE PROJECTS BEFORE THE DEADLINE.

• SEPTEMBER 30, 2010, DEADLINE FOR SECOND ARRA DISTRIBUTION FUNDS. DETAILS OF REDISTRIBUTION FORTHCOMING.

• DEADLINE TO COMPLETE CONSTRUCTION PROJECTS: SEPTEMBER 30, 2012.

• SHOVEL READY PROJECTS MUST BE COMPLETED TIMELY AS AWARDED AND REPORTED (START AND END DATES). DO NOT EXTEND PROJECT INTO 2012 IF YOUR PROJECT DOES NOT WARRANT EXTENDING INTO ADDITIONAL YEARS.
### ARRA FUNDING SUMMARY

#### TWO ARRA ROADS FUNDING SOURCES

<table>
<thead>
<tr>
<th>ARRA CONSTRUCTION (FER)</th>
<th>ARRA REPAIR AND RESTORE</th>
</tr>
</thead>
<tbody>
<tr>
<td>• ARRA FUNDS FROM FHWA TO BIA-DOT CENTRAL OFC FUNDS ARE HELD IN CENTRAL OFFICE</td>
<td>• ARRA BIA DOI REPAIR AND RESTORE FUNDS ARE HELD IN BIA, NWRO</td>
</tr>
<tr>
<td>• PROJECT APPROVAL AT BIA-DOT LEVEL AND FHWA</td>
<td>• PROJECT APPROVAL AT BIA-DOT LEVEL ONLY FHWA NOT APPLICABLE</td>
</tr>
</tbody>
</table>
### ARRA DIFFERENCE IN PROJECT APPROVAL PROCESS

<table>
<thead>
<tr>
<th>ARRA CONSTRUCTION (FER)</th>
<th>ARRA REPAIR AND RESTORE</th>
</tr>
</thead>
<tbody>
<tr>
<td>• DOT CENTRAL . FUNDS ARE HELD IN CENTRAL OFFICE</td>
<td>• ARRA BIA REPAIR AND RESTORE FUNDS ARE HELD IN BIA, NWRO</td>
</tr>
<tr>
<td>• PROJECT APPROVAL AT BIA-DOT LEVEL AND FHWA APPROVAL</td>
<td>• PROJECT APPROVAL AT BIA-DOT LEVEL ONLY FHWA NOT APPLICABLE</td>
</tr>
<tr>
<td>• FUNDS NEED TO BE ALLOCATED TO THE REGION</td>
<td></td>
</tr>
</tbody>
</table>
AWARD OVERVIEW

• Pre-award process

• Contract Award

• Contract Administration

• Close Out
Pre-Award: What is needed to apply for a PL 93-638 ARRA Construction contract? See SAMPLES

- Contract Application and Tribal Resolution
- Addendum certification to comply with ARRA
- Plans, Specifications, Engineer’s Estimate
- Copy of approved NEPA
- Copy of approved Right of Way
- Copy of the funding approval from
  - (BIA DOT – Central Office) for IRR and R/R
  - (Federal Highway) additional approval for IRR only
Pre-Award: What is needed to apply for a PL 93-638 ARRA Repair and Restore contract? See SAMPLES

- Contract Application and Tribal Resolution
- Addendum certification to comply with ARRA
- Abbreviated Plans, Specifications, Engineer’s Estimate
- Work Plan
- Copy of approved NEPA
- Copy of the funding approval from
  - (BIA DOT – Central Office) Only
  - FHWA approval is not required
Pre-Award: What ARRA review process is required prior to award? *(SEE RISK ASSESSMENT HANDOUT)*

- Risk Assessment Review: BIA Awarding Official conducts a Financial Management Capacity Assessment

- Risk Assessment Review: BIA AOTR’S conducts a Tribal Resources Assessment

- Assure Tribe has a Contract/Procurement procedure in place to meet ARRA competitive bidding requirements
Pre-Award: Will BIA and Tribe conduct contract negotiations before award? (Yes)

- Application is reviewed by BIA Team
  - Awarding Official
  - Approving Official
  - Designated Roads Representative/AOTR’s

- Risk Assessment is reviewed with determination if Tribe meets and is in compliance with ARRA
Pre-Award: Will BIA and Tribe conduct contract negotiations before award? (Yes)

- Tribal Negotiation Team will be notified to schedule a negotiations session.
- Tribal Negotiation Team may consist of:
  - Tribal Compliance Officer
  - Tribal Finance Officer
  - Tribal Contracts and Grants Officer
  - Attorney
  - Transportation Planner and ARRA Compliance Officer
  - Designated Project Manager
  - Other as necessary
Pre-Award: Tribes must register in the Central Contractor Registration (CCR) at www.ccr.gov

SEE CCR HANDOUT FOR DISCUSSION
Pre-Award of Subcontractors: All Tribal Subcontractors MUST be registered in CCR to receive awards [www.ccr.gov](http://www.ccr.gov)

Tribes and/or their Engineers must provide CCR Registration language as a bid responsive item in their solicitation/bid packages.
Contract Award: When will the Tribe receive a contract?

- **AN AWARD CAN BE MADE FOLLOWING**
  - COMPLETED APPLICATION AND DOCUMENTS
  - APPROVING OFFICIAL DETERMINATION OF NO DECLINATIONS IN THE APPLICATION
  - NEGOTIATIONS FOR A MUTUAL AGREED ARRA CONTRACT
  - FUNDING AVAILABILITY AND APPROVALS
Contract Award: Important contract award requirements?

- KNOW THE CONTRACT TERMS, CONDITIONS, DEADLINES
- DEVELOP TRACKING TOOL FOR:
  - DELIVERABLES
  - REPORTS
  - PAYMENT REQUIREMENTS
  - FINANCIAL AND PROPERTY REQUIREMENTS
  - KNOW WHAT TRIBAL ARRA TEAM MEMBER IS RESPONSIBLE FOR WHAT PHASES OF THE CONTRACT REQUIREMENTS
Contract Administration: Is Advance Payment allowed under ARRA?

- Initial Advance Payment will be negotiated. The amount determined based on Risk Assessment Rating and the complexity of the project.

- Construction Monthly certified Progress Payments Requests will be required based on work completed and accepted by all parties and receipt of certified payroll.

- Tribe and Subcontractors must certify they will meet ARRA reporting requirements. Failure to comply BIA may withhold payment.
Contract Administration: Tribe must develop a ARRA Report Tracking System.

Example: ARRA Quarterly Reports are Due by the 10th Day following FY Quarters

FAILURE TO REPORT BY DUE DATES RISK:
1) Non Payment
2) Termination of the contract
3) Return of funds
Contract Administration: How many reports could one ARRA contract require in one year?

- 1 Initial FHWA Report
- 48 Weekly FHWA Reports (4 per mo x 12 mo)
- 24 Monthly Reports FHWA (2 per month x 12 months)
- 4 ARRA Quarterly Reports (4 per year) federalreporting.gov
- 4 SF-269 Financial Reports - 638 (4 per year)
- 4 Narrative Accomplishment Reports 638 (4 per year)
- 1 A-133 Single Audit 638 (1 per year)

86 TOTAL REPORTS DUE ONE CONTRACT ONE YEAR

172 TOTAL REPORTS DUE ONE CONTRACT TWO YEARS
Contract Administration: How many new ARRA contracts Tribes might be awarded? (At least 2)

- 2 Initial FHWA Report
- 96 Weekly FHWA Reports (4 per mo x 12 mo)
- 48 Monthly Reports FHWA (2 per month x 12 months)
- 8 ARRA Quarterly Reports (4 per year) federalreporting.gov
- 8 SF-269 Financial Reports - 638 (4 per year)
- 8 Narrative Accomplishment Reports 638 (4 per year)
- 1 A-133 Single Audit 638 (1 per year)

171 TOTAL REPORTS DUE TWO CONTRACTS TWO YEARS

342 TOTAL REPORTS DUE TWO CONTRACTS TWO YEARS
Contract Administration: How will you track your reports?

- Questions to ask?
- How will you track your reports?
- How will you track your subcontractors reports?
- Who will be responsible for tracking?
- Will you have a back up plan in the absence of responsible staff?
Contract Administration: Transparency and Accountability

AS A RECIPIENT OF ARRA FUNDS EXPECT TO BE VISITED BY:

- Bureau of Indian Affairs
- Federal Highway Administration
- Office of Inspectors General
- Accountability and Transparency Board
- Government Accountability Office

KEEP ARRA FILES IN SEPARATE FILE CABINETS
Contract Administration: Finance must keep ARRA funds in a separate account.

- Tribes must keep ARRA funds in a separate account from all other funds.
- No commingling of funds.
Contract Administration: Transparency and Accountability

- Document...Document...Document

Keep copies of all records, bid advertisements, Awards, notice to proceed letters, submittals, E-Mails Telephone documentations, reports, meeting notes, invoices, submittals, payments, etc, etc.
Contract Administration: Submit construction project records during the project?

- Documentation requirements can be found in your contract, specifications, IRR Business Plan and all other negotiated deliverables.

- Preconstruction Meetings are held prior to a Notice to Proceed and provide clear direction on the required construction and contract submittals.
Contract Administration: Communication, Communication, Communication, Communication, Communication! Keep everyone informed at all times!
Contract Administration: Know your points of contacts and their authorities? BIA

• BIA Awarding Official, Indian Self Determination Specialists: Contract and Modification (Award Authority)

• BIA Approving Official Director, Division of Transportation Program Recommendation and Technical Approval. No contract authority

• Awarding Official Technical Representatives (AOTR’s) Division of Transportation Technical Staff various Titles
  ▫ Program Recommendation and Technical Approval
  ▫ No contract authority
Contract Administration: Know your points of contacts and their authorities? TRIBE

- Know who has Tribal contract award authority? Tribal Chairman and written delegated staff

- If you have not received written authority to negotiate and award contracts or modifications do not direct, approve authorization of changed work on behalf of the Tribe. Know you authority limitations.

- Subcontractors have no authority to proceed with performing ANY changed work outside their agreed subcontract without Tribal and BIA Approval. Risk of proceeding without approval is NON-PAYMENT.
Contract Administration: Tribes and Subcontract Points

- Use of BIA IRR funds for Design of your ARRA funds requires a Pre-Design Meeting.
  - Assures ARRA Requirements are understood
  - Assures Scope of Work is clear
  - Determines who is performing what phase of project such as NEPA and Right of Way
  - Set Milestones for completion of all phases
Contract Administration: Tribes and Subcontract Points for Design Development.

- Tribes must assure your Engineer Designs your project to apply for ARRA FUNDS in accordance with 25 CFR Part 170, 25 CFR Part 900 and ARRA.

  - ARRA Requirements are understood
  - Scope of Work and fast tracking deadlines are clear
  - Determines who is performing what phase of project such as NEPA and Right of Way
  - Develop Design Schedule/Milestones for completion of all contracted phases
Contract Administration: Subcontractor Requirements for Davis Bacon Act.

- Davis Bacon Act is required for all ARRA Construction Contracts using (ARRA FER) funds in all subcontracts.

- Davis Bacon Act is exempt (not required) for ARRA BIA Repair and Restore projects.
CONTRACT CLOSEOUT:

- Construction Project Closeout occurs after:
  - Substantial Project Completion
  - Develop Project Punch List
  - Final Project Inspection
  - Final As Builtts and Project Records
  - Final Acceptance

- A construction contract close out is the final accounting of all IRR construction project, review all obligations, final expenditures, release of claims and close out reports
TEAMWORK, COMMUNICATION, DOCUMENTATION AND TIMELY REPORTING WILL MEET THE MISSION OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

WE LOOK FORWARD TO SUCCESSFUL ARRA PROJECTS
THANK YOU FOR YOUR TIME
ANY QUESTIONS?