



Contract Confusion: The Transparency Issue

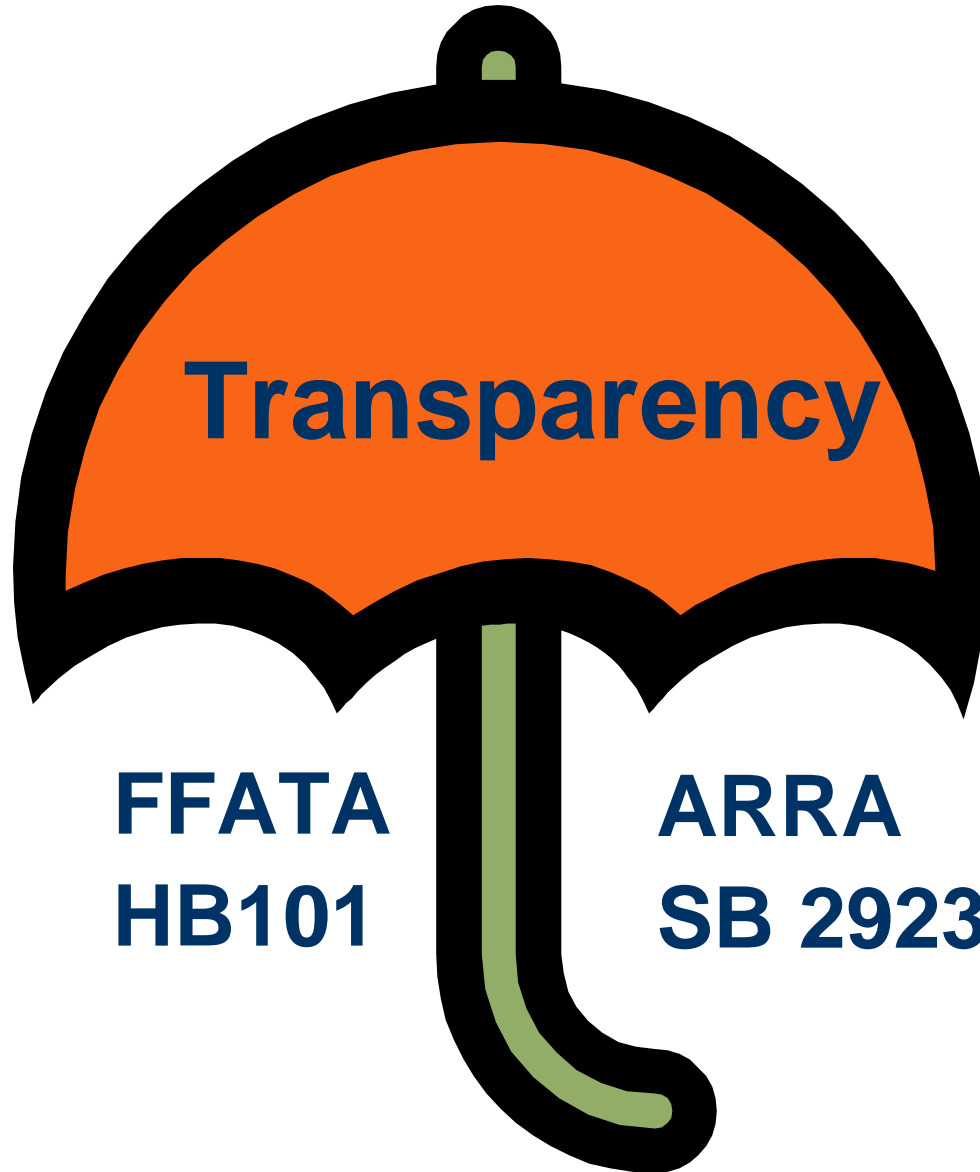
October 20, 2009

Department of Finance and Administration
Office of the Mississippi Management and Reporting System



Transparency:

A concerted effort to provide **visibility**, **openness**, and **accessibility** to state government financial activity for Mississippi taxpayers.



Transparency

**FFATA
HB101**

**ARRA
SB 2923**



Federal Funding Accountability and Transparency Act of 2006 (FFATA)

- The intent is to empower every American with the ability to hold the government accountable for each spending decision.
- Requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website.

Mississippi Accountability and Transparency Act of 2008 (MATA)

HOUSE BILL NO. 101
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 27-104-3, MISSISSIPPI CODE OF 1972,
2 TO DELETE THE DATE OF THE REPEALER ON THE PROVISION THAT
3 AUTHORIZES THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO PROVIDE
4 ASSISTANCE TO STATE AGENCIES IN COLLECTING FEES OR OBLIGATIONS
5 THAT OTHER AGENCIES HAVE FAILED TO PAY TO THEM; TO CREATE THE
6 "MISSISSIPPI ACCOUNTABILITY AND TRANSPARENCY ACT OF 2008"; TO
7 REQUIRE THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO DEVELOP
8 AND OPERATE A WEB SITE THAT DISCLOSES CERTAIN INFORMATION
9 REGARDING THE EXPENDITURE OF STATE FUNDS; TO DIRECT ALL STATE
10 AGENCIES TO COOPERATE WITH SUCH REQUIREMENT; AND FOR RELATED
11 PURPOSES.

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

13 **SECTION 1.** Section 27-104-3, Mississippi Code of 1972, is
14 amended as follows:

15 27-104-3. In addition to other powers and duties prescribed
16 by statute, the Department of Finance and Administration shall
17 have the following powers and duties, with regard to fiscal
18 management:

Mandates a searchable website to post:

- State expenditures
- Electronic copies of each grant, contract, and subcontract



American Recovery and Reinvestment Act of 2009 (ARRA Stimulus)

American Recovery and Reinvestment Act of 2009



Full title	An act making supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and State and local fiscal stabilization, for the fiscal year ending September 30, 2009, and for other purposes.
Acronym / colloquial name	ARRA (official acronym) "stimulus package", "stimulus bill", "stimulus plan", and several other variations (unofficial)
Enacted by the	111th United States Congress
Effective	February 17, 2009



Senate Bill 2923

- Revised public purchasing laws
- ARRA projects in excess of \$25,000 must be bid
- Notices of intention to accept bids for ARRA projects must be submitted to MDA for posting to public website
- Bid process timeline shortened for ARRA construction projects
- ARRA contract awards and executed contracts must be posted for public access by DFA



Commonality of Laws?

FFATA, MATA, ARRA, and SB2923:

All mandate specific reporting on contracts and grants at both the State and Federal levels and require that all grant and contract information be available for public access.





Mississippi's Transparency Website: MERLIN.net

<https://merlin.state.ms.us/merlin/merlin.nsf/Navigation?OpenForm&Home>



[Budget](#)

[Contracts](#)

[Revenue](#)

[Vendor](#)

[Workforce](#)

[Dictionary](#)

[Mississippi.gov](#)

MMRS Call Center
(601) 359-1343

Comments!
Questions?

Click [here](#) to e-mail one of our MMRS Applications Staff.

What is Transparency?

Transparency in Mississippi Government is a concerted effort to provide visibility, openness, and accessibility to state government financial activity for Mississippi taxpayers as mandated by the State Legislature. As part of our continuing effort to set new standards for transparency and accountability in state government, the Department of Finance and Administration now provides access to a variety of financial data that is updated regularly. Click on any of the categories below to view and create online reports.

Budget

A user can view appropriation, expenditure, and encumbrance summary information for all state agencies as reported in the Statewide Automated Accounting System (SAAS). The budget information may be viewed four different ways; by Agency, by Expense Type, by Functions of Government, or by Fund Type. This information is updated daily after SAAS nightly processing. All queries run for the current budget year will reflect the last day the information was updated. All queries run for a prior budget year will note as of June of the budget year, i.e. Agency by Expense Type report run for budget year = 1999 will show an 'As of Month June 1999'.

Contracts

These queries provide contract information for State Agencies for Budget Year 2009 forward in compliance with the Mississippi Accountability and Transparency Act of 2008.

Revenue

A user can view a monthly report of general fund tax revenues as reported in the Statewide Automated Accounting System (SAAS) for the State of Mississippi.

Vendor

A user can view information about vendors doing business with State of Mississippi agencies. The vendor information is updated on a daily basis and includes warrant information, vendor expenditures by expense type and statewide expenditures to city and county.



Contract Definition:

...any written agreement which contains the terms and conditions of the agreement: the "who, what, where, when, and how" that define the binding terms and conditions between the parties and amendments, changes, modifications, and additions to the terms and conditions for the life of the agreement. To be valid, a contract must be signed by an appropriate representative of all parties to the agreement.

Memo #16





Contracts include, but are not limited to:

- Project-specific agreements with all legal terms and conditions and attachments.
- Personal services agreements, including those for contract workers and professional (medical, accounting, legal, other) services.
- Master agreements and cooperative purchasing agreements that may be utilized for multiple projects.
- Project-specific supplements to master agreements or statements of work under master agreements that are specific to an agency.
- Agency leases with third parties.



Additional Requirements for ARRA Contracts

- Contracts that will be paid in whole or part from Stimulus funds must also include the required addendum of federally mandated terms and conditions. Memo #12.

http://www.mmrs.state.ms.us/statewide_applications/Stimulus/Stimulus_Policies_and_Procedures.shtml

- ▶ Reporting and Registration Requirements Under Section 1512 of the ARRA.
- ▶ Required Use of American Iron, Steel, and Manufactured Goods Not Covered Under International Agreements Under Section 1605 of the ARRA.
- ▶ Wage Rate Requirements under Section 1606 of the ARRA.
- ▶ Recipient Responsibilities regarding tracking and documenting Expenditures under the ARRA.



Additional Requirements for ARRA Contracts, cont.

- ▶ Mandated ARRA Terms and Conditions Also applies to sub-grants and inter-agency agreements for sub-allocations.
- ▶ Terms and conditions are NOT optional.
- ▶ Can modify existing contracts to add these terms IF those agreements were properly advertised and competed.
- It is expected that additional terms will be added for contracts paid from Stimulus funds to require that jobs created under those contracts be posted for recruitment via the Mississippi Online Job Opportunities (MoJo) website. Memo #14.

Additional Requirements for ARRA Contracts, cont.

- State Contracts, EPLs, and Master Agreements (Memo #27) can be used with Stimulus funds **IF** they have been amended to include the mandated Terms and Conditions.
 - Up to the **BUYING ENTITY** to verify with the Agreement owner (DFA, ITS, agency-specific) that the Agreement has been appropriately amended **before** the purchase is done. **DO NOT ASSUME!**
 - Recommend that multiple quotes be requested from all/several vendors on a multi-award statewide agreement to get the best possible pricing – due diligence that shows best effort!



ARRA Contracts

Things to avoid where possible:

- Sole source agreements
 - Sole source agreements will be subject to specific extra scrutiny. Certification needs to be rock solid!
 - All justification must be maintained in the work papers.
- Non fixed price agreements (“time and material”).
 - Same sort of scrutiny as sole source.
 - Need substantial documentation in the work papers!



NOW WHAT???





Contracts Process

- DFA has identified a number of **REQUIRED** entry points for contracts.
- Contract entry points are the source for automatic populating of contract data to the SAAS PASM table.
- Personal Services contracts for both contract workers and independent contractors must be entered into SPAHRS.



MISSISSIPPI MANAGEMENT & REPORTING SYSTEM

Meeting the Management Information Needs for the State of Mississippi

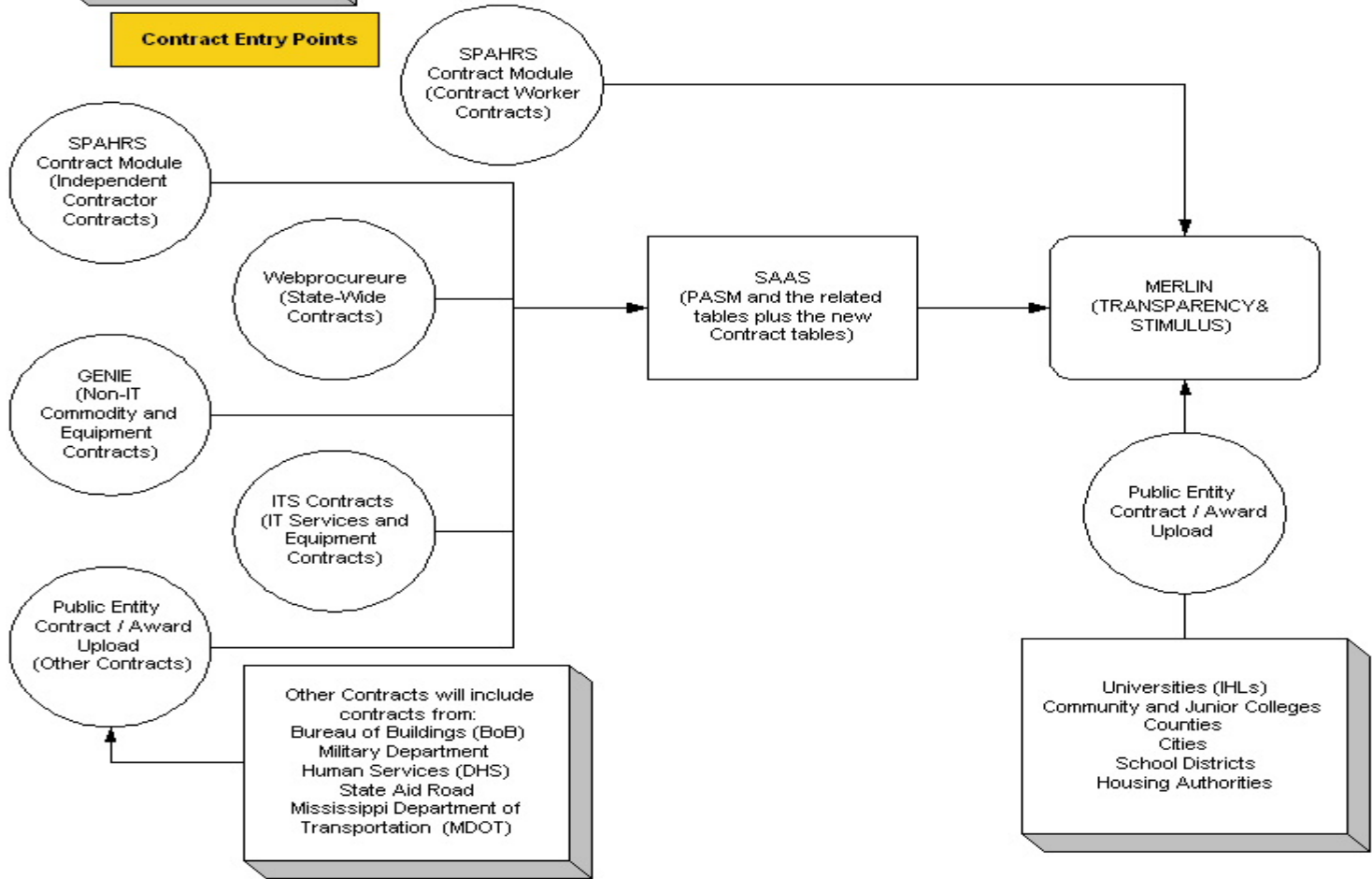


STIMULUS Project Transparency and Stimulus Tracking for Contracts May 20, 2009

All Contracts (see definition) are include in this approach

Stimulus Contracts worth \$25,000 or more must be uploaded within 24 hours of contract award or contract execution

Contract Entry Points



Upload a Redacted Searchable PDF



Contract Entry Points

October 8, 2009
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Contract Type	Entry Point	Responsible for Entering Contract into Entry Point	Contract Number Assignment	Responsible for Load of Contract Award/Executed Contract PDFs or Links	Purchase Order Type
Effective July 1, 2009 *Stimulus Contracts of \$25K or above require approval					
Contract Worker (CW) Personal Services	SPAHRs	Agency	SPAHRs	Agency	N/A
Independent Contractor (IC) Personal Services**	SPAHRs	Agency	SPAHRs	Agency	SC
District Attorney Contracts	SPAHRs	DFA	SPAHRs	DFA	SC
IT Services and Equipment (excluding EPL purchases) approved by ITS (require a CP1)	ITS CP1 System	ITS	Interface from ITS	Award – ITS Contract -- Agency	CS
IT Services and Equipment (delegated to the Agency)***	Award/Contract Interface	Agency	Award/Contract Interface	Agency	PD
EPL Purchases***	N/A	N/A	N/A	N/A	PD
Statewide Competitive Contracts	WebProcure	OPTFM	WebProcure	OPTFM	PO
Statewide Negotiated Contracts	Award/Contract Interface	OPTFM	Award/Contract Interface	OPTFM	PO
Statewide Agency Contracts – OPTFM Approved	Award/Contract Interface	Agency	Award/Contract Interface	Agency	PO
GENIE P1 Non-IT Commodities and Equipment \$50K and above***	GENIE	Agency	GENIE P1s	Agency	PG
Non-IT Commodities and Equipment less than \$50K***	WebProcure	Agency	WebProcure	Agency	PO
Construction (MDOT, Bureau of Building, State Aid Road, Military, etc)	Award/Contract Interface	Agency	Issuing Agency	Agency	PV
Leases Other than Real Property	Award/Contract Interface	Agency	Award/Contract Interface	Agency	PD
Real Property Leases	Award/Contract Interface	Agency	Bureau of Building	Agency	PD
Other	Award/Contract Interface	Agency	Award/Contract Interface	Agency	PD

Memo #17



Transparency Compliance

How do Agencies comply with Transparency mandates re: contract awards, executed contracts, and contract amendments?





Notice of Awards Vs. Executed Contract

The Notice of Award. This is NOT the actual executed contract, but is only the notice that a contract involving Stimulus funds has been awarded. The Notice of Award must be uploaded within one business day of the award being made, but before the contract is negotiated and signed by all parties. Notices of Award that do NOT involve Stimulus funds do not have to be uploaded unless the agency chooses to do so.

The Initial Contract. This is the final executed contract that has been signed by all the parties. For Stimulus contracts, the executed contract must be uploaded within one business day of being finalized. All other contracts must be uploaded as well, but they do not fall under the one business day deadline.

Addendums to executed contracts. Posting deadlines are the same as for initial contracts.



Award/Contract Posting Requirements

▶ Non-ARRA Contracts –

- Post as soon as possible (HB101, Section 4(b)-(d)).

▶ Contract Notice of Award –

- Posting of Contract Notice of Awards for contracts funded in part or in whole by ARRA Stimulus funds is required within **one (1) working day** of the contract award (SB2923, Section 1(c)(i)(3)).

▶ Executed Contracts

- Posting of contract information and the redacted PDF of contracts funded in part or in whole by ARRA Stimulus funds is required within **one (1) working day** of the contract execution (SB2923, Section 1(c)(i)(3)).



State Entities – Notice of Award / Contract Interface

MISSISSIPPI MANAGEMENT
& REPORTING SYSTEM

Meeting the Management Information Needs for the State of Mississippi

MISSISSIPPI Department of
DFA
FINANCE & ADMINISTRATION

Award / Contract Interface

- Initial Contract Upload
- Maintain Contract Data/Documentation
- Create Notice of Award Record
- Maintain Notice of Award Record

Final executed contract has been signed by all the parties.

Notice that a contract involving Stimulus funds has been awarded.

<https://merlin.state.ms.us/Stimulus/AwardsContracts.nsf/Home?OpenPage>



Non-SAAS Entities – Notice of Award / Contract Interface

Final executed contract has been signed by all the parties.

Notice that a contract involving Stimulus funds has been awarded.

Initial Contract Upload

Maintain Contract Data/Documentation

Create Notice of Award Record

Maintain Notice of Award Record

<https://merlin.state.ms.us/Stimulus/ContractUploads.nsf/Home?OpenPage>



Award / Contract Interface

- State Entities
 - ▶ SAAS Agencies
 - ▶ Must have proper security set-up to access
- Non-State Entities
 - ▶ Counties
 - ▶ Municipalities
 - ▶ IHL
 - ▶ Public School Districts
 - ▶ Etc.

Training Materials available:

http://www.mmrs.state.ms.us/MMRS_Training/training_materials/MA/TA/index.shtml



Public Reports

The screenshot shows the MERLIN web application interface. At the top, there is a header with the Mississippi Management & Reporting System logo and the Department of Finance & Administration (DFA) logo. Below the header, there is a navigation bar with links for Back, Home, and Help. The main content area features a large heading "Welcome to MERLIN" and a button that says "Interested in becoming a MERLIN.net user?". On the left side, there is a sidebar menu with links for 1512 Reporting, Stimulus, Transparency, Pre-Defined Queries, Template Queries, MERLIN Reference, Open a Saved Query, and Mississippi.gov. At the bottom left of the sidebar, there is a "BOBBY APPROVED" logo. The footer of the page also contains links for Back, Home, and Help.

<https://merlin.state.ms.us>



Q & A

This presentation is posted at <http://www.mmrs.state.ms.us>.