

**RECOVERY ACT – SPECIAL PROVISIONS RELATED TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (May 2009)**

**PREAMBLE**

Work performed under this Agreement will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available by it for activities that can be initiated not later than June 17, 2009.

The Seller must obtain a DUNS number (or update the existing DUNS record if needed), and be registered with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related Guidance. For projects funded by sources other than the Recovery Act, Seller should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning the how and where for the new reporting requirements. The Seller will be provided these details as they become available. The Seller must comply with all requirements of the Act. If the Seller believes there is any inconsistency between ARRA requirements and current contract requirements, the issues will be referred to the Subcontract Administrator for reconciliation.

Be advised that special provisions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Protecting whistleblowers; and
- Requiring prompt referral of evidence of a false claim to the Inspector General.

**(1) Definitions**

For purposes of this clause, "Covered Funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

**(2) Segregation and Payment of Costs**

The Seller must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source to meet the reporting requirements of the Recovery Act and OMB Guidance.

Invoices, if required by this Agreement, must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act and billings must be separated by line items identified in the Agreement.

**(3) Prohibition on Use of Funds**

None of the funds provided under this Agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

#### **(4) Wage Rates**

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 American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See <http://www.dol.gov/esa/whd/contracts/dbra.htm>.

#### **(5) Publication**

Information about this agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov), maintained by the Accountability and Transparency Board (the Board). The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

#### **(6) Reporting Requirements**

(a) Seller shall provide information to the Company as necessary to comply with reporting requirements of FAR 52.204-11 American Recovery and Reinvestment Act – Reporting Requirements (Mar 2009), which is incorporated herein by reference. The form *Recovery Act - Representations and Certifications Required from Subcontractors for Special Reporting* executed by the Seller is hereby made a part of this Agreement.

(b) The Company is required to provide monthly reports to DOE of "jobs created" and "jobs retained" by the Company and its subcontractors. For subcontracts exceeding \$25,000, during the period of performance under this Agreement, the Seller shall provide a report each month to the Company no later than three (3) working days after the end of the calendar month of "jobs created" and "jobs retained" by the Seller and all lower-tier subcontractors under this Agreement. The monthly report shall be submitted using the form titled "*Recovery Act – Subcontractor Jobs Report*" available under the title *Special Articles and Forms* at <http://www.ornl.gov/adm/contracts/documents.shtml>. The terms "jobs created" and "jobs retained" are defined in FAR 52.204-11.

#### **(7) Utilization of Small Business**

Seller shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.

#### **(8) Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Mar 2009)**

(a) The Seller shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(b) The Seller shall include the substance of this clause including this paragraph (b) in all subcontracts.

#### **(9) Inspection**

(a) The Comptroller General and his representatives are authorized to examine any records of the Seller that involve transactions relating to the subcontract and to interview any officer or employee of the Seller regarding the transaction.

(b) Any representative of an appropriate inspector general is authorized to examine any records of the Seller and to interview any officer or employee of the Seller regarding the transaction.

(c) The Recovery Accountability and Transparency Board (The Board) and its representatives are authorized to conduct audits and review of subcontracts that use Recovery Act funds. In addition to having access to records of the Seller, and the right to interview any officer or employee of the Seller, the Board is also authorized to issue and enforce subpoenas to compel the testimony at public hearings, or otherwise, of persons who are not Federal officers or employees.

#### **(10) DEAR 970.5232-3, Accounts, Records, and Inspection (Dec 2000)**

If this Agreement incorporates DEAR 970.5232-3, Accounts, Records, and Inspection (Dec 2000), in the General Provisions of this Agreement, paragraph (h)(1) is deleted and replaced with the following:

(h) Comptroller General

(1) The Comptroller General of the United States, or an authorized representative, shall

have access to and the right to examine any of the contractor's or subcontractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

**(11) Change Order Accounting**

Change order accounting is required whenever the estimated cost of a change or series of related changes exceeds \$100,000. The Seller, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) or work, both changed and not changed, allocable to the change. The Seller shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Subcontract Administrator or the matter is conclusively disposed of in accordance with the Resolution of Disputes clause. This clause applies whenever the Seller believes the Agreement has been changed, either because of an ordered change or any other reason.

**(12) Buy American Act – Construction Materials**

If this Agreement is for construction, FAR 52.225-9, Buy American Act – Construction Materials (Jan 2005), in Part 1.15a of the General Terms and Conditions –Construction is deleted and replaced with FAR 52.225-21, Required Use of American Iron, Steel, and Other Manufactured Goods – Buy American Act – Construction Materials (Mar 2009).