

PROVISIONS APPLICABLE TO PROCUREMENTS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

I. APPLICABILITY OF ARRA

This procurement is being funded by the District of Columbia with funds made available by the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (ARRA), and is subject to the reporting and operational requirements of ARRA. All Sub-Recipients and Sub-Contractors are subject to audit by appropriate federal and District entities. The District has the right to cancel, terminate or suspend the Contract if the Sub-Recipient or any of its Sub-Contractors fails to comply with the reporting or operational requirements of ARRA, as it may be amended.

II. REPORTING

In addition to the other reporting requirements in this Contract, the Sub-Recipient shall comply with all reporting requirements of ARRA, as follows:

A. Definitions as used in this Sub-Grant Agreement:

1. “Contract”: a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, Contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter Contracts; orders, such as purchase orders, under which the Contract becomes effective by written acceptance or performance; and bilateral Contract modifications.
2. “Contractor”: an entity that receives the funds from a District or Federal Agency to carry out or Contract out to perform the project set forth in the award. Also known as the Sub-Recipient.
3. “First-tier Sub-Contract”: a Contract awarded directly by a Prime Recipient whose Contract is funded by ARRA.
4. “Grant Administrator”: the DDOE employee assigned to oversee execution of this Sub-Grant agreement.
5. “Grantee”: the same as Prime Recipient. In this case, DDOE.

6. “Jobs created”: an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by ARRA. This definition covers only Sub-Recipient positions established in the United States and outlying areas. The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule. A funded job is defined as one in which the wages or salaries are either paid for or will be reimbursed with recovery Act funding.
7. “Jobs retained”: an estimate of those previously existing filled positions that are retained as a result of funding by ARRA. This definition covers only Sub-Recipient positions. The number shall be expressed as FTE, calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule. A funded job is defined as one in which the wages or salaries are either paid for or will be reimbursed with recovery Act funding.
8. “Prime Recipient”: a District agency which receives money from the Federal Agency. In this case, DDOE.
9. “Prime Recipient Vendor”: an entity that Contracts directly with DDOE or another District or federal government entity to provide supplies, equipment ancillary to the performance of the project set forth in the award.
10. “Sub-Contractor”: an entity that Contracts directly with the Sub-Recipient to perform specific service(s) in the Project.
11. “Sub-Grant Agreement”: a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, Contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter Contracts; orders, such as purchase orders, under which the Contract becomes effective by written acceptance or performance; and bilateral sub-grant modifications.
12. “Sub-Grantee”: the Sub-Recipient.
13. “Sub-Recipient”: an entity that receives the funds from a District or Federal Agency to carry out or Contract out to perform the project set forth in the award. Also known as the Contractor

14. “Sub-Recipient Vendor”: an entity that Contracts directly with the Sub-Recipient entity to provide supplies, equipment ancillary to the performance of the project set forth in the award.
 15. “Total compensation”: the cash and noncash dollar value earned by the executive during the Sub-Recipient or Sub-Recipient Vendor’s past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):
 - a. *Salary and bonus.*
 - b. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - c. *Earnings for services under non-equity incentive plans.* Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - d. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.
 - e. *Above-market earnings on deferred compensation which is not tax-qualified.*
 - f. *Other compensation.* For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.
 16. “Vendor”: a dealer, distributor, merchant or other seller of goods or services which are required for the projects under the federal award pursuant to the MOU or Grant.
- B.** The Contract requires the Sub-Recipient to provide products and/or services that are funded under ARRA. Section 1512(c) of ARRA requires each Sub-Recipient to report on its use of ARRA funds under this Contract. These reports will be made available to the public.

- C.** Reports from Contractors for all work funded, in whole or in part, by ARRA, and for which an invoice has been submitted are due no later than the first business day after the end of each month.
- D.** Unless otherwise directed by the non-DDOE District, the Sub-Recipient shall report monthly, the following information, using the online reporting tools available at reporting.dc.gov:
- 1.** The Contract and order number, as applicable.
 - 2.** The amount of ARRA funds invoiced by the Sub-Recipient for the reporting period.
 - 3.** A list of all significant services performed or supplies delivered, including construction, for which the Sub-Recipient invoiced in the previous month.
 - 4.** Program or project title, if any.
 - 5.** A description of the overall purpose and expected outcomes or results of the Contract, including significant deliverables and, if appropriate, associated units of measure.
 - 6.** An assessment of the Sub-Recipient's progress towards the completion of the overall purpose and expected outcomes or results of the Contract (i.e., not started, less than 50% completed, completed 50% or more, or fully completed). This covers the Contract (or portion thereof) funded by ARRA.
 - 7.** Names and total compensation of each of the five most highly compensated officers of the Sub-Recipient for the calendar year in which the Contract is awarded if:
 - a.** In the Sub-Recipient's preceding fiscal year, the Sub-Recipient received:
 - i.** 80% or more of its annual gross revenues from federal Contracts (and Sub-Contracts), loans, grants (and Sub-Grants) and cooperative agreements; and
 - ii.** \$25,000,000 or more in annual gross revenues from federal Contracts (and Sub-Contracts), loans, grants (and Sub-Grants) and cooperative agreements; and
 - b.** The public does not have access to information about the compensation of the senior executives through periodic

reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

- 8.** For Sub-Contracts valued at less than \$25,000, or any Sub-Contracts awarded to an individual, or Sub-Contracts awarded to a Sub-Contractor that in the previous tax year had gross income under \$300,000, the Sub-Recipient shall only report the aggregate number of such first tier Sub-Contracts awarded, and their aggregate total dollar amount.
- 9.** For any first-tier Sub-Contract funded in whole or in part under ARRA, that is over \$25,000, but not awarded to an individual or Sub-Contractor whose that in the previous tax year had gross income under \$300,000, the Sub-Recipient shall require the Sub-Contractor to provide the information described in **a, i, j, and k** of this paragraph below, to the Sub-Recipient. The Sub-Recipient shall advise the Sub-Contractor that the information will be made available to the public as required by section 1512 of ARRA. The Sub-Recipient shall provide detailed information on these first-tier Sub-Contracts as follows:

 - a.** Unique identifier (DUNS Number) for the Sub-Contractor receiving the award and for the Sub-Contractor's parent company, if the Sub-Contractor has a parent company.
 - b.** Name of the Sub-Contractor.
 - c.** Amount of the Sub-Contract award.
 - d.** Date of the Sub-Contract award.
 - e.** The applicable North American Industry Classification System (NAICS) code.
 - f.** Funding agency.
 - g.** A description of the products or services (including construction) being provided under the Sub-Contract, including the overall purpose and expected outcomes or results of the Sub-Contract.
 - h.** Sub-Contract number (the Contract number assigned by the Sub-Recipient).

- 11. A unique identifier for each of the Sub-Recipient's employees working on a project funded by ARRA. The unique identifier will be the employee's last name combined with the last three numbers of their social security number.
 - 12. Total hours worked on work funded by ARRA by each employee utilizing the unique identifier.
- E. The Sub-Recipient shall designate a responsible contact person who will ensure that the data described in Section II herein, is reported by the required time. The Sub-Recipient designates the following person as the contact person:
- Name:* _____
Title: _____
Address: _____
Telephone: _____
Email address: _____
- F. A cumulative amount from all the reports submitted for this Contract will be maintained by the District's on-line reporting tools.
- G. The Sub-Recipient shall not use ARRA funds to meet the cost of its tracking and reporting requirements under its ARRA Contracts.

III. POSTING AVAILABLE JOB OPENINGS

The Sub-Recipient shall promptly post all new job openings on the District Department of Employment Services' website at www.dcnetworks.org.

IV. ACCESSIBILITY TO RECORDS

- A. Pursuant to section 1514 of ARRA, the Sub-Recipient agrees to allow any appropriate federal entity, including an inspector general:
- 1. Access to examine any records of the Sub-Recipient and any Sub-Contractor pursuant to this Contract that pertain to, and involve transactions relating to, this Contract or any Sub-Contract under this Contract; and
 - 2. To interview any officer or employee of the Sub-Recipient, or any Sub-Contractor, regarding such transactions.
- B. Pursuant to section 902 of ARRA, the Sub-Recipient agrees to allow the Comptroller General and his representatives:

1. Access to examine any records of the Sub-Recipient or any of its Sub-Contractors that directly pertain to, and involve transactions relating to the Contract or Sub-Contract under this Contract; and
2. To interview any officer or employee of the Contractor or any of its Sub-Contractors regarding such transactions.

V. EQUAL EMPLOYMENT OPPORTUNITIES

In addition to the District's equal opportunity requirements, the Sub-Recipient shall comply with, and require its Sub-Contractors to comply with, all of the following federal laws for equal employment opportunities, if applicable:

- A. Titles VI and VII of the Civil Rights Act of 1964;
- B. Equal Pay Act of 1962;
- C. Age Discrimination in Employment Act of 1967;
- D. Title IX of the Educational Amendments of 1972;
- E. Section 504 of the Rehabilitation Act of 1973;
- F. Age Discrimination Act of 1975;
- G. Titles I and V of the Americans with Disabilities Act of 1990;
- H. Fair Housing Act;
- I. Fair Credit Reporting Act;
- J. Equal Educational Opportunities Act; and,
- K. Uniform Relocation Act;

VI. WHISTLEBLOWER PROTECTIONS

- A. Pursuant to Section 1553 of ARRA, the Sub-Recipient and all Sub-Contractors are prohibited from discharging, demoting or otherwise discriminating against any employee of the Sub-Recipient or any Sub-Contractor as a reprisal for disclosing any of the following information that the employee reasonably believes is evidence of:
 1. Gross mismanagement of the Contract related to ARRA funds;

2. Gross waste of ARRA funds;
 3. A substantial and specific danger to public health or safety related to the implementation or use of ARRA funds;
 4. An abuse of authority related to the Contract, including the competition for or negotiation of the Contract, related to ARRA funds; or
 5. A violation of law, rule or regulation related to ARRA funds.
- B.** The inspector general shall receive and investigate all complaints alleging a violation of paragraph **VI. A.**, of this section.
- C.** All Sub-Recipients and Sub-Contractors receiving ARRA funds shall post a notice of employee rights as described in **VI. A.**, of this section in conspicuous locations with other required employee rights information.

VII. ADDITIONAL PROVISIONS APPLICABLE TO CONSTRUCTION CONTRACTS

A. U.S. Department of Labor (U.S. DOL) Wage Determinations

1. The Sub-Recipient and its Sub-Contractors shall pay all laborers and mechanics 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 (Davis-Bacon Act). With respect to the labor standards, 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. The Contractor shall be bound by the wage rates for the term of the Contract.
2. All rulings and interpretations of the Davis-Bacon and related Acts contained in 20 CFR Parts 1, 3 and 5 are herein incorporated by reference in this Contract.

B. Buy American

1. Pursuant to Section 1605 of ARRA, the Sub-Recipient and all Sub-Contractors must use steel, iron and manufactured goods that have been produced in the United States, unless the Government determines one of the following:

- a.** The use of those materials would be inconsistent with the public interest;
 - b.** That there is an insufficient quantity or quality of steel, iron or relevant manufactured goods that were produced in the United States; or
 - c.** The use of those materials would increase the cost of the project by more than 25%.
- 2.** The Sub-Recipient may seek a waiver from the Buy American requirements by appealing to the appropriate agency under the rules at 2 CFR Part 176.

VIII. PROVISIONS APPLICABLE TO SUB-CONTRACTORS

The Sub-Recipient shall provide a copy of this Attachment to all of its Sub-Contractors under this Contract.