

1. General

a. Definitions

The following terms shall have the meanings below:

- 1.) ARRA means the American Recovery and Reinvestment Act of 2009 (American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) or Recovery Act or ACT.
- 2.) DOE means the U. S. Department of Energy (DOE) and includes the U. S. Government and includes any duly authorized representative thereof.
- 3.) Company means Babcock & Wilcox Technical Services Y-12, LLC (B&W Y-12) acting under DOE Contract No. DE-AC05-00OR22800.
- 4.) First-tier Subcontractor means the person or organization that has entered into this Agreement with the Company (Federal Government Prime Contractor) funded by the Recovery Act.
- 5.) Agreement means Purchase Order, Subcontract, Price Agreement, AVID Agreement, Basic Ordering Agreement, or Modification thereof.
- 6.) Subcontract Administrator (SA) means Company's cognizant Procurement representative.
- 7.) 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. Covered Funds must be reimbursed by September 30, 2015.
- 8.) Subcontractor – Means any entity who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a subcontract.
- 9.) Vendor - Means a dealer, distributor, merchant or other seller providing goods or services that are required for the conduct of a Federal program. Subcontractors may purchase goods or services needed to carry out the project or program from vendors. Vendors are required to report hours as described below in item #10, Other Requirements.
- 10.) Total Head-count (lives-touched) – Means the cumulative total that includes subcontractor employees, temporary workers and part-time workers, reflecting the number of people that have been compensated for work under the Recovery Act funding for anytime during the period of performance.
- 11.) 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 or 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. Preface

a. The Act:

- 1.) requires the First-tier Subcontractor to comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below,

- 2.) is not fully developed and the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements, may be adjusted. The First-tier Subcontractor will be provided these details as they become available. The First-tier Subcontractor shall comply with all requirements of the Act. If the First-tier Subcontractor believes there is any inconsistency between ARRA requirements and any current award terms and conditions or Special Conditions, the issues will be referred to the Company SA for reconciliation by the YSO DOE Contracting Officer,
- 3.) requires subcontracts, to the maximum extent possible, be awarded as fixed price and through the use of competitive procedures.

3. Flow-Down Requirements

The first-tier Subcontractor (in every first-tier subcontract over \$25,000 for work reimbursed by Recovery Act funds) is subject to all requirements of these Special Provisions. In addition, the First-tier Subcontractor shall flow the following provisions to any and all of its lower-tier subcontractors: 4.Wage Rates; 5.Publication; 6.Registration; 7.Utilization of Small Business; 8. Segregation and Payment of Costs and the Certification; and 9. Prohibition on Use of Funds made part of these Special Provisions.

4. Wage Rates

All laborers and mechanics employed by the first tier subcontractor and its lower-tier subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act 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 (commonly referred to as the 'Davis-Bacon Act'). 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 work will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency 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. Registration Requirements

First-tier Subcontractors and lower-tier subcontractors shall: 1.) provide a valid DUNS number (including information update as may be necessary) and 2.) be registered with the Central Contractor Registration (CCR) no later than the date the first report is due under Section 10b. American Recovery and Reinvestment Act – Reporting Requirements.

7. Utilization of Small Business

Subcontractor 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. Segregation and Payment of Costs and the Certification

First-Tier Subcontractor 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. 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 OMB Guidance. Invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

9. Prohibition on Use of Funds

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

10. Clauses Incorporated by Reference

The clauses listed below are applicable to goods or services funded by the Recovery Act and incorporated herein by reference.

a. Buy American

- (i) 52.225-21 (Required Use of American Iron, Steel, and other Manufactured Goods -- Buy American Act -- Construction Materials March 2009)
- (ii) 52.225-22 (Notice of Required Use of American Iron, Steel, and Other Manufactured Goods, Buy American Act—Construction Materials March 2009)
- (iii) 52.225-23 (Required Use of American Iron, Steel, and Other Manufactured Goods -- Buy American Act—Construction Materials Under Trade Agreements March 2009)
- (iv) 52.225-24 (Notice of Required Use of American Iron, Steel, and Other Manufactured Goods -- Buy American Act—Construction Materials under Trade Agreements March 2009)

b. Reporting Requirements

52.204-11 (American Recovery and Reinvestment Act – Reporting Requirements July 2010)

Note: Please pay particular attention to these requirements as they are key subcontracting reporting mandates. It is important to understand the different reporting requirements that will be required depending upon your certifications.

c. Whistleblower Protection

52.203-15 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009, (June 2010)

d. Audit and Records

52.215-2 Audit and Records – Negotiation (March 2009) (ALT I) (March 2009)

e. Subcontracts for Commercial Items

52.244-6 Subcontracts for Commercial Items (June 2010), excluding subpart (e)

11. Other Requirements

a. Monthly Man-hour Reporting

In addition to paragraph 10.b above, monthly reporting of hours expended to perform subcontracted work during each reporting month is required by the Company. The hours reported are to be inclusive of all full-time, part-time, temporary, and permanent positions supported by Recovery Act funding. The below Excel sheet (b) is the tool to capture your monthly hours expended. In addition, the below text provides general guidance on how to report the various types of hours that may be involved.

- 1.) For Agreements for which Direct Productive Labor Hours are invoiced (i.e. Staff Augmentation), the Subcontractor shall report those labor hours expended and cumulative head-count for services rendered in the performance of the work.
- 2.) For Agreements involving paving, deliverable reports, construction activities, and any equipment or service that is unique or specific to Company that needs to be manufactured and/or assembled to support Recovery Act funded activity, the Subcontractor shall report those hours and cumulative head-count expended in the performance of the work. This category is also inclusive of Agreements containing milestone or progress payments.
- 3.) Subcontractors shall not report labor hours and cumulative head-count for vendors, including but not limited to, commercially available equipment and supplies such as trucks, earth movers, PPE, wire, or other such off-the-shelf type commercial products.

b. Excel Reporting Spreadsheet

This report is due electronically to the subcontract administrator on or before the third calendar day of the month following the reporting period. If that third calendar day is a weekend day or Company holiday, the first Company business day thereafter becomes the required due date.

<http://www.y12.doe.gov/library/forms/xls/UCN-22181.xls>

c. Subcontractor Reporting: Jobs Created, Jobs Retained

1. The First-Tier Subcontractor (for all first-tier subcontracts valued at \$25,000 or more) shall report on a quarterly basis the number of jobs either **created** and/or **retained** and any jobs **created** or **retained** through its sub-subcontracting utilizing ARRA funding. The report shall keep data pertaining to jobs **created** and jobs **retained** separate by First-Tier level and each lower tier subcontractor. A job shall not be reported as both **created** and **retained** nor can the First-tier subcontractor count the jobs **created** and/or **retained** by any of its subcontractors.

The report shall be provided electronically to the Subcontract Administrator by the third calendar day following the end of the reporting quarter. If that third calendar day is a weekend day or Company holiday, the first Company business day thereafter becomes the required due date. Each report shall identify the cumulative of all previous reporting periods, net changes (plus or minus) that occurred for the reporting quarter, and the grand total (previous reporting periods plus current reporting period) for both job categories.

2. A narrative description of the employment impact of work funded by the Recovery Act shall be provided. This narrative should be cumulative for each calendar quarter and address the impact on the Contractor's and first-tier subcontractors' workforce for all first-tier subcontracts valued at \$25,000 or more. At a minimum, the contractor shall provide—
 - (i) A brief description of the types of jobs created and jobs retained in the United States and

outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the first-tier subcontractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

- (ii) An estimate of the number of jobs created and jobs retained by the first-tier subcontractor valued at \$25,000 or more, in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at http://www.whitehouse.gov/omb/recovery_faqs_contractors.

Jobs created and jobs retained are defined as follows:

Jobs created – those new positions created and filled, or previously unfilled positions that are filled as a result of ARRA funding. This shall be inclusive of full time and part-time employees. The number shall be expressed as “full time equivalents” (FTE) as determined by the cumulative of all hours worked divided by the total number of hours in a full time schedule as defined by the subcontractor.

Jobs retained – those previously filled existing positions that are retained as a result of ARRA funding. This shall be inclusive of full time and part-time employees. The number shall be expressed as “full time equivalents” (FTE) as determined by the cumulative of all hours worked divided by the total number of hours in a full time schedule as defined by the subcontractor.

- d. Complete Certification Special Provisions American Recovery and Reinvestment Act of 2009** using link below:

<http://www.y12.doe.gov/library/forms/pdf/UCN-22179.pdf>