

# **Additional Terms for American Recovery and Reinvestment Act of 2009**

## **Special Requirements for Contracts that Relate to Work Funded under the American Recovery and Reinvestment Act of 2009**

### **I. Introduction**

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

The vendor or contractor agrees and assures that by accepting ARRA funds through this contract it and its subcontractor(s) will fully comply with the requirements herein and any requirements hereafter issued by the federal government or the State of New Jersey for compliance with ARRA and other related federal and state laws. Further, it is understood that this contract is subject to all applicable terms and conditions of ARRA. It is anticipated that future guidance on requirements for tracking and reporting expenditures of ARRA funds will be issued by the Director of the federal Office of Management and Budget (OMB) or other federal or state agencies. Each vendor or contractor specifically assures that it and its subcontractor(s) will comply with all such requirements, as published at any time during the contract period.

### **II. General Requirements**

#### **A. Flow Down Provision**

Vendors or contractors must include these Special Contract Requirements in every subcontract over \$25,000 that is funded, in whole or in part, by ARRA, unless the subcontract is with an individual.

#### **B. Segregation and Payment of Costs**

Vendors or contractors must segregate the obligations and expenditures related to funding under ARRA. 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 ARRA shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for ARRA projects. ARRA 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 ARRA and federal OMB Guidance.

Invoices must clearly indicate the portion of the requested payment that is for work funded by ARRA.

### C. Wage Rates

In accordance with ARRA, §1606, the contractor or vendor assures that it and its subcontractor(s) shall fully comply with said section in that, notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by vendors, contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the federal government, pursuant to ARRA, shall be paid wages at rates not less than those prevailing on projects of a similar character 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). It is understood that the Secretary of Labor has 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.

### D. Subcontractor Registration Requirements

In accordance with ARRA, §1512(h), the vendor or contractor and its subcontractor(s) (first-tier) shall register in the Central Contractor Registration (CCR) database at [www.ccr.gov](http://www.ccr.gov), and maintain current registration at all time during the pendency of this contract. In order to register in CCR, a valid Dun and Bradstreet Data Universal Numbering System (DUNS) Number is required. See [www.dnb.com](http://www.dnb.com).

### E. Buy American

In accordance with ARRA, §1605, the contractor or vendor assures that it and its subcontractor(s) will not use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The contractor or vendor understands that this requirement may only be waived by the applicable federal agency in limited situations, as set out in ARRA, §1605.

### F. Whistleblower Protection

In accordance with ARRA, §1553, the vendor or contractor assures that it and its subcontractor(s) shall fully comply with said section, including, but not limited to, assuring that their employees will not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the federal government or any representative thereof, the State of New Jersey, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury any information that the employee reasonably believes is evidence of: 1) gross mismanagement of a contract or grant relating to ARRA; 2) a 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 implementation or use of ARRA funds; or 5) a violation of law, rule, or regulation related to the contract (including the competition for or negotiation of the contract), awarded or issued relating to ARRA funds. In accordance with ARRA, §1553(e), the

vendor or contractor assures that it and its subcontractor (s) shall post notice of the rights and remedies provided in ARRA, §1553.

### **III. Program Reporting Requirements**

#### A. Definitions as used in this clause-

“Contract” as defined in FAR 2.101, means 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 State of New Jersey 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. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq. For discussion of various types of contracts, see FAR Part 16.

“First-tier subcontract” means a subcontract awarded directly by a Federal Government prime contractor or vendor whose contract is funded by ARRA.

“Jobs created” means 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 prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). 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, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

“Jobs retained” means an estimate of those previously existing filled positions that are retained as a result of funding by ARRA. This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). 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, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

“Total compensation” means the cash and non cash dollar value, earned by the executive during the vendor or contractor’s past fiscal year, of the following (for more information see 17 CFR 229.402(c)(2):

- (1) Salary and bonus.

- (2) 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.
- (3) 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.
- (4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (5) Above-market earnings on deferred compensation which is not tax-qualified.
- (6) 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.

B. This contract requires the contractor to provide products and/or services that are funded under ARRA. Section 1512(c) of ARRA requires each contractor to report on its use of ARRA funds under this contract. These reports will be made available to the public.

C. Reports from vendors or contractors for all work funded, in whole or in part, by ARRA, and for which an invoice is submitted prior to June 20, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10<sup>th</sup> day after the end of each calendar quarter.

D. The vendor or contractor shall report the following information, using the online reporting tool available at <http://www.FederalReporting.gov> .

- (1) The New Jersey contract and order number, as applicable.
- (2) The amount of ARRA funds invoiced by the vendor or contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the State's on-line reporting tool.
- (3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.
- (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 vendor or contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof ) funded by ARRA.
- (7) A narrative description of the employment impact of work funded by ARRA. This narrative should be cumulative for each calendar quarter and only address the impact on the vendor or contractor's workforce. At a minimum, the vendor or 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 title, broader labor categories, or the vendor or contractor'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 prime contractor, in the United State and outlying areas. A job cannot be reported as both created and retained.
- (8) Names and total compensation of each of the five most highly compensated officers of the vendor or contractor for the calendar year in which the contract is awarded if-
  - (i) In the vendor or contractor's preceding fiscal year, the vendor or contractor received-
    - (A) 80 percent or more of its annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and
    - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts) loans, grants (and subgrants) and cooperative agreements; and
- (9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the vendor or contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.
- (10) For any first subcontract funded in whole or in part under ARRA that is over \$25,000 and not subject to reporting under paragraph 9, the vendor or contractor shall require the subcontractor to provide the information described in (i), (ix), (x) and (xi) below to the vendor or contractor for the purposes of the quarterly report. The vendor or contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of ARRA. The vendor or

contractor shall provide detailed information on these first-tier subcontracts as follows:

- (i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.
- (ii) Name of the subcontractor.
- (iii) Amount of the subcontract award.
- (iv) Date of subcontract award.
- (v) The applicable North American Industry Classification System (NAICS) code.
- (vi) Funding agency.
- (vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.
- (viii) Subcontract number (the contract number assigned by the prime contractor).
- (ix) Subcontractor's physical address including street address, city, state and country. Also include the nine-digit zip code and congressional district, if applicable.
- (x) Subcontract primary performance location including street address, city, state and country. Also include the nine-digit zip code and congressional district, if applicable.
- (xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if-
  - (a) In the subcontractor's preceding fiscal year, the subcontractor received-
    - (1) 80 percent or more of its annual gross revenues in federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(2) \$25,000,000 or more in annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants), 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. 78mo(d)) or section 6104 of the Internal Revenue Code of 1986.

#### **IV. Inspection of Documents**

In accordance with ARRA, §§902, 1514 and 1515, the vendor or contractor assures that it and its subcontractor(s) will cooperate with any representative of the State of New Jersey, Comptroller General, or appropriate inspector general appointed under §3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), in the examination of their records that pertain to, and involve transactions relating to this contract, and agrees that they and their personnel can be interviewed by said entities regarding this contract and related program.

#### **V. Enforceability**

If a vendor or contractor or one of its subcontractors fails to comply with all applicable federal and state requirements governing the use of ARRA funds, the State of New Jersey may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies for recovery of misspent funds available to the State of New Jersey under all applicable state and federal laws.