

TAB A - FAR Case 2009-009 American Recovery and Reinvestment Act-Reporting Requirements

Baseline - FAC 30

[Subpart 4.15 - American Recovery and Reinvestment Act-Reporting Requirements

4.1500 Scope of subpart.

This subpart implements section 1512(c) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) which requires, as a condition of receipt of funds, quarterly reporting on the use of funds. The subpart also implements the data elements of the Federal Funding Accountability and Transparency Act of 2006, as amended (Public Law 109-282). Contractors that receive awards (or modifications to existing awards) funded in whole or in part by the Recovery Act, must report information including, but not limited to,

- (a) The dollar amount of contractor invoices,
- (b) The supplies delivered and services performed,
- (c) An assessment of the completion status of the work,
- (d) An estimate of jobs created and retained as a result of the Recovery Act funds,

(e) Names and total compensation of each of the five most highly compensated officers for the calendar year in which the contract is awarded, and

(f) Specific information on first-tier subcontractors.

4.1501 - Procedure

(a) In any contract action funded in whole or in part by the Recovery Act, the contracting officer shall indicate that the contract action is being made under the Recovery Act, and indicate which products or services are funded under the Recovery Act. This requirement applies whenever Recovery Act funds are used, regardless of the contract instrument.

(b) To maximize transparency of Recovery Act funds required for reporting by the contractor, the contracting officer shall structure contract awards to allow for separately tracking Recovery Act funds. For example, the contracting officer may consider awarding dedicated separate contracts when using Recovery Act funds or establishing contract line item number (CLIN) structures to mitigate co-mingling of Recovery funds with other funds.

(c) Contracting officers shall ensure that the contractor complies with the reporting requirements of 52.204-XX American Recovery and Reinvestment Act-Reporting

Requirements. If the contractor fails to comply with the reporting requirements, the contracting officer shall exercise appropriate contractual remedies.-

(d) The contracting officer shall make the contractor's failure to comply with the reporting requirements a part of the contractor's performance information under Subpart 42.15.

4.1502 Contract clause.

Insert the clause at 52.204-XX, American Recovery and Reinvestment Act-Reporting Requirements in all solicitations and contracts funded in whole or in part with Recovery Act funds, except classified solicitations and contracts. This includes, but is not limited to Governmentwide Acquisition Contracts (GWACs), multi-agency contracts (MACs), Federal Supply Schedule contracts, or agency indefinite-delivery/indefinite-quantity (ID/IQ) contracts that will be funded with Recovery Act funds. Contracting officers shall ensure that this clause is included in any existing contract or order that will be funded with Recovery Act funds. Contracting officers may not use Recovery Act funds on existing contracts and orders if the clause at 52.204-XX is not incorporated.

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PART 52--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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[52.204-XX American Recovery and Reinvestment Act-Reporting Requirements

As prescribed in 4.1502, insert the following clause:

American Recovery and Reinvestment Act-Reporting Requirements (DATE)

(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 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. 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 16](#).

"First-tier subcontract" means a subcontract awarded directly by a Federal Government prime contractor whose contract is funded by the Recovery Act.

"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 the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only 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 the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only 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 noncash dollar value earned by the executive during the contractor's past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

(i). Salary and bonus.

(ii). 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 FAS 123R.

(iii). 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.

(iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

(v). Above-market earnings on deferred compensation which is not tax-qualified.

(vi). 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 which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act 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 the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

(d) The Contractor shall report the following information, using the online reporting tool available at

www.FederalReporting.gov:

(1) The Government contract and order number, as applicable.

(2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government'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 has invoiced.

(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 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% completed, completed 50% or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.

(7) A narrative description of the employment impact of the Recovery Act funded work. This narrative should be cumulative for each calendar quarter and only address the impact on the contractor's workforce. 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 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 contractor, in the United States 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 Contractor for the calendar year in which the contract is awarded if—

(i) In the Contractor's preceding fiscal year, the 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

(ii) 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.

(9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor which in the previous tax year had gross income under \$300,000, the 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-tier subcontract funded in whole or in part under the Recovery Act, that is over \$25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor to provide the information described in (i), (ix), (x), and (xi) below to the contractor for the purposes of the quarterly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The 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 the 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. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(End of clause)]

Part 52 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212.5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

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CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (DATE)

(a) ***

(b) ***

— (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) ([41 U.S.C. 253g](#) and [10 U.S.C. 2402](#)).

— (2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Dec 2008) (Pub. L. 110-252, Title VI, Chapter 1 ([41 U.S.C. 251 note](#))).

— (3) [52.204-XX](#), American Recovery and Reinvestment Act-Reporting Requirements (XXXX 2009) (Pub. L. 111-5)

— (4) [52.219-3](#), Notice of Total HUBZone Set-Aside (Jan 1999) ([15 U.S.C. 657a](#)).