

PROVISIONS APPLICABLE TO PROCUREMENTS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT

I. APPLICABILITY OF THE AMERICAN RECOVERY AND REINVESTMENT ACT

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 (Recovery Act), and is subject to the reporting and operational requirements of the Recovery Act. All contractors and subcontractors are subject to audit by appropriate federal and District entities. The District has the right to cancel, terminate or suspend the contract if the Contractor or any subcontractor fails to comply with the reporting or operational requirements of the Recovery Act, as it may be amended.

II. REPORTING

1. In addition to the other reporting requirements in this contract, the Contractor shall comply with all reporting requirements of the Recovery Act, as follows:

(a) *Definitions.* As used in this clause—

“Contract” 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.

“First-tier subcontract” means a subcontract awarded directly by a 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 Recovery Act. This definition covers only prime contractor 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.

“Jobs retained” means an estimate of those previously existing filled positions that are retained as a result of funding by the Recovery Act. This definition covers only prime contractor 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.

“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)):

(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 the 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 has been submitted are due no later than 5th calendar day after the end of each month.

(d) Unless otherwise directed by the Contracting Officer, the Contractor shall report the following information, using the online reporting tools available at <https://reporting.dc.gov>

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

(2) The amount of Recovery Act funds invoiced by the Contractor for the reporting period.

(3) A list of all significant services performed or supplies delivered, including construction, for which the Contractor 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 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 the Recovery Act.

(7) 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.

(8) 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 Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

(9) 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 8, 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.

(10) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative 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. 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 prime contractor. A job cannot be reported as both created and retained.

(11) A unique identifier for each of the Contractor's employees working on a project funded by the Recovery Act. 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 the Recovery Act by each employee utilizing the unique identifier.

2. The Contractor shall designate a responsible contact person who will ensure that the data described in Section II.1 is reported by the required time. The Contractor designates the following person as the contact person:

[Name: _____
Title: _____
Address: _____

Telephone: _____
Email address: _____]

3. A cumulative amount from all the reports submitted for this contract will be maintained by the District's on-line reporting tools.

4. The Contractor shall not use Recovery Act funds to meet the cost of its tracking and reporting requirements under its Recovery Act contracts.

III. POSTING AVAILABLE JOB OPENINGS

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

IV. ACCESSIBILITY TO RECORDS REQUIREMENTS

1. Pursuant to section 1514 of the Recovery Act, the Contractor agrees to allow any appropriate federal entity, including an inspector general:
 - a) access to examine any records of the Contractor and any subcontractor pursuant to this contract that pertain to, and involve transactions relating to, this contract or any subcontract under this contract; and
 - b) to interview any officer or employee of the Contractor, or any subcontractor, regarding such transactions.

2. Pursuant to section 902 of the Recovery Act, the Contractor agrees to allow the Comptroller General and his representatives:
 - a) access to examine any records of the Contractor or any of its subcontractors that directly pertain to, and involve transactions relating to the contract or subcontract under this contract; and
 - b) to interview any officer or employee of the contractor or any of its subcontractors regarding such transactions.

IV. EQUAL EMPLOYMENT OPPORTUNITIES

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

Titles VI and VII of the Civil Rights Act of 1964
Equal Pay Act of 1962
Age Discrimination in Employment Act of 1967
Title IX of the Educational Amendments of 1972
Section 504 of the Rehabilitation Act of 1973
Age Discrimination Act of 1975
Titles I and V of the Americans with Disabilities Act of 1990
Fair Housing Act
Fair Credit Reporting Act
Equal Educational Opportunities Act
Uniform Relocation Act

V. WHISTLEBLOWER PROTECTIONS

1. Pursuant to Section 1553 of the Recovery Act, the Contractor and all subcontractors are prohibited from discharging, demoting or otherwise discriminating against any employee of the Contractor or any subcontractor as a reprisal for disclosing any of the following information that the employee reasonably believes is evidence of:
 - a) gross mismanagement of the contract related to Recovery Act funds;
 - b) gross waste of Recovery Act funds;

- c) a substantial and specific danger to public health or safety related to the implementation or use of Recovery Act funds;
- d) an abuse of authority related to the contract, including the competition for or negotiation of the contract, related to Recovery Act funds; or
- e) a violation of law, rule or regulation related to Recovery Act funds.

2. The inspector general shall receive and investigate all complaints alleging a violation of Paragraph 1 of this section.

3. All contractors and subcontractors receiving Recovery Act funds shall post a notice of employee rights as described in Paragraph 1 of this section in conspicuous locations with other required employee rights information.

VI. ADDITIONAL PROVISIONS APPLICABLE TO CONSTRUCTION CONTRACTS

1. Department of Labor Wage Determinations

- a) The Contractor and its subcontractors 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.
- b) 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.

2. Buy American

- a) Pursuant to Section 1605 of the Recovery Act, the Contractor and all subcontractors must use steel, iron and manufactured goods that have been produced in the United States, unless the Government determines one of the following:
 - (i) The use of those materials would be inconsistent with the public interest;
 - (ii) That there is an insufficient quantity or quality of steel, iron or relevant manufactured goods that were produced in the United States; or
 - (iii) The use of those materials would increase the cost of the project by more than twenty-five percent (25%).
- b) The Contractor may seek a waiver from the Buy American requirements by appealing to the appropriate agency under the rules at 2 CFR Part 176.

VI. PROVISIONS APPLICABLE TO SUBCONTRACTORS

The Contractor shall provide a copy of this Attachment **J.X** to all of its subcontractors under this contract.

