

AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) of 2009
SPECIAL PROVISIONS (Rev 2)
(Company – JUN 2009)
B&W Y-12

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
- 2.) Reinvestment Act of 2009, Pub. L. 111-5) or ACT.
- 3.) DOE means the U. S. Department of Energy (DOE) and includes the U. S. Government and includes any duly authorized representative thereof.
- 4.) Company means Babcock & Wilcox Technical Services Y-12, LLC (B&W Y-12) acting under DOE Contract No. DE-AC05-00OR22800.
- 5.) 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..
- 6.) Agreement means Purchase Order, Subcontract, Price Agreement, AVID Agreement, Basic Ordering Agreement, or Modification thereof.
- 7.) Subcontract Administrator (SA) means Company’s cognizant Procurement representative,
- 8.) Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

2. Preface

B.) 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 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 made part of these Special Provisions.

4. Wage Rates

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 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 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 9. American Recovery and Reinvestment Act – Reporting Requirements.

7. Utilization of Small Business

Contractor 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

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.

Note: In paragraph 9 below, elements a., b., e., and f. are interim FAR clauses. These interim FAR clauses are in effect until the FAR is amended to implement, in final, provisions of the Recovery Act. The First-tier Subcontractor agrees that the Company may unilaterally modify this Agreement to incorporate the final FAR clauses that implement the Recovery Act, and paragraph 9 a, b, e, f will no longer be valid, and this Agreement will be considered modified to add the final FAR clauses.

9. Clauses Incorporated by Reference

The clauses listed below are applicable to Goods or services funded by ARRA 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)

Note: Use clauses 52.225-21 and 52.225-22 for construction, alteration, maintenance of a public building or public work performed in the United States under \$7,443,000 and 52.225-23 and 52.225-24 for construction, alteration, maintenance of a public building or public work performed in the United States for over \$7,443,000.

b. Reporting Requirements.

52.204-11 (American Recovery and Reinvestment Act – Reporting Requirements March 2009) **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. Publicizing Contract Actions

48 CFR, Part 5, Subpart 5.7 (Publicizing Requirements under the American Recovery and Reinvestment Act of 2009) (see Federal Register March 31, 2009, volume 74, Number 60, page 14638)

d. Whistleblower Protection

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

e. GAO/IG Access

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

Note: Section (d) (1) is revised by inserting before the period “and to interview any current employee regarding such transactions.”

f. GAO/IG Access

52.212-5 (Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items)

Note: This clause is revised to add Alternate II (Mar 2009) as detailed in the Federal Register, March 31, 2009, volume 74, Number 60, pages 14648 and 14649

10. Other Requirements

a.) Monthly Manhour Reporting

In addition to paragraph 9.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 ARRA funding. The below link to the Excel sheet 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. Agreements for which Direct Productive Labor Hours are invoiced (i.e. Staff Augmentation), the Subcontractor shall report those hours expended in the performance of the work.
2. Agreements that are fixed price (such as paving, deliverable reports, construction, etc.) the subcontractor shall report those hours expended in the performance of the work. This category is also inclusive of Agreements containing milestone or progress payments.
3. For Agreements that are fixed price and the subcontractor is delivering purchased products (i.e. equipment/materials/AVID supplies), report only those hours associated with filling and delivery the purchase order. If the purchased product is fabricated, report those hours expended in the performance of the fabrication during the reporting month.

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>

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b.) Subcontractor Reporting : Jobs Created, Jobs Retained

The First-Tier Subcontractor 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

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.

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>