

## **NOTIFICATION OF REQUIREMENTS RELATED TO THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

**Introduction:** The City's funding for this project, whether through grant, contract or loan, or will be derived in whole or in part from federal resources appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, ("ARRA" or the "Recovery Act"). The Recovery Act's stated purposes are to stimulate the economy and to create and retain jobs. The Recovery Act gives preference to activities that can be started and completed expeditiously.

Guidelines being developed by federal agencies in implementing the Recovery Act indicate that contractors and first tier subcontractors will be required to provide data through electronic reporting. Recovery Act funds may be used with other funding as necessary to complete projects, but tracking and reporting must be separated to meet the reporting requirements of the Recovery Act and related federal agency guidelines. Plans should be developed to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Recovery Act.

When receiving any funding in this project, contractors and subcontractors must anticipate the need to comply with requirements of the Recovery Act. This may require developing specific accounting and data reporting procedures. In other instances, such as compliance with Davis-Bacon prevailing wage requirements, the City will require certification of conformity to the Recovery Act requirements. Various provisions under the Recovery Act will apply to projects with ARRA funding:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Protecting whistleblowers; and
- Requiring prompt referral of evidence of a false claim to the inspector general.

Federal agencies have not fully developed implementing instructions under the Recovery Act, particularly concerning the specifics of the reporting requirements. Potential applicants, proposers, grantees, borrowers, contractors and their consultant(s) are advised to review and be familiar with the requirements of the Recovery Act, and to follow federal agency development of specific guidelines.

The information provided in this document is based upon a review of the Recovery Act, and generally applicable federal guidelines. There may be other statutory and/or legal requirements that may be applicable in the context of a specific project. This document is subject to subsequent modification as the federal agencies develop and provide further guidance on Recovery Act requirements.

Any inconsistencies between Recovery Act requirements with local requirements should be referred to the City's project manager for reconciliation.

**1. General Purposes and Principles:** In accordance with the intent of the Recovery Act, funds provided under the ARRA must be spent expeditiously and effectively, with full transparency and accountability. The Recovery Act provides more than an injection of workforce development resources into communities in need. Stimulus funding presents a unique opportunity for workforce systems to develop and implement effective, innovative delivery strategies. Successful implementation of the Recovery Act will include quick and effective provision of services and training for workers in need.

**2. Prohibition on Use of Funds:** None of the funds appropriated or otherwise made available in the Recovery Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

**3. DUNS/CCR:** Under the Recovery Act, recipients and their subrecipients (first tier), must have a Dun and Bradstreet Numbering System (DUNS) number ([www.dnb.com](http://www.dnb.com)) and must maintain active and current profiles in the Central Contractor Registration (CCR). ([www.ccr.gov](http://www.ccr.gov)).

According to guidelines developed by the Office of Management and Budget, recipients and subrecipients include non-Federal entities that expend Recovery Act funds received from a pass-through entity to carry out a Federal program. However, subrecipients do not include an individual who is a beneficiary of such a program. For further guidance, see Office of Management and Budget, *2 CFR Part 176 Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards*, 74 Fed Reg 18449 (April 23, 2009), and subsequent guidance from OMB.

**4. Separate Tracking of ARRA Funds:** Funds and expenditures must be separately tracked by state and local governments, on forms required by Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." Separate accountability and disclosure must be provided for Recovery Act funds, consistent with the recipient reports required by the Recovery Act Section 1512(c).

**A, Segregated Accounting for Recovery Act funds:** Financial and accounting systems should be revised as necessary to segregate, track and maintain the Recovery Act funds separate and apart from other revenue sources. Do not commingle Recovery Act funds with any other funds, or use Recovery Act funds 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.

**B. Invoicing:** Invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act. Subcontracts and other contracts for goods and services for an ARRA-funded project must include references to this mandate.

**C. Federal Access to Records:** Under Section 902 of the ARRA, contracts awarded using ARRA funds must include a provision addressing the authority of the U.S. Comptroller General and any representatives to:

- (1) examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Section 1515 of the ARRA separately grants authority for the US Inspector General and authorized representatives regarding contracts or grant awards using ARRA funds to:

- (1) examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and
- (2) interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

**D. Responsibilities for Informing Subrecipients:** At the time of any subawards and any disbursement of funds, each subrecipient must be separately informed of the Federal award

number, CFDA number, and amount of Recovery Act funds. This notification should be separately documented.

**6. Reporting: Program Management and Financial Expenditure:** Accountability guidelines for the Recovery Act emphasize data quality, streamlining data collection, and collection of information that shows measurable program outputs. The Recovery Act also emphasizes transparency and frequent communication with the American public about the nature of the Recovery Act investments.

As required by Section 1512 of the ARRA, subrecipients must provide reports and employment information to allow the City to document the number of jobs created or jobs retained by the ARRA funding, whether from the Contractor's own workforce or any subcontractors, Section 1512 of the Recovery Act requires that quarterly reports be filed with the federal agency that is the source of the funds. Generally, it will be the City's obligation to compile the necessary information for the reports. The reports are due not later than 10 days after the end of each calendar quarter. Information that must be provided in these reports includes:

- (1) the total amount of recovery funds received from that agency;
- (2) the amount of recovery funds received that were expended or obligated to projects or activities; and
- (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including—
  - (A) the name of the project or activity;
  - (B) a description of the project or activity;
  - (C) an evaluation of the completion status of the project or activity;
  - (D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and
  - (E) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.

In order for the City to comply with these requirements, subrecipients must submit timely reports on specific data elements. No direct payment may be made for providing said reports.

**7. General Provisions of the Recovery Act, as applicable:** The following requirements are specific to usage of Recovery Act funds. As conditions imposed under the Recovery Act, these are supplemental to other terms and conditions of any loan documents, contracts or grant agreements.

- **Whistleblower Protection:** Section 1553 of the Recovery Act prohibits any private employer or state or local government that receives "covered funds" from retaliating against any employee who discloses, internally or externally, information that the employee reasonably believes constitutes evidence of: (a) improper uses of stimulus funds, including fraud, gross mismanagement of an agency contract or grant; (b) gross waste of covered funds; or, (c) an abuse of authority related to the implementation or use of covered funds.

Section 1553 applies to state and local governments, as well as private employers, that receive covered funds, "Covered funds" include any contract, grant or other payment received by the employer if any portion of such money or property has been provided by the Federal Government and at least some of the funds are appropriated by or made available under the Act.

Section 1553 provides if an employee “reasonably believes” that an employer has committed any fraud, gross mismanagement, or other specifically identified actions regarding “covered funds” may not be discharged, demoted or otherwise retaliated against for reporting the action. In addition, an employee is protected for disclosing information to “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),” including reports made in the ordinary course of performing the employee’s duties. Remedies available for violation of the provision include reinstatement, back pay, compensatory damages and attorneys’ fees. Covered employers are also required to post a notice of the rights and remedies under Section 1533.

Federal guidelines indicate that the substance of Section 1553 must be referenced in all subcontracts. For further information, refer to ARRA FAR Interim Rules, 74 Federal Register 14,622 (March 31, 2009).

- **Wage Rate Requirements:** Laborers and mechanics employed by contractors or subcontractors on construction, modernization, renovation, or repair projects, whether funded directly by or assisted in whole or in part with ARRA funds, must be paid in 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 of the United States Code (commonly called “Davis-Bacon and related acts”). (See also 20 U.S.C. 1232b Labor Standards and Section 1606 of the ARRA.) Contracts must include language that acknowledges that all contractors or subcontractors must pay laborers and mechanics employed under the contract no less than the locally prevailing wages for corresponding work on similar projects in the area. Davis-Bacon requires contractors and subcontractors to pay laborers and mechanics at least once a week for the full amount accrued at the time of payment computed at wages not less than the prevailing wage rates. The scale of wages to be paid must be prominently posted at an easily accessible place on the project site.

For further discussion of this ARRA-related requirement, refer to Office of Management and Budget, *2 CFR Part 176 Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards*, 74 Fed Reg 18449 (April 23, 2009), and any subsequent guidance from OMB. The U.S. Department of Labor (the “DOL”) determines locally prevailing wage rates. The DOL has posted information on complying with Davis-Bacon requirements at the following website:

<http://www.dol.gov/esa/whd/programs/dbra/faqs.htm>.

For information about the prevailing wage rates in this community, contact the DOL regional office for this geographic location:

<http://www.dol.gov/esa/whd/america2.htm#Oregon>

The DOL’s regional office may provide guidance as to where the required weekly payroll submissions referenced in the Davis-Bacon regulations (see 29 C.F.R. 3.3 and 3.4) should be sent.

- **Buy American – Use of American Iron, Steel, and Manufactured Goods:** Section 1605 of the Recovery Act generally prohibits using funds for the construction, alteration, maintenance, or repair of public buildings or works unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Exceptions to this requirement may occur under limited circumstances:

(1) A waiver is provided by federal agency after a demonstration that:

- (a) Use of domestic iron, steel or manufactured goods would be inconsistent with the public interest;
- (b) Iron, steel or manufactured goods are not produced in the United States in sufficient and reasonable quantities and of satisfactory quality; or
- (c) Inclusion of domestic iron, steel and manufactured goods would increase the overall project costs by more than 25%.

Any waiver granted by a federal agency must be published in the Federal Register, including a detailed written justification as to why the provision is being waived.

- (2) The Recovery Act provides that the Buy American requirements will be applied consistent with United States obligations under international agreements. If the iron, steel or manufactured goods to be used in a project are from a party to an international agreement with the United States, the goods are to be treated as domestic goods. This exception only applies to projects with an estimated value of \$7,443,000 or more, or projects not specifically excluded from the application of relevant international agreements.

For contractors and grantees to comply with the requirements of ARRA, bids and applications for public buildings and works must be submitted based upon permanently incorporating only iron, steel and manufactured goods produced in the United States, except if a waiver is granted prior to bidding, and except to the extent provided for under applicable, controlling international agreements. Contractors and grantees will be asked to certify compliance with the Buy American requirements. Correspondingly, the City will vigorously seek to recover any damages for losses, expenses or costs (including without limitation attorneys' fees) from contractors or other subrecipients incurred by or resulting from any failure to comply (including without limitation any impairment or loss of funding, whether in whole or in part, or damages assessed against the City) resulting from violations of this provision.

For further guidance on Buy American requirements, refer to Office of Management and Budget. *2 CFR Part 176 Requirements for Implementing Sections 1512, 1605, and 1606 of the American Recovery and Reinvestment Act of 2009 for Financial Assistance Awards*, 74 Fed Reg 18449 (April 23, 2009), and any subsequent guidance from OMB.