

# Appendix 1 to Attachment A BSA GENERAL TERMS AND CONDITIONS

## Introduction

This Appendix to BSA's General Terms and Conditions is set forth in compliance with the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (hereafter also referred to as "ARRA," "Recovery Act," or "Act").

Whenever necessary to make the context of the below clauses applicable to the use of ARRA funds under this Agreement, the term Prime Contractor/Contractor(s) shall mean BSA, the term Subcontractor/First Tier Subcontractor shall mean the supplier awarded the instant purchase order/contract, the term "purchase order/Contract" shall mean this Agreement, and where noted or where necessary to derive proper meaning in a subcontract situation the terms "DOE", "Government" shall mean BSA and "Contracting Officer" shall mean BSA's Contracts Representative, except the terms "DOE", "Government" shall not change: (1) in the phrases "Government Property", "Government-Furnished Property", "Government Equipment" and "Government-Owned Equipment", or where otherwise intended that title ownership or rights are to remain with the Government; or (2) where statute or regulation vests authority exclusively in specific agencies or officials; or (3) where otherwise specifically modified in this Agreement.

In the event of an inconsistency among provisions and/or terms and conditions set forth in this Agreement, the terms set forth in this appendix shall be given precedence when related to ARRA funded workscope.

## Supplemental Terms and Conditions

The following contract terms are added or modified as follows:

### Clauses Incorporated by Reference

#### **Add:**

**FAR 52.203-15 – "WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 2009)."**

**FAR 52.204-11 – "AMERICAN RECOVERY AND REINVESTMENT ACT – REPORTING REQUIREMENTS (MAR 2009)."**

**FAR 52.225-21 – "REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS-BUY AMERICAN ACT—CONSTRUCTION MATERIALS (MAR 2009)."**

#### **Modify:**

For BSA General Terms and Conditions containing the clause **DEAR 970.5232-3 – "Accounts, Records and Inspection (Sections A through H) (Aug 2009),"** of Attachment A, BSA's General Terms and Conditions, that clause is hereby modified as follows:

Delete paragraph (h) (1) and replace it with the following:

(h) Comptroller General.

- (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the contractor's or subcontractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

### **Payment**

#### **Add:**

Subcontractor invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

The subcontractor shall certify that the items delivered and/or the work was performed to accomplish the Recovery Act work in accordance with the contract work scope.

### **Registration Requirements**

#### **Add:**

In accordance with the Special Provision added below, the subcontractor shall have a DUNS number and be registered in the Central Contractor Registration (CCR) no later than the date of the first report is due under FAR 52.204-11 American Recovery and Reinvestment Act – Reporting Requirements.

### **Special Provision**

BSA is required to include the clause in every first-tier subcontract receiving Recovery Act funds.

#### **Add:**

### **SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) OF 2009 (APR 2009)**

### **Preamble:**

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, Pub. L. 111-5, (Recovery Act or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available by it for activities that can be initiated not later than June 17, 2009.

Contractors should begin planning activities for their first tier subcontractors, including obtaining a

DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that 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 related Guidance. For projects funded by sources other than the Recovery Act, Contractors should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

**The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning the how and where for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor must comply with all requirements of the Act. If the contractor believes there is any inconsistency between ARRA requirements and current contract requirements, the issues will be referred to the Contracting Officer for reconciliation.**

**Be advised that special provisions may apply to projects funded by the Act relating to:**

- **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.**

**Definitions:**

For purposes of this clause, “Covered Funds” means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

A. Flow Down Provision

This clause must be included in every first-tier subcontract.

B. Segregation and Payment of Costs

Contractor 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. Where Recovery Act funds are authorized to be used in conjunction

with other funding to complete projects, tracking and reporting must be separate from the original funding source 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: For contractors currently using drawdown on a letter of credit, the current procedure remains in effect and is used for Recovery Act activity in lieu of invoicing.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. 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. 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> .

E. Publication

Information about this agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov) , maintained by the Accountability and Transparency Board (the 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.

F. Registration requirements

Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the date the first report is due under FAR 52.204-11 American Recovery and Reinvestment Act – Reporting Requirements.

G. 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.

(End of Clause)