

## ARRA-1

### SUBMIT WITH THE MASTER CONTRACTOR'S TASK ORDER RESPONSE TO A TORFP ONLY IF THE TORFP SPECIFICALLY NOTES THE REQUIREMENT

#### *Supplemental Terms and Conditions For TORFPs Funded in Whole or in Part with ARRA Funds*

### **1. General**

This TORFP and TOA are governed by the provisions of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (ARRA), federal regulations and ARRA implementing guidance from the federal government as may be revised and updated from time to time (collectively "ARRA Requirements").

A. Compliance. The Contractor agrees that it will comply with all ARRA Requirements applicable to this contract, including modifications or additional requirements that may be imposed by law, future guidance and clarifications of ARRA requirements.

B. Conflict of Laws. The Contractor agrees that to the extent ARRA requirements conflict with State requirements, the ARRA requirements shall control.

C. Enforceability. The Contractor agrees that if Contractor or one of its subcontractors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

### **2. Contractor Identification**

All Contractors are required to provide the State with either their unique Dun & Bradstreet Data Universal Numbering System (DUNS) number or, for those Contractors that do not have a DUNS number, the name and zip code of the Contractor's headquarters prior to award.

Contractors can request a DUNS number or modification to an existing DUNS record by using the online webform process at <http://fedgov.dnb.com/webform> (for US and International locations) or they can call 866-705-5711, option 3. The toll free number is for US locations only. Registrants will be asked for their entity name, address, city, state, country, postal code, highest ranking individual's name and title, line of business, # of employees and legal structure (corporation, non-profit, etc.) and socio-economic data (veteran owned, woman owned, etc.). If the webform is used, there are mailing address area, SIC code and annual revenue data lines, but these are optional.

### **3. Job Creation and Retention**

Pursuant to Section 1512 of ARRA, the Contractor shall timely report to the State all of the data noted on the enclosed **Monthly Employment Report**, Attachment N-2, no later than the 8<sup>th</sup> day of each month, for the previous month's reporting data. For any subcontracts of less than \$25,000 or to individuals, the required information may be reported in the aggregate and requires the certification of an authorized officer of the Contractor that the information contained in the report is accurate. The Contractor agrees to provide any other information reasonably requested by the State or required by State or federal law or regulation.

Further instructions for reporting are provided in Attachment N-2.

The Contractor's failure to provide complete, accurate and timely reports under this section may constitute an event of default under the Contract.

Electronic reporting is preferred. The required information shall be submitted to:

NAME of AGENCY'S REPORT RECIPIENT  
ADDRESS  
EMAIL  
PHONE NUMBER

*NOTE: All areas highlighted in yellow above should be customized by your agency according to the specifics of your solicitations/contracts.*

#### **4. Access to Project Records and Employees Clause**

##### **A. U.S. Comptroller General Authority to Inspect**

1. Pursuant to Section 902 of ARRA, the U.S. Comptroller General (CG) and the CG's representatives have the authority to:

(a) 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 subcontracts; and

(b) 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.

2. Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the CG.

##### **B. U.S. Inspector General Authority to Inspect**

1. Pursuant to Section 1515 of ARRA, the U.S. Inspector General (IG) and any of the IG's representatives have the authority to:

(a) examine any records of the contractor or grantee or any of its subcontractors, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract or subcontract; and

(b) interview any officer or employee of the contractor, or any of its subcontractors, or of any State or local government agency administering the contract or grant, regarding such transactions.

2. Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an IG.

##### **C. Requirements Extended to Subcontractors**

The Contractor shall include in all of the Contractor's agreements with its subcontractors performing work funded in whole or in part with ARRA funds under this Contract, and shall require subcontractors to include with lower tier subcontractors, the language provided in Parts A, B and C of this subsection.

#### **5. Whistleblower Protections Under ARRA**

A. The Contractor agrees that both it and its subcontractors shall comply with Section 1553 of the ARRA, which prohibits the Contractor and its subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract or grant relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to a State contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds.

B. The investigation of complaints, remedies and enforcement under this section shall be governed by §1553 of ARRA, applicable federal regulations and federal law.

C. The Contractor and its subcontractors at any tier shall post notice of the rights and remedies available to employees under Section 1553 of Division A, Title XV of ARRA.

D. The Contractor shall include the substance of these Whistleblower Protections under ARRA, including this paragraph D in its contracts with employees and subcontractors, and require its subcontractors at any tier to do the same.

More information related to ARRA Whistleblower Protection requirements, including a down loadable poster, can be found at the following links:

<http://www.oig.dol.gov/recovery/arrawhistleblowers.htm>

<http://www.oig.dol.gov/recovery/Section1553WhistleblowerProvisions.pdf>

## **6. Use of Maryland Workforce Exchange**

To as quickly as possible help achieve the hiring of individuals into jobs that are ARRA-funded in whole or in part, the Contractor shall:

1. Post all jobs which are to be newly filled, whether for an entirely new job or for an existing job that is currently vacant, on the Maryland Workforce Exchange website of the Maryland Department of Labor, Licensing and Regulation. Link: <https://mwe.dllr.state.md.us/default.asp?SessionUID=a>. Posting shall be done after contract award, as part of “start-up” procedures to fulfill the requirements of this contract.
2. Continue to post for the duration of this contract, on the Maryland Workforce Exchange new jobs that are created to perform under this contract, and existing jobs that are filled as a result of turnover of existing employees that fully or substantially work under the contract.
3. Stipulate the requirements for posting job openings with the Maryland Workforce Exchange, as per clauses 1 and 2 of this section, as requirements for any subcontractor(s) the contractor uses in the fulfillment of this contract.

The requirements to post ARRA-funded job openings on the Maryland Workforce Exchange, as per clauses 1-3 of this section, are not meant to be the exclusive means for the contractor or subcontractors to hire employees. The contractor or subcontractors may use any other means of job advertising and recruitment, in addition to the use of the Maryland Workforce Exchange.

**Exceptions:** Contractors are not required to post on the Maryland Workforce Exchange those jobs the Contractor intends to fill with a present employee, a laid-off former employee or a job candidate from a previous recruitment.

## ATTACHMENT N-2 – ARRA-2

### ARRA-2 Instructions for Completing the Monthly Employment Report

#### **Part 1:**

Enter the last day of the Month being Reported (e.g. September 30, 2009), the Contract Number (to be provided by the State), and contact information for the individual completing the report.

#### **Part 2:**

Enter Prime Contractor information.

Type of Organization: Contractor should use one of the following types that represents the Contractor's organization:

- Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education)
- Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education)
- Individual
- For-Profit Organization (other than small business)
- Small Business
- State, County or Local Government
- Special District or Regional Government
- US Territory or Possession
- Independent School District
- Hispanic-serving Institution
- Alaska Native and Native Hawaiian Serving Institutions
- Public/State Controlled Institution of Higher Education
- Indian/Native American Tribal Government (Federally Recognized)
- Indian/Native American Tribally Designated Organization
- Public/Indian Housing Authority
- Tribally Controlled Colleges and Universities
- Historically Black Colleges and Universities (HBCUs)
- Private Institution of Higher Education
- Non-domestic (non-US) entity
- Other

#### **Part 3:**

Enter the names and total compensation of the five most highly compensated officers of the Contractor entity **if:**

1. the Contractor in its preceding fiscal year received:
  - a. 80% or more of its annual gross revenues in Federal awards; and
  - b. \$25,000,000 or more in annual gross revenues from Federal awards; **and**
2. the public does not have access to information about the compensation of the senior executives of the contractor's entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 USC 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986 (26 USC §6104).

**Total Compensation** means the cash and noncash dollar value earned by the executive during the Contractor's past fiscal year for 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 are 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.

#### **Part 4:**

Only jobs **directly** created or retained by the Contractor as a result of the contract activity should be reported.

A **job created** is a newly created position or an existing unfilled position that is filled and paid in whole or in part with ARRA funds. A **job retained** is an existing position that would not have continued to be filled without ARRA funding. A job cannot be both created and retained. Aggregate numbers for jobs created/retained are to be reported as noted below.

**Note:** Do not report on the employment impact on materials suppliers and central service providers ("indirect" jobs) or on the local community (induced" jobs). Employees who are not directly charged to ARRA supported activities, which nonetheless provide critical indirect support (e.g., clerical/administrative staff preparing reports, institutional review board staff members, departmental administrators) are NOT counted or reported as jobs created/retained.

**Part 4 Column (a):** enter the address or work location where the work, or majority of work, is being performed.

**Part 4 Column (b):** enter a brief narrative description of the jobs created/retained by the Contractor. For example: construction trades jobs, health care professionals, consultants.

**Part 4 Column (c):** enter the cumulative number of hours worked from the start of the contract up through the end of the reporting period by individuals in jobs created/retained. The report for the initial month will include only those hours worked during the initial month; the report for subsequent reports will include the cumulative number of hours worked from the start of the contract up through the end of the reporting month. Examples are provided below.

#### **Initial Month Reporting**

**Example:** if there were 3 employees working in jobs that were created/retained, and Employees #1 and #2 each work full time, 40 hours per week, during the initial reporting month, for a total of 176 hours each (40 hours x 4.4 weeks = 176 hours). Employee #3 works part-time, 20 hours per week, for a total of 88 hours during the entire reporting month (20 hours x 4.4 work weeks = 88 hours).

Employees in Jobs Created/Retained: <input type="radio"/> Employee #1 full time (40 hrs/wk) <input type="radio"/> Employee #2 full time (40 hrs/wk) <input type="radio"/> Employee #3 part time (20 hrs/wk)	<b>1<sup>st</sup> mo Total Hours Worked/Reported</b>
	176
	176
	88
	<b>440</b>
<b>Total Hours Worked by all Employees)</b>	

Together the three employees in jobs created/retained worked 440 total hours during the initial reporting month. Enter 440 into Column (c) on Part 4 of the Monthly Employment Report for month one.

### Second Month Reporting

**Example:** if the Contractor’s Employees #1 and #2 each work 168 hours during the second month (40 hours x 4.2 weeks), Employee #3 works 84 hours during the second month (20 hours x 4.2 weeks), and a fourth Employee is hired during the second reporting month and works 40 hours during the month. Together the four employees in jobs created/retained worked of 460 hours during the second month.

Employees in Jobs Created/Retained:	<b>1<sup>st</sup> month Total Hours Worked</b>	<b>2<sup>nd</sup> month Total Hours Worked</b>	<b>Cum. Hours to be Reported</b>
<input type="radio"/> Employee #1 full time (40 hrs/wk)	176	168	344
<input type="radio"/> Employee #2 full time (40 hrs/wk)	176	168	344
<input type="radio"/> Employee #3 part time (20 hrs/wk)	88	84	172
<input type="radio"/> Employee #4 part time (40 hrs/mo)	0	40	40
<b>Total Hours Worked by all Employees</b>	<b>440</b>	<b>460</b>	<b>900</b>

Because Total Hours Worked by employees in jobs created/retained are to be reported on a *cumulative* basis over the life of the contract, the hours to be reported in the second reporting month are the total hours worked in month one **plus** the total hours worked in month two. As shown above, the cumulative total hours for month one and month two for employees in jobs created/retained is 900. Enter 900 into Column (c) on Part 4 of the Monthly Employment Report for month two.

### Third Month Reporting

**Example:** If the Contractor’s Employees #1 and #2 each work 184 hours during the third month (40 hours/week x 4.6 weeks), Employee #3 works 92 hours (20 hours/week x 4.6 weeks), and a fourth Employee is hired and works 40 hours. Together employees in jobs created/retained worked 500 hours in month three.

Employees in Jobs Created/Retained:	1 <sup>st</sup> month Total Hours Worked	2 <sup>nd</sup> month Total Hours Worked	3 <sup>rd</sup> month Total Hours Worked	Cum. Hours to be Reported
○ Employee #1 full time (40 hrs/wk)	176	168	184	528
○ Employee #2 full time (40 hrs/wk)	176	168	184	528
○ Employee #3 part time (20 hrs/wk)	88	84	92	264
○ Employee #4 part time (40 hrs/mo)	0	40	40	80
<b>Total Hours Worked by all Employees <i>ate</i></b>	440	460	500	<b>1400</b>

Because Total Hours Worked by employees in jobs created/retained are to be reported on a ***cumulative*** basis over the life of the contract, the hours to be reported for the third reporting month are the total hours worked in month one, **plus** the total hours worked in month two, **plus** the total hours worked in month three. As shown above, the total hours for months one, two and three cumulatively total 1400 hours for employees in jobs created/retained. Enter 1400 into Column (c) on Part 4 of the Monthly Employment Report for month three.

### **Subsequent Month Reporting**

Subsequent monthly employment reports should be handled consistent with the process outlined above. Remember, because reporting is cumulative across the life of the contract, the hours reported in subsequent reports will include all hours worked in prior reporting periods (or the cumulative hours reported in the immediately prior reporting period) **plus** the hours worked during the current reporting period.

**Part 4 Column (d)**: enter the cumulative number of hours that a full-time-equivalent would have worked from the start of the contract up through the end of the reporting period.

### **Initial Reporting Month:**

***Example #1:*** if a full-time schedule is 40 hours per week, or 2080 hours per year (40 hours x 52 weeks = 2080 hours per year), enter 173.3 in Part 4 Column (d) on the Monthly Employment Report (2080 hours per year ÷ 12 months = 173.3 hours per month).

**Example #2:** if a full-time schedule is 35 hours per week, or 1820 hours per year (35 hours x 52 weeks = 1820 hours per year), enter 151.7 in Part 4 Column (d) on the Monthly Employment Report (1820 ÷ 12 months = 151.7 hours per month).

### **Subsequent Month Reporting:**

**Example 1:** if the number of hours for a full-time schedule is 173.3 per month as indicated in Example 1 above (2080 hours per year ÷ 12 months), enter 346.6 in Part 4 Column (d) on the Monthly Employment Report for the second monthly report (173.3 x 2 months). For the third monthly report, enter 519.9 in Part 4 Column (d) on the Monthly Employment Report (173.3 x 3 months). Subsequent reporting periods should be handled consistently.

**Example 2:** if the number of hours for a full-time schedule is 151.7 per month as indicated in Example 2 above, enter 303.4 in Part 4 Column (d) on the Monthly Employment Report for the second monthly report (151.7 x 2). For the third monthly report enter 455.1 in Part 4 Column (d) on the Monthly Employment Report (151.7x 3). Subsequent reporting periods should be handled consistently.

**Part 4 Column (e):** Do not enter anything in column(e). This column will automatically calculate the number of full time equivalents in jobs created/retained based on the data entered in column (c) and column (d).

### **Part 5:**

Part 5 is for reporting jobs created or retained by each subcontractor that receives a subcontract valued at \$25,000 or more and is not an Individual. Only jobs directly created or retained by subcontractors as a result of the contract activity should be reported.

For each subcontractor that receives a subcontract valued at \$25,000 or more and is not an Individual, report the name of the subcontractor in column (a). Report the same data in columns (b) through (e) as indicated in Part 4 relating to each subcontractor's workforce.

### **Part 6:**

Part 6 is for reporting, in aggregate, jobs created or retained by subcontractors that receive one or more subcontracts valued at less than \$25,000 and by subcontractors who are Individuals. Only jobs directly created or retained by subcontractors as a result of the contract activity should be reported.

**Part 6 Column (a):** enter the total number of subcontractors that are being reported in the aggregate

For columns (b) through (e), follow the instructions in Part 4 and report cumulatively for subcontractors that are Individuals or have one or more subcontracts valued at less than \$25,000.

### **Part 7:**

Contractor signature required.