

CONTRACTING GUIDANCE FOR SEP/EECBG GRANTEES

There are certain contract provisions that you, as the recipient of a State Energy Program (SEP) grant or Energy Efficiency and Conservation Block Grant (EECBG) from the State Energy Office (SEO) that is funded through the American Reinvestment and Recovery Act of 2009 (Recovery Act), are required to put into your contractor agreements (the solicitation, request for proposal, contractor agreement or whatever document becomes the legally binding agreement between you and your contractor). **Please read the special terms and conditions that apply to your SEP or EECBG grant (whichever are applicable) and OERI Directives 3, 3a, and 3b before commencing your contracting activities. The OERI directives contain requirements regarding advertising, use of competition, encouragement of HUB participation, checking federal and state debarment lists, etc. that apply to you in letting contracts.** There are numerous guidance documents on the federal Department of Energy and the Office of Management and Budget websites to help with the implementation of the requirements that apply to your grant. **This document has been provided to you as a checklist to assist you in preparing your contractor agreements so that they comply with the Recovery Act, OERI requirements, the DOE award agreement that funded your grant, and your grant agreement with the SEO. This document does not address other provisions that may be required to be in your contractor agreements pursuant to state law, local ordinance or code, or standards and policies of your organization.** It is not sufficient to simply put this document in your contractor agreements. Nothing in this guidance document is intended to restrict you from adding additional requirements or provisions that meet your specific project needs. We recommend that you consult your attorney before entering into any legally binding agreement.

Reporting and Registration Requirements

Include the following provision in your contracts:

“The Contractor is notified that this project will be financed with *American Recovery and Reinvestment Act of 2009* (hereinafter, “ARRA”) Funds. The Contractor shall ensure that all subcontracts and other contracts for goods and services for an ARRA-funded project have the mandated provisions of this directive in their contracts. Pursuant to Title XV, Section 1512 of the ARRA, the State shall require that the Contractor provide reports and other employment information as evidence to document the number of jobs created or jobs retained by this contract from the Contractor’s own workforce and any sub-contractors. No direct payment will be made for providing said reports, as the cost for same shall be included in the various items in the contract.

For reporting purposes, Contractor must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data

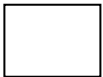
Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.”



Posting with the Local Employment Security Commission

Include the following provision in your contracts:

“In addition to any other job postings the Contractor normally utilizes, pursuant to the requirements of the OERI, the Contractor and its subcontractors shall post with the local Employment Security Commission Office all positions for which he intends to hire workers as a result of being awarded this contract. Labor and semiskilled positions must be posted for at least 48 hours before the hiring decision. All other positions must be posted a minimum posting of five days before the hiring decision. The Contractor and its subcontractors shall report the new hires in the manner prescribed by the Employment Security Commission and the OERI in the format provided to Contractor.”



Required Contract Provision to Implement ARRA Section 902

Include the following provision in your contracts:

“Section 902 of the ARRA requires that each contract awarded using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority 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.

Accordingly, the Comptroller General and his representatives shall have the authority and rights prescribed under Section 902 of the ARRA with respect to contracts funded with recovery funds made available under the ARRA. Section 902 further states that nothing in 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.”



Authority of the Inspector General

Include the following provision in your contracts:

“Section 1515(a) of the ARRA provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working on this contract. The contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, its subcontractors or other firms working on this contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.”

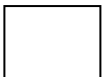


Buy American provision

Include the following provision in your contracts:

“Section 1605 of the ARRA requires that iron, steel and manufactured goods used in public buildings or public works projects be produced in the United States. Contractor and its subcontractors agrees to abide by Section 1605, shall secure documentation that purchases meet the requirements of Section 1605, and shall maintain records of such purchases for inspections by authorized agents of the State of North Carolina and federal agencies. The Contractor and its subcontractors must obtain written exception from this provision from the agency issuing the contract.”

Also include a requirement that the Contractor supply this documentation to you at some specified time or upon request. Note that this provision only applies to public buildings and public works.



Davis-Bacon Requirements

The provisions located at the following internet address must be included in all contracts for construction, alteration or repair work (including painting and decorating):

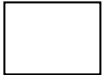
http://www1.eere.energy.gov/wip/pdfs/dba_clauses_weatherization.pdf [Note: this is a general DBA clause approved by DOL for DOE programs, including SEP and EECBG.]

You must also determine the prevailing wage for your location and type of activity as determined by the Department of Labor (DOL) and **include the prevailing wage requirements in your contract**. See www.wdol.gov for DOL’s prevailing wage rates.

Please review the requirements of this contract provision, which require, among other things, weekly payment to covered workers, weekly reporting of certified payroll, posting of prevailing wages at the project site. The following are sources to assist you and your contractor in meeting the Davis-Bacon requirements:

- a. Free workplace law poster <http://www.nclabor.com/posters/posters.htm>

- b. Employees certified weekly payroll (you can find sample at http://www1.eere.energy.gov/wip/pdfs/wh-347_example.pdf)
- c. Davis Bacon Wage Determination <http://www.wdol.gov/dba.aspx#3>
- d. Davis Bacon Wage Determination - Excel Sheet
http://www1.eere.energy.gov/wip/dol_wage_determinations_sep_eecbg.html
- e. Davis Bacon help desk, please call 1-866-487-9243



Availability and Use of Funds

Include the following provision in your contracts:

“Contractors understand and acknowledge that any and all payment of funds or the continuation thereof is contingent upon funds provided solely by ARRA or required state matching funds. Pursuant to Section 1604 of the ARRA, contractors agree not to undertake or make progress toward any activity using recovery funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the Recovery Act.”



Whistleblower Provisions

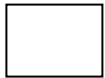
Include the following provision in your contracts:

“Contractor and its subcontractors understand and acknowledge that Article 14 of Chapter 124, NCGS 126-84 through 126-88 (applies to the State and state employees), Article 21 of Chapter 95, NCGS 95-240 through 85-245 (applies to anyone, including state employees), and Section 1553 of the Recovery Act (applies to anyone receiving federal funds), provide protection to State, Federal and contract employees. Specifically, the Recovery Act provides that an employee of any non-Federal employer receiving Recovery Act funds, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee’s duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct, a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or

- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

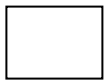
Any employer receiving Recovery Act funds shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.). A form of the notice that meets the requirements of this section is located at the following internet address:
<http://www.recovery.gov/Contact/ReportFraud/Documents/Whistleblower+Poster.pdf>”



Outsourcing outside the USA without Specific Prior Approval Provision

Include the following provision in your contracts:

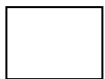
“Contractor and its subcontractors agree not to use any recovery funds from a contract or any other performance agreement awarded by the State of North Carolina, its agencies, or political subdivisions for outsourcing outside of the United States, without specific prior written approval from the agency issuing the contract.”



Federal, State and Local Tax Obligations

Include the following provision in your contracts:

“By submission of a proposal, contractors and subcontractors assert and self-certify that all Federal, State and local tax obligations have been or will be satisfied prior to receiving recovery funds.”



Anti-Discrimination and Equal Opportunity

Include the following provision in your contracts:

“Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, Recovery Act funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders pertaining to the expenditure of funds.”

Office of State Budget and Management Access to Records

Include the following provision in your contracts:

“The Contractor and its subcontractors agree to allow the Office of State Budget and Management internal auditors and state agency internal auditors access to records and employees pertaining to the performance of any contract awarded by a public agency.”

Use of Recovery Funds for Travel

Include the following provision in your contracts:

“Contractor and its subcontractors are specifically prohibited from using Recovery Act funds for travel outside the service area or county in which the project is located. The exceptions are for travel specifically mandated by the Recovery Act or approved by the senior management of the State Energy Office.”

The National Historic Preservation Act (NHPA) - Section 106

As you are aware, your grant is subject to NHPA and your project must undergo a review for compliance with NHPA. In the event that any special conditions were placed on your project as a result of the NHPA review, include any special requirements in your contractor agreements.

National Environmental Policy Act (NEPA)

As you are aware, your grant is subject to NEPA and no activity shall be undertaken until a NEPA determination has been made with respect to your project. In the event that any special conditions were placed on your project as a result of a NEPA review, include any special requirements in your contractor agreements.

Historically Underutilized Business

Include the following question in your bid documents or requests for proposals:

“Please check the following:

Is your organization registered with HUB office? Yes_____ No_____

Is your organization a minority contractor, small contractor, physically handicapped contractor, a woman contractor, a disabled business enterprise, or a non-profit work center for the blind and severely disabled? Yes _____ No _____”



Applicable Contract Provisions Required Pursuant to 10 C.F.R. Part 600

If you are a **State or Local Government**, include the applicable provisions of 10 C.F.R. § 600.236(i).

If you are an **Institution of Higher Education, Hospital, or Non-Profit**, include the applicable provisions of 10 C.F.R. § 600.148.

If you are a **For-Profit Organization**, include the applicable provisions of 10 C.F.R. § 600.331(c).