

ADDENDUM

Appendix B - Standard Terms & Conditions
Alliance for Sustainable Energy, LLC
National Renewable Energy Laboratory

Subcontracts and Purchase Orders funded in whole or in part under AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

Preamble:

Work performed under this subcontract or purchase order (hereinafter “subcontract”) 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). The Recovery Act’s 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.

Subcontractors should obtain a DUNS number (or update the existing DUNS record) and register with the Central Contractor Registration (CCR).

Subcontractors are advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete subcontracts, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related Guidance. For subcontracts also funded by sources other than the Recovery Act, Subcontractors should keep separate records for Recovery Act funds and ensure those records comply with the requirements of the Recovery Act.

Implementing instructions of the Recovery Act have not yet been fully developed, particularly concerning the how and where for the new reporting requirements. The Subcontractor will be provided these details through subcontract modifications as they become available. The Subcontractor must comply with all requirements of the Recovery Act. If the Subcontractor believes there is any inconsistency between Recovery Act requirements and current subcontract requirements, the issues will be referred to the NREL Subcontract Administrator for reconciliation.

Be advised that special provisions may apply to projects funded by the Recovery 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 Addendum to Appendix B, “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 subcontracts and/or subcontract modifications using Recovery Act funds.

Non-Federal employer means any employer with respect to Covered Funds – the Subcontractor is an employer; and any professional membership organization, certification or 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.

The following requirements apply to all subcontracts funded in whole or in part with Recovery Act funds.

A. Segregation and Payment of Costs

The 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. 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.

B. 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.

C. Wage Rates

All laborers and mechanics employed by 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>.

D. Publication

Information about this subcontract will be published on the Internet and linked to the website 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.

E. Utilization of Small Business

The Subcontractor shall to the maximum extent practicable give preference to small business in the award of lower-tier subcontracts for projects funded by Recovery Act dollars.

Appendix B Modifications – Applicable to all Subcontracts

The following clauses apply to all subcontracts where work performed will be funded in whole or in part, with Recovery Act funds.

As used in the clauses incorporated by reference, the term “Government” shall mean the Alliance for Sustainable Energy, LLC managing and operating contractor for the National Renewable Energy Laboratory (NREL), “Contractor” shall mean “Subcontractor” and “Contracting Officer” shall mean “NREL Subcontract Administrator”.

A. Add the following two (2) clauses, incorporated by reference:

WHISTLEBLOWER PROTECTIONS UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (JUN 2010)

Derived from FAR 52.203-15

(Applies to all subcontracts and purchase orders where work performed will be funded in whole or in part, with Recovery Act funds.)

AMERICAN RECOVERY AND REINVESTMENT ACT—REPORTING REQUIREMENTS (JUL 2010)

Derived from FAR 52.204-11

(Applies to all subcontracts and purchase orders where work performed will be funded in whole or in part, with Recovery Act funds.)

Subcontracts for Construction

In addition to the modifications provided in this document that are applicable to all subcontracts, Appendices B-4 and B-10 applicable to construction subcontracts are also modified as described below.

A. Delete the following clause dated FEB 2009

CLAUSE 36. BUY AMERICAN ACT-BALANCE OF PAYMENTS PROGRAM-CONSTRUCTION MATERIALS (FEB 2009)

Derived from FAR 52.225-9

(Applies to construction subcontracts less than \$7,443,000.)

Replace with the following clause dated OCT 2010, incorporated by reference:

CLAUSE 36. REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS—BUY AMERICAN ACT—CONSTRUCTION MATERIALS (RECOVERY ACT) (OCT 2010)

Derived from FAR 52.225-21

(Applies to construction subcontracts less than \$7,804,000 and funded in part or in whole with Recovery Act funds.)

B. Delete the following clause dated AUG 2009:

CLAUSE 37. BUY AMERICAN -CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (AUG 2009)

Derived from FAR 52.225-11

(Applies to construction subcontracts valued at \$7,443,000 or more.)

Replace with the following clause dated OCT 2010:

CLAUSE 37. REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS—BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (RECOVERY ACT) (OCT 2010)

Derived from FAR 52.225-23

(Applies to construction subcontracts valued at \$7,804,000 or more and funded in part or in whole with Recovery Act funds.)

Subcontracts and Purchase Orders for Commercial Items (Goods and Services)

Appendix B-8 applicable to commercial items subcontracts and purchase orders are modified as described below.

- A. Modify CLAUSE 3. SUBCONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS as follows.

CLAUSE 3. SUBCONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS – COMMERCIAL ITEMS (SPECIAL) (AUG 2011)

Derived from FAR 52.212-5 (SEP 2009)

Insert the following at the bottom of Section (a):

- (19) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5).
- (20) 52.204-11, American Recovery and Reinvestment Act – Reporting Requirements (JUL 2010) (Pub. L. 111-5).