

## **American Recovery and Reinvestment Act (ARRA) GENERAL CONDITIONS**

**Contractor agrees that in consideration of receipt of Federal ARRA funds, it will comply with all of the terms, conditions, requirements and limitations as set forth below:**

### **AGC-01. Revisions to Requirements**

Contractor acknowledges that these Special Conditions may be revised pursuant to ongoing guidance from the relevant federal agency regarding requirements for ARRA funds. Contractor agrees to abide by any such revisions upon receipt of written notification from the Commission or Owner of the revisions, which will automatically become a material part of this Contract, without the necessity of either party executing any further instrument.

### **AGC-02. Registrations and Identification Information**

Contractor must maintain current registrations in the Central Contractor Registration ([www.ccr.gov](http://www.ccr.gov)) at all times during which they have active federal awards funded with ARRA funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number ([www.dnb.com](http://www.dnb.com)) is one of the requirements for registration in the Central Contractor Registration.

If applicable, the Contractor agrees to separately identify to each subcontractor, and document at the time of award of contract or approval of application and at the time of disbursement of funds, the Statewide Contract award number, EZIQC Work Order, and amount of ARRA funds.

### **AGC-03. Reporting Requirements**

No later than 5 days after the end of each calendar quarter, or more frequently as directed by the Commission or the Owner, the Contractor shall submit a report, on a web based database, to the Georgia Environmental Facilities Authority (GEFA), that contains:

- (1)** The total amount of recovery funds received;
- (2)** The amount of recovery funds received that were obligated and expended to projects or activities under the Statewide Contract (SWC90818). If required by GEFA or the Owner, Contractor shall submit backup documentation for expenditures of ARRA funds, including such items as timecards, payroll, and invoices.
- (3)** Detailed information on any subcontracts awarded by the Contractor must include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.
- (4)** A description of the overall purpose and expected outcomes or results of the orders issued under the contract, including significant deliverables and, if appropriate, associated units of measure.
- (5)** An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of orders issued under the contract (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers all orders issued under the contract (or portion thereof) funded by the Recovery Act.

**(6)** A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and only address the impact on the contractor's workforce. At a minimum, the contractor shall provide—

**(A)** A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

**(B)** An estimate of the number of jobs created and jobs retained by the prime contractor, in the United States and outlying areas. A job cannot be reported as both created and retained.

**(7)** Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract/order is awarded if—

**(A)** In the Contractor's preceding fiscal year, the Contractor received—

**(i)** 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

**(ii)** \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

**(B)** The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

**(8)** For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

**(9)** For any first-tier subcontract funded in whole or in part under the Recovery Act, that is over \$25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor to provide the information described in (A), (I), (J), and (K) below to the contractor for the purposes of the quarterly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by Section 151 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows:

**(A)** Unique identifier (i.e. DUNS Number , Tax ID) for the subcontractor receiving the award and for the subcontractor’s parent company, if the subcontractor has a parent company.

**(B)** Name of the subcontractor.

**(C)** Amount of the subcontract award.

**(D)** Date of the subcontract award.

**(E)** The applicable North American Industry Classification System (NAICS) code.

**(F)** Funding agency.

**(G)** A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

**(H)** Subcontract number (the contract number assigned by the prime contractor).

**(I)** Subcontractor’s physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

**(J)** Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

**(K)** Names and total compensation of each of the subcontractor’s five most highly compensated officers, for the calendar year in which the subcontract is awarded if—

**(i)** In the subcontractor’s preceding fiscal year, the subcontractor received—

**(a)** 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

**(b)** \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

**(ii)** The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

#### **AGC-04. Definitions**

**“Contract,”** as defined in FAR 2.101, means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq. For discussion of various types of contracts, see FAR Part 16.

**“First-tier Subcontract”** means a subcontract awarded directly by a prime contractor whose contract is funded by the Recovery Act.

**“Jobs Created”** means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

**“Jobs Retained”** means an estimate of those previously existing filled positions that are retained as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

**“Total Compensation”** means the cash and noncash dollar value earned by the executive during the contractor’s past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

(1) Salary and bonus.

(2) 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 the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

(3) 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.

(4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

(5) Above-market earnings on deferred compensation which is not tax-qualified.

(6) 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.

#### **AGC-05. General**

These special terms and conditions incorporate one or more clauses by reference, with the same force and effect as if they were given in full text. The full text of a clause may be accessed electronically at one of these website addresses: <http://farsite.hill.af.mil/> or <http://www.acquisition.gov/FAR/>

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- **FAR 52.226-3** Convict Labor (June 2003)
- **FAR 52.226-4** Contract Work Hours and Safety Standards Act -- Overtime Compensation. (Jul 2005)
- **FAR 52.226-5** Davis-Bacon Act (Jul 2005)
- **FAR 52.226-7** Withholding of Funds (Feb 1988)
- **FAR 52.226-8** Payrolls and Basic Records (Feb 1988)
- **FAR 52.222-9** Apprentices and Trainees (Jul 2005)
- **FAR 52.222-10** Compliance with Copeland Act Requirements (Feb 1988)
- **FAR 52.222-11** Subcontracts (Labor Standards) (Jul 2005)

#### **AGC-06. FAR 52.203-15 Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Mar 2009)**

(1) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(2) The Contractor shall include the substance of this clause including this paragraph (2) in all subcontracts.

#### **AGC-07. Buy American - Use of American Iron, Steel, and Manufactured Goods – Section 1605 of the American Recovery and Reinvestment Act of 2009**

Recipients may not use any funds obligated under this award for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless the Agency waives the application of this provision (ARRA Sec. 1605).

(a) **Definitions.** As used in this award term and condition—

**Designated country —**

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);
- (2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or
- (3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

**Designated country iron, steel, and/or manufactured goods —**

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

**Domestic iron, steel, and/or manufactured good** —(1) Is wholly the growth, product, or manufacture of the United States; or (2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

**Foreign iron, steel, and/or manufactured good** means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

**Manufactured good** means a good brought to the construction site for incorporation into the building or work that has been—

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

**Public building and public work** means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

**Steel** means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

**(b) Iron, steel, and manufactured goods.**

**(1) The award term and condition described in this section implements—**

**(i)** Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

**(ii)** Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

**(2)** The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

**(3)** The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:  
None

**(4)** The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

**(i)** The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

**(ii)** The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

**(iii)** The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

**(c) (1) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.**

**(i)** Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

**(A)** A description of the foreign and domestic iron, steel, and/or manufactured goods;

**(B)** Unit of measure;

**(C)** Quantity;

**(D)** Cost;

**(E)** Time of delivery or availability;

**(F)** Location of the project;

**(G)** Name and address of the proposed supplier; and

**(H)** A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

**(ii)** A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

**(iii)** The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

**(iv)** Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

**(2)** If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods.. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

**(3)** Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

**(d) Data.** To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

**Foreign and Domestic Items Cost Comparison**

Description	Unit of measure	Quantity	Cost (dollars)***
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

*\* List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.*

*\*\* Include other applicable supporting information.*

*\*\*\*Include all delivery costs to the construction site.*

**AGC-08. Wage Rate Requirements (ARRA)**

Subject to further clarification issued by the Office of Management and Budget, and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, 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 this award 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 (ARRA Sec. 1606).

**Davis Bacon Wage Rates for the State of Georgia** may be accessed at the following website:

<http://www.gpo.gov/davisbacon/ga.html> Heavy Construction Wage Rates are to be used in the performance of projects awarded under this agreement.

**AGC-09. Limit on Funds (ARRA)**

None of the funds appropriated or otherwise made available in ARRA 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 (ARRA Sec. 1604).

#### **AGC-10. Disclosure of Fraud or Misconduct**

Each recipient or sub-recipient awarded funds made available under the ARRA shall promptly refer to the USDA Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. To implement the [FAR rule on Contractor Disclosures](#) (effective December 12th, 2008), USDA has a web-based form (<http://www.usda.gov/oig/contractorform.htm>) that allows the Contractor or Recipient to notify, in writing, the USDA Office of the Inspector General, whenever the contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor or Recipient has committed a violation of the civil False Claims Act or a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations in connection with the award, performance, or closeout of a contract or any related subcontract. If you wish to provide information that does not fall within these guidelines, please visit the Office of Inspector General, USDA web site at [www.usda.gov/oig](http://www.usda.gov/oig) and/or e-mail the USDA OIG hotline at [usda\\_hotline@oig.usda.gov](mailto:usda_hotline@oig.usda.gov).

#### **AGC-11. Drug-Free Workplace**

The Contractor agrees to provide the certification set out below. If it is later determined that the contractor knowingly rendered a false certification, or otherwise violated the requirements of the Drug-Free Workplace Act, the Commission, in addition to any other remedies available, may take action authorized under the Drug-Free Workplace Act.

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacturing, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a contractor directly engaged in the performance of work under a contract, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the contract and who are on the contractor's payroll. This definition does not include workers not on the payroll of the contractor (e.g., volunteers, even if used to meet a matching requirements; consultants or independent contractors not on the contractor's payroll; or employee of subcontractors in covered workplaces).

**Certification:**

(1) The contractor certifies that it will or will continue to provide a drug-free workplace by:

**(A) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;**

**(B) Establishing an ongoing drug-free awareness program to inform employees about-**

**(i) The danger of drug abuse in the workplace;**

**(ii) The grantee's policy of maintaining a drug-free workplace;**

**(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and**

**(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;**

**(C) Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (A);**

**(D) Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the grant, the employee will—**

**(i) Abide by the terms of the statement; and**

**(ii) Notifying the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such a conviction;**

**(E) Notifying the Commission in writing, within ten calendar days after receiving notice under paragraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;**

**(F) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (D)(ii), with respect to any employee who is so convicted-**

**(i) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or**

**(ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;**

(G) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F).(H) Agencies shall keep the original of all disclosure reports in the official files of the agency.

(2) The contractor may provide a list of the site(s) for the performance of work done in connection with a specific project or other agreement.

#### **AGC-12. Certification Regarding Debarment, Suspension, and Other Responsibility Matters –**

##### **Primary Covered Transactions, (7 CFR 3017)**

(1) The contractor certifies to the best of its knowledge and belief, that it and its principals:

(A) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(B) Have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(C) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (A)(ii) of this certification; and

(D) Have not within a three-year period preceding this application/bid has one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the primary contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.

#### **AGC-13. Examination of Records**

The contractor agrees to give to the Commission or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this contract. The contractor also agrees to retain all records related to this contract for a period of three years after completion of the terms of this contract.

**AGC-14. Environmental Requirements**

The Contractor shall comply with all applicable federal, state, and local environmental and historic preservation requirements and shall provide any information requested by the Commission to ensure compliance with applicable laws.

**AGC-15. Certification Regarding Lobbying (7 CFR 3018) (Applicable if this contract exceeds \$100,000)**

The contractor certifies to the best of their knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of an agency, Member of Congress, and officer or employer of Congress, or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**AGC-16. Clean Air and Water Certification**

(Applicable if this agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c) and is listed by EPA, or is not otherwise exempt.)

The contractor certifies as follows:

(1) Any facility to be utilized in the performance of this proposed agreement is \_\_\_\_\_, is not \_\_\_\_\_, listed on the Environmental Protection Agency List of Violating Facilities.

**(2)** To promptly notify the Commission prior to the signing of this contract by the Commission, of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, indicating that any facility which he proposes to use for the performance of the agreement is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.

**(3)** To include substantially this certification, including this subparagraph (3), in every nonexempt subagreement.

#### **AGC-17. Clean Air and Water Clause**

(Applicable only if the agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. (1319(c)) and is listed by EPA or the agreement is not otherwise exempt.)

**(1)** The contractor agrees as follows:

**(A)** To comply with all the requirements of section 114 of the Clean Air Act as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the signing of this contract by the Commission.

**(B)** That no portion of the work required by this agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was signed by the Commission unless and until the EPA eliminates the name of such facility or facilities from such listing.

**(C)** To use their best efforts to comply with clean air standards and clean water standards at the facilities in which the agreement is being performed.

**(D)** To insert the substance of the provisions of this clause in any nonexempt sub-contract, including this subparagraph (1)(D).

**(2)** The terms used in this clause have the following meanings:

**(A)** The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

**(B)** The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

**(C)** The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), and approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

**(D)** The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standards, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with per treatment regulations as required by section 307 of the Water Act (3 U.S.C. 1317).

**(E)** The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with the scheduled or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or any air or water pollution control issued pursuant thereto.

**(F)** The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations, owned leased, or supervised by a contractor, to be utilized in the performance of an agreement or subagreement. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

#### **AGC-18. Nondiscrimination Provisions**

The Contractor covenants and agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor's performance under this Agreement. Accordingly, and to the extent applicable, the Contractor covenants and agrees to comply with the following:

**(1)** On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by applicable regulations.

**(2)** On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 (3 CFR, 1964-1965 Comp. pg. 339), as implemented by applicable regulations.

**(3)** On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by applicable regulations.

(4) On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by applicable regulations.

(5) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by applicable regulations.

**AGC-19. Flow Down Requirement**

Contractor must include these ARRA Terms and Conditions in any subcontract.

**AGC-20. ARRA Compliance Certificate**

The Contractor must complete in its entirety, sign and notarize the Application for Payment, Compliance Certificate of the Construction Professional (Exhibit A-1) for all requests for payment made to the Georgia Environmental Facilities Authority (GEFA). This form must accompany (as an attachment) all requests for payment/invoices submitted to GEFA for ARRA funded (in whole or in part) projects.

**THIS FORM MUST ACCOMPANY ALL REQUESTS FOR PAYMENT/INVOICES**

**EXHIBIT# A-1**



**AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)  
GEORGIA ENVIRONMENTAL FACILITIES AUTHORITY (GEFA)  
APPLICATION FOR PAYMENT**

**COMPLIANCE CERTIFICATE OF THE CONSTRUCTION PROFESSIONAL**

Invoice No \_\_\_\_\_ Date \_\_\_\_\_

<b>Project No.</b>	
<b>Project Name</b>	

This Compliance Certificate confirms that in performance of the work requested for payment and in compliance with the construction contract/purchase order between the parties dated \_\_\_\_/\_\_\_\_/\_\_\_\_ the undersigned has fully complied with all aspects of the intent and requirements of the contracted work funded by the American Recovery and Reinvestment Act of 2009 (ARRA).

Furthermore, the undersigned does hereby confirm that failure to comply in all matters related to the ARRA shall result in the revocation of the awarded contract/purchase order and will require repayment of all funds disbursed to the contractor. In addition and without limitations, the Georgia Environmental Facilities Authority (GEFA) as Owner shall have the ultimate authority to approve or refuse payment for any portion of the Application for Payment submitted by the construction professional.

*In summary, the undersigned as the contractor (construction professional) representative certifies that the Invoice for Payment attached hereto meets all requirements of the Statewide Contract including any resultant Purchase Order/s between the company, Weatherproofing Technologies INC, the State of Georgia and its Authorized Users. It is further understood that failure to comply with any of the requirements set forth in contract may be sufficient grounds for termination, recoupment of all payments and collection of damages.*

Duly executed this \_\_\_\_\_ day of 20\_\_\_\_ by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**NOTARY**

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_



**AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)**

**& GEORGIA ENVIRONMENTAL FACILITIES AUTHORITY (GEFA)**



**SUPPLEMENT TO APPLICATION FOR PAYMENT  
COMPLIANCE CERTIFICATE**

Application No \_\_\_\_\_ Date \_\_\_\_\_

Project/ECM No.	
Project Name	

The Contractor's execution of this Compliance Certificate, in conjunction with the corresponding Application for Payment [Georgia State Financing and Investment Commission (GSFIC) Form GSFIC-AD-105 (01-03-08)] attached hereto, represents affirmation that all work performed and included in Application for Payment No. \_\_\_\_ is in compliance with the requirements of the American Recovery and Reinvestment Act of 2009 (ARRA) as contained in a contract dated \_\_\_\_/\_\_\_\_/\_\_\_\_ between GEFA and \_\_\_\_\_.

Furthermore, the contractor does herein acknowledge that failure to comply with all ARRA requirements as contained in the above referenced contract may result in the revocation of the awarded contract and may require repayment of funds paid to the contractor. In addition and without limitations, the Georgia Environmental Facilities Authority (GEFA) as Owner shall have the ultimate authority to approve or refuse payment for any portion of the Application for Payment submitted by the contractor that is found to not be in compliance with ARRA.

Duly executed this \_\_\_\_\_ day of 20\_\_\_\_ by:

\_\_\_\_\_  
Signature Title

\_\_\_\_\_  
Print Name

## **State of Georgia-Exhibit I**

### **American Recovery and Reinvestment Act (ARRA)**

#### **SUPPLEMENTARY GENERAL CONDITIONS**

**These additional Terms and Conditions address the American Recovery and Reinvestment Act of 2009 and are made a part of the statewide contract and any resultant purchase order/s issued under the contract to which it is attached, and each of the terms and conditions set forth hereafter are incorporated in and made a part of the resulting contract or purchase order as if fully set forth therein.**

#### **ASGC-01. American Recovery and Reinvestment Act of 2009.**

The Work contemplated hereby is funded pursuant to the American Recovery and Reinvestment Act ("ARRA"). As a condition of the funding, the federal government requires certain reports regarding the use of the funds. The responsibility for providing such reports may be delegated by the recipients to the sub-recipients of the awards. As such, the Department of Administrative Services, State of Georgia hereby delegates reporting responsibility to Contractor, and the award for the Work is made on the condition that Contractor agrees to abide by all requirements of ARRA, including the reporting requirements for sub-recipients. Receipt of funds by Contractor under this Contract and any resultant Purchase Order/s is contingent upon Contractor's compliance with those reporting requirements. The reporting requirements include, but are not necessarily limited to, the following:

- a)** Contractor shall acquire or update their DUNS (Dun & Bradstreet) number and register with the Central Contractor Registration (CCR) if applicable;
- b)** Contractor shall report the total amount of ARRA funds received pursuant to all promulgated rules and regulations;
- c)** Contractor shall report the amount of funds received that were expended or obligated to projects or activities, including unobligated balances to facilitate reconciliations.

#### **ASGC-02. The American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5) Award Term**

Unless otherwise specified, ARRA funding is one-time funding.

#### **ASGC-03. Reporting and Registration Requirements under Section 1512 of the American Recovery and Reinvestment Act of 2009, (Public Law 111-5)**

- (a)** This statewide contract requires the Contractor to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 ("Recovery Act") and to report on use of Recovery Act funds provided through this statewide contract. Information from these reports will be made available to the public.
- (b)** The reports are due on the 10<sup>th</sup> day of April, July, October, and January for each preceding quarter in which the Contractor receives the assistance award funded in whole or in part by the Recovery Act.

- (c) Contractor must maintain current registrations in the Central Contractor Registration ([www.ccr.gov](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 ([www.dnb.com](http://www.dnb.com)) is one of the requirements for registration in the Central Contractor Registration.
- (d) The Contractor shall report the information described in this section using the reporting instructions and data elements that will be provided online at [www.FederalReporting.gov](http://www.FederalReporting.gov) and ensure that any information that is pre-filled is corrected or updated as needed.

**ASGC-04. Protecting State and Local Government and Contractor Whistleblowers under Section 1553 of the American Recovery and Reinvestment Act of 2009, (Public Law 111-5)**

A. Department of Administrative Services, State of Georgia and Contractor agree and acknowledge that an employee of any non-Federal employer receiving funds pursuant to ARRA 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 Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency (such as the New Mexico Attorney General's Office), 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), a court or grand jury, the head of a Federal agency or their representatives, information that the employee reasonably believes is evidence of:

- 1) Gross mismanagement of an agency 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 the implementation or use of ARRA funds; or
- 5) A violation of law, rule, or regulation related to an agency contract (including the competition or negotiation of a contract) or grant, awarded or issued relating to ARRA funds.

B. Contractor shall post notice of the rights and remedies provided under this section. The notice of rights shall be the same as or equivalent to the example poster at:

<http://www.recovery.gov/Contact/ReportFraud/Documents/Whistleblower+Poster.pdf>

C. Contractor will ensure that any subcontractor that provides any products or services in connection with this statewide contract is informed of this requirement and Contractor shall require all subcontractors to comply with the requirement as a condition of its subcontracting agreement.

**ASGC-05. Civil Rights Obligations**

While ARRA has not modified awardees' civil rights obligations, which are referenced in the NIH Grants Policy Statement, these obligations remain a requirement of Federal law. Contractors and subcontractors receiving ARRA funds or other Federal financial assistance must comply with Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination), Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination), Title IX of the Education Amendments of 1972 (prohibiting sex discrimination in education and training programs), and the Age

Discrimination Act of 1975 (prohibiting age discrimination in the provision of services). For further information and technical assistance, please contact the HHS Office for Civil Rights at (202) 619-0403, OCRmail@hhs.gov, or <http://www.hhs.gov/ocr/civilrights/>.

#### **ASGC-06. Disclosure of Fraud or Misconduct**

Each contractor or subcontractor awarded funds made available under the ARRA shall promptly refer to the HHS Office of Inspector General any credible evidence, known by the contractor or subcontractor that a principal, employee, agent, contractor, subcontractor, or other person has submitted a false claim as defined by the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. The HHS Office of Inspector General can be reached at <http://oig.hhs.gov/fraud/hotline>

#### **ASGC-07. Buy American Provisions for Construction Services**

**A.** If applicable, Contractor will comply with Division A, Section 1605 of ARRA regarding Buy American Provisions, regarding use of American iron, steel, and manufactured goods.

*(a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.*

*(b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that—*

*(1) applying subsection (a) would be inconsistent with the public interest;*

*(2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or*

*(3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.*

*(c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head -of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.*

*(d) This section shall be applied in a manner consistent with United States obligations under international agreements.*

B. If applicable, Contractor shall require all subcontractors to comply with the requirement as a condition of its subcontracting agreement.

**ASGC-08. Wage Rate Requirements for Construction Services**

A. If applicable, Contractor will comply with Division A, Section 1606 of ARRA regarding wage rate requirements.

*Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, 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 this Act 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.*

B. If applicable, Contractor will comply with Division B, Section 1601 of ARRA regarding application of certain labor standards to projects financed with certain tax-favored bonds.

*Subchapter IV of chapter 31 of the title 40, United States Code, shall apply to projects financed with the proceeds of—*

*(1) any new clean renewable energy bond (as defined in section 54C of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,*

*(2) any qualified energy conservation bond (as defined in section 54D of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,*

*(3) any qualified zone academy bond (as defined in section 54E of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,*

*(4) any qualified school construction bond (as defined in section 54F of the Internal Revenue Code of 1986), and*

*(5) any recovery zone economic development bond (as defined in section 1400U-2 of the Internal Revenue Code of 1986).*

C. If applicable, Contractor shall require all subcontractors to comply with the requirement. as a condition of its subcontracting agreement.

#### **ASGC-09. Non-Compliance with ARRA Reporting Requirements**

**A.** If any part of this Agreement is funded pursuant to the American Recovery and Reinvestment Act ("ARRA"), Contractor agrees to abide by sections ASGC-01 through ASGC-08 above.

**B.** Failure of Contractor or any subcontractor to Contractor to comply with the reporting requirements, through material omission, knowingly reporting false data, or failure to comply with reporting deadlines, may result in withholding of payment.

#### **ASGC-10. Reporting Requirements As They Relate to Measurement and Verification**

**A.** Each project or energy conservation measure awarded funding by GEFA through the ARRA-funded State Agency Facilities Retrofit will need to include some form of measurement and verification (M&V) plan of execution and implementation for the achieved or projected energy savings. **The exact method utilized for measurement and verification shall be as determined and pre-approved** by the State of Georgia governmental entity utilizing the EZIQC contract from the most appropriate method outlined in the International Performance Measurement and Verification Protocol (IPMVP) 2007 Vol. 1. The Contractor will assist the State of Georgia governmental entity with gathering, producing, or creating, data and technical information and then formatting it for reporting to GEFA and the Federal Government. The required measurement and verification data and technical information may include or compare as baseline or final data product manufacturer provided specifications data, engineering calculations, measurement via metering, or other methods or sources. The delineation of Contractor's specific responsibilities with regard to M&V responsibilities and the related reporting will be set forth in the Detailed Scope of Work applicable to each Work Order. M&V responsibilities will be unique for each Work Order.

**B.** The Contractor understands and accepts that each State of Georgia governmental entity receiving funding as described herein must submit an M&V plan to GEFA for approval prior to issuing a Purchase Order under the Statewide EZIQC Contract. The Detailed Scope of Work may be modified to incorporate any revisions to the M&V plan by GEFA with respect to Contractor responsibilities. The Contractor will be given the opportunity to modify its Price Proposal accordingly, if the M&V plan modifications impact the responsibilities of the Contractor, and thus the Detailed Scope of Work.