MAY 26 2010

Homeland Security

TO: DHS Heads of the Contracting Activities

FROM: Department of Homeland Security; Office of the Chief Procurement Officer; Director, Policy and Acquisition Workforce

SUBJ: Recovery Act Contract Actions – Implementation and Review of Contractor Reports

1. Introduction: This amendment updates the Acquisition Alert to incorporate additional guidance on submission and review of recipient reports. The updates are based on Office of Management and Budget (PMB) Memoranda M-10-17, dated May 4, 2010. Updates include:

- For contracts awarded on or after May 4, 2010, a requirement to contact the contractor no later than ten business days prior to the beginning of each reporting period to remind them of the reporting requirements and the consequences of non-compliance.
- A requirement to contact and follow-up with each contractor that was non-compliant in the prior reporting period.
- A requirement to use the data extracts to track submission of and perform data quality reviews of filed contractor reports.
- A requirement to contact each contractor who has not submitted a report at least three business days before the end of the report submission phase.
- More detailed guidance on taking action against contractors who fail to comply with the reporting requirement.
- More detailed language in Attachment A on the potential consequences of non-compliance with reporting requirements.

The Acquisition Alert establishes procedures for the implementation and review of quarterly contractor reports for contract actions that use funds provided by the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (Recovery Act). It defines the roles and responsibilities of Contracting Officer, COTRs, and Heads of Contracting Activities.

2. Background/Reference to Regulations and Agency Policies/Procedures:

A. Recovery Act Reporting Requirements. Section 1512 of the Recovery Act requires that recipients of Recovery Act funds, including contractors, provide quarterly reports on:

(1) The total amount of recovery funds received from that agency;

(2) The amount of recovery funds received that were expended or obligated to projects or activities (for contracts, this is dollars invoiced); and

(3) A detailed list of all projects or activities for which recovery funds were expended or obligated, including—

a. The name of the project or activity;
b. A description of the project or activity;
c. An evaluation of the completion status of the project or activity;
d. An estimate of the number of jobs created and the number of jobs retained by the project or activity; and
e. Subcontracts awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (FFATA, Public Law 109–282). The Federal Acquisition Regulation (FAR 4.15) applies this to the prime contractor as well as to first tier subcontractors.

B. Office of Management and Budget (OMB) Guidance. OMB has issued the following implementing guidance and training materials:

(1) OMB Memorandum M-09-10, Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009, dated February 18, 2009, available at http://www.whitehouse.gov/omb/recovery_default

(2) OMB Memorandum M-09-15, Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009, dated April 3. 2009, available at http://www.whitehouse.gov/omb/recovery_default

(3) OMB Memorandum M-09-30, Improving Recovery Act Recipient Reporting, dated September 11, 2009, available at http://www.whitehouse.gov/omb/assets/agencyinformation_memoranda_2009_pdf/m09-30.pdf.

(4) OMB Memorandum M-10-05, Improving Compliance in Recovery Act Recipient Reporting, dated November 30, 2009, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-05.pdf.

(5) OMB Memorandum M-10-08, Updated Guidance on the American Recovery and Reinvestment Act -- Data Quality, Non-Reporting Recipients, and Reporting Job Estimates, dated December 18, 2009, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-08.pdf.

(6) OMB Memorandum M-10-14, Updated Guidance on the American Recovery and Reinvestment Act, dated March 22, 2010, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-14.pdf.

(7) OMB Memorandum M-10-17, Holding Recipients Accountable for Reporting Compliance under the American Recovery and Reinvestment Act, dated May 4, 2010, available at http://www.whitehouse.gov/omb/assets/memoranda_2010/m-10-17.pdf

(8) Office of Federal Procurement Policy Memorandum, Interim Guidance on Reviewing Contractor Reports on the Use of Recovery Act Funds in Accordance with FAR Clause 52.204-11, dated September 30, 2009, available at http://www.whitehouse.gov/omb/assets/recovery_act/OFPP_RecoveryReviewGuidance.pdf.

(9) Frequently Asked Questions (FAQs) available at http://www.whitehouse.gov/omb/recovery_faqs

C. Reporting Website and Resources. The Recovery Accountability and Transparency Board ("Board") has established https://www.federalreporting.gov (note that this is a secure site, "https") as the central government-wide data collection system for Federal Agencies and recipients of Federal awards under Section 1512 of the Recovery Act. The Board has also issued a Recipient Reporting Data Model that, a User Guide, FAQs, and other supporting technical documentation. These are available at FederalReporting.gov under "Downloads." The data dictionary defines the elements recipients are required to report. It constitutes a key reference for understanding the specific information to be reported in each required field. The User Guide provides step-by-step instructions for the various functions of the system. Note that while the site includes training webinars, these are hosted at YouTube.com. They cannot be accessed from a DHS computer. The reports submitted by contractors are made available to the public at Recovery.gov at http://www.recovery.gov/?q=content/recipient-reporting. There are additional FAQs and information at this site.

D. FAR Requirements and Contract Clause. An interim rule issued in Federal Acquisition Circular (FAC) 2005-32 incorporated Section 1512 reporting requirements in the FAR. FAC 2005-32 is available at http://acquisition.gov/far/fac/FAC-2005-32_Looseleaf.pdf. The interim rule added a new FAR Subpart 4.15 and a new clause, FAR 52.204-11, American Recovery and Reinvestment Act – Reporting Requirements. The clause requires contractors to submit quarterly reports beginning on July 10, 2009. In Civilian Agency Acquisition Council (CAAC) letter 2009-01 (dated July 2, 2009), the CAAC Chair provided notice that the Recovery Accountability and Transparency Board

extended the initial report due date to October 10, 2009. FAR Subpart 4.15 establishes specific responsibilities for Contracting Officers which include:

(1) Structuring the contract awards to allow for separate tracking of Recovery Act funds, to include awarding dedicated contracts or establishing contract line item number (CLIN) structures to mitigate commingling of Recovery funds with other funds.

(2) **Ensuring that the contractor complies with the reporting requirement.** The Contracting Officer shall exercise appropriate contract remedies should the contractor fail to comply and shall make the contractor's failure to comply with the reporting requirements part of the contractor's performance information under Subpart 42.15. Based on advice provided by the Office of Federal Procurement Policy to agency Senior Procurement Executives, Contracting Officers are responsible for identifying "significant errors and material omissions," but not for validating information such as the compensation or jobs data reported by contractors. OFPP plans to issue further guidance that will provide examples of "significant errors and material omissions."

E. FAR Council Notices to Contractors. The Civilian Agency Acquisition Council and Defense Acquisition Regulations Councils (the Councils) have issued the following Federal Register notices to Contractors:

(1) On August 25, 2009, a Federal Register Notice (74 FR 42877) informed Federal contractors that the Board had announced the availability of registration at www.federalreporting.gov. The Notice is available at http://www.regulations.gov/search/Regs/home.html#home.

(2) On September 25, 2009, a Federal Register Notice (74 FR 48971) provides assistance to Federal contractors in understanding the FederalReporting.gov centralized reporting tool. The notice is available at http://www.regulations.gov/search/Regs/home.html#home

F. OCPO Guidance. OCPO issued OCPO Regulatory Advisory 09-19 (and subsequent updates) to explain and provide guidance on the FAR contractor reporting requirements. The Advisory is available at http://www.dhs.gov/xopnbiz/gc_1242325946000.shtm.

3. Effective Date: This Acquisition Alert is effective upon issuance for all contracts and orders that use Recovery Act funds.

4. Acquisition Impact and Required Component Action:

A. Applicability: This Acquisition Alert applies to all solicitations, contracts, and interagency agreements for assisted acquisitions (reference Management Directive 125-02, *Interagency Agreements*) funded in whole or in part with Recovery Act funds,

except classified solicitations and contracts. This includes Governmentwide Acquisition Contracts (GWACs), multi-agency contracts (MACs), Federal Supply Schedule (FSS) contracts, or agency indefinite-delivery/indefinite-quantity (ID/IQ) contracts that will be funded with Recovery Act funds.

(1) This Alert applies to contracts both above and below the simplified acquisition threshold; contracts for commercial items; and commercially available off-the-shelf item contracts. (See definitions for simplified acquisition, commercial items, and commercially available off-the-shelf items at FAR 2.101).

(2) Section 1512 reporting requirements are limited to prime contractors and first tier subcontractors.

(3) The FAR clause at 52.204-11 references the FAR 2.101 definition of "contract" and makes clear that it includes "*...orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance*; ..."

B. Heads of Contracting Activities. HCAs shall monitor the assignment of Contracting Officers and COTRs to contracts and interagency agreements funded in whole or in part with Recovery Act funds.

(1) HCAs shall ensure that Contracting Officer and COTR assignments provide the level of expertise and support needed to effectively monitor contractor reporting.

(2) Each HCA must report the user.id, first name, and last name of each Contracting Officer and COTR assigned to Recovery Act contracts and interagency agreements not later than September 30, 2009. The HCA, or his or her designee, provide the user.ids and names to Erin Cummings of the DHS Recovery Team at erin.cummings@dhs.gov. Once an account is created from the user.id, the Contracting Officers will be contacted by Ms. Cummings with detailed instructions on how to use the site and documentation expectation. The *DHS Recovery Act Community* site may be accessed at http://mgmt-ocpo-sp.dhs.gov/arra/Pages/Default.aspx. The HCA shall ensure that the information remains current. The HCA must promptly submit user.ids and names as new Contracting Officers or COTRs are assigned and provide other updates as assignments change.

C. Contracting Officers: Contracting Officers must take the following actions:

(1) Within five (5) workdays of the effective date of this Alert for contracts awarded on or before the effective date, and at time of award for contracts issued thereafter, provide a notice to the contractor with the information described below. Provide a copy of the notice to the COTR. A sample letter is provided at Attachment A.

a. Refer the contractor to the reporting requirements set forth in clause FAR 52.204-11, *American Recovery and Reinvestment Act – Reporting Requirements*, as incorporated in the contract.

b. Note the requirement for the contractor to register at www.federalreporting.gov in advance of the required reporting date.

c. Provide the information listed below as reported into FPDS and DHS management systems. Report and assist in reconciling any differences between data as reported in FPDS and in DHS management systems. The first several items are not typically available to the contractor from any other source. Providing all of these elements will promote consistency in the data reported by the contractor into www.federalreporting.gov and DHS' data in FPDS and USASpending.gov. Consistency is critical as data from agency reports, FPDS, USASpending.gov, and contractor reports will be reviewed and compared by Congress, the Board, the Office of Management and Budget, the public, and other interested parties. Provide the following information:

- Award Type (identify to the recipient which of the three choices for Award Type applies: (1) Grant, (2) Loan, or (3) Federally Awarded Contract. Any other type of federal financial assistance that is neither a grant nor a loan should be identified, for purposes of Award Type, as a Grant)
- Award Number
- Order Number for Federally Awarded Contracts, if applicable
- Funding Agency Code (four characters)
- Awarding Agency Code (four characters)
- DUNS Number
- Government Contracting Office Code, if a federally awarded contract (6 characters or less)
- Award Date
- Amount of Award (For Federally Awarded Contracts: The total amount of dollars obligated by the Federal Agency)
- Activity Code (NAICS or NTEE-NPC , as applicable to the award). [Agencies should review the Recipient Reporting Data Model at the —Downloads tab at FederalReporting.gov to determine which applies].
- Program Source (TAS) Code (format will be two digits, a hyphen, and then four digits, for example, 70-7008)
- Contractor Congressional District
- Award Description
- Project Name or Project/Program Title
- Primary Place of Performance

d. Instruct the contractor to submit subsequent quarterly reports (i.e., after the initial report) using the Copy and Copy Forward function. This process will create and preserve a link from the previous quarter's report to the new quarterly report to be submitted.

NOTE 1: The Award Number, Order Number, and DUNS Number are added by Amendment 02. If the Contracting Officer provided a notice to a contractor prior to the issuance of Amendment 01 which did not provide these items of award information, the Contracting Officer must issue a supplemental notice by letter or email to provide these not later than December 23, 2009. Post a copy of the supplemental notice at http://mgmt-ocpo-sp.dhs.gov/arra/Pages/Default.aspx.

NOTE 2: The requirement to instruct the contractor to use the Copy and Copy Forward function is added by Amendment 03. For contracts awarded prior to the issuance of Amendment 03, the Contracting Officer must provide this instruction through an email or other written notice to the contractor not later than March 31, 2010.

e. Post a copy of the notice to the contractor on the *DHS Recovery Act Community* site at http://mgmt-ocpo-sp.dhs.gov/arra/Pages/Default.aspx. A "Contracts" folder has been established in each Component's work area for posting these notices. Posting the notice is critical for DHS to be able to report compliance to OMB in accordance with OMB Memorandum M-10-08.

(2) Review reporting requirements and procedures as part of any post-award orientation meeting.

(3) Register at www.federalreporting.gov. Where the system asks who the Contracting Officer represents, select "federal agency." For contracts awarded on or prior to the effective date of this Alert, Contracting Officers must register within five (5) workdays of the effective date. For contracts awarded after the effective date of this Alert, Contracting Officers must register within five (5) workdays of award.

(4) Provide reminder notices in advance of the start of each reporting period as prescribed in Attachment B.

(5) Provide notice to each contractor who has not submitted its report within three business days of before the end of the report submission phase as prescribed in Attachment B.

(6) For each contractor who fails to submit a report within the report submission period, provide the notice prescribed in Attachment B.

(7) For contracts awarded on or after May 4, 2010, if the contract is awarded within the ten business days prior to the beginning of the reporting quarter, inform the contractor of its reporting obligation in writing at the time of award (see paragraph 4.C(1)) and via a phone call.

(8) Review each contractor report following the procedures in Attachment B. Maintain a log of significant errors and material omissions using the format provided in Attachment C. Note that these procedures supplement Recovery Accountability and Transparency Board instructions and OMB (including OFPP) guidance. In the event of a conflict, contact OCPO.

(9) For each contractor who fails to submit a report the report submission period:

a. Inform the contractor in writing of the potential consequences of current and continued non-compliance of the Recovery Act, Section 1512 reporting responsibilities.

b. Determine the specific reasons a contractor failed to submit a report as required. Work to identify and remediate instances in which:

- A contractor demonstrates systemic or chronic reporting problems and/or otherwise fails to correct such problems as identified by DHS; and

- A contractor demonstrates systemic or chronic deficiencies in meeting its responsibilities to review and identify data quality problems of subcontractors.

c. If the contractor is non-responsive, take appropriate actions, which can include withholding payments until the contractor becomes responsive and implementing additional sanctions and remedies. Confirm the non-reporting contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by DHS.

(10) If a contractor fails to submit required reports for two or more successive reporting periods, take appropriate action within 20 business days of the end of the reporting period. The Contracting Officer must report the contractor's failure to comply with the reporting requirements as part of the contractor's performance information. See FAR 4.1501(d) and 42.15. Additional actions may include, but are not limited to:

a. Increasing award monitoring and surveillance regarding reporting, such as requiring more frequent progress reports.

b. Formally elevating the failure to perform in accordance with the terms and conditions of the award within the contractor's organization or company.

c. Withholding payments until the contractor becomes fully compliant with Section 1512 reporting requirements.

d. Considering referral for suspension or debarment under FAR 9.4 and HSAM 3009.4. If the non-compliance appears to be fraudulent, refer the matter to the Office of the Inspector General.

(11) The Contracting Officer, at his or her discretion, may delegate the monitoring and reporting responsibilities to the COTR. The delegation must be in writing either within the COTR appointment memorandum or by a separate memorandum. Attachment D provides a sample delegation memorandum. Any such delegation is subject to the following conditions:

a. The COTR must register at www.federalreporting.gov.

b. The Contracting Officer shall not delegate any authority to address performance issues that authorize the COTR to sign contractual documents, order contract changes, modify contract terms, or create any commitment or liability on the part of the Government different from that set forth in the contract.

c. The Contracting Officer shall not delegate responsibility for the notifications to the contractor required by paragraphs 4.C(1) or 4.C(5).

(12) Contracting Officers should avoid changing Federal agency Award IDs previously provided to contractors in prior quarters. DHS must seek OMB's approval to change or modify Award IDs for which the contractor has already begun to report. This does *not* mean corrections to inaccurately reported Award IDs in recipient reports, but a change in the naming convention/formatting or issuing entirely new award numbers that will not be recognized within the system. To request an Award ID change, the Contracting Officer must prepare an email for the HCA. The subject line must read "[Agency Name] Request to change Award IDs" and the message must contain:

- Rationale for Request
- Program Name
- Recipient type (e.g. state/local government, Federal contractor, etc.)
- Number of reports that will be affected

The HCA must submit the request to RecoveryLeadership@hq.dhs.gov.

D. Contracting Officer Technical Representatives: When delegated responsibility by the Contracting Officer for monitoring a contractor's quarterly reports under the Recovery Act, the COTR shall:

(1) Register at www.federalreporting.gov. Where the system asks who the COTR represents, select "federal agency." The COTR must register within five (5) workdays of the Contracting Officer's delegation.

(2) Perform the monitoring and review responsibilities delegated by the Contracting Officer.

(3) Resolve performance issues using remedies within the scope and limitations of the COTR's delegated authority. When performance issues require the exercise of contractual remedies that are outside of the COTR's authority, refer the issue to the Contracting Officer.

E. Interagency Agreements: The procedures in this paragraph apply to each interagency agreement for an assisted acquisition that uses Recovery Act funds.

(1) ,The Component shall ensure that the agreement incorporates terms and conditions that:

a. Require the servicing agency to issue the notice to the contractors described in paragraph 4.C(1).

b. Clearly assign responsibilities for reviewing contractors' quarterly reports in accordance with FAR Subpart 4.15 and related guidance issued by OMB and the Recovery Accountability and Transparency Board.

c. Clearly assign responsibilities for addressing a contractor's failure to comply with the reporting requirements.

(2) Unless special circumstances apply, the agency that retains responsibility for administering the contracts or task or delivery orders issued under the interagency agreement should have responsibility for reviewing reports and addressing contractor noncompliance.

(3) For interagency agreements awarded prior to the effective date of this Alert and under which contracts or orders have been or will be awarded prior to October 1, 2009, modify the agreement not later than September 25, 2009 to incorporate the requirements of this paragraph.

(4) For interagency agreements awarded prior to the effective date of this Alert, and under which the initial contract or order will be awarded on or after October 1, 2009, modify the agreement not later than October 16, 2009 to incorporate the requirements of this paragraph.

F. Required Milestones. Attachment B summarizes key milestones for implementing and monitoring contractor reporting under the Recovery Act. OCPO will

provide a notice when the RATB establishes different timelines for a given reporting period.

5. Expiration Date: This Acquisition Alert remains in full force and effect through the completion of all Recovery Act reporting to OMB and the Recovery Accountability and Transparency Board.

6. Attachments:
Attachment A: Sample Notice from Contracting Officer to Contractor
Attachment B: Procedures for Reviewing Contractor Recovery Act Reports
Attachment C: Log of Significant Errors and Material Omissions
Attachment D: Sample Delegation from the Contracting Officer to COTR

7. Additional Information: Questions or comments about this Alert may be directed to Gloria Sochon at (202) 447-5307 or by e-mail to gloria.sochon@dhs.gov

Distribution Instructions: Disseminate to the widest possible audience-Acquisition Staff, Program Offices, Office of the General Counsel, etc.

Attachment A: Sample Notice from Contracting Officer to Contractor

Addressee's Name
Address Line 1
Address Line 2
City, State, Zip Code

Re: [Contract No.] – Recovery Act Reporting Requirements

Dear Addressee:

This letter provides information to assist [Contractor Name] in completing the quarterly reports required under Contract No. [Enter], clause FAR 52.204-11, *American Recovery and Reinvestment Act – Reporting Requirements*. Transparency and accountability are key goals of the American Recovery and Reinvestment Act. The quarterly reports provide information to demonstrate that the recipients and uses of recovery funds are transparent to the public, and that the public benefits of these funds are reported clearly, accurately, and in a timely manner.

[Contractor Name] must report on this contract beginning with the first quarter that you submit an invoice. That is, if ABC submits its first invoice on or before December 31, 2009, ABC must report to FederalReporting.gov between January 1 and January 10, 2010. If the first invoice is submitted between January 1, 2020 and March 31, 2010, the first report must be submitted between April 1 and April 10, 2010. [*Note to Contracting Officer – adjust dates accordingly for contract awarded after January 1, 2010.*] In order to ensure able to report in a timely manner, DHS recommends that the personnel designated to enter the report register promptly at FederalReporting.gov and become familiar with the system. To assist in the process, a Registration Quick Reference Card is available at https://www.federalreporting.gov/federalreporting/documentation/FederalReporting-dot-gov%20Registration%20Quick%20Reference%20Card%20v1.pdf.

A key resource at the site, the *Recipient Reporting Data Model (*available under *"Downloads")*, provides definitions for the required elements. The Office of Management and Budget also provides online training available at www.whitehouse.gov/Recovery/WebinarTrainingMaterials.

Entry at FederalReporting.gov will require basic identifying information on the contract. To ensure consistency with other DHS reports on this contract, I am providing the following information. Please use this information in preparing your report. If you have a question on any element or believe the information is not correct, please contact me as soon as possible to resolve the concern.

Data Element	Value
Award Type	
Award Number	
Order Number	
Funding Agency Code	
Awarding Agency Code	
DUNS Number	
Government Contracting Office Code	
Award Date	
Amount of Award	
Activity Code	
Program Source	
Contractor Congressional District	
Award Description	
Project Name or Project/Program Title	
Primary Place of Performance	

For reports filed subsequent to the initial report, use the Copy and Copy Forward function at FederalReporting.gov. This process will create and preserve a link from the previous quarter's report to the new quarterly report to be submitted. Additional details are found in Chapter 15, Copy Forward and Copy Function of the Recovery Accountability and Transparency Board's (RATB) in-bound recipient reporting user manual. The RATB user manuals are available online at www.FederalReporting.gov

Please note that submission of the reports is a contract requirement. Pursuant to Federal Acquisition Regulation 4.1501(c) and (d), failure to comply will result in the government exercising its contractual remedies. Remedies may include, but are not limited to:

- Increasing award monitoring and surveillance regarding reporting, such as requiring frequent progress reports.
- Formally elevating the failure to perform in accordance with the terms and conditions of the contract within the Contractor's organization or company.
- Withholding payments until the Contractor becomes fully compliant with Section 1512 reporting requirements

Also, failure to comply with the reporting requirements will be a part of [Contractor Name]'s performance information under FAR 42.15.

I look forward to working with you on this initiative in support of our nation's economic recovery. If you have any questions regarding this letter, please contact me at [enter email and phone].

Sincerely,

[Name]
Contracting Officer

cc: [enter COTR]
[enter others as applicable]

Attachment B: Procedures for Reviewing Contractor Recovery Act Reports

These procedures supplement Recovery Accountability and Transparency Board instructions and OMB (including OFPP) guidance, In the event of a conflict, contact OCPO. If delegated to the Contracting Officer's Technical Representative (COTR), substitute "COTR" for "Contracting Officer."

NOTE ON TIMEFRAMES: The Recovery Accountability and Transparency Board (RATB) has revised the timeframes for given reporting periods. However, while the timeframes may change, the procedures for each step apply. OCPO will provide separate notice to Components when the RATB post updates to the timeframes.

Prior to the start of each reporting period:
The DHS Recovery Act Leadership Team will provide each Component Accountable Official with a list of contractors who have received Recovery Act funds, but who have not registered at FederalReporting.gov. The Contracting Officer must promptly contact each such contractor to determine the reasons for not registering, assist the contractor in obtaining any technical support needed, and address any noncompliance issues.

At least ten (10) business days prior the start date to each reporting period:
Send a reminder notice for reporting. Contractors are required to begin reporting for the first quarter they submit an invoice and each quarter thereafter. Document the reminder in appropriate administrative records.

For contracts awarded on or after May 4, 2010, the reminder may be through a phone call, but must be confirmed by a letter faxed or mailed to the recipient. The reminder notice must contain the Notice Regarding Consequences of Non-Compliance set forth in Exhibit 1.

Support the contractor in good faith efforts to resolve system or definition questions.

At least three (3) business days prior to the beginning of a new reporting period, contact each contractor that was noncompliant in the prior reporting period to remind it of the reporting requirements and the consequences of non-compliance. This contact must be timely. It may be completed through a phone call or email, but must be confirmed by a letter faxed or mailed to the contractor. Continue to follow-up with these contractors throughout the reporting period to consistently and comprehensively pursue compliance.

Between the 1st and 10th day following the close of each quarter, the DHS Recovery Act Leadership Team will provide data extract reports on the status of contractors who have registered and have initiated reports. Use the data extracts to perform data quality reviews of filed contractor reports and to determine if all Recovery Act contractors have fulfilled their Recovery Act, Section 1512 reporting responsibilities. The data extracts are located at the *DHS Recovery Act Community*, under Recipient Reporting at:

http://mgmt-ocpo-sp.dhs.gov/arra/Recipient%20Reporting/Forms/AllItems.aspx?RootFolder=%2farra%2fRecipient%20Reporting%2fFederalReporting%2egov%20Recipient%20Data%20Extract%20Reports&FolderCTID=&View=%7bB64633E4%2dC2C8%2d42D0%2dA70F%2d89FEC18C9E1D%7d

Notice Regarding Consequences of Non-Compliance

Failure to comply with the reporting requirements of the American Recovery and Reinvestment Act, Section 1512 reporting responsibilities may result in the Government pursuing one or more of the following remedies as appropriate:

- Increasing award monitoring and surveillance regarding reporting, such as requiring frequent progress reports.
- Including the Contractor's failure to comply with the reporting requirements as part of performance information under FAR 42.15.
- Formally elevating the failure to perform in accordance with the terms and conditions of the contract within the Contractor's organization or company.
- Withholding payments until the Contractor becomes fully compliant with Section 1512 reporting requirements.
- Termination of the contract under [*cite the contract clause for termination for default or cause, as applicable*].
- Other remedies available to the Government.

The Government may also initiate debarment or suspension proceedings when in the public interest for the Government's protection.

Further, in some cases, intentional reporting of false information can result in civil and/or criminal penalties.

Exhibit 1. Notice Regarding Consequences of Non-Compliance

At least three business days before the end of the report submission phase, when the Contracting Officer identifies a contractor who has not reported, he or she must contact the contractor through phone call or email. Ascertain the contractor's ability to submit its report and to ensure timely filing. Ensure that the contractor understands the reporting milestones and requirements and how to obtain technical assistance if needed. In the case of a contractor who did not comply in the prior reporting period, the follow-up must occur consistently throughout the period, not just in the last three business days (see "At least three (3) business days prior to the beginning of a new reporting period").

Between the 11th and the 21st day following the close of each quarter,

For each contractor who failed to submit a report during the report submission period:

a. Inform the contractor in writing of the potential consequences of current and continued non-compliance of the Recovery Act, Section 1512 reporting responsibilities. Include the Notice Regarding Consequences of Non-Compliance set forth in Exhibit 1.

b. Determine the specific reasons a contractor failed to submit a report as required.

   1. Provide assistance to contractors who experience technical challenges, difficulty in understanding coding or other situations where the agency may be able to either provide direct assistance or an appropriate referral to avoid similar problems in the next reporting cycle.

   2. Increase award monitoring and surveillance techniques regarding reporting, including monitoring the contractor on progress in the steps necessary to overcome any challenges to successful reporting for the next quarter.

c. If the contractor is non-responsive, take appropriate actions, which can include withholding payments until the contractor becomes responsive and implementing additional sanctions and remedies. [***Note for COTRs***: *Except for withholding payment, consult with the Contracting Officer before initiating any other remedy.*]

Begin reviewing contractors' submitted reports to: **(1) ensure that the report information is consistent with the award and (2) identify *significant errors and material omissions***. During this period the Contracting Officer may provide comments directly to the Contractor (not through FederalReporting.gov). The contractor may make corrections to any data in their report. These changes will be tracked through version control. While the Contracting Officer must review contractor reports for significant errors and material omissions, he or she is not required to validate information such as the compensation or jobs data reported by the contractor. Key items to check include:

a. Corrections from prior period. Confirm that the contractor has made any corrections noted from the prior reporting period that were held over to the current period.

b. Inconsistent and misaligned data. Confirm that the information on the contract is accurate and consistent with information reported in FPDS and DHS management and financial systems. As necessary, make corrections to the FPDS and DHS records, and/or request that the contractor make corrections in its report. The following guidelines assist in identifying inconsistent or misaligned data:

Order Number – Identify order numbers that do not match agency documentation.

Agency vs. Treasury Account Symbol (TAS) – Identify reports in which the TAS codes do not match the funding Component and program code.

Award Type vs. Agency Code – Identify reports that have an erroneous award type (e.g., a contract reported as a grant or loan).

Final Report vs. Project Status – Identify reports in which the contractor indicated that this was the final report, but the project status does not indicate —Fully Complete.

Final Report vs. Funds Invoiced – Identify reports in which the contractor indicated this was the final report, but they have yet to invoice for funds that were awarded.

Project Status vs. Funds Invoiced – Identify reports in which the contractor indicates that the project is Fully Completed, but the Invoiced Amount is minimal compared to award amount.

Award Date vs. Jobs Created/Retained – Identify reports with award dates that are after the end of the reporting period and the recipient has reported jobs created/retained.

Award Date vs. Projects Completed – Identify reports with award dates that are after the end of the reporting period, but the contractor has reported the project as completed.

Recipient DUNS number vs. Numbers in FPDS and DHS Management and Financial Systems – Identify DUNS numbers that are in FPDS and DHS management and financial systems but that are not in FederalReporting.gov and vice versa.

Congressional District – Identify congressional districts with a value greater than "53" with the exception of "97," which is used for foreign countries. If you unsure of the number of districts in the state under review, contact the Office of Congressional Affairs.

c. **Project progress**. Check the contractor's reports on project progress for reasonableness and consistency with other sources of progress information (day-to-day monitoring, progress reports, management or progress review meetings, etc.).

d. **Amount invoiced**. Check the reported amount invoiced against contract invoice records and financial system available (e.g., FFMS, SAP, etc.).

e. **Number of jobs**. The contractor reports a single, combined number of jobs created and retained. Check the number for reasonableness and consistency with other sources of progress information (day-to-day monitoring, progress

reports, management or progress review meetings, etc.). Note the definitions in the FAR clause at FAR 52.204-11:

> "'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." [*emphasis added*]
>
> "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." [*emphasis added*]

The FederalReporting.gov Recipient Reporting Data Model provides further clarification" Number of Jobs" as follows:

> "Jobs created and retained. An estimate of the combined number of jobs created and jobs retained funded by the Recovery Act during the current reporting quarter in the United States and outlying areas. For grants and loans, the number shall include the number of jobs created and retained by sub recipients and vendors. The number shall be expressed as "full-time equivalent" (FTE), calculated quarterly as all hours worked and funded by the Recovery Act during the current reporting quarter divided by the total number of hours in a full-time schedule for the quarter, as defined by the recipient or federal contractor. For more information on how to perform this calculation, please see OMB Memorandum M-10-08, found at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-08.pdf. An example of calculating jobs for federal contractors can be found at http://www.whitehouse.gov/omb/recovery_faqs_contractors
>
> "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. A job cannot be reported as both created and retained. As used in this instruction,

United States means the 50 States and the District of Columbia, and outlying areas means—

(1) Commonwealths.
(i) Puerto Rico.
(ii) The Northern Mariana Islands;
(2) Territories.
(i) American Samoa.
(ii) Guam.
(iii) U.S. Virgin Islands; and
(3) Minor outlying islands.
(i) Baker Island.
(ii) Howland Island.
(iii) Jarvis Island.
(iv) Johnston Atoll.
(v) Kingman Reef.
(vi) Midway Islands.
(vii) Navassa Island.
(viii) Palmyra Atoll.
(ix) Wake Atoll.

"For Grants and Loans: See OMB Memo M-10-08

"For Federally Awarded Contracts: See FAR Clause 52.204-11"

f. **Highly Compensated Officers.** For the field named "Recipient Highly Compensated Officers" the contractor must report the names and total compensation of each of its five most highly compensated officers under the conditions described at FAR 52.204-11(d)(8). If the contractor indicates "No," that reporting this information does not apply, submit a comment asking the contractor to identify under which condition it is exempt:

- In the contractor's preceding fiscal year, the contractor received less than 80 percent of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements.

- In the contractor's preceding fiscal year, the contractor received less than $25,000,000 in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements.

- The public has 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.

DHS needs to ensure that contractors provide the required compensation information or that they are appropriately exempt. If the contractor fails to respond to the comment, note it on the log as a material omission.

g. **Significant errors and material omissions**. OFPP's memorandum of September 30, 2009, provides the following guidance on identifying significant errors and material omissions:

> **"5. What is a *significant error* or *material omission*?**
>
> "A *significant error* is defined as data that is not reported accurately and where such erroneous reporting results in significant risk that the public will be misled or confused by the contractor's report. Examples of significant errors include, **but are not limited to:**
>
> The cumulative invoiced amount reported is in excess of the obligation;
>
> The contractor incorrectly selects *fully complete*, to describe an incomplete project; or;
>
> The contract award/obligation amount was for a relatively small dollar amount, such as $100,000, and the contractor reports the number of jobs created and retained cumulatively as 100,000.
>
> "A *material omission* is defined as data that is not responsive to a specific data element. When reviewing for material omissions, the agency reviewer should do so with the goals of transparency in mind. For instance, where the contractor is required to provide a narrative description, it must be sufficiently clear to facilitate understanding by the general public."

OMB Memorandum 10-08 notes that the data fields of major concern for significant errors are:

- Federal amount of the award
- Number of jobs retained or created
- Federal award number
- Recipient name

In addition, OMB Memorandum 10-08 notes that material omissions include the following:

- Failure of a Federal Recovery Act award recipient to report on a received award as required by the terms of their award. The Contracting Officer (or COTR, if delegated responsibility) must identify specific awards going to a contractor(s) by identifying the award number, recipient name and award

date and other information as necessary. If the Contracting Officer (or COTR, if delegated responsibility) determines a particular contractor did not report, he or she must notify the contractor to submit a report either through the comment function of FederalReporting.gov or by notifying the contractor directly.

- Data in a report that is not responsive to a specific data element. For instance, where a recipient is required to provide a narrative description, such as in "Award Description," the description must be sufficiently clear to facilitate understanding by the general public.

Note that the narrative description fields are required items. Even if the contractor reports "Project Status" as not started or "Number of Jobs" as 0, the corresponding narrative must provide an explanation.

The DHS Leadership Recovery Act Team will provide a download of contractor reports at the DHS Recovery Act Community, http://mgmt-ocpo-sp.dhs.gov/arra/Pages/Default.aspx. This provides an alternate format that may help in quickly identifying omissions and errors.

Between the 22nd and 26th provide comments to the contractor. Reference the User Guide available at https://www.federalreporting.gov/federalreporting/downloads.do#docs (particularly Chapters 11-13) for instructions on how to provide comments. The system will provide a tool for the Contracting Officer to notify the contractor of suspected errors or omissions. Unless the Contracting Officer or other agency reviewer provides comments, FederalReporting.gov will not allow the contractor to make any changes to its report. The system will accept comments up to the 29th, however, OFPP encourages submission by the 26th. To accommodate the tight timeframes for review and comment, coordinate early and maintain open dialogue with the contractor to avoid last minute misunderstandings. The Contracting Officer must indicate the review status for each contractor report. The review status indicators are:

- Not Reviewed (this is the default setting and will appear unless changed by the Contracting Officer)
- Reviewed, no comments
- Reviewed, with comments. If the system does not allow the reviewer to set this status as the final status at the end of the review period, then set the status to "Not Reviewed"

Maintain a log of significant errors and material omissions for each contract report that is reviewed. Use the log format provided in Attachment C. ***Provide a copy of the log to the Component Accountable Official on 30th day of each reporting period***.

Between the 27th and 29th day, if the contractor received a notification of comments, the contractor may make corrections to the report. All corrections must be complete by the

end of day 29. On the 30th day after the close of each quarter, the contractor reports are published on www.recovery.gov. No changes or adjustments can be made until the next quarterly reporting period.

Continuous Correction Period: The FederalReporting.gov solution is open for continuous corrections of data following the close of a quarter. Such corrections can only be made for the reporting quarter (i.e., the most recent quarter). The DHS Recovery Act Leadership Team is obtaining clarification from OMB on the requirements for Government review of changes to contractor reports during the continuous correction period.

Documentation: Maintain a record of all report reminders and other communications regarding reporting issues. Note the reason for any instance of non-compliance, the degree of severity, and corrective actions taken.

Attachment C: Log of Significant Errors and Material Omissions

Significant Error

Award #	Award Type	Awarding Agency Code	Awarding Agency Name	Program Source TAS	CFDA #	Recipient Name	Award Description	Type of Error

Material Omission

Award #	Award Type	Awarding Agency Code	Awarding Agency Name	Program Source TAS	CFDA #	Recipient Name	Award Description	Reason

Attachment D: Sample Delegation of Authority to COTR

MEMORANDUM FOR: [Addressee]

FROM: [Name]
Contracting Officer, [Component Contracting Activity]

SUBJECT: Contract No. [enter] -- Delegation of Responsibilities for Recovery Act Reporting Requirements

In addition to the responsibilities set forth in your appointment memorandum dated [enter date], as the Contracting Officer's Technical Representative for Contract No. [enter] with [Contractor's name], you are assigned responsibilities for monitoring and reviewing the contractor's quarterly reports under clause FAR 52.204-11, *American Recovery and Reinvestment Act – Reporting Requirements*. Transparency and accountability are key goals of the American Recovery and Reinvestment Act. The quarterly reports provide information to demonstrate that the recipients and uses of recovery funds are transparent to the public, and that the public benefits of these funds are reported clearly, accurately, and in a timely manner.

The contractor will enter its reports at www.FederalReporting.gov. In order to review the reports, you will need to register at FederalReporting.gov. To ensure that you have the necessary access and to prepare to perform reviews, you must register at FederalReporting.gov within five (5) workdays of this memorandum. To assist in the process, a Registration Quick Reference Card for Federal Reporting is available at https://www.federalreporting.gov/federalreporting/documentation/FederalReporting-dot-gov%20Registration%20Quick%20Reference%20Card%20v1.pdf.

The contractor's reports are due by the 10th day after the close of each quarter, beginning with the first quarter that the contractor submits an invoice. Following the procedures in Attachment A to this memorandum, you must:

1. Provide a reminder notice to the contractor ten business days prior to the beginning of each reporting period.

2. If the contractor was non-compliant in the prior reporting period, contact the contractor at least three business days prior to the beginning of the new reporting period.

3. If the contractor has not submitted its reports at least three business days before the end of the report submission phase, contact the contractor as prescribed.

4. Review each report in accordance with the review procedures.

5. Maintain a log of significant errors and material omissions for each contract report that you review using the format provided in Attachment B. Provide a copy of the log to the Component Accountable Official within one day of the completion of each reporting period.

6. Take actions to mitigate contractor compliance issues. Support the contractor in good faith efforts to resolve system or definition questions. Provide documentation in appropriate administrative records. Actions that you should take include:

    a. Continue to instruct each non-reporting contractor to submit reports for the forthcoming and subsequent reporting quarters.

    b. Determine the specific reasons a contractor failed to submit a report as required.

    c. Provide assistance to contractors who experience technical challenges, difficulty in understanding coding or other situations where the agency may be able to either provide direct assistance or an appropriate referral to avoid similar problems in the next reporting cycle.

    d. Describe in plain language the consequences of current and continued non-compliance. On a case-by-case basis, such findings can result in termination of Federal funding. Further, in some cases, intentional reporting of false information can result in civil and/or criminal penalties. Recipients who have failed to submit a Section 1512 report as required by the terms of their award are considered to be non-compliant. Non-compliant recipients, including those who are persistently late or negligent in their reporting obligations, are subject to Federal action, up to and including the termination of Federal funding or the ability to receive Federal funds in the future.

7. Report the contractor's failure to comply with the reporting requirements as part of the contractor's performance information.

8. If the contractor fails to submit required reports for two or more successive quarters, consult with the Contracting Officer on further appropriate action.

If you have any questions regarding this delegation of responsibility, please contact me at [email] or [phone number].

Attachments:
Attachment A: Procedures for Reviewing Contractor Recovery Act Reports
Attachment B: Log of Significant Errors and Material Omissions
[*Note to Contracting Officer: Re-number the corresponding attachments to Acquisition Alert 09-14 and attach them to the delegation memorandum.*]