

AMENDMENT OF SOLICITATION/ON/MODIFICATION OF CONTRACT		1. CONTRACT ID CODE	PAGE OF PAGES 1 2
2. AMENDMENT/MODIFICATION NO. 097	3. EFFECTIVE DATE See Block 16C	4. REQUISITION/PURCHASE REQ. NO. 09EM000495	5. PROJECT NO. (If applicable)
6. ISSUED BY Idaho Operations U.S. Department of Energy Idaho Operations 1955 Fremont Avenue Idaho Falls ID 83415	CODE 00701	7. ADMINISTERED BY (If other than Item 6) Idaho Operations U.S. Department of Energy Idaho Operations 1955 Fremont Avenue MS 1221 Idaho Falls ID 83415	CODE 00701
8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) CH2M WG IDAHO LLC Attn: Ronald J. Slottke 151 NORTH RIDGE AVENUE SUITE 150 IDAHO FALLS ID 834024039		(x) 9A. AMENDMENT OF SOLICITATION NO.	
CODE 166527569		FACILITY CODE	9B. DATED (SEE ITEM 11)
		X 10A. MODIFICATION OF CONTRACT/ORDER NO. DE-AC07-05ID14516	
			10B. DATED (SEE ITEM 11) 03/23/2005

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended. Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required) Net Increase: \$362,000,000.00

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
X	D. OTHER (Specify type of modification and authority) American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Ac

E. IMPORTANT: Contractor is not, is required to sign this document and return 1 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

Tax ID Number: 05-0607601
 DUNS Number: 166527569
 RECOVERY ACT - Mod 097, undefinitized modification, will enable current contract requirements to be met, accelerate existing EM out-year scope, complete deactivation and decommissioning (D&D) of additional facilities, consolidate spent nuclear fuel (SNF), and accelerate the disposition of legacy materials.

Refer to the SF30 continuation pages document for Continued ...

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Ronald J. Slottke, UP Admin. Services	16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Maria M. Mitchell
15B. CONTRACTOR/OFFEROR <i>(Signature of person authorized to sign)</i>	15C. DATE SIGNED 4/15/09
	16B. UNITED STATES OF AMERICA <i>(Signature of Contracting Officer)</i>
	16C. DATE SIGNED 4/15/09

CONTINUATION SHEET

REFERENCE NO. OF DOCUMENT BEING CONTINUED
DE-AC07-05ID14516/097

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NAME OF OFFEROR OR CONTRACTOR
CH2M WG IDAHO LLC

ITEM NO. (A)	SUPPLIES/SERVICES (B)	QUANTITY (C)	UNIT (D)	UNIT PRICE (E)	AMOUNT (F)
00001	<p>the full text of the Recovery Act undefinitized modification. Also included are attachments 1-5 to accompany the modification. Subj to Retent: NO Delivery Location Code: 00701 Idaho Operations U.S. Department of Energy Idaho Operations 1955 Fremont Avenue Idaho Falls ID 83415 US</p> <p>FOB: Destination Period of Performance: 03/23/2005 to 09/30/2012</p> <p>Change Item 00001 to read as follows(amount shown is the total amount):</p> <p>IDAHO CLEANUP PROJECT AT THE INL</p> <p>Line item value is:\$3,013,170,360.00 Incrementally Funded Amount: \$1,851,762,061.34</p> <p>RECOVERY ACT - Within Target Cost Funding Obligation: \$132,800,000 of the net \$362,000,000 obligation for Recovery Act Mod 097. See Attached Detailed Funding Profile for details.</p>				3,013,170,360.00
00002	<p>Change Item 00002 to read as follows(amount shown is the total amount):</p> <p>B.5 Items Not Included in Target Cost</p> <p>Line item value is:\$343,091,625.84 Incrementally Funded Amount: \$343,091,625.84</p> <p>RECOVERY ACT - B.5 Obligation: \$229,200,000 of the net total \$362,000,000 obligation for Recovery Act Modification 097. See Attached Detailed Funding Profile for details.</p>				343,091,625.84

The purpose of this modification is to issue a change order revising the statement of work and to make certain other changes to the contract terms associated with the revised statement of work. These revisions are being made under the authority of the contract clause contained in Section I.81, entitled “Changes – Cost Reimbursement (AUG 1987) and Alternate 1 (APR 1984)” and by mutual agreement of the parties.

The work described in this modification shall be performed using funds obligated under this contract, appropriated under the American Recovery and Reinvestment Act of 2009, Pub. L. 1115 (Recovery Act) and as such is subject to special statutory conditions.

The contractor is to begin work immediately. The contractor is authorized to incur costs not to exceed \$108,600,000, consistent with the other contract terms and conditions and pending definitization of this change.

The following changes are hereby made to the contract:

1. SECTION B, SUPPLIES OR SERVICES AND PRICES/COSTS is amended as follows:

- A. **Section B.2 Contract Funding Profile** – B.2 will be revised upon completion of negotiations.
- B. **Section B.3 Total Contract Target Cost, Fee, and Completion Date** – B.3 will be revised upon completion of negotiations.
- C. **Section B.4 Incentive Fee** – is modified to include the following:

No fee shall be paid to the contractor for work under this change order for the Recovery Act work, including provisional fee, prior to definitization.

- D. **Section B.6 Fee Payment Schedule and Adjustments** – B.6 will be revised upon completion of negotiations.
- E. **Section B.11, American Recovery and Reinvestment Act (Recovery Act)** is incorporated as follows:

The contractor shall, in accordance with the terms of this contract, provide the personnel, materials, supplies, and services and do all things necessary for, or incident to, providing its best efforts to perform the Recovery Act work. This work is generally described as follows:

The Recovery Act work will enable current contract requirements to be met, accelerate existing EM out-year scope, complete deactivation and decommissioning (D&D) of additional facilities, consolidate spent nuclear fuel (SNF), and accelerate the disposition of legacy materials.

This work is distinctly identifiable Recovery Act work and separate from the all other work descriptions with separate deliverables, schedules, performance reporting and incentives as applicable.

The detailed description of the work is contained in this modification identified as Section B.5 and Section C, including applicable attachments to Section J.

F. **Section B.9 Obligations of Funds** is modified to add the following:

Pursuant to the clause in Section I, entitled "Limitation of Funds," total funds in the amount of \$362,000,000, are obligated herein and made available for payment of allowable costs and fee earned related only to the Recovery Act work from the effective date of this modification through the period of performance for the Recovery Act work, contained in Section F.

G. **Section B.5 Items Not Included in Target Cost** is modified to include the following Recovery Act work. Each B.5 activity listed below will be revised upon completion of negotiations. All B.5 activities must be completed by September 30, 2011.

The following listed scope and their supporting activities (i.e. Waste Disposition, Environmental Services, etc.) are funded by the Recovery Act and are subject to the requirements of the Recovery Act as incorporated herein.

In addition, the contractor shall evaluate and pursue the most cost effective materials transportation method(s) between MFC and INTEC. This transportation method shall be such as to support D&D debris transfers, SNF transfers and the RH-TRU/RSWF work scope.

a. **INTEC Fuel Receipts/Transfers/Deactivation & Decommissioning (D&D) Activities:**

i. **INTEC Fuel Receipts/Transfers:**

Schedule

The contractor shall schedule activities in a manner that promotes efficiency and effectiveness; however, work for this task shall be completed by September 30, 2011.

Performance Outcomes, Measures, and Deliverables

1. Retrieve, package and transport to MFC approximately 0.13 MTHM of Experimental Breeder Reactor II (EBR-II) spent nuclear fuel (SNF) currently stored at the Idaho Nuclear Technology and Engineering Center (INTEC).

2. Perform all preparatory, repackaging, procurement, licensing, engineering, operations, maintenance, and management tasks required to retrieve the EBR-II SNF located in the CPP-666 wet storage basin.
The work scope will include retrieving, repackaging as necessary, loading the packaged fuel into casks, transporting to the Hot Fuel Examination Facility (HFEF) truck bay at the Materials and Fuels Complex (MFC) for unloading by others.
3. Perform updates to Authorization Basis and Criticality Safety documents, transportation documents and procedures as necessary, prepare tooling and equipment designs and parts fabrication, conduct QA/QC activities, perform safety assessment, and report work scope activities as defined in the Recovery Act reporting requirements.
4. For the stimulus funding, all the upfront documentation is to be completed including tool and equipment design, fabrication, revisions to the safety bases documents and transportation documents. The FY2011 goal for this project is to complete 16 shipments (approximately 0.13 MTHM), at minimum, of EBR-II fuel from INTEC to MFC. This includes unloading/receipt of fuel at HFEF, storage and process preparation work.

ii. Deactivation & Decommissioning (D&D) Activities:

Schedule

The contractor shall schedule activities in a manner that promotes efficiency and effectiveness; however, work for this task shall be completed by September 30, 2011.

Performance Outcomes, Measures, and Deliverables

The following table contains the list of buildings to be included with the Recovery Act. Specific end states are identified per facility and denoted as site back-filled (SB) or site restored (SR). Specific site back-filled requirements for high-risk facilities will be identified in the applicable Engineering Evaluation/Cost Analysis (EE/CA).

Note: This list is in addition to the facilities identified in Attachment 5.

BUILDING	B.5 Activity - DESCRIPTION	End State
CPP-601	CPP-601 Final D&D	SB
N/A	VCO Lines under Hot cell	SR
CPP-602	Laboratory/Offices Bldg	SB
CPP-630	Safety/Spectrometry	SR
CPP-711	CPP-711 Unloading Shelter at CPP-603	SR
CPP-719	CPP-719 A & B Nitric Acid Storage VES-CS-100/151	SR

BUILDING	B.5 Activity - DESCRIPTION	End State
CPP-720	CPP-720 A/B & CPP-1784 Alum. Nitrate Tank Enclosure	SR
CPP-730	Liquid Nitrogen Storage Tank	SR
CPP-736	Salt Storage Pit	SR
CPP-757	CPP-757 Acid Tank	SR
CPP-1794	Subcontractor's Staging Area	SR
CPP-762	West Side Condensate Pump Pit	SR
SAA-101&104	VES-SAA- 101 & VES-SAA-104 LO2 Tanks	SR
UTI-709	VES-UTI-709 Sulfuric Acid Tank	SR
WO-129	VES-WO-129 LN2 Tanks	SR
WO-130	VES-WO-130 LN2 Tanks	SR
CPP-1760	CPP-1760 Above Ground Kerosene Tanks. (basin)	SR
CPP-2716	CPP-2716 HIC Enclosure	SR
CPP-679	Tent Fabrication Facility	SR
NCE-140-1	VES-NCE-140-1 Diesel Underground storage tanks	SR
NCE-140-2	VES-NCE-140-2 Diesel Underground storage tanks	SR
CPP-1637	CPP 1637 FPR Weld Fab Shop Ware house	SR
CPP-1672	Access Control Building (TF)	SR
CPP-1682	CPP-1682 Kerosene Tank Pump House	SR
CPP-1638	CPP 1638 Radiological Contaminated Storage Bldg	SR
CPP-641	Waste Holdup Pump House	SR
CPP-796	West Side Service Waste Building	SR
CPP-751	Service Waste Monitor Station	SR
CPP-752	Service Waste Diversion Station	SR
TSF-07	Disposal Pond	SR
TRA-632	Hot Cell	SR
PBF-609	PBF-609 (WERF Incinerator Bldg)	SR
PBF-761	WERF Spray Dryer Absorber	SR
PBF-756	WERF Exhaust Stack	SR
MFC-725/767	EBR II	SR
MFC-750A	MFC-750A (EBR-II Experimental Bldg.)	SR
MFC-757A	MFC-757A (EBR-II Cooling Tower)	SR
MFC-766	MFC-766 (EBR-II Sodium Boiler)	SR
MFC-793A	Alcohol Recovery Facility Pad & Tank	SR
MFC-793B	Alcohol Recovery Facility Annex	SR
MFC-793 E/F	SCMS Storage Buildings	SR
MFC-795	EBR-II Cover Gas Cleanup System	SR
TRA-612	TRA-612 (Retention Basin)	SR

BUILDING	B.5 Activity - DESCRIPTION	End State
TRA-712	TRA-712 (Retention Basin)	SR
TRA-760	TRA-760 (Retention Basin)	SR
TRA-613	TRA-613 (Hot Waste Pump Bldg.)	SR
TRA-713B	TRA-713B C D (Hot Waste Tank)	SR

b. Remote-Handled TRU Waste:

Schedule

The contractor shall schedule activities in a manner that promotes efficiency and effectiveness; however, work for this task shall be completed by September 30, 2011.

Performance Outcomes, Measures, and Deliverables

1. Receive, transport, process and dispose waste that is identified in Table #1 attached (Attachment 1). This waste includes:
 - 22 HFEF-5 cans
 - 6 SLSF cans
 - 11 thin walled cans
 - 1 EBR-1 Donut insert

All waste is currently stored at the Radioactive Scrap and Waste Facility at the Materials and Fuels Complex. The waste contains RH-TRU, accountable nuclear material, sodium, and Nak. See Table 1 attached for specific containers. This also includes other wastes such as MLLW that may be contained in this group of containers.

2. Receive, transport, process and dispose the waste that is contained in the twelve containers identified in Table #2 (Attachment 2) and located in the facilities indicated. The waste is primarily RH-TRU and RH-MTRU, however, the contractor shall investigate the contents of these containers as necessary to determine the appropriate treatment requirements for disposal of all waste in the containers.

The following requirements pertain to 1 and 2 above of Section C.3.5.1.

- Waste and any SNF that may be encountered that cannot be disposed will be returned to MFC for storage.
- The contractor will accomplish necessary coordination with NRF, BEA, NE, WIPP, and CCP to accomplish the scope.

- Must reflect all aspects of the work through departure from the state of Idaho or other interim or final disposition of non-TRU waste.
 - The contractor shall sequence the work to give priority to waste covered by the Idaho Settlement Agreement and the Site Treatment Plan.
3. Receive, transport, process and dispose the waste that is identified in Table #3 attached (Attachment 3). This waste includes:
- 192 liners of MLLW

All waste is currently stored at the Radioactive Scrap and Waste Facility at the Materials and Fuels Complex. The majority of the MLLW contains sodium, and/or Nak. See Table #3 attached for specific containers.

4. Accelerate the processing, waste characterization and certification of 67 Sludge Pan Containers stored in a Hot Cell at the Naval Reactors Facility to support disposal at the Waste Isolation Pilot Plant by the end of FY2010.
5. Perform the actions necessary to receive RH-TRU and suspect RH-TRU from AMWTP and transport it to INTEC for characterization, remediation (if necessary), interim storage, packaging and preparation for shipment to WIPP for disposal. This includes any certification activities which may be necessary to meet the WIPP Waste Acceptance Criteria, either performed by CWI or by Central Characterization Project (CCP).

Waste that is determined not to be RH-TRU (i.e., CH-TRU, LLW, MLLW) shall be returned to AMWTP for further treatment and disposal.

Perform the actions necessary to receive waste primarily stored in WMF-628 and adjacent facilities and transport it to INTEC for characterization, remediation (if necessary), interim storage, packaging and shipment offsite for disposal.

The cost of these activities shall be borne by CWI from the time the waste is loaded for transport to INTEC until it is loaded in a cask for transportation to WIPP, it is received back at AMWTP, or it has been disposed of offsite.

6. Provide RH TRU and CH TRU Analytical Laboratory capability.

c. WAG 7/Subsurface Disposal Area (SDA)

Additional Recovery Act work scope to include the following activities:

- a. Pit 4W (P04P03) exhumation facility design, construction and start excavation of the pit area footprint, retrieval and packaging and shipment to WIPP of TRU and targeted waste. This includes all necessary additional engineering staffing, operations crews, operations trailers and excavation equipment.
- b. Pit 10W (P10P03) exhumation facility design and construction.
- c. Design and construction of an additional storage facility similar in size and function to WMF-698

2. **SECTION C, DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK** is amended as follows:

Please see Attachment 4 for in target scope that will be funded by Recovery Act funding.

3. **SECTION E, INSPECTION AND ACCEPTANCE** is amended as follows:

Section E.4 is incorporated to include the following, which is applicable only to the Recovery Act work:

Certification:

In order for the Contracting Officer to accept any products or services funded by the Recovery Act, the Contractor shall certify that the items were delivered and/or work was performed for a purpose authorized under the Recovery Act.

4. SECTION F, DELIVERIES OR PERFORMANCE is amended as follows:

Section F.9 is incorporated to include the following:

The period of performance for the Recovery Act work specified in Section C shall be for the period of performance beginning _____ (date modification is signed by the Contracting Officer) through September 30, 2011.

5. SECTION G, CONTRACT ADMINISTRATION DATA is amended as follows:

Section G.9 is incorporated to add the following:

The following invoice procedure will apply to the submission of invoices for Recovery Act work specified in Section C:

The contractor may invoice costs for both Recovery Act work and other work in the same invoice. However, the contractor shall separately identify costs in its invoices that pertain to the Recovery Act work. Recovery Act costs shall also be segregated in the invoice so as to identify those costs associated with each applicable appropriation at the program code, local use and project value level of the following accounting and appropriations data:

Accounting and Appropriations Data

Level	1	2	3	4	5	6	7	8	9
Numerical Characters	xxxxx	xxxx	xx	xxxxxx	xxxxx	xxxxxxx	xxxxxxx	xxxxxxx	xxxxxxx
Level Name	Fund	Appropriation Year	Allottee	Reporting Entity	Object Class	Program	Project	WFO	Local Use

(Include each appropriation, as applicable, in the above table. TBD)

The contractor shall certify in each invoice that the costs included in the invoice for Recovery Act work were incurred only to accomplish the Recovery Act work in accordance with Section C. Other existing provisions applicable to invoice submission are applicable to Recovery Act invoices.

6. SECTION H, SPECIAL CONTRACT REQUIREMENTS is amended as follows:

A. The following clause is added (from Policy Flash 2009-32):

H.37 Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009 (Feb 2009)

Preamble:

Work performed under this contract will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. The Act gives preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds made available by it for activities that can be initiated not later than June 17, 2009.

Contractors should begin planning activities for their first tier subcontractors, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

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

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning the how and where for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor must comply with all requirements of the Act. If the contractor believes there is any inconsistency between Recovery Act requirements and current contract requirements, the issues will be referred to the Contracting Officer for reconciliation.

Be advised that special provisions may apply to projects funded by the Act relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Protecting whistleblowers; and
- Requiring prompt referral of evidence of a false claim to the Inspector General.

Definitions:

For purposes of this clause, "Covered Funds" means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

A. Flow Down Provision

This clause must be included in every first-tier subcontract.

B. Segregation and Payment of Costs

Contractor must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting must be separate from the original funding source to meet the reporting requirements of the Recovery Act and OMB Guidance.

Invoices must clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Wage Rates

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 the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5,

shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See <http://www.dol.gov/esa/whd/contracts/dbra.htm>.

E. Publication

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board (the Board). The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Registration requirements

Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the date the first report is due under Section I. clause entitled “52.204-11 American Recovery and Reinvestment Act – Reporting Requirements (MAR 2009).

G. Utilization of Small Business

Contractor shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.

- B. The following clause is added. This clause applies only to the Recovery Act work specified in Section C as directed by the Contracting Officer under this modification in accordance with the clause in Section I, entitled “Changes,” until such time that the Contracting Officer and the contractor reach a mutual agreement and modify the contract definitizing the Recovery Act work.

H.38 Recovery Act Modification Definitization

- (a) The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive modification for the Recovery Act work directed under this modification. The Contractor agrees to submit a technical, cost, and fee proposal in accordance with the instructions contained in section 9 of this modification.
- (b) The schedule for definitizing this modification is as follows:

TBD within 7 days of issuing this modification.

<u>Action</u>	<u>Date</u>
Contractor submits technical, cost, and fee Proposal	

(The Changes clause may state the required time for the submission of a proposal. If that time is sufficient, state the actual date based on the time allowed by the clause. If that time is not sufficient based on the effort required for the submission of a proposal, state the necessary time, not to exceed 60 days after issuance of this modification.)

Commence negotiations

Mutual agreement on definitization of Recovery Act work

Contractor submits certificate of current cost or pricing data

Execute definitization contract modification

(This date should not exceed 180 days after issuance of this modification.)

(c) If agreement on a definitive modification is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with [Subpart 15.4](#) and [Part 31](#) of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the clause in section I, entitled "Limitation of Government Liability," added by this modification.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by —

- (i) All clauses required by the FAR on the date of execution of this modification for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);
- (ii) All clauses required by law as of the date of the Contracting Officer's determination; and
- (iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this section, all clauses, terms, and conditions included in this contract shall continue in effect, except those that by their nature apply only to the modification definitization.

C. The following clause is added as follows:

H.39 Baseline and Reporting Requirements for Work Performed under the Recovery Act

This clause defines the unique requirements for the contractor's project management baseline and associated reporting requirements to address the modified contract performance requirements as implemented in Section B.5 Section C. Statement of Work to be performed and funded under the provisions of the American Recovery and Reinvestment Act of 2009 (Recovery Act).

Baseline Requirements

- a. For purposes of this clause the "pre-definitized period" is defined as that timeframe from the date of execution of modification number ____ directing the contractor to begin the Recovery Act work until the work is definitized in accordance with the clause in Section H entitled "Modification Definitization." All requirements for plans and deliverables during the pre-definitized period shall be based on the definitization time period estimated in the "Modification Definitization" clause.

(The pre-definitized period is sequenced with specific deliverables and actions each 30 days. These deliverables and actions may occur in less than 30 days based on the project size, scope, and level of confidence in current NTB/OPER, but no more than 30 day periods.)

- b. During the pre-definitized period, the contractor shall develop and deliver to the Contracting Officer the following:
 1. Within 30 days after execution of modification no. _____, the contractor shall provide a work plan for performance of that portion of the work specified in Section C. Statement of Work expected to be performed during the 180-day period after execution of modification no. _____. This plan shall include the following:
 - i. Product-oriented Work Breakdown Structure (WBS) and WBS dictionary in alignment with the statement of work, as modified for the Recovery Act work, to include performance of Recovery Act work totally within distinctly defined, separately tracked and uniquely managed WBS elements;

- ii. Monthly spend plan consistent with the statement of work, completely segregating the non-Recovery Act work from the Recovery Act funded portions of the statement of work;
 - iii. Crosswalk of statement of work WBS elements and associated planned milestones, metrics, and estimated costs (at the 80% confidence level), at the Activity Building Block (ABB) level, between the current base program/project Near-Term Baseline (NTB) and/or Out-year Planning Estimate Range (OPER) and the Recovery Act work;
 - iv. Milestone list including, but not limited to, major hiring actions that create newly “created” or “retained” jobs by the contractor or first tier subcontractors in accordance with the clause in Section H, entitled “Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009, key starts and completions, enforceable regulatory dates, approval of key regulatory decisions, project critical decisions, delivery of critical Government Furnished Services and Items; and
 - v. Planned quarterly summary of jobs “created” or “retained” by the contractor and first tier subcontractors as defined in the Section H clause entitled “Special provisions relating to work funded under the American Recovery and Reinvestment Act of 2009.”
2. Within 90 days after execution of modification no. XX the contractor shall propose a Performance Baseline for the complete work specified in Section C. Statement of Work. This baseline shall use control accounts that will be made up of work packages. The WBS elements at the lowest level should roll up within the WBS structure and clearly identify the entire work to be performed. The WBS shall clearly distinguish all non-Recovery Act work from all Recovery Act work. The proposed Performance Baseline shall include the following:
- i. The contractor shall propose a performance baseline, at a high confidence level, for the work to be performed, including the pre-definitized period and the post-definitized period. This baseline shall be based upon the work and schedule included in modification no. xx and the contractor’s cost proposal. A month-by-month baseline or budgeted cost of work scheduled (BCWS)/planned value (PV) must be developed for the complete Recovery Act work. This will be the original baseline for Recovery Act work and shall include all of the work by WBS, including both the pre- and post- definitized periods, and the contractor’s defined management reserve. The sum of these three items (estimated cost for the pre-definitized period, estimated cost for the post-definitized period, and the management reserve) shall equal the contractor’s proposed estimated cost for the Recovery Act work.

This performance baseline is subject to independent project review and certification before approval by the government.

- ii. A network logic schedule utilizing Primavera will be developed at the activity level for each control account which includes milestones. The schedule must be resource loaded and coded to allow summarization of lower level activities through the control account for the complete Recovery Act work.
- iii. The proposed Performance Baseline shall also include the planned quarterly summary of jobs “created” or “retained” by the contractor and first tier subcontractors as defined in the Section H clause entitled “Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009.” .

Deliverables supporting the Recovery Act performance baseline shall include all deliverables required under existing contract requirements, those Recovery Act deliverable and reporting requirements specified in the section H clause entitled “Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009” *and those Recovery Act-unique deliverables listed below*. For all common deliverables, the data shall be clearly segregated and distinguished between non-Recovery Act work and Recovery Act work, as well as summing to complete contract totals.

- a. *Work breakdown structure and associated dictionary;*
- b. *List of planning basis and assumptions;*
- c. *Cost baseline description document that includes the basis of cost estimate;*
- d. *Schedule baseline that employs a critical path method and is resources loaded such that earned value can be measured;*
- e. *Organizational breakdown structure;*
- f. *Responsibility assignment matrix that identifies Control Account Managers;*
- g. *Earned value management system description and a copy of the letter of certification against ANSI/EIA-748-B, “Earned Value Management Systems;”*
- h. *Project controls system description document;*
- i. *Risk management plan with results of qualitative and quantitative analysis including S-curves, cost and schedule contingency determinations, risk mitigation/risk response plans, and risk register;*
- j. *All work packages;*
- k. *Technical design documentation;*
- l. *Documented safety analysis;*

- m. Safety evaluation report (if required);*
- n. Safety design strategy;*
- o. Integrated safety management system description document and latest annual certification;*
- p. NEPA documentation (analysis of environmental impacts);*
and
- q. Regulatory decision documents.*

These documents shall be submitted to the Contracting Officer to support DOE review and baseline approval. The Contracting Officer may identify other documents as needed to support project reviews and audits.

- 3. The contractor shall support resolution of IPR or External Independent Review (EIR) corrective actions for the performance baseline submitted. .
- c. During the pre-definitized period, the contractor shall determine the budgeted cost of work performed (BCWS)/earned value (EV) for budgeted cost for work performed (BCWP)/planned value (PV) on a monthly basis utilizing measurable units associated with each activity in the schedule (e.g., square foot reduction, number of TRU shipments, foot print reduction, etc.), as appropriate, that will allow the reporting of the contractor's progress in accordance with the reporting requirements specified in the clause in Section H entitled "Special provisions relating to work funded under American Recovery and Reinvestment Act." The associated actual cost of work performed (ACWP)/actual cost (AC), cost and schedule variances and performance indices, and variance analyses shall be reported monthly. Performance against the Recovery Act performance baseline shall be tracked separately from other work under the contract funded by other appropriations.
- d. Upon negotiation of the definitive modification to the contract, the performance baseline documentation submitted in accordance with paragraph b.2 above shall be revised by the contractor to reconcile cost estimates and WBS elements, if necessary, consistent with the definitive modification.

Reporting Requirements

- e. The contractor is to begin immediately reporting against the established performance baseline in accordance with the reporting requirements specified under existing contract requirements, those reporting requirements specified in the section H. clause entitled "Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009, and those Recovery Act-unique deliverables listed below. Performance against the Recovery Act work shall be tracked and reported separately from other work under the contract funded by other appropriations.
- f. These reports shall be provided to the Contracting Officer on a monthly basis.

1. *Contract Performance Report (Refer to OMB No. 0704-0188 or DD FORM 2734/1, MAR 05) :Format 1 - Work Breakdown Structure, Format 3 - Baseline, and Format 5 - Explanations and Problem Analyses.*
2. *A Milestone report from Primavera reflecting status of all milestones being reported with columns for the scope, original planned date, current planned date, and the actual date the milestone was completed.*
3. *A funds management report by Budgeting & Reporting (B&R) codes that identifies the amount of funds obligated to the contract and the amount of funds obligated to the contractor, and committed and expended by the contractor.*

D. The following clauses are modified (*or added*) as follows: TBD

(There may be existing clauses in contracts that need to be modified for application to the Recovery Act work due to the nature of the specific work or in order to provide additional oversight or control. Other clauses in Section H. should be reviewed for this purpose. In addition, there may be a need for new clauses applicable to the Recovery Work. Areas that should be assessed include:

- *Financial management and oversight,*
- *Project controls,*
- *Baseline management and change control, and*
- *Special reporting, etc.)*

7. SECTION I, CONTRACT CLAUSES is amended as follows:

The following clause applies only to the Recovery Act work specified in this modification (or modifications thereafter related to Recovery Act work):

A. 52.203-15 Whistleblower Protections Under The American Recovery And Reinvestment Act Of 2009 (Mar 2009)

(a) 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).

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

B. 52.204-11 American Recovery And Reinvestment Act—Reporting Requirements (Mar 2009)

(a) *Definitions.* As used in this clause—

“*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 Federal Government 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.

(b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.

(c) Reports from contractors for all work funded, in whole or in part, by the Recovery Act, and for which an invoice is submitted prior to June 30, 2009, are due no later than July 10, 2009. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter.

(d) The Contractor shall report the following information, using the online reporting tool available at <http://www.FederalReporting.gov>.

(1) The Government contract and order number, as applicable.

(2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.

(3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.

(4) Program or project title, if any.

(5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.

(6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (*i.e.*, not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.

(7) 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—

(i) 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

(ii) 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.

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

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

(A) 80 percent or more of its annual gross revenues from 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.

(9) 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.

(10) 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 (i), (ix), (x), and (xi) 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 1512 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows:

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

- (iii) Amount of the subcontract award.
- (iv) Date of the subcontract award.
- (v) The applicable North American Industry Classification System (NAICS) code.
- (vi) Funding agency.
- (vii) 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.
- (viii) Subcontract number (the contract number assigned by the prime contractor).
- (ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
- (x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.
- (xi) 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—
 - (A) In the subcontractor's preceding fiscal year, the subcontractor received—
 - (1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (2) \$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.

C. 52.215-2 Audit And Records – Negotiation (Mar 2009)

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- (b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer,

shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to --

- (1) The proposal for the contract, subcontract, or modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the contract, subcontract, or modification; or
- (4) Performance of the contract, subcontract or modification.

(d) *Comptroller General*—

- (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.
- (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating --

- (1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and
- (2) The data reported.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7,

Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition --

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, and --

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of Clause)

Alternate I (Mar 2009). As prescribed in [15.209](#) (b)(2), substitute the following paragraphs (d)(1) and (g) for paragraphs (d)(1) and (g) of the basic clause:

(d) *Comptroller General or Inspector General.*

(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, shall have access to and the right to—

(i) Examine any of the Contractor's or any subcontractor's records that pertain to and involve transactions relating to this contract or a subcontract hereunder; and

(ii) Interview any officer or employee regarding such transactions.

(g)(1) Except as provided in paragraph (g)(2) of this clause, the Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract. The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(2) The authority of the Inspector General under paragraph (d)(1)(ii) of this clause does not flow down to subcontracts.

D. 52.216-24 Limitation Of Government Liability (Apr 1984)

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding \$108,600,000 dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is \$108,600,000 dollars.

E. 52.225-23 Required Use Of American Iron, Steel, And Other Manufactured Goods--Buy American Act--Construction Materials Under Trade Agreements (Mar 2009)

FAR Clause 52.225-23 replaces 52.225-11 for Recovery Act work only.

(a) Definitions. As used in this clause—

“*Construction material*” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“*Domestic construction material*” means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States.

“*Foreign construction material*” means a construction material other than a domestic construction material.

“Free trade agreement (FTA) country construction material” means a construction material that—

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

“Least developed country construction material” means a construction material that—

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

“Manufactured construction material” means any construction material that is not unmanufactured construction material.

“Recovery Act designated country” means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement (WTO GPA) 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, or United Kingdom);
- (2) A Free Trade Agreement country (FTA)(Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

“Recovery Act designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country construction material.

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

“United States” means the 50 States, the District of Columbia, and outlying areas.

“Unmanufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not 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.

“WTO GPA country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act (41 U.S.C. 10a-10d) do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act by providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic or Recovery Act designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

-----NONE-----

[Contracting Officer to list applicable excepted materials or indicate "none".]

(4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable.

(A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the overall cost of the contract by more than 25 percent;

(B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The construction material is not mined, 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 or the Buy American Act to a particular construction material would be inconsistent with the public interest.

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

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

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

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(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 clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material other than that covered by trade agreements is noncompliant with the applicable Act.

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

Foreign and Domestic Construction Materials Cost Comparison

Construction material description	Unit of measure	Quantity	Cost (dollars)
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

[List name, address, telephone number, 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.]

(End of clause)

Alternate I (MAR 2009). As prescribed in [25.1102](#) (e), add the following definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

“*Bahrainian, Mexican, or Omani construction material*” means a construction material that—

(1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

(1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act, by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

F. 52.225-24 Notice Of Required Use Of American Iron, Steel, And Other Manufactured Goods--Buy American Act--Construction Materials Under Trade Agreements (Mar 2009)

FAR Clause 52.225-24 replaces 52.225-12 for Recovery Act work only.

(a) Definitions. “Construction material,” “domestic construction material,” “foreign construction material,” “manufactured construction material,” “Recovery Act designated country construction material,” “steel,” and “unmanufactured construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Required Use of Iron, Steel, and Other Manufactured Goods--Buy American Act--Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225-23).

(b) Requests for determination of inapplicability. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-23 in the request. If an offeror has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) Evaluation of offers.

(1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American Act by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign iron, steel, or other manufactured goods are used as construction material based on unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on unreasonable cost of comparable domestic unmanufactured construction material.

(2) If two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) Alternate offers.

(1) When an offer includes foreign construction material, other than Recovery Act designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-23, the offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-23 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-23 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material, and the offeror shall be required to furnish such domestic or Recovery Act designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (MAR 2009). As prescribed in 25. [25.1102](#)(e), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) Requests for determination of inapplicability. An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-23.

Alternate II (MAR 2009). As prescribed in [25.1102](#)(e), add the definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) Alternate offers.

(1) When an offer includes foreign construction material, except foreign construction material from a Recovery Act designated country other than Bahrain, Mexico,

or Oman that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-23, the offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-23 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-23 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

G. 52.243-6 Change Order Accounting (Apr 1984) is incorporated as following:

The Contracting Officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with the Disputes clause.

(End of Clause)

8. SECTION J, LIST OF ATTACHMENTS is amended as follows:

A. The following attachments are modified (or added) as follows:

TBD

- B. There are certain attachments to the contract that will need to be updated as a result of the addition of the Recovery Act work to the contract. These will be addressed during the definitization period in accordance with the applicable provisions of the contract, e.g., (*Quality Assurance Surveillance Plan (QASP) Small Business Subcontracting Plan, etc.*)

TBD

9. PROPOSAL PREPARATION INSTRUCTIONS

The contractor's technical, cost, and fee proposal shall be prepared in accordance with Attachment 5 to this modification.

A proposal is not required for in-target work (deferred work being reinstated as a result of Recovery Act funding). However, the in-target scope associated with Recovery Act funding must include a work schedule and the metrics used to measure successful performance of the work.