

**MODEL CONTRACT MODIFICATION
AMERICAN RECOVERY AND REINVESTMENT ACT
Developed by the Office of Environmental Management**

Purpose of Model

The purpose of this model is to expedite the contracting process by helping assure a consistent application of the contract terms for the various modifications to EM contracts for incorporation of the Recovery Act work and associated requirements. This applies to work within the general scope existing contracts where Recovery Act funds are to be used. It is recognized that the work scope and other terms of individual contracts will affect the actual language that is used in each modification. However, this model sets forth principles that are necessary for all modifications for EM FAR-based (non-M&O) contracts as well as M&O contracts and FAR-based task orders to the maximum extent possible.

The primary principle that must be followed is the need to identify the distinct work, associated deliverables, and the other contract requirements applicable to the work funded by the Recovery Act. This is essential both for DOE's and the contractor's accountability for use the Recovery Act funds. Some provisions of the model may seem redundant to existing provisions or processes in the contract; but due to the purpose of the Recovery Act, it is necessary to assure the appropriate separation of this work.

The approach taken in this model is to use a bilateral modification. This modification will accomplish the following:

- Direct the contractor to initiate work funded by the Recovery Act under the authority of the Changes clause of each contract,
- Add the special Section H clauses related to the Recovery Act and certain other provisions that require a bilateral agreement, and
- Demonstrate that the contractors are in agreement with the terms of immediately beginning the work and complying with all provisions associated with the Recovery Act.

Below are other aspects related to use of the model:

- Words in bracketed italics are instructional notes to help guide the Contracting Officer in preparing the detailed contract modification.
- While the word "contract" is used throughout, the same guidance applies to modification of a task order, master contract, etc.
- Where specific clause titles are used in the model, these are to be viewed as the general subject matter of the clause. Actual clause titles may vary between individual contracts.

Text for Inclusion in Modification

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, entitled “Changes” 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 \$_____, 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. Paragraph B.XX (x) is modified to add the following:

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:

(Include a brief description of the work. There must be a new CLIN added for the work funded by the Recovery Act if the contract uses a CLIN structure. If the contract does not use a CLIN structure, the work must be described in a separate, distinctly identifiable Recovery Act work description from the other work descriptions with separate deliverables, schedules, and incentives as applicable.)

The detailed description of the work is contained in attachments to this modification identified as Section C and attachment XX in Section J of the contract.

B. Paragraph B.XX (x) is modified to add the following:

Pursuant to the clause in Section I, entitled “Limitation of Funds,” total funds in the amount of _____ (100% of funds to be obligated in FY 09) 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.

C. Paragraph B.XX(s) is modified to add 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.

2. Section C, Description/Specifications/Statement of Work is amended as follows:

Paragraph C. XX is modified as follows:

(Due to the differences in the statements of work in the various contracts, a template, similar to other portions of this model modification, cannot be created. However, there are several fundamental principles that must be adhered to in the drafting of the various modifications. These principles include the following:

- *Statement of Work - The work that will be performed using Recovery Act funds must be clearly identified and distinguished within the contract from the other work. These situations may include the following:*
 - *Supplementary work - In situations where work is required within the existing general scope of the contract, additional text describing Recovery Act work is added to the statement of work.*
 - *Acceleration of work - If existing work, already specified in the statement of work, is to be accelerated, the accelerated work to be performed using Recovery Act funds must be described as Recovery Act work in such a manner to allow the work to be identified and clearly distinguished from the other work..*

A product-oriented work breakdown structure (WBS) should be used for the Recovery Act work. This WBS should also form the basis for the contractor's cost proposal.

- *Schedule – Section C, or a Section J attachment, must specify schedule or milestone requirements for the work specified.*
- *Performance outcomes and measures – Section C, or a Section J attachment, must specify performance outcomes and measures that will be used to assess performance of the work. While these performance outcomes and measures may subsequently be incorporated into fee incentives, through the Performance Evaluation Management Plan (PEMP), Award Fee Plan, or other similar document, Section C needs to tie the work to these outcomes and measures.*
- *Deliverables – Section C, or a Section J attachment, must specify the associated deliverables.*

- *Other Requirements – Specify other requirements associated with the performance of the work. These may include reporting requirements (other than those specified in the Section H clause in the modification entitled “Special provisions related to the work funded under American Recovery and Reinvestment Act of 2009,” such as related to project status, earned value, or other cost type reports generally associated with work performance.)*

3. Section E, Inspection and Acceptance is amended as follows:

Paragraph E.XX (x) is modified to add the following, which is applicable only to the Recovery Act work:

(x) Access –

- i. The Comptroller General and his representatives are authorized to examine any records of the contractor or any of its subcontractors that involve transactions relating to the contract or subcontract and to interview any officer or employee of the contractor or any of its subcontractors, regarding such transactions.
- ii. Any representative of an appropriate inspector general is authorized to examine any records of the contractor or any of its subcontractors that involves transactions relating to the contract or subcontract and to interview any officer or employee of the contractor or subcontractor regarding such transactions.
- iii. The Recovery Accountability and Transparency Board (The Board) and its representatives are authorized to conduct audits and reviews of contracts that use Recovery Act funds. In addition to having access to records of the contractor and any of its subcontractors, and the right to interview any officer or employee of the contractor or subcontractor, the Board is also authorized to issue and enforce subpoenas to compel the testimony at public hearings, or otherwise, of persons who are not Federal officers or employees.

(x) 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:

Paragraph F.XX(x) is modified to add 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 _____. (The date of completion of the work funded by Recovery Act, is expected not to exceed September 30, 2011.)

5. Section G, Contract Administration Data is amended as follows:

Paragraph G.XX(x) is modified 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 _____ (specify level; at a minimum this should be at the Recovery Act program and project values) 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.)

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.

(For contracts with provisions allowing the contractor’s reimbursement through a draw-down against a letter of credit, additional requirements will need to be specified in the contract to obtain comparable segregation of Recovery Act funds and the appropriate certification.)

6. Section H, Special Contract Requirements is amended as follows:

A. The following clause is added (from Policy Flash 2009-28):

H.999 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 ARRA 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

Contractors must include this clause in every subcontract over \$25,000 that is funded, in whole or in part, by the Recovery Act unless the subcontract is with an individual.

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. 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 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 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 paragraph H below.

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.

Note: The following paragraphs, H, I, and J, are in effect until the FAR is modified to implement these provisions of the Recovery Act. The Contractor agrees that the Contracting Officer may unilaterally modify the contract to incorporate the FAR clauses that implement the Recovery Act. The following paragraphs will no longer be valid and the contract will be considered modified to add the new FAR provisions and clauses in Section I.

H. American Recovery and Reinvestment Act-Reporting Requirements

(a) Definitions. As used in this clause -

“First-tier Subcontract” means a subcontract awarded directly by a Federal government prime contractor 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 (ARRA). This definition covers only positions established in the United States and outlying areas (see definition in FAR 2.101.) The number shall be expressed as “full-time equivalent” which shall include full-time, part-time, temporary, permanent, positions as expressed as a “person-year,” consistent with the contractor’s existing personnel procedures.

This includes positions at the prime level, and the prime contractor's estimate of positions at the first subcontract tier.

"Jobs retained" means an estimate of those previously existing unfilled positions that are filled as a result of funding by the American Recovery and Reinvestment Act (ARRA). This definition covers only positions established in the United States and outlying areas (see definition in FAR 2.101.) The number shall be expressed as "full-time equivalent" which shall include full-time, part-time, temporary, permanent, positions as expressed as a "person-year," consistent with the contractor's existing personnel procedures. This includes positions at the prime level, and the prime contractor's estimate of positions at the first subcontract tier.

"Total Compensation" means the complete pay package of contractor employees, including all forms of money, benefits, services, and in-kind payments, consistent with the regulations of the Securities and Exchanges Commission at 17 CCR 229.402.

(b) This contract requires products and/or services which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor that receives contracts from a Federal agency under the Recovery Act to report on use of funds.

(c) Reporting starts with the later of the first calendar quarter in which the contractor invoices the Government for work funded by Recovery funds, or the second calendar quarter of 2009. Reporting is required not later than 10 days after the end of each calendar quarter. The Contractor shall report the following information, using the online reporting tool available at TBD. If the tool is not available when the contractor's report is due, the contractor shall maintain the data necessary to report for that quarter when the tool becomes available or submit the report in hard or soft copy if required by the Contracting Officer.

(1) the amount of recovery funds invoiced by the contractor, cumulative since the beginning of the contract;

(2) a detailed list of all services performed or supplies delivered for which the contractor has invoiced, including –

(i) project title, if any;

(ii) a description of the project;

(iii) an assessment of the contractor's progress towards the completion of the requirements of the contract (i.e., not started, less than 50% completed, completed 50% or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.

(iv) an estimate of the number of jobs created by the project, in the United States and outlying areas; and

(v) an estimate of the number of jobs retained by the project, in the United States and outlying areas. A job cannot be reported as both created and retained.

(3) the Government contract number.

(4) Names and total compensation of each of the five most highly compensated officers 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 in Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

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

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

(5) detailed information on any first-tier subcontract over \$25,000, where the subcontractor is not an individual, awarded by the contractor, funded under the Recovery Act, to include the following:

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

(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 code.

(vi) Funding agency.

(vii) A description of the product or service to be provided under the subcontract.

(viii) Subcontract number (the contract number assigned by the prime contractor).

(ix) Subcontractor physical address including street address, city, state and nine-digit zip code and congressional district if in the United States.

(x) Subcontract primary performance location including street address, city, state and nine-digit zip code and congressional district if in the United States.

(xi) Names and total compensation of each of the five most highly compensated officers for the calendar year in which the subcontract is awarded if –

(i) entity in the subcontractor's preceding fiscal year, the subcontractor received --

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

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

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

(Note: the information in paragraphs (i) through (x) are not required to be reported for any contractor or first-tier subcontractor whose gross income did not exceed \$300,000 in the previous tax year.)

(6) For subcontracts under \$25,000 or any subcontracts awarded to an individual, the total number of subcontracts awarded in the quarter and their total dollar amount.

I. Audit and Records—Negotiation

(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 or any subcontractors' 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.

J. Buy American

[When using funds appropriated under the American Recovery and Reinvestment Act for construction, use clauses 52.225-XX, 52.225-YY, 52.225-ZZ, or 52.225-WW. Use 52.225-XX and 52.225-YY for contracts for the construction, alteration, maintenance of a public building or public work performed in the United States under \$7,443,000 and 52.225-ZZ and 52.225-WW for contracts for the construction, alteration, maintenance of a public building or public work performed in the United States and over \$7,443,000.]

52.225-XX Required Use of American Iron, Steel, and Other Manufactured Goods -- Buy American Act —Construction Materials.

(a) Definitions. As used in this clause—

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a 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.

"Manufactured construction material" means any construction material that is not unmanufactured 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.

(b) Domestic preference.

(1) This clause implements—

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act)(Pub. L. 111-5), 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 (41 U.S.C. 10a - 10d) by providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraph (b)(3) and (b)(4) of this clause.

(3) This requirement does not apply to the construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”]

(4) The Contracting Officer may add other foreign 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 cost of the overall project 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 quantities and 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 section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American 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.]

52.225-YY Notice of Required Use of American Iron, Steel, and Other Manufactured Goods--Buy American Act—Construction Materials.

(a) Definitions. “Construction material,” “domestic construction material,” “foreign construction material,” “manufactured 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” (Federal Acquisition Regulation (FAR) clause 52.225-XX).

(b) Requests for determinations 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 the clause at FAR 52.225-XX in the request. If an offeror has not requested a determination regarding the inapplicability of 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) In the case of a tie, 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 not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR 52.225-XX, the offeror also may submit an alternate offer based on use of equivalent domestic 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 the clause at FAR 52.225-XX 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 the clause at FAR 52.225-XX does not apply, the Government will

evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic 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 (DATE). As prescribed in 25.1102(e), substitute the following paragraph (b) for paragraph (b) of the basic provision:

- (b) Requests for determinations 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 the clause at FAR 52.225-XX.

52.225-ZZ Required Use of American Iron, Steel, and Other Manufactured Goods--Buy American Act—Construction Materials under Trade Agreements.

- (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 a 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 a 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:

[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 project 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 (DATE). 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.

52.225-WW Notice of Required Use of American Iron, Steel, and Other Manufactured Goods--Buy American Act—Construction Materials under Trade Agreements.

(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-ZZ).

(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-ZZ 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) In the case of a tie, 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-ZZ, 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-ZZ 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-ZZ 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 (DATE). As prescribed in 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-ZZ.

Alternate II (DATE). 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-ZZ, 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-ZZ 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-ZZ 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.

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.

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:

(Insert target dates for key milestones related to the definitization of the 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 60days 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.

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

(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 clauses are added:

- A. The follow clause applies only to the Recovery Act work specified in Section C:

LIMITATION OF GOVERNMENT LIABILITY

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding _____ (*insert 30% of the total obligation amount*) dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is _____ (*insert 30% of the total obligation amount*) dollars.

(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 letter contract 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 letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

B. 52.243-6 CHANGE ORDER ACCOUNTING (APR 1984)

(Add this clause if it is not already in the contract.)

8. Section J, List of Attachments is amended as follows:

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

(Additional or amended attachments should be included, as applicable, e.g., Section C detailed statement of work, revised deliverables, etc.)

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., (*Performance Evaluation Management Plan (PEMP) or award fee plan, Quality Assurance Surveillance Plan (QASP) Small Business Subcontracting Plan, etc. For example, the fee incentives for the Recovery Act work must be separately identified, with associated available fee, in a modification to the PEMP, a separate PEMP created solely for the Recovery Act work, or other method depending on the type of fee under the contract.*)

9. Proposal Preparation Instructions

The contractor's technical, cost, and fee proposal shall be prepared in accordance with Attachment 1 to this modification.

Attachment 1
Modification XXX

PROPOSAL PREPARATION INSTRUCTIONS

[This document provides a model for preparation instructions for the submission of proposals for the definitization of work authorized under the changes clause for the Recovery Act work. This model is intended to address the pertinent areas of the proposal, including technical, cost, and fee to assure adequate information is obtained to perform a proper evaluation of the proposal and execution of a definitized agreement. These model instructions should be tailored based on the individual contract's terms and the nature of the change order issued.]

1. INTRODUCTION

This document contains instructions to the contractor for the preparation of a proposal in response to the modification of the contract which defines work that will be funded by and performed under the provisions of the American Recovery and Reinvestment Act (Recovery Act).

The contractor shall provide a written proposal consisting of a Technical Proposal and a Cost and Fee Proposal. The Technical Proposal shall contain the contractor's approach to perform the work, and the Cost and Fee Proposal shall contain the estimated cost of performing the work and any associated fee. The contractor shall assure that there is consistency between the Technical Proposal and the Cost and Fee Proposal.

2. PREPARATION INSTRUCTIONS – GENERAL INFORMATION

The contractor shall submit written proposal information in the format as outlined in Table 1.

[The inclusion of the specific requirements for the proposal format contained in Table 1 below is not intended to be enforced to the extent that is necessary in a competitive acquisition where page limitations dictate such rigor. Rather, this approach is suggested to facilitate getting a formal and consistent proposal from the various contractors.]

Table 1

Proposal Instructions	
Number of Copies	<ul style="list-style-type: none"> • Technical Proposal – 5 hard copies and 5 electronic copies. • Cost and Fee Proposal – 5 hard copies and 5 electronic copies. • Both portions of the proposal shall contain a table of contents.
Paper Size	<ul style="list-style-type: none"> • 8 1/2” x 11” paper. • Fold-outs shall not exceed 11” x 17”
Print Type	<ul style="list-style-type: none"> • Print type (Font size) used in the text portions of the proposal shall be no smaller than 12 point font. • Print type used in completing any forms attached to this document as Microsoft® (MS) Word®, Access®, or Excel® documents should not be changed from the styles used in the attachments. • Print type used in charts, graphics, figures and tables may be smaller than 12 point Font, but must be clearly legible.
Page Margins	Page margins shall be 1-inch on the top, bottom, left, and right sides of the page, exclusive of headers and footers.
Page Numbering	All pages, including forms, tables, and exhibits, shall be appropriately numbered and identified with the name of the contractor.
CD-ROM or DVD Requirements	CD-ROMs or DVDs shall be clearly labeled with the contract number. Files submitted shall be readable using Microsoft® (MS) Word®, Access®, or Excel® (Version 2003), and the proposal schedule shall be submitted as a Primavera P3e Version 5.x, “XER” file type.

3. PREPARATION INSTRUCTIONS - COVER LETTER

The cover letter shall include, but not be limited to, the following:

- (a) The contract and modification number.
- (b) The name, address, telephone numbers, facsimile numbers, and electronic addresses of the contractor’s representative(s) responsible for providing additional information, as required, on the Technical Proposal and the Cost and Fee Proposal.
- (c) The name and contact information of the contractor’s representative(s) with the authority to negotiate the definitization of this modification with the Contracting Officer.
- (d) Identification of any proposed changes to the statement of work or other terms included in this modification that the contractor believes would be in the best interest of the Government in meeting the objectives of the Recovery Act.

- (e) A statement that the contractor will cooperate fully and expeditiously in providing access to proposal information that may be necessary to be reviewed by representatives of DOE, e.g. Defense Contract Audit Agency (DCAA), for the purpose of definitizing this modification.

(f) CERTIFICATIONS - TBD

4. PREPARATION INSTRUCTIONS - TECHNICAL PROPOSAL

The Technical Proposal shall be organized in accordance with the WBS as shown in Section C. Statement of Work and shall include the following:

- (a) Description of the proposed strategy and technical approach (including any innovations) to implement the requirements of the Recovery Act work .
- (b) Description of the specific detailed approach to the management, execution and sequencing of the work for the major Work Breakdown Structure (WBS) elements identified in the Section C. Statement of Work. This description shall include the following:
 - i. A description of the work that will be performed by the contractor and the work that will be performed by subcontractors;
 - ii. The supporting rationale for the division of work between the contractor and subcontractors, including considerations related to efficiency of performance, cost, the need to hire additional staff, etc;
 - iii. The extent of utilization of small business subcontractors; and
 - iv. The extent of utilization of fixed-price subcontracting.
- (c) Identification of the risks and impacts to the proposed approach, rationale for the identified risks and impacts, and the contractor's approach to eliminate, avoid and/or mitigate the risks throughout performance of the Recovery Act work.
- (d) Integrated critical path method schedule, through completion, for the activities defined in the WBS.
- (e) Description of the contractor's approach to achieve regulatory approval, as required, for the proposed execution of the Recovery Act work and how the regulatory approach will be integrated with project management and execution.
- (f) Identification of the project staffing throughout the performance of the Recovery Act work. This should include the estimated staffing for both the contractor's

employees and existing or proposed subcontractor employees (assure this is consistent with the man hours identified in the cost proposal).

- (g) Description of existing and/or any new methods or processes that the contractor will use in the oversight and control of the Recovery Act work to help assure the following:
- i. The work is performed in accordance with the statement of work requirements;
 - ii. The performance schedule and milestones are accomplished;
 - iii. The deliverables are completed; and
 - iv. The performance outcomes and measures are attained.
- (h) Estimate of contractor's and first tier subcontractors' jobs that will be "created" or "retained" as a result of the performance of the Recovery Act work. The definitions for "created" and "retained" are based on the requirements of the clause added by this modification in Section H, entitled "Special provisions relating to work funded under American Recovery and Reinvestment Act of 2009." This estimate should be by fiscal year. *(The requirement for reporting jobs many need to be further defined depending on the availability of information and any further guidance from either OMB or DOE HQ, e.g., categories of labor (craft, technical/engineering, administrative, management, etc.).)*

5. PREPARATION INSTRUCTIONS – COST AND FEE PROPOSAL

The Cost and Fee Proposal shall be prepared in accordance with the following instructions:

- (a) FAR 15 - The contractor shall prepare its cost proposal in accordance with Table 15-2, of Part 15 of the Federal Acquisition Regulation (FAR).
- (b) WBS - Costs shall be proposed consistent with and at the lowest level of the WBS described in the statement of work and consistent with the Technical Proposal.
- (c) Formats - Formats contained in the appendices to this document shall be used for the submission of the estimated costs as follows:

Appendix 1 – Cost by WBS (Schedules A-C)

Appendix 2 – Labor – Consolidated Summary

Appendix 3 – Material, Equipment, Subcontracts, and Other Direct Costs - Consolidated Summaries (Schedules A-D)

Appendix 4 – Waste Quantities and Cost – Consolidated Summary

The contractor should assure consistency and traceability between these various appendices, schedules, and supporting information. If multiple Recovery Act funding sources are identified, the contractor shall identify the estimated costs for each work activity by the appropriate funding source.

- (d) Appendix 2 - Appendix 2 is to be used to provide a direct labor summary (labor category, labor rate, and labor hours) on both a cumulative total and fiscal year basis. This should show the hours for the contractor, subcontractor, LLC members, and any other direct labor hours.
- (e) Appendix 3 - Appendix 3 is to be used to provide, in total and by fiscal year, materials (Schedule A), equipment (Schedule B), subcontracts (Schedule C, subcontracts over \$XM are to be individually listed), and other direct costs (Schedule D). Additional schedules should be included as appropriate to address elements of cost which are not included in Schedules A-D.
- (f) Appendix 4 - Appendix 4 is to be used to provide a separate summary table of waste quantities by waste type in cubic feet by fiscal year by WBS. The contractor shall provide the summary of waste quantities, at a minimum, to a level equal to the WBS. This waste summary shall be supplemented by additional tables that include all costs associated with waste disposition including treatment, transportation and disposal for each waste type by fiscal year. Separate detailed computations shall be provided for treatment, transportation, and disposal cost by WBS. The basis of estimate associated with information provided in the waste summary table (including the additional tables) should be fully explained in supporting documentation.
- (g) Schedule - A resource loaded P3 schedule shall be provided which shall be presented at the level of detail as shown in the WBS. The schedule shall include logic ties.
- (e) Basis of Estimate – A basis of estimate shall be provided that thoroughly documents all estimates. A basis of estimate description shall be provided for each activity at the lowest level in the estimate. The detailed narrative description of the basis of estimate shall be organized by WBS and include the following: how the proposed costs were derived; key assumptions and supporting rationale, including assumptions related to site conditions; source of existing verifiable data and judgment factors in projecting from known data to the estimate; estimating methods, parametric estimates, and models, etc; and other assumptions and related information to provide clarity and understanding of the contractor’s basis of estimate to demonstrate reasonableness and realism.

- (i) Cost Elements - Costs shall be provided by major cost elements such as: direct labor (including labor categories, direct labor hours and direct labor rates for each labor category type), fringe benefits (if applicable), direct labor overhead (if applicable), material, material handling overhead (if applicable), equipment (including capital investments), subcontract cost, disposal cost, transportation cost, treatment cost, supplies, travel, relocation, other direct costs, and general and administrative (G&A) costs (if applicable). Notwithstanding that all “subcontract” costs are included above, LLC member/other teaming arrangement/subcontractors (\$X million or more) shall be individually estimated and costs provided by major cost elements as described in this paragraph. Appendix 1 is to be used to provide the costs by major cost elements, WBS, and fiscal year.
- (j) Indirect Rates - A detailed estimate for each indirect rate (fringe benefit, material handling, labor overhead and G&A, if applicable) proposed by fiscal year is to be provided. The detailed estimate shall include cost, by cost element, for the allocation pool and the allocation base showing how each cost element within the allocation pool and allocation base was derived. The contractor shall provide all related information to provide a clear understanding of the basis of estimate. The contractor shall compute all of the indirect rates by fiscal year. This data shall be provided for each LLC member/other teaming arrangement/subcontractor (over \$X million).
- (l) Escalation - Identify the escalation factors used for each fiscal year, the source of the proposed escalation rates, and the rationale as to why the proposed escalation rates are reasonable.
- (m) Electronic Media - Cost Proposal information and any spreadsheets or mathematical computation shall be submitted using Microsoft Excel 2003 and shall be working versions, including formulas and computations. The contractor shall provide the electronic version of the cost proposal in Adobe Acrobat 8.0 (PDF) or higher. The electronic media versions provided shall be searchable.
- (n) Cognizant ACO/DCAA - The contractor shall provide the name, address and telephone number of the cognizant Administrative Contracting Officer and the cognizant Defense Contract Audit Agency (DCAA) office, if any. If the contractor is an LLC or has subcontractor(s) (\$X million or more), this data must be provided for each entity performing work.
- (o) Accounting System - The contractor shall submit an explanation of how costs related to the Recovery Act work will be accumulated, recorded, invoiced, and reported using the contractor’s accounting system in order to assure that costs associated with Recovery Act work are separate from other costs incurred under the contract. The contractor shall describe how its existing accounting system, any proposed changes, and/or new oversight controls will help assure

this necessary separation of Recovery Act funds. The contractor shall identify the cognizant Government audit agency that has issued reports regarding the adequacy of the accounting system for accumulating and billing costs under Government contracts. This data must also be provided for each member of an LLC and each subcontractor that is performing work estimated to be \$X million or more.

- (p) Cost Accounting Standards - If the contractor, LLC members, or subcontractor(s) (\$X million or more) performing work are covered by Cost Accounting Standards (CAS), the contractor shall discuss the adequacy of the disclosure statement. The contractor shall also identify whether the cognizant Government audit agency has issued any audit reports on the compliance with the CAS requirements of any of these entities.
- (p) Government Furnished Property - The contractor shall provide a list of any Government Furnished Property (GFP) that will be used in the performance of the Recovery Act work that is in addition to the GFP already provided.
- (q) Fee - The contractor's fee proposal shall address the following:
 - (i) The contractual basis for any adjustment in the fee currently in the contract;
 - (ii) The proposed amount of fee associated with the Recovery Act work; and
 - (iii) A description of how the proposed fee is calculated and the supporting rationale as to why the proposed fee amount is reasonable.

(The contract terms of the individual contracts related to fee provisions must be considered in preparing this instruction to the contractor. Considerations will include: type of contract, e.g., CPAF, CPIF, FFP; whether the work is added or accelerated, etc.)

Cost By WBS

<u>WBS</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
C.1.1 - Groundwater Environmental Actions				
C.2.1 - D&D of Building XX				
C.3.1 - Waste Disposal				
Total Cost				
Fee				
Total Cost and Fee				

Cost by Cost Element WBS 1.1 - Groundwater Environmental Actions

	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
Direct Labor				
<i>Insert Direct Labor Categories</i>				
Fringe Benefits				
Direct Labor Overhead				
Materials				
Material Handling Overhead				
Equipment				
Subcontract Costs (Under \$?M)				
Disposal Costs				
Transportation Costs				
Treatment Costs				
Supplies				
Travel				
Relocation				
Other Direct Costs				
<i>Joint Venture/LLC Member/Other teaming arrangement/Subcontractor (\$?M or over) (complete for each major entity)</i>				
<i>Direct Labor</i>				
<i>Insert Direct Labor Categories</i>				
<i>Fringe Benefits</i>				
<i>Direct Labor Overhead</i>				
<i>Materials</i>				
<i>Material Handling Overhead</i>				
<i>Equipment</i>				
<i>Subcontract costs</i>				
<i>Disposal Costs</i>				
<i>Transportation Costs</i>				
<i>Treatment Costs</i>				
<i>Supplies</i>				
<i>Travel</i>				
<i>Relocation</i>				
<i>Other Direct Costs</i>				
<i>G&A Costs</i>				
Subtotal Cost				
G&A Costs				
Total Cost				

Each Spreadsheet shall be completed by FY and cumulatively

Cost by Cost Element WBS 1.1.1 - Groundwater Subproject X

	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total</u>
Direct Labor				
Fringe Benefits				
Direct Labor Overhead				
Materials				
Material Handling Overhead				
Equipment				
Subcontract Costs (Under \$?M)				
Disposal Costs				
Transportation Costs				
Treatment Costs				
Supplies				
Travel				
Relocation				
Other Direct Costs				
<i>Joint Venture/LLC Member/Other teaming arrangement/Subcontractor</i>				
<i>(\$?M or Over) (complete for each major entity)</i>				
<i>Direct Labor</i>				
<i>Insert Direct Labor Categories</i>				
<i>Fringe Benefits</i>				
<i>Direct Labor Overhead</i>				
<i>Materials</i>				
<i>Material Handling Overhead</i>				
<i>Equipment</i>				
<i>Subcontract costs</i>				
<i>Disposal Costs</i>				
<i>Transportation Costs</i>				
<i>Treatment Costs</i>				
<i>Supplies</i>				
<i>Travel</i>				
<i>Relocation</i>				
<i>Other Direct Costs</i>				
<i>G&A Costs</i>				
Subtotal Cost				
G&A Costs				
Total Cost				

Each Spreadsheet shall be completed by FY and cumulatively
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Labor - Consolidated Summary

<u>Labor Category:</u>	<u>FY 2009</u>			<u>FY 2010</u>			<u>FY 2011</u>			<u>Total</u>
	<u>Hourly Rate</u>	<u>Hours</u>	<u>Total</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Total</u>	<u>Hourly Rate</u>	<u>Hours</u>	<u>Total</u>	<u>All Years</u>
Contractor:										
-Category A										
-Category B										
-Category C										
Total										
Subcontractor:										
-Category A										
-Category B										
-Category C										
Total										
LLC:										
-Category A										
-Category B										
-Category C										
Total										
Grand Total										

Materials - Consolidated Summary

<i>Description</i>	<i>FY 2009</i>			<i>FY 2010</i>			<i>FY 2011</i>			<i>Total All Years</i>
	<i>Units</i>	<i>Unit Rate</i>	<i>Total</i>	<i>Units</i>	<i>Unit Rate</i>	<i>Total</i>	<i>Units</i>	<i>Unit Rate</i>	<i>Total</i>	
-Item A										
-Item B										
-Item C										
-Item D										
-All Other Items										
Total										

Equipment - Consolidated Summary

<u>Description</u>	<u>FY 2009</u>			<u>FY 2010</u>			<u>FY 2011</u>			<u>Total All Years</u>
	<u>Units</u>	<u>Unit Rate</u>	<u>Total</u>	<u>Units</u>	<u>Unit Rate</u>	<u>Total</u>	<u>Units</u>	<u>Unit Rate</u>	<u>Total</u>	
-Equipment A										
-Equipment B										
-Equipment C										
-Equipment D										
Total										

Subcontracts - Consolidated Summary

<u>Description</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>Total All Years</u>
-A				
-B				
-C				
-D				
Total				

Other Direct Costs - Consolidated Summary

<i>Description</i>	<i>FY 2009</i>			<i>FY 2010</i>			<i>FY 2011</i>			<i>Total All Years</i>
	<i>Units</i>	<i>Unit Rate</i>	<i>Total</i>	<i>Units</i>	<i>Unit Rate</i>	<i>Total</i>	<i>Units</i>	<i>Unit Rate</i>	<i>Total</i>	
-A										
-B										
-C										
-D										
Total										

Waste Quantities and Cost - Consolidated Summary

<i>WBS and Description</i>	<i>FY 2009</i>			<i>FY 2010</i>			<i>FY 2011</i>			<i>Total</i>		
	<i>Quantity</i>	<i>Transportation Cost</i>	<i>Disposal Cost</i>	<i>Quantity</i>	<i>Transportation Cost</i>	<i>Disposal Cost</i>	<i>Quantity</i>	<i>Transportation Cost</i>	<i>Disposal Cost</i>	<i>Quantity</i>	<i>Transportation Cost</i>	<i>Disposal Cost</i>
<u>C.1.1 - Groundwater Environmental Actions:</u>												
LLW												
MLLW												
RH-TRU												
CH-TRU												
Hazardous												
Industrial												
<u>C.2.1 - D&D of Building XX</u>												
LLW												
MLLW												
RH-TRU												
CH-TRU												
Hazardous												
Industrial												
Total												