
AMERICAN RECOVERY AND REINVESTMENT ACT of 2009

SPECIAL PROVISIONS (rev 0)

(Company -- MAR 2009)

B&W Y-12 National Security Complex

1. General Definitions

The following terms shall have the meanings below:

- a.) Act means the American Recovery and Reinvestment Act of 2009 (American Recovery and Reinvestment Act of 2009, Pub. L. 111-5)
- b.) DOE means the U. S. Department of Energy (DOE) and includes the U. S. Government and includes any duly authorized representative thereof.
- c.) Company means Babcock & Wilcox Technical Services, LLC (B&W Y-12) acting under Contract No. DE-AC05-00OR22800.
- d.) First-tier Subcontractor means the person or organization that has entered into this Agreement with the Company (Federal Government Prime Contractor) funded by the Recovery Act..
- e.) Agreement means Purchase Order, Subcontract, Price Agreement, AVID Agreement, Basic Ordering Agreement, or Modification thereof.
- f.) Subcontract Administrator (SA) means Company's cognizant Procurement representative,
- g.) Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

2. Preamble

The Act:

- a.) requires the First-tier Subcontractor to comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below,
- b.) is not fully developed and the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements, may be adjusted. The First-tier Subcontractor will be provided these details as they become available. The First-tier Subcontractor shall comply with all requirements of the Act. If the First-tier Subcontractor believes there is any inconsistency between ARRA requirements and any current award terms and conditions or Special Conditions, the issues will be referred to the Company SA for reconciliation by the YSO DOE Contracting Officer,
- c.) 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 work funded by sources other than the Recovery Act, the First-tier Subcontractor must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

4. Flow Down Requirements

First-tier Subcontractors are required to include these Special Provisions in every subcontract over \$25,000 that is funded, in whole or part, by the Recovery Act unless the subcontract is with an individual.

5. 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>.

6. Registration Requirements

First-tier Subcontractors shall: 1.) provide a valid DUNS number (including information update as may be necessary) and 2.) be registered with the Central Contractor Registration (CCR) no later than the date the first report is due under Section 8, American Recovery and Reinvestment Act – Reporting Requirements.

7. 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 Sections 8, 9, and 10, are in effect until the FAR is modified to implement these provisions of the Recovery Act. The First-tier Subcontractor agrees that the SA 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 9.

8. 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 First-tier Subcontractor’s existing personnel procedures.

“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 First-tier Subcontractor’s existing personnel procedures.

“Total Compensation” means the complete pay package of First-tier Subcontractor 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 First-tier Subcontract 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 First-tier subcontractor that receives First-tier Subcontracts 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 First-tier Subcontractor invoices the Company 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 First-tier Subcontractor shall report the following information, using the online reporting tool available at TBD. If the tool is not

available when the First-tier Subcontractor's report is due, the First-tier Subcontractor 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 SA.

- (1) the amount of recovery funds invoiced by the First-tier Subcontractor, cumulative since the beginning of the subcontract;
- (2) a detailed list of all services performed or supplies delivered for which the First-tier Subcontractor has invoiced, including –
 - (i) project title, if any;
 - (ii) a description of the project;
 - (iii) an assessment of the First-tier Subcontractor's progress towards the completion of the requirements of the subcontract (i.e., not started, less than 50% completed, completed 50% or more, or fully completed). This covers the subcontract (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 subcontract number.
- (4) 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) in the First-tier Subcontractor's preceding fiscal year, the First-tier Subcontractor received-
 - (A) 80 percent or more of its annual gross revenues in Federal contracts (or subcontracts), loans, grants (and sub-grants) and cooperative agreements; and
 - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and sub-grants) 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 subcontract over \$25,000, where the subcontractor is not an individual, awarded by the Company or a First-tier Subcontractor, 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 subcontract number assigned by the Company).
 - (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 sub-grants), and cooperative agreements; and
 - (B) \$25,000,000 or more in annual gross revenues from Federal contracts (and

- subcontracts), loans, grants (and sub-grants), 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 First-tier Subcontractor or its lower 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.

9. 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 re-determinable subcontract, or any combination of these, the First-tier Subcontractor shall maintain and the Government and Company 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 subcontract. This right of examination shall include inspection at all reasonable times of the First-tier Subcontractor’s plants, or parts of them, engaged in performing the subcontract.

(c) Cost or pricing data.. If the First-tier Subcontractor has been required to submit cost or pricing data in connection with any pricing action relating to this subcontract, the Company and Government, or an authorized representative of the Government, 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 First-tier Subcontractor’s records, including computations and projections, related to—

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

(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 First-tier Subcontractor’s or any lower-tier subcontractors’ directly pertinent records involving transactions related to this a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the First-tier Subcontractor or its lower-tier subcontractor to create or maintain any record that the First-tier Subcontractor or its lower-tier subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Reports. If the First-tier Subcontractor is required to furnish cost, funding, or performance reports, the Company and Government shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

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

(f) Availability. The First-tier Subcontractor 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 subcontract 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 subcontract. In addition—

- (1) If this subcontract is completely or partially terminated, the First-tier Subcontractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and
- (2) The First-tier Subcontractor 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 First-tier Subcontract until such appeals, litigation, or claims are finally resolved.

(g) The First-tier Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all of its subcontracts under this subcontract 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.

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.

(note: above is modeled on the Clause H.999 contained in the Policy Flash number 2009-28 and dated March 11, 2009)

CERTIFICATION

SPECIAL PROVISIONS AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (COMPANY – MAR 2009) B&W Y-12 National Security Complex

The First-Tier Subcontractor (see Paragraph 1. General Definitions, subpart d. of the Special Provisions) hereby certifies the following:

1. In the First-tier Subcontractor's preceding fiscal year, it has ; has not , received 80% or more of its annual gross revenues in Federal contracts (or subcontracts), loans, grants (and sub-grants), and cooperative agreements and;
2. In the First-tier Subcontractor's preceding fiscal year, it has ; has not , received \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and sub-grants), and cooperative agreements and;
3. 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.

By signing below, the First-tier Subcontractor certifies, under penalty of law, that these representations are accurate, current, and complete and that the signer is duly authorized to make such certification on behalf of the First-tier subcontractor.

First-tier Subcontractor: _____
(Insert First-tier's legal name)

By: _____ / _____
(Printed Name) (Signature)

Title: _____

Date: _____

NOTE: In the event your certification has the first block checked in each of the above three items, you are required to provide the names and total compensation of each of the five most highly compensated officers for the calendar year in which the subcontract is awarded.

	<u>Name</u>	<u>Compensation</u>
1.		
2.		
3.		
4.		
5.		

