

AGREEMENT ADDENDUM
Implementation of the American Recovery and Reinvestment Act of 2009

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (“ARRA”) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases.

This agreement addendum addresses additional requirements applicable to ARRA funds. Subject to further guidance by the applicable Federal awarding agency, the following terms and conditions are consistent with the mandatory requirements for agreements funded by ARRA.

Be advised that ARRA 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 ARRA and related guidance. For projects funded by other sources in addition to ARRA funds, Contractors must keep separate records for ARRA funds and must ensure those records comply with the requirements of the ARRA.

The federal Government has not fully developed the implementing instructions of ARRA, particularly concerning specific procedural requirements for the new reporting requirements. The Contractor will be provided these details as they become available. The Contractor must comply with all requirements of ARRA. In the event there is any inconsistency between these ARRA requirements and current award terms and conditions, the ARRA requirements will take precedence.

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

Definitions

A. “ARRA funds” means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

B. “Contractor” is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

ARRA Terms & Conditions

1. **Revisions to Requirements.** Contractor acknowledges that this Addendum may be revised pursuant to ongoing guidance from the relevant Federal or Commonwealth agency regarding requirements for ARRA funds. Contractor agrees to abide by any such revisions upon receipt of written notification from the Commonwealth of the revisions, which will automatically become a material part of this Addendum, without the necessity of either party executing any further instrument.

2. **Reporting Requirements.** Not later than 5 days after the end of each calendar quarter, or more frequently as directed by the Commonwealth, the Contractor shall submit a report to the Commonwealth that contains:
 - (a) The total amount of ARRA funds received;

 - (b) The amount of ARRA funds received that were expended or obligated to projects or activities;

 - (c) A detailed list of all projects or activities for which ARRA funds were expended or obligated, including:
 - i) the name of the project or activity;
 - ii) a description of the project or activity;
 - iii) an evaluation of the completion status of the project or activity;
 - iv) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and
 - v) for infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under ARRA, and name of the person to contact at the agency if there are concerns with the infrastructure investment;

 - (d) Detailed information on any subcontracts or subgrants awarded by the Contractor must include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget;

 - (e) If required by the Commonwealth, Contractor agrees to separately identify the expenditures for each award funded under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by Office of Management and Budget Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." This identification on the

SEFA and SF-SAC shall include the Federal award number, the Catalog of Federal Domestic Assistance (CFDA) number, and amount such that separate accountability and disclosure is provided for ARRA funds by Federal award number consistent with the Contractor reports required by ARRA;

(f) If required by the Commonwealth, Contractor shall submit backup documentation for expenditures of ARRA funds including such items as timecards and invoices. Contractor shall provide copies of backup documentation at the request of the Commonwealth.

3. Registrations and Identification Information

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

(b) If applicable, the Contractor agrees to separately identify to each sub-contractor and document at the time of award of contract or approval of application and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of ARRA funds.

4. Flow Down Requirement. Contractor must include these ARRA Terms and Conditions in any subcontract.

5. Prohibition on Use of Funds. No ARRA funds may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, or any other items prohibited by ARRA.

6. Required Job Posting. To ensure Pennsylvanians have the utmost opportunity to be hired for jobs created through the receipt of ARRA funding, all Contractors shall post jobs they create or seek to fill as a result of receiving ARRA funding to the PA CareerLink® system at www.pacareerlink.state.pa.us . Contractors can locate their local PA CareerLink® office through the same website or by calling 1-866-858-2753. Staff at local PA CareerLinks® can assist Contractors with posting positions and explain how to retrieve resumes or applications within the system.

7. Wage Rate Requirements. Section 1606 of ARRA requires that 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 ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

8. Whistleblower Provision.

(a) An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of:

- (1) gross mismanagement of an agency contract or grant relating to covered funds;
- (2) a gross waste of covered funds;
- (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- (4) an abuse of authority related to the implementation or use of covered funds; or
- (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

(b) A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint regarding the reprisal to the appropriate U.S. Office of the Inspector General.

(c) Any employer receiving covered funds under ARRA, shall post notice of the rights and remedies as required by Section 1553 of ARRA. See www.recovery.gov.

9. Duty to Report Fraud. Contractors and subcontractors shall promptly refer to the U.S. Office of Inspector General and Commonwealth Office of Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person will or has: 1) submitted a false claim under the False Claims Act; 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, ethics or similar misconduct involving ARRA funds; or 3) engaged in misuse, gross waste, gross mismanagement or abuse of authority related to the use or award of ARRA funds.

10. Environmental and Preservation Requirements. The Contractor shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by the awarding Federal agency to ensure compliance with applicable laws including: National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, the Clean Air Act, the Federal Water Pollution and Control Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898). Failure of the Contractor to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal

funding. The Contractor shall not undertake any project having the potential to impact EHP resources without the prior approval of the awarding Federal agency, including but not limited to communication towers, physical security enhancements, new construction, and modification to buildings that are 50 years old or greater. The Contractor must comply with all conditions placed on the project as a result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, the Contractor must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, the Contractor will immediately cease construction in that area and notify the awarding Federal agency and the Pennsylvania Historical and Museum Commission. Any construction activities that have been initiated prior to the full environmental and historic preservation review will result in a non-compliance finding.

11. No Contracts with Debarred or Suspended Entities. The Contractor shall not enter into any contract or subcontract with any party that has been debarred or suspended from either:

- (a) contracting with the Federal Government or the Commonwealth; or
- (b) participating in any Federal or Commonwealth assistance programs.

12. Prohibition on Lobbying.

(a) The Contractor covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any Agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or Agreement.

(b) Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) and any applicable regulations are incorporated by reference and the Contractor agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

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

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

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

- (c) On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by applicable regulations.
- (d) On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by applicable regulations.
- (e) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by applicable regulations.

14. Creating Opportunities for Small and Disadvantaged Businesses.

Please use one of the following subsections – I, II, III or IV as detailed below:

- I. *The following shall apply for Projects using ARRA funds associated with an established federal DBE program and the Commonwealth agency and the administering federal agency have determined that only the Federal DBE program requirements shall apply:***

Creating Opportunities for Small and Disadvantaged Businesses

The Contractor shall comply with all applicable federal Disadvantaged Business Enterprises (DBE) requirements related to the DBE program.

- II. *The following shall be included in invitations for bid, requests for proposals, requests for quotes and other Commonwealth solicitations for Projects using ARRA funds and shall be incorporated (along with commitments made) in the resulting contract:***

Creating Opportunities for Small and Disadvantaged Businesses

(a) The Governor, through Executive Order 2009-02, has established, as an overall Commonwealth aspirational goal that at least ten percent (10%) of the funds allotted to the Commonwealth of Pennsylvania through the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (“ARRA”) should go to small disadvantaged businesses as contractors, subcontractors, grantees, subgrantees, and suppliers.

(b) To assist the Commonwealth in attaining this aspirational goal, each bidder/offeror/contractor is required to make reasonable and good faith efforts to reach out to small disadvantaged businesses to make them aware of subcontracting and supply opportunities and to encourage these businesses to participate as subcontractors and suppliers.

- (c) At a minimum, each bidder/offeror/contractor is required to:
 - (i) Contact the Department of General Services’ Bureau of Minority and Women Business Opportunities (“BMWBO”) by telephone (717-783-3119)

to discuss potential opportunities for small disadvantaged businesses as subcontractors and suppliers; and

(ii) When notified by the Commonwealth agency or BMWBO, participate in outreach activities and events to increase small disadvantaged business interest and participation in ARRA opportunities; and

(iii) Use the Department of General Services website www.dgsweb.state.pa.us/mbewbe/VendorSearch.aspx to identify DGS-certified Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) as potential subcontractors and suppliers; and

(iv) Solicit identified MBEs and WBEs; and

(v) Prepare and keep the following records:

a. Solicitations lists, specifically identifying all small, disadvantaged businesses that were solicited; and

b. Bid tabulations, specifically identifying all small, disadvantaged businesses that submitted a bid, quote or proposal, and the dollar amount of the bid, quote or proposal; and

c. Copies of all bids, quotes and proposals received; and

(vi) If awarded the contract, provide monthly reports to the Department of General Services' Bureau of Minority and Women Business Opportunities on small disadvantaged business utilization.

(d) Bidder/Offeror/Contractor shall comply with all applicable federal Disadvantaged Business Enterprises (DBE) requirements related to DBE programs. To the extent that federal DBE requirements conflict with the requirements of this Paragraph, the federal DBE requirements shall prevail. In the event that Contractor identifies a conflict, Contractor shall verify with the Commonwealth, which shall verify with the administering federal agency, that a conflict exists that would jeopardize ARRA funding.

(e) For purposes of this paragraph, "small disadvantaged businesses" are small businesses that are owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages. The term includes:

(i) Department of General Services-certified MBEs and WBEs that qualify as small businesses; and

- (ii) United States Small Business Administration certified 8(a) small disadvantaged business concerns; and
- (iii) Businesses that BMWBO determines meet the Small Business Administration criteria for designation as a small disadvantaged business.
- (iv) Small businesses that have been certified as disadvantaged business enterprises (“DBEs”).

“Small businesses” are businesses in the United States that are independently owned, are not dominant in their field of operation, employ no more than 100 full-time or full-time equivalent employees and earn less than \$20 million in gross annual revenues (\$25 million in gross annual revenues for those businesses in the information technology sales or service business).

III. The following shall be included in contracts for Projects using ARRA funds where there was no solicitation document that included the clause is Subsection II above:

Creating Opportunities for Small and Disadvantaged Businesses

(a) The Governor, through Executive Order 2009-02, has established, as an overall Commonwealth aspirational goal that at least ten percent (10%) of the funds allotted to the Commonwealth of Pennsylvania through the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (“ARRA”) should go to small disadvantaged businesses as contractors, subcontractors, grantees, subgrantees, and suppliers.

(b) To assist the Commonwealth in attaining this aspirational goal, Contractor is required to make reasonable and good faith efforts to reach out to small disadvantaged businesses to make them aware of subcontracting and supply opportunities and to encourage these businesses to participate as subcontractors and suppliers.

(c) At a minimum, Contractor is required to:

(i) Contact the Department of General Services’ Bureau of Minority and Women Business Opportunities (“BMWBO”) by telephone (717-783-3119) to discuss potential opportunities that may exist for small disadvantaged businesses as subcontractors and suppliers; and

(ii) When notified by the Commonwealth agency or BMWBO, participate in outreach activities and events to increase small disadvantaged business interest and participation in subcontracting and supply contract opportunities; and

(iii) Use the Department of General Services website

www.dgsweb.state.pa.us/mbewbe/VendorSearch.aspx to identify DGS-certified Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) as potential subcontractors and suppliers; and

(vi) Solicit identified MBEs and WBEs for subcontracting and supply contract opportunities; and

(vii) Prepare and keep the following records:

a. Solicitations lists, specifically identifying all small, disadvantaged businesses that were solicited; and

b. Bid tabulations, specifically identifying all small, disadvantaged businesses that submitted a bid, quote or proposal, and the dollar amount of the bid, quote or proposal; and

c. Copies of all bids, quotes and proposals received; and

(vi) Provide monthly reports to the Department of General Services' Bureau of Minority and Women Business Opportunities on small disadvantaged business utilization.

(d) To the extent that this Contract imposes specific small, disadvantaged business solicitation and document submission requirements, Contractor shall comply with those requirements.

(e) Contractor shall comply with all applicable federal Disadvantaged Business Enterprises (DBE) requirements related to DBE programs. To the extent that federal DBE requirements conflict with the requirements of this Paragraph, the federal DBE requirements shall prevail. In the event that Contractor identifies a conflict, Contractor shall verify with the Commonwealth, which shall verify with the administering federal agency, that a conflict exists that would jeopardize ARRA funding.

(f) For purposes of this paragraph, "small disadvantaged businesses" are small businesses that are owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages. The term includes:

(i) Department of General Services-certified MBEs and WBEs that qualify as small businesses; and

(ii) United States Small Business Administration certified 8(a) small disadvantaged business concerns; and

- (iii) Businesses that BMWBO determines meet the Small Business Administration criteria for designation as a small disadvantaged business.
- (iv) Small businesses that have been certified as disadvantaged business enterprises (“DBEs”).

“Small businesses” are businesses in the United States that are independently owned, are not dominant in their field of operation, employ no more than 100 full-time or full-time equivalent employees and earn less than \$20 million in gross annual revenues (\$25 million in gross annual revenues for those businesses in the information technology sales or service business).

IV. The following shall be included in grants for Projects using ARRA funds:

Creating Opportunities for Small and Disadvantaged Businesses

(a) The Governor, through Executive Order 2009-02, has established, as an overall Commonwealth aspirational goal that at least ten percent (10%) of the funds allotted to the Commonwealth of Pennsylvania through the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (“ARRA”) should go to small disadvantaged businesses as contractors, subcontractors, grantees, subgrantees, and suppliers.

(b) To assist the Commonwealth in attaining this aspirational goal, Grantee is required to make reasonable and good faith efforts to reach out to small disadvantaged businesses to make them aware of subcontracting and supply opportunities and to encourage these businesses to participate as subgrantees, contractors, subcontractors and suppliers.

(c) At a minimum, Grantee is required to:

(i) Contact the Department of General Services’ Bureau of Minority and Women Business Opportunities (“BMWBO”) by telephone (717-783-3119) to discuss potential opportunities that may exist for small disadvantaged businesses as subgrantees, contractors, subcontractors and suppliers; and

(ii) When notified by the Commonwealth agency or BMWBO, participate in outreach activities and events to increase small disadvantaged business interest and participation in subgrant, contract, subcontract and supply contract opportunities; and

(iii) Use the Department of General Services website www.dgsweb.state.pa.us/mbewbe/VendorSearch.aspx to identify DGS-certified Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) as potential subgrantees, contractors, subcontractors and suppliers; and

- (iv) Solicit identified MBEs and WBEs for subgrant, contract, subcontract and supply contract opportunities; and
 - (v) Prepare and keep the following records:
 - a. Solicitations lists, specifically identifying all small, disadvantaged businesses that were solicited; and
 - b. Bid tabulations, specifically identifying all small, disadvantaged businesses that submitted a bid, quote or proposal, and the dollar amount of the bid, quote or proposal; and
 - c. Copies of all bids, quotes and proposals received; and
 - (vi) Provide monthly reports to the Department of General Services' Bureau of Minority and Women Business Opportunities on small disadvantaged business utilization.
- (d) To the extent that the grant imposes specific small, disadvantaged business solicitation and document submission requirements, Grantee shall comply with those requirements.
- (e) Grantee shall comply with all applicable federal Disadvantaged Business Enterprises (DBE) requirements related to DBE programs. To the extent that federal DBE requirements conflict with the requirements of this Paragraph, the federal DBE requirements shall prevail. In the event that Grantee identifies a conflict, Grantee shall verify with the Commonwealth, which shall verify with the administering federal agency, that a conflict exists that would jeopardize ARRA funding.
- (f) For purposes of this paragraph, "small disadvantaged businesses" are small businesses that are owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages. The term includes:
- (i) Department of General Services-certified MBEs and WBEs that qualify as small businesses; and
 - (ii) United States Small Business Administration certified 8(a) small disadvantaged business concerns; and
 - (iii) Businesses that BMWBO determines meet the Small Business Administration criteria for designation as a small disadvantaged business.

- (iv) Small businesses that have been certified as disadvantaged business enterprises (“DBEs”).

“Small businesses” are businesses in the United States that are independently owned, are not dominant in their field of operation, employ no more than 100 full-time or full-time equivalent employees and earn less than \$20 million in gross annual revenues (\$25 million in gross annual revenues for those businesses in the information technology sales or service business).

15. Access to Records. Contractor agrees that with respect to each agreement using, in whole or in part, ARRA funds, any representative of an appropriate U.S. Inspector General appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the U.S. Comptroller General is authorized:

- (a) to examine any records of the Contractor, any of its subcontractors, or any state or local agency administering such contract that pertain to, and involve transactions relating to the contract; and
- (b) to interview any officer or employee of the contractor, subcontractor or agency regarding such transactions.

16. Records Retention. The Contractor shall retain all such contract records intact in a form, if not original documents, as may be approved by the Federal Government, for at least three (3) years following termination of a project funded by ARRA or for such longer period of time as required by the Commonwealth.

17. Access to Information. This contract and any records or expenditures related thereto may be subject to disclosure under the Pennsylvania Right to Know Law 65 P.S. 67.101 *et seq.* and the Freedom of Information Act, 5 U.S.C. §552.

18. Compliance. The Contractor shall comply with all applicable laws, regulations and program guidance. A **non-exclusive** list of statutes, regulations and/or guidance commonly applicable to Federal funds follows:

General

- Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*; 32 CFR part 26, Subpart B
- Copeland “Anti-Kickback Act”, 18 U.S.C. Section 874; 29 CFR Part 3
- Contract Work Hours and Safety Standards Act, 40 U.S.C. §§327-330; 29 CFR Part 5
- Americans with Disabilities Act of 1990, as amended; 42 U.S.C. Chapter 126; 28 C.F.R. §35.101 *et seq.*

Administrative Requirements

- OMB Circular A-102, State and Local Governments (10/07/94, amended 08/28/07) (44 CFR Part 13)

- OMB Circular A-110, Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (11/19/93, amended 09/30/99) (2 CFR Part 215)

Cost Principles

- OMB Circular A-87, State and Local Governments (05/10/04) (2 CFR Part 225)
- OMB Circular A-21, Educational Institutions (5/10/04) (2 CFR Part 220)
- OMB Circular A-122, Non-Profit Organizations (5/10/04) (2 CFR Part 230)

Audit Requirement

- OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations (6/24/97, includes revisions published in the Federal Register 6/27/03)

19. Buy American - Use of American Iron, Steel, and Manufactured Goods.

Please use subsections I and II in the alternative as detailed below:

I. The following shall apply for Projects using ARRA funds for the construction, alteration, maintenance, or repair of a public building or public work when:

- *the estimated value of the project is less than \$7,804,000; or*
- *the procurement is being conducted by local governments and municipalities; or*
- *the specific item being procured is not covered under the World Trade Organization Agreement on Government Procurement or other international procurement agreement. (e.g. mass transit or highway procurements, dredging service procurements, or national defense-related procurements).*

(a) *Requirement.* All iron, steel, and other manufactured goods used as construction material for the construction, alteration, maintenance, or repair of a public building or public work must be produced in the United States. This requirement shall be applied in a manner that is consistent with the laws and agreements of the United States and the Commonwealth of Pennsylvania.

(b) *Definitions.*

1. “Building or work” means construction, maintenance, alteration, or repair. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which

they are manufactured or furnished) is not “building” or “work” within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

2. “Construction material” means an article, material, or supply brought to the construction site by the recipient, subrecipient 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.

3. “Domestic construction material” means:

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

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

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

5. “Manufactured good or product” means a good or product used as construction material in a project that is the result of processing materials by way of machinery and/or labor that produce a substantially different article. Where the basic character, function, or kind of material processed remains the same, it is not manufactured.

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

7. “Public building or public work” means building or work, the construction, alteration, maintenance, or repair of which, as defined in this award term, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

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

9. "Unmanufactured construction material" means raw material brought to the construction site for incorporation into the building or work that has not been:

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

10. "United States" means the 50 States, the District of Columbia, and outlying areas including:

- (i) Commonwealths: (a) Puerto Rico; (b) The Northern Mariana Islands;
- (ii) Territories: (a) American Samoa; (b) Guam; (c) U.S. Virgin Islands; and
- (iii) Minor outlying islands: (a) Baker Island; (b) Howland Island; (c) Jarvis Island; (d) Johnston Atoll; (e) Kingman Reef; (f) Midway Islands; (g) Navassa Island; (h) Palmyra Atoll; (i) Wake Atoll.

(c) *Domestic preference.*

1. This award term and condition implements Section 1605 of ARRA, by requiring that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States.

2. The recipient shall use only domestic construction material in performing this project, except as provided in paragraph (c)(3) and (c)(4) of this term and condition.

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

[Award official to list applicable excepted materials or indicate "none"]

4. The award official may add other foreign construction material to the list in paragraph (c)(3) of this term and condition if the Federal government determines that—

- (i) The cost of domestic construction material would be unreasonable. The cost of domestic iron, steel, or other manufactured goods used as construction material in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 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 ARRA to a particular construction material would be inconsistent with the public interest.

(d) *Request for determination of inapplicability of Section 1605 of ARRA.*

1. (i) Any request to use foreign construction material in accordance with paragraph (c)(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) Price;

(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 price comparison table in the format in paragraph (e) of this clause.

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

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

2. If the Federal government determines after award that an exception to section 1605 of ARRA applies, the award official will amend the award to allow use of the foreign construction material. When the basis of the exception is non-availability or public interest, the amended award shall reflect adjustment of the award amount or redistribution of budgeted funds, as appropriate, to cover costs associated with acquiring or using the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, the award official shall adjust the award amount or

redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

3. Unless the Federal government determines that an exception to section 1605 of ARRA applies, use of foreign construction material is noncompliant with section 1605 of ARRA.

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

Foreign and Domestic Construction Materials Price Comparison

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
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Item 1:

Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

Item 2:

Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

1. [List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
2. [Include other applicable supporting information.]
3. [* Include all delivery costs to the construction site.]

II. The following shall, in addition to the Pennsylvania Steel Products Procurement Act, 73 P.S. Sections 1881-1887, apply for Projects using ARRA funds for the construction, alteration, maintenance, or repair of a public building or public work with an estimated value of \$7,804,000 or more:

(a) *Requirement.* All iron and steel used in the construction, reconstruction, alteration or repair of a public building or public work must be manufactured in the United States. All other manufactured goods used as construction material for the construction, alteration, maintenance, or repair of a public building or public work must be produced in the United States or a designated country. This requirement shall be applied in a manner that is consistent with the laws and agreements of the United States and the Commonwealth of Pennsylvania.

(b) *Definitions.* As used in this award term and condition:

1. “Building or work” includes, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways,

streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not “building” or “work” within the meaning of this definition unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

2. “Construction material” means iron, steel, and other manufactured goods used as construction material brought to the construction site by the recipient, subrecipient, 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.

3. “Designated country” means: Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Chile, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom.

4. “Designated country construction material” means a construction material that

(i) Is wholly the growth, product, or manufacture of a designated country; or

(ii) 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 designated country into a new and different construction material distinct from the materials from which it was transformed.

5. “Domestic construction material” means:

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

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

6. "Foreign construction material" means a construction material other than a domestic construction material.

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

8. "Public building or public work" means building or work, the construction, alteration, maintenance, or repair of which, as defined in this Subpart, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

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

10. "Unmanufactured construction material" means raw material brought to the construction site for incorporation into the building or work that has not been--

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

11. "United States" means the 50 States, the District of Columbia, and outlying areas.

(c) *Construction materials.*

1. This award term and condition implements

(i) Section 1605(a) of the American ARRA, by requiring that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of ARRA do not apply to designated country construction materials. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used as construction material in the project are from a Party to an international agreement that obligates the

recipient to treat the goods and services of that Party the same as domestic goods and services, or where the iron, steel or manufactured goods used as construction material in the project are from a least developed country. This obligation shall only apply to projects with an estimated value of \$7,804,000 or more.

2. The recipient shall use only domestic or designated country construction material in performing the work funded in whole or part with this award, except as provided in paragraphs (c)(3) and (c)(4) of this term and condition.

3. The requirement in paragraph (c)(2) of this term and condition does not apply to the construction materials or components listed by the Government as follows:

[Award official to list applicable excepted materials or indicate "none"]

4. The award official may add other construction material to the list in paragraph (c)(3) of this award term and condition if the Federal government determines that:

- (i) The cost of domestic construction material would be unreasonable. The cost of domestic iron, steel, or other manufactured goods used as construction material in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;
- (ii) The 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 ARRA to a particular construction material would be inconsistent with the public interest.

(d) Request for determination of inapplicability of section 1605 of ARRA or the Buy American Act.

- 1. (i) Any recipient request to use foreign construction material in accordance with paragraph(c)(4) of this term and condition 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) Price;

- (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(c)(4) of this clause.

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

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

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

2. If the Federal government determines after award that an exception to section 1605 of ARRA applies and the award official will amend the award to allow use of the foreign construction material. When the basis of the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount or redistribution of budgeted funds, as appropriate, to cover costs associated with acquiring or using the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in paragraph (c)(4)(i) of this term and condition.

3. Unless the Federal government determines that an exception to the section 1605 of ARRA applies, use of foreign construction material other than designated country construction material is noncompliant with the applicable Act.

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

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction Material Description	Unit	of Quantity	Price
	Measure		(Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____

Domestic construction material _____
Item 2:
Foreign construction material _____
Domestic construction material _____

[List name, address, telephone number ,email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
[Include other applicable supporting information.]
[Include all delivery costs to the construction site].*