

**ADDENDUM
MAY 2009**

Alliance for Sustainable Energy, LLC
National Renewable Energy Laboratory
Representations and Certifications for Subcontracts (dated May 10, 2007)

**Applicable to Subcontracts and Purchase Orders funded in whole or in part under
AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

Work performed under this subcontract or purchase order will be funded, in whole or in part, with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act or Act).

EXEMPTION FROM REPORTING DETAILED INFORMATION

1. Exemption from Reporting Officer's Compensation

The Offeror hereby certifies that it is exempt from a reporting requirement of the Recovery Act, specifically FAR 52.204-11, paragraph (d)(8) to report the names and total compensation of each of the five most highly compensated officers for the calendar year in which this subcontract is awarded. The exemption is based on (*check all that applies*):

___ a. In the preceding fiscal year, the Subcontractor received less than 80 percent of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

___ b. In the preceding fiscal year, the Subcontractor received less than \$25,000,000 in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; or

___ c. The public currently has access to information about the compensation of its senior executives through periodic reports filed under section 132(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), or section 6104 of the Internal Revenue Code of 1986.

OR IF NOT EXEMPT - COMPLETE THE FOLLOWING

Information required is included herein (*check if applicable*).

Officer's Name	Total Compensation
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____

2. Exemption from Reporting Detailed Information

The Offeror hereby certifies that it is exempt from a detailed reporting requirement of the Recovery Act, specifically FAR 42.204-11, paragraph (d)(10 (i) through (x) to report the DUNS number, congressional district(s), etc. The exemption is based on (check all that applies):

- a. The Subcontractor is an individual
- b. The Subcontract amount is less than \$25,000
- c. The Subcontractor, in the previous fiscal year, had gross income over \$300,000.

OR IF NOT EXEMPT – COMPLETE THE FOLLOWING

DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER AND CENTRAL CONTRACTOR REGISTRATION (CCR)

Offeror must obtain a DUNS number and be currently registered with the CCR (www.ccr.gov)

Offeror's DUNS Number: _____

Offeror certifies that it has registered in the CCR system: _____
(Initial and Date)

3. BUY AMERICAN ACT- CONSTRUCTION MATERIALS CERTIFICATION

- (i) The Offeror certifies that construction materials to be used in this project comply with 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.
- (ii) The Offeror shall comply with the requirements of the clauses below to request a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act.
- (iii) NREL will evaluate offers in accordance with the policies and procedures of the requirements of the clauses below and Part 25 of the Federal Acquisition Regulation and Subpart 925.1 of the Department of Energy Acquisition Regulation.
- (iv) As used in the following clauses, the term "Government" shall mean the Alliance for Sustainable Energy, LLC managing and operating contractor for the National Renewable Energy Laboratory (NREL), "Contractor" shall mean "Subcontractor", and "Contracting Officer" shall mean NREL Subcontract Administrator.

REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS— BUY AMERICAN ACT—CONSTRUCTION MATERIALS

Derived from FAR 52.225-21 (MAR 2009)

(Applies to construction subcontracts **less than \$7,443,000** and funded in part or in whole with funds appropriated by the Recovery Act.)

- 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 contract by more than 25 percent;
 - (B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available 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.
 - (i) 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:

Construction Material Description	Unit of Measure	Quantity	Cost (Dollars)*
<u>Item 1:</u>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<u>Item 2:</u>			
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.]			

Foreign and Domestic Construction Materials Cost Comparison

REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS—BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS

Derived from FAR 52.225-23 (MAR 2009)

(Applies to construction subcontracts valued at \$7,443,000 or more and funded in part or in whole with funds appropriated by the Recovery Act.)

- a. Definitions. As used in this clause—
- “Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.
- “Domestic construction material” means—
- (1) An unmanufactured construction material mined or produced in the United States; or
 - (2) A construction material manufactured in the United States.
- “Foreign construction material” means a construction material other than a domestic construction material.

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

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

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

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

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

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

- (1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);
- (2) A Free Trade Agreement country (FTA)(Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

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

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

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

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

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

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

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

- (b) Construction materials.
- (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act ([41 U.S.C. 10a-10d](#)) do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—
 - (i) Section 1605 of the Recovery Act by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and
 - (ii) The Buy American Act by providing a preference for unmanufactured domestic construction material.
 - (2) The Contractor shall use only domestic or Recovery Act designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.
 - (3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”]
 - (4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that—
 - (i) The cost of domestic construction material would be unreasonable.
 - (A) The cost of domestic iron, steel, or other manufactured goods used as construction material is unreasonable when the cumulative cost of such material will increase the overall cost of the contract by more than 25 percent;
 - (B) The cost of unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
 - (ii) 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:

Construction Material Description	Unit of Measure	Quantity	Cost (Dollars)*
<u>Item 1:</u>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<u>Item 2:</u>			
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.]			

Foreign and Domestic Construction Materials Cost Comparison

CERTIFICATION

By signing below, the Offeror certifies, under penalty of law, that these representations and certifications are accurate, current, and complete.

COMPANY NAME: _____

BY (SIGNATURE) _____

DATE: _____

TYPED/PRINTED NAME: _____

TITLE: _____

TELEPHONE NUMBER: _____

FAX NUMBER: _____

EMAIL ADDRESS: _____

Please print, sign, and fax to the NREL, Subcontract Administrator.