

**PROCUREMENT DEPARTMENT**  
Rm 120 Municipal Services Building  
Philadelphia, PA 19102-1685  
FAX: (215) 686-4716

# CITY OF PHILADELPHIA

Hugh Ortman  
Procurement Commissioner

June 6, 2011

**BID NUMBER:** S2OF1820  
**TITLE:** Landscape Restoration of Existing Park Grounds and Habitats  
**DEPARTMENT:** PHILADELPHIA PARKS & RECREATION (PP & R)  
**DATE TO OPEN:** June 29, 2011 at 10:30 AM

## ADDENDUM # 1

### TO ALL BIDDERS:

**You are hereby notified of the following changes to the above mentioned bid:**

#### **1. Section 1.6.2 is incorrect. It should read:**

##### **1.6.2 Bids Opening July 1, 2010 through June 30, 2012**

Bidders may qualify for the Master Bid Security Program described above for **July 1, 2010 – June 30, 2012** by submitting a check in the amount of **\$175.00** made payable to the City of Philadelphia. The check should be submitted, under separate cover, to the Bid Unit Supervisor at least one day prior to the first bid that the bidder wants covered under the program and is *non-refundable*. Or if, and only if, the bidder chooses to submit the check for the Master Bid Security Program with their bid, the check **MUST** be in the form of a Certified, Treasurer's or Cashier's Check, Bank or United States Postal Money Order and is non-refundable.

**2. Section 1.8.6 should be changed to 1.8.7. The new information for section 1.8.6 should read as follows:**

1.8.6 When M-BE, W-BE or DS-BE ranges are required on an Invitation and Bid, bidders are reminded that the submission of a blank "Commerce Department Office of Economic Opportunity (OEO) Solicitation and Commitment Form" will be deemed non-responsive and ineligible for an award. Bidders are reminded to read carefully and entirely the "Bidder's Guidelines relating to Executive Order 02-05".

OR

If no M-BE, W-BE or DS-BE ranges are established for this Invitation and Bid, bidders are requested to complete the "Voluntary Participation and Commitment Form (Bid)" located after page 1 of the bid.

Completion of this form will not, in any way, impact the City's determination concerning bidder's responsiveness to the requirements of the bid and the award process. The information provided in the "Voluntary Participation and Commitment Form (Bid)" will be for the City's information.

**3. Please find attached to this addendum SUPPLEMENTAL TERMS AND CONDITIONS FOR ARRA FUNDED CONTRACTS.**

Please sign, date and return this addendum with your bid to the Procurement Department, 1401 J.F.K Boulevard, Bid Room 170A, Philadelphia, PA 19102-1685 as it now becomes a part of the proposal.

A. Campfield  
Buyer, A. Campfield

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
FIRM NAME (PRINT)

\_\_\_\_\_  
DATE

AC/bws

***SUPPLEMENTAL TERMS AND CONDITIONS FOR ARRA FUNDED CONTRACTS SUBJECT TO  
COMPETITIVE SEALED BID BY CITY'S PROCUREMENT DEPARTMENT***

**Background**

The City of Philadelphia (the "City") has entered into a certain grant agreement (the "Grant Agreement") with the Commonwealth of Pennsylvania (the "Commonwealth") or the federal government to carry out services and/or provide materials specified therein pursuant to the ARRA, subject to certain terms and conditions. This Contract is funded in whole or in part with funds received by the City under the Grant Agreement, under and subject thereto. In carrying out services and/or providing materials funded with ARRA funds under this Contract, Contractor shall comply with all applicable provisions of the Grant Agreement, a copy of which is incorporated herein and made a part hereof by reference and any Applicable Law(s) referenced therein to the extent applicable. Copies of the full Grant Agreement are available upon request.

1. **Definitions.** The following definitions shall apply to this Addendum:
  - A. "ARRA" or "Act" means the American Recovery and Reinvestment Act of 2009, Pub. Law 111-5.
  - B. "ARRA Funds" means funds expended or obligated from appropriations authorized by the ARRA.
  - C. "Authorized Parties" has the meaning set forth in Paragraph 5 of this Addendum.
  - D. Capitalized terms not defined in this Addendum shall have the meaning attributed to them in the General Provisions.
  
2. **Prohibition on Use of ARRA Funds.** Contractor acknowledges that it is familiar with the ARRA and the expenditures authorized under that Act to be paid for with ARRA Funds. Contractor, for itself and its Subcontractor(s), agrees that no ARRA funds paid to Contractor under this Contract shall be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool, or for any other item, or activity prohibited by the ARRA.
  
3. **Prohibition Against Misuse of Funds, Dishonest Practices and other Forms of Misconduct.** Contractor agrees, for itself and any Subcontractor(s) engaged by Contractor, that the following best practices and ethical standards shall govern the performance of work and the provision of any services or materials under this Contract:
  - (A) All compensation paid under this Contract shall only be used to reimburse for actual, bona fide work, services or materials authorized by, and provided pursuant to this Contract or any Amendment thereto.
  - (B) All payments made by Contractor to any Subcontractor(s) or other entities in any way related to this Contract shall be made only for bona fide services or materials provided in the ordinary course of such Subcontractor's business and shall be supported by invoices and related documentation. Such invoices shall provide sufficient detail to determine the nature, scope or quantity of the services or materials. Subject to prior City approval, Contractor may utilize brokers or middle persons to arrange for work, services, supplies, goods, materials or equipment in furtherance of this Contract; however Contractor shall not utilize any brokers or middle persons that are not acting in the ordinary course of their bona fide ongoing business concerns in brokering such services or materials. Contractor shall inform all Subcontractors and other entities receiving payments under this Contract that such payments will be publicly disclosed and will be subject to possible investigation and audit as provided in Paragraph 5 of this Addendum.
  - (C) Contractor will adhere to the highest standards of ethics, transparency and accountability in the performance of this Contract and will make best efforts to ensure that such standards are upheld by Contractor's principals, directors, employees, Subcontractors and agents. Contractor will immediately report any suspected acts of fraud, corruption, abuse, conflict of interest, bribery or similar misconduct involving ARRA funds under this Contract to the Inspector General of the City of Philadelphia. By way of illustration and not in limitation of the ethical standards to be upheld in the performance of this Contract, the following are examples of conduct that will be considered in violation of such standards:

- (i) Attempts to bribe City employees or officials;
- (ii) Submission of inflated or otherwise fraudulent invoices;
- (iii) Falsification of any documents or records related to this Contract;
- (iv) Fraud by Contract personnel to gain business advantage;
- (v) Collusive purchasing practices by personnel on this Contract;
- (vi) Theft or embezzlement of City funds by Contract personnel;
- (vii) Use of Contract funds to pay ghost employees or ghost Subcontractors;
- (viii) Contractor collusion with City employees or officials;
- (ix) Actions that constitute a false claim under the U.S. False Claims Act, 31 U.S.C. Section 3729 *et seq.*

4. **Reporting Requirements / Maintenance of Records.** Contractor understands and acknowledges that the City must comply with all current and future reporting requirements established by the ARRA and federal or Commonwealth of Pennsylvania agencies having jurisdiction over ARRA Funds. Contractor agrees that it will cooperate with the City and provide to the City the data and information necessary to comply with ARRA Section 1512 as well as, in addition, any other information requested by the City.

5. **Investigation, Audit and Access to Records.** Contractor acknowledges and agrees that the Commonwealth of Pennsylvania, the United States Comptroller General or representative, the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978, the Inspector General of the City of Philadelphia, the Chief Integrity Officer of the City of Philadelphia and/or their designees, or any other person appointed by the Mayor of the City of Philadelphia to a position relating to the promotion and assurance of integrity, ethics, transparency and accountability in the City's contracting process ("Authorized Parties") shall have the same rights of investigation and access to Contractor's records as are set forth in the Contract pertaining to Contractor's obligations to maintain and provide access to contract-related documents. Contractor shall fully cooperate with any investigation related to this Contract initiated by any of the Authorized Parties. By way of supplementation and not in limitation of these rights, the investigative, audit and review rights and privileges held by the Authorized Parties in fulfilling their responsibilities to promote integrity in the City's contracting process shall include the following:

- (A) Access to any records of Contractor, or those of its Subcontractors, and any state or local agency administering this Contract that pertain or relate to this Contract; and
- (B) Access to interview any officer, director, employee or agent of the Contractor or any of its Subcontractors, at their place of employment or at such other reasonable location as the Authorized Parties shall determine.

6. **Invoice Retention.** In addition to any records retention requirement otherwise provided in the Contract, Contractor shall maintain all invoices related to this Contract for a period of five (5) years following expiration or termination of this Contract. Such invoices shall provide sufficient detail to determine what the Contractor has purchased and the scope or quantity of the services or materials. However, if any litigation, claim or audit is commenced prior to expiration of said five (5) year period, then the invoices shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the invoices shall be retained for such longer period.

7. **Events of Default.** In addition to Events of Default otherwise set forth in the Contract, violations of any of the provisions of this Addendum shall constitute an Event of Default entitling the City to pursue, in its sole discretion, the remedies set forth in the Contract or such remedies as are available at law or in equity. In addition, misuse of Contract proceeds or other acts in violation of Paragraphs 2, 3, 4 and 5 of this Addendum shall entitle the City to pursue, in its sole discretion, the additional remedies set forth in Paragraph 8 of this Addendum pertaining to the City's recovery of liquidated damages. In the interest of promoting timely compliance with the requirements of the ARRA and protecting the integrity of any investigation initiated by the Authorized Parties, Contractor shall not have the opportunity of notice and cure as is otherwise provided under this Contract for violations of the provisions of Paragraphs 2, 3 and 5 of this Addendum.

8. **Liquidated Damages.** In addition to all remedies available to the City under this Contract or at law and in equity, the City shall have the additional remedies provided in this Paragraph in connection with Events of Default for violation of the provisions contained in Paragraphs 2, 3, 4 and 5 of this Addendum. Contractor acknowledges that ensuring the use of ARRA Funds in compliance with the ARRA (Paragraphs 2 and 4) and promoting the integrity of the City's contracting process (Paragraphs 3 and 5) are important objectives to the City and that misuse of proceeds paid to Contractor, and any Subcontractor under this Contract, or other improper conduct by Contractor, and any Subcontractor, in violation of these provisions, poses a risk of damages incurred by the City that are unpredictable or incapable of precise measurement (for example, loss of future federal and state funds, damage to the City's reputation; damage to the morale of City employees; reduced participation by the business community in City contracts). Therefore, Contractor and the City agree that the following calculations of damages shall serve as liquidated damages, and not a penalty, intended as a reasonable forecast of just compensation for which Contractor shall be liable to compensate the City for any Event of Default arising under Paragraphs 2, 3, 4 or 5, as the case may be, of this Addendum:

A. If Contractor is determined to have made payments or committed acts or omissions in violation of Paragraphs 2, 3, 4 or 5 of this Addendum, then Provider shall pay liquidated damages to the City in the aggregate amount of ten percent (10%) of the amount of compensation authorized under this Contract and any Change Order or Amendment thereto.

B. The amount of liquidated damages due under this Paragraph 8 shall not exceed Fifty Thousand Dollars (\$50,000); except that this limitation shall not apply if the City is determined to be ineligible for future funds by any federal or Commonwealth of Pennsylvania agency having jurisdiction over ARRA Funds, for the failure to meet any ARRA-related obligation, in whole or in part because of Contractor's failure to perform its obligations under Paragraphs 2,3,4 or 5 of this Addendum.

C. In addition to the payment of liquidated damages provided above, if it is determined that Contractor has violated the provisions contained in Paragraph 2, 3, 4 or 5 of this Addendum, Contractor shall reimburse the City for the City's costs of any investigation and/or prosecution undertaken or initiated by the Authorized Parties, and shall repay to the City the full amount of funds misused or inadequately documented.

D. In the case of any damages for which Contractor is liable under this Paragraph 8, the City may apply the amount of such damages as a credit against pending or future invoices under this Contract, and may declare any such damages not so credited to be immediately due and payable to the City.

9. **Wage Rate Requirements.** Contractor agrees that it and any of its Subcontractors shall, to the extent applicable, comply with ARRA Section 1606 and that, notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, 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 and shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App) and Section 3145 of Title 40, United States Code.

10. **Whistleblower Protection.** Contractor agrees that both it and any subcontractors shall comply with Section 1553 of the ARRA, which prohibits all non-federal contractors from discharging, demoting or otherwise discriminating against any employee for disclosures by the employee that the employee reasonably believes are evidence of (1) gross mismanagement of a contract relating to ARRA funds; (2) gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. Contractor agrees that it and any subcontractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

11. **Current and Future Requirements.** Contractor understands and acknowledges that the federal recovery funding process is still evolving and that new requirements for ARRA compliance may be forthcoming from the federal government, the Commonwealth and/or the City. In such event, any such new requirement(s) will automatically become a material part of this Addendum. Contractor hereby agrees that both it and any Subcontractors will be bound by and shall comply with all current ARRA requirements, whether or not specifically set forth herein and any such future requirements during the term hereof without the necessity of either party executing any further legal instrument(s).

12. **Required Use of American Iron, Steel and Other Manufactured Goods.** Contractor agrees that in accordance with ARRA, Section 1605, neither it nor its subcontractors will use ARRA funds for a project for the construction, alteration, maintenance or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. This requirement may be waived only by the ARRA granting federal department as set forth in ARRA Section 1605.

Subsections I and II below apply in the alternative:

*1. 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 \$7,443,000; 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 Contractor or any 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 manufactured construction material".

7. "Public building or public work" means building or work, the construction, alteration, maintenance, or repair of which 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,

(c) Domestic preference.

1. This Contract 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 Contract 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:

[City 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 requirement 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 request for a determination submitted after award shall explain why the Contractor 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 176.11 O(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		
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Item 2:

Foreign construction material	Domestic construction material		
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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 \$7,443,000 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 State and the Commonwealth of Pennsylvania.

(b) Definitions. As used in this Contract:

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 Contractor 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, 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 herein, 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 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) Construction materials.

1. This Contract 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 \$7,443,000 or more.
2. The Contractor 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 document.
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:

[City to list applicable excepted materials or indicate "none"]

4. The City 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 request to use foreign construction material in accordance with paragraph (c) (4) of this document 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;
    - (j) 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 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 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 paragraph (c)( 4)(i) of this Contract.
  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) *
Item 1:			
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).]

13. **Trafficking in Persons.** Pursuant to 22 U.S.C.S. Section 7101 et. seq., Contractor and its employees and subcontractors may not:

- i. Engage in severe forms of trafficking in persons during the period of time that the contract is in effect;
- ii. Procure a commercial sex act during the period of time that the contract is in effect;
- iii. Use forced labor in the performance of the contract or any subcontract(s).

14. **Availability of Funding.** Contractor acknowledges that Services or Materials supported with temporary federal funds made available by the ARRA will not be continued with Commonwealth of Pennsylvania or City financed appropriations once the temporary ARRA funds are expended.

15. **Effect of this Addendum.** Except as provided by this Addendum, the remaining terms and conditions of this Contract shall be and remain in full force and effect. In the event of any conflict between the terms and conditions stated in this Addendum and the terms and conditions stated elsewhere in this Contract, the terms and conditions stated in this Addendum shall prevail.