

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE: **11EM001745** PAGE **1** OF **9** PAGES

2. AMENDMENT/MODIFICATION NO. **210** 3. EFFECTIVE DATE (M/D/Y) **See Block 16C** 4. REQUISITION/PURCHASE REQ. NO. **11EM001745** 5. PROJECT NO. (If applicable)

6. ISSUED BY **U.S. Department of Energy
Office of River Protection
P. O. Box 450, MS H6-60
Richland, WA 99352** CODE 7. ADMINISTERED BY (If other than Item 6) CODE

8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP code)
**Bechtel National, Inc.
2435 Stevens Center Place
Richland, WA 99354**

9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

10A. MODIFICATION OF CONTRACT/ ORDER NO. **DE-AC27-01RV14136**

10B. DATED (SEE ITEM 13) **December 11, 2000**

CODE **396A5** FACILITY CODE **153392068**

11. THIS ITEM APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
(a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE DATE AND HOUR SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and amendment and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)
See Block 14

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS SET FORTH IN ITEM 14.

- CHECK ONE
- A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
- B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO AUTHORITY OF FAR 43.103(b).
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO THE AUTHORITY OF: Clause B.2, "Obligation and Availability of Funds," and Clause I.66 "Limitation of Funds" (Apr 1984) Clause I.55, FAR 52.225-11, Buy American Act - Construction Materials Under Trade Agreements
- D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return 2 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

01250 2011 34 421301 32001 1111245 0001482 0000000 0420751
 01250 2011 34 421301 32001 1111244 0001482 0000000 0420751
 01250 2011 34 421301 32001 1111243 0001482 0000000 0420751
 01250 2011 34 421301 32001 1111241 0001482 0000000 0420751

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) **Frank M. Russo
Project Director** 16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) **Ashley T. Morris
Contracting Officer**

15B. **ORIGINAL SIGNED BY** 15C. DATE SIGNED **3/22/11** 16B. UNITED STATES OF AMERICA BY **ORIGINAL SIGNED BY** 16C. DATE SIGNED **3/24/2011**
 (Signature of person authorized to sign) (Signature of Contracting Officer)

Purpose of Modification:

The purpose of this modification is to update Section I, *Contract Clauses*.

Description of Modification:

1. The total amount of funds obligated to this contract is increased by \$66,418,590.00, from \$6,548,613,556.53 to \$6,615,032,146.53. The following table shows the increase in obligated funds by control point:

Control Point	Obligated Funding Amount
1111245	\$37,000,000.00
1111244	\$19,000,000.00
1111243	\$5,000,000.00
1111241	\$5,418,590.00

The table in Section B, *Supplies or Services and Prices/Costs*, Contract Clause B.2, *Obligation and Availability of Funds and Contract Value*, paragraph (a) is deleted in its entirety and replaced with the following table, which reflects the new total amount of funding by control point.

BUDGETARY CONTROL POINTS FOR WTP PROJECT			
Description	Appropriation Symbol	B&R No. (Control Point)	Budget Authority
	1250	1110401	\$3,006,205,907.70
LAW	1250	1111183	\$637,526,129.46
LAB	1250	1111184	\$207,771,782.24
BOF	1250	1111185	\$261,703,289.91
HLW	1250	1111186	\$559,528,351.76
PT	1250	1111187	\$840,429,777.64
LAW	1250	1111241	\$156,780,590.00
LAB	1250	1111242	\$60,000,000.00
BOF	1250	1111243	\$20,000,000.00
HLW	1250	1111244	\$306,000,000.00
PT	1250	1111245	\$483,283,799.00
Subtotal - Budgetary Controls Points for WTP Project thru Contract Modification 210			\$6,539,229,627.71
INTER-ENTITY WORK ORDER FUNDING			
IEWO Identification Numbers	IEWO Amendment No.		Funding
M0SRLE60 Funding (SRNS/SRNL)	40		\$73,957,217.82

M0SRV00028 Funding (SRNS)	9	\$831,201.00	
M0SRV00036 Funding (WSRC)	2	\$186,500.00	
M0SRV00042 Funding (ORNL)	0	\$27,600.00	
Total - IEWO Funding		\$75,002,518.82	
Total Budgetary Control Points for WTP Project		\$6,614,232,146.53	
BUDGETARY CONTROL POINTS FOR PROGRAM DIRECTION			
Description	Appropriation Symbol	B&R No. (Control Point)	Budget Authority
PD	1250	1110462	\$800,000.00
Subtotal - Budgetary Controls Points for Program Direction thru Contract Modification A197			\$800,000.00
Total Obligated Funding			\$6,615,032,146.53

2. Update Section I, *Contract Clauses*, Contract Clause I.55, FAR 52.225-11 *Buy American Act – Construction Materials Under Trade Agreements*, from version dated August 2009 to September 2010. The said change affects sub-paragraph (b)(3) and provides exception to information technology materials that are considered to be commercial items. Section I, *Contract Clauses*, Contract Clause I.55, FAR 52.225-11 *Buy American Act – Construction Materials Under Trade Agreements*, is deleted in its entirety and replaced as follows:

I.55 FAR 52.225-11 BUY AMERICAN ACT-CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (SEP 2010)

- (a) *Definitions.* As used in this clause--

“Caribbean Basin country construction material” means a construction material that--

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin 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 Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Commercially available off-the-shelf (COTS) item”—

- (1) Means any item of supply (including construction material) that is—
 - (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
 - (ii) Sold in substantial quantities in the commercial marketplace; and
 - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into a construction material.

“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.

“Cost of components” means--

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement 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, Taiwan, or United Kingdom);
- (2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);
- (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); or
- (4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if—
 - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which non-availability determinations have been made are treated as domestic: or
 - (ii) The construction material is a COTS item.

“Free Trade Agreement country construction material means” a construction material that--

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

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

“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.

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

“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) This clause implements the Buy American Act (41 U.S.C. 10a-10d) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for construction material that is a COTS item. (See FAR 12.50-5(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

- (2) The Contractor shall use only domestic or 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 information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

See Contract Section J, *List of Attachments*, Attachment O, *List of Exclusions Under FAR 52.222-11 (b)(3) Buy American Act - Construction Materials Under Trade Agreements (M189)*.

- (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. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of 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) 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)(3) 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 (d) of this clause.
 - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
 - (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 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 price 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 Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.
- (d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

Construction material description	Unit of measure	Quantity	Price (dollars) *
<i>Item 1</i>			

Foreign construction material			
Domestic construction material			
<i>Item 2</i>			
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 and any applicable duty (whether or not a duty-free entry certificate is issued).]*

Contractor’s Statement of Release: In consideration of the Modification agreed to herein as complete equitable adjustment, the Contractor hereby releases the Government from any and all liability under this contract for further equitable adjustments attributable to such facts or circumstances giving rise to the changes as noted in this modification.

All other terms and conditions remain unchanged.

(End of Modification)