



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

November 29, 2021

Sent via electronic mail

Scott Armentrout
Executive Vice President, Environment, Fish and Wildlife
Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3221
Email: sgarmentrout@bpa.gov

**Re: YN-BPA Intergovernmental Master Agreement 56662 – Mod 3, Implementing
Executive Order 14042**

Dear Mr. Armentrout,

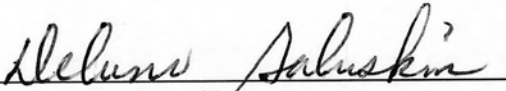
On November 10, 2021, a Bonneville Power Administration (“BPA”) contract specialist provided Yakama Nation Fisheries administrative staff with a proposed Modification No. 003 (“Mod 3”) amending the Yakama Nation – BPA Intergovernmental Master Agreement 56662 (the “IGMA”). Mod 3 was described as necessary to BPA’s administrative compliance with Executive Order (“EO”) 14042, “Providing for Adequate COVID-19 Safety Protocols for Federal Contractors and Subcontractors,” and also as a mandatory pre-requisite to BPA’s issuance or extension of Accord funding releases under the IGMA.

I write on behalf of the Confederated Tribes & Bands of the Yakama Nation (“Yakama Nation”) to express my strong objections to both the manner in which Mod 3 was presented to Yakama Nation for consideration, and, more importantly, to BPA’s position, as articulated by the transmitting BPA contract specialist, that Yakama Nation is not exempt from EO 14042, which effectively implements a vaccine mandate for federal contractors.

Because BPA is refusing to issue critical and time-sensitive Accord funding releases to Yakama Nation until Mod 3 is signed, Yakama Nation has executed Mod 3 under protest. However, this letter serves as notice that Yakama Nation understands that, as a federally recognized sovereign Native Nation, it is exempt from the vaccine mandate and other requirements of EO 14042.

Please contact Yakama Nation Senior Attorney Kate Marckworth at kate@yakamanation-olc.org or (509) 594-0364 at your earliest convenience to address this important issue. In the future, I hope that proposed contract modifications that have potentially significant implications to Yakama Nation’s sovereign interests can be discussed appropriately at the Accord table by our senior points of contact, instead of being implemented in a pre-emptory manner at the eleventh hour by BPA contracting staff.

Sincerely,



Delano Saluskin, Chairman
Yakama Nation Tribal Council

CC: Dorothy Welch, BPA
Philip Key, BPA

Enclosure: IGMA 56662 Mod. 3

**U.S. DEPARTMENT OF ENERGY
BONNEVILLE POWER ADMINISTRATION
AMENDMENT OF SOLICITATION/MODIFICATION OF
CONTRACT/ORDER**

OMB

PAPERWORK REDUCTION ACT BURDEN DISCLOSURE STATEMENT

This data is used to amend a solicitation or modify a contract or order. This form will assist in ensuring all changes are applied appropriately. Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching for existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of the Chief Information Officer, Enterprise Policy Development & Implementation Office, IM-22, Paperwork Reduction Program (OMB) US Department of Energy, 1000 Independence Ave, SW, Washington, DC 20585-1290; and to the Office of Management & Budget (OMB), OIRA, Paperwork Reduction Project (OMB), Washington, DC 20503.

1. Solicitation/Contract/Order Number: BPA- ... - C - 56662-000		2. Amendment/Modification Number: M - 003	
3. Effective Date:	4. Requisition/Purchase Req Number (used for COOP event only):	5. Contract Specialist (Name, Phone, Email): Karen Wolfe 503-230-3448, ktwolfe@bpa.gov	

AMENDMENTS OF SOLICITATIONS

6. The above numbered solicitation is amended as set forth in Item 12. The hour and date specified for receipt of Offers, is extended to _____ is not extended.

Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation. If a signature is requested in Item 11, acknowledge this amendment by completing Items 13 and 14 and returning the amendment with your proposal. Failure of your acknowledgment to be received at the place designated for the receipt of proposal prior to the hour and date specified may result in rejection of your proposal. If by virtue of this amendment you desire to change a proposal already submitted, such a change must be received prior to the due date and hour specified in the solicitation.

MODIFICATIONS OF CONTRACTS/ORDERS (Modifies the contract/order as described in item 12.)

CHECK ONE	7. This unilateral modification is issued pursuant to: (specify authority below). The changes set forth in item 12 are made in the Contract/Order in Item 1.
<input type="checkbox"/>	
<input type="checkbox"/>	8. The above numbered Contract/Order is modified to reflect the administrative changes (such as changes in paying office, spelling correction, etc.) set forth in item 12 pursuant to the authority of BPI Part 14.10.3(b)(1).
<input checked="" type="checkbox"/>	9. Bilateral/Other (specify authority): BPI Clause 14-9 Changes-Cost-Reimbursement

10. Accounting and Appropriation Data (used for COOP event only):

IMPORTANT 11. Contractor is not, is required to sign this document and return via email to the Contract Specialist.

12. Description of Amendment/Modification (Attach additional documentation if needed and state SEE CONTINUATION SHEET.)

This contractual modification is issued in accordance with BPI Clause 14-9 'Changes-Cost-Reimbursement'.

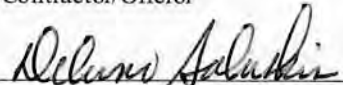
In Order to comply with the Executive Order, BPA is required to add the Bonneville Purchasing Instructions (BPI) Clause 15-99 Safety Protocols for Federal Contractors into Current Master Agreement No. 56662-000.

A conformed copy of the terms and conditions is hereby attached.

Except as provided herein, all terms and conditions of the document referenced in Item 1 or 2 remain unchanged.

13. Company Name:

Confederated Tribes and Bands of the Yakama Nation

14a. Name, Phone and Title of Signer: Delano Saluskin, Tribal Council Chair, 509-865-5121		15a. Name of Contracting Officer: Karen Wolfe	
14b. Contractor/Offeror By:  (Signature of person authorized to sign)	14c. Date Signed: 11.29.21	15b. Signature of Contracting Officer KAREN WOLFE By: WOLFE (Signature of Contracting Officer)	15c. Date Signed: 11/10/2021

TERMS & CONDITIONS / BPI CLAUSES

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UNIT 1 — SCHEDULE

CONTRACT TYPE (7-1)(M) (MAR 12)(BPI 7.1.9)

- (a) This is a Master Agreement type contract, from which individual releases (task orders) may be issued as cost reimbursement or cost share type contracts.
- (b) Each release will specify the contract type and any unique terms applicable to that specific order.

MASTER AGREEMENT: BASIC TERMS & SCOPE (7-6)(M) (MAR 12)(BPI 7.2.5.2.1)

- (a) Effective Period. This agreement is effective on 01 April 2012, or upon receipt and acceptance of this agreement and continues for five years, whichever occurs later.
- (b) BPA's Obligation. This agreement places no obligation on BPA to purchase a minimum amount services. BPA is obligated only to the extent of authorized releases actually placed against this agreement.
- (c) Release Placement, Confirmation and Contract Formation. Only releases placed by individuals specifically authorized by the BPA's Head of Contracting Activity via Contracting Officer's Warrant will be considered valid releases. A binding release will be formed when the Contracting Officer or his/her authorized representative transmits to the Contractor a complete and legible release that includes a release number and the contract number, and receives from the Contractor a written or facsimile or electronic confirmation. There is no limit on the number of releases that may be issued. Information provided in the release shall include at a minimum: (1) the task(s) to be performed, (2) the schedule of performance, (3) identification of all deliverables required or Statement of Work, and (4) budget for the release.
- (d) Inspection and Acceptance. Inspection and acceptance will be at the place specified in each release for delivery or performance.
- (e) Terms and Conditions. Each release against this Master Agreement may contain unique terms or clauses appropriate to the type of release such as (but not limited to): Performance Period and Options, Intellectual Property, Cost Share, Reporting Requirements, Key Personnel, and Property. These terms shall be negotiated prior to execution of any release.

MASTER AGREEMENT PERFORMANCE PERIOD AND OPTIONS (7-7) (SEP 98)(BPI 7.2.7.1)

- (a) This is a **five** year contract, commencing on **01 April 2012** or upon receipt and acceptance of this agreement by both parties, whichever is later, with options to extend for **two** additional **five** year periods.
- (b) BPA may unilaterally extend the term of this contract by written notice to the Contractor. BPA will give the Contractor preliminary notice of its intent to extend at least 60 days before the contract expires.

TASK ORDERS – FOR EACH RELEASE (7-50)(M) (MAR 12)

- (a) For each *Release*, the Yakama Indian Nation (YIN) will be requested to prepare a Statement of Work (SOW) and budget, which will include:
 - (1) the task(s) to be performed,
 - (2) the schedule of performance, and
 - (3) identification of all deliverables required.

- (4) dates of commencement and completion of work, and any necessary revision(s) to BPA's Schedule of Performance;
 - (5) a list of proposed personnel to be assigned to the task;
 - (6) labor hours estimated to complete the task;
 - (7) identification of other direct costs, i.e., travel, materials, etc., estimated to complete the task;
 - (8) an estimate for any *Contract* request by the YIN ;
 - (9) budget/cost break-down for completion of the tasks assigned; and.
 - (10) property inventory (as applicable).
- (b) The BPA's Contracting Officer's Technical Representative (COTR) will review the SOW and budget to determine if the parties have a mutual understanding of the work. Proposed estimated costs will also be reviewed for reasonableness and allowability. Discussions between the COTR and the YIN may be effected to clarify any uncertainties and resolve any disagreements with respect to the YIN's proposed SOW and budget to ensure that both parties have a complete understanding of the assignment(s).
- (c) Upon approval of the SOW and budget, BPA's Contracting Officer (BPA CO) will issue an executed *Release* authorizing the YIN to begin work.
- (d) The YIN shall incur costs under this Agreement only in the performance of the *Release* and Amendments to the *Release* issued in accordance with this ordering procedure. No other costs are authorized without the express written consent of the BPA CO.
- (e) This ordering procedure is subject to the "*Contract Release Ceiling Limitation*" clause of the *Agreement*. The YIN is not authorized to incur costs on *Releases* which are not in compliance with any clauses of this *Agreement*.

**RELEASE SYSTEM (7-55)(M)
(MAR 12)**

- (a) BPA will assign specific jobs by the *Release* issued against the *Agreement*. Funds for work to be performed are obligated at the time the *Release* is issued.
- (b) A *Contract Release Ceiling Limitation* will be determined by mutual agreement for each *Release* placed.

**CONTRACT RELEASE / PROJECT RENEWAL (IGC'S) (7-51)(M)
(MAR 12)**

This Project may be incrementally funded on an annual basis subject to BPA's favorable determination of the following:

- (1) Availability of adequate funds for BPA's Environment, Fish and Wildlife Program.
- (2) Required reports were submitted and contained required data.
- (3) Results demonstrate progress towards project goals was equal to or greater than established by the Intergovernmental Contract.
- (4) The next year's work statement has been approved by BPA.
- (5) The annual formal presentation of the project status, if required, has been completed on a timely basis; and BPA desires to continue the project.

**CONTRACT RELEASE PERIOD OF PERFORMANCE (CONSTRUCTION) (7-52)
(SEP 98)**

- (a) The Contractor shall be required to (1) commence work under this contract within ___CO FILL IN calendar days after the date the Contractor receives the notice to proceed, (2) prosecute the work diligently, and (3) complete the entire work ready for use not later than _____CO FILL IN. The time stated for completion shall include final cleanup of the premises.
- (b) The completion date is based on the assumption that the successful offeror will receive the notice to proceed by _____CO FILL IN. The completion date will be extended by the number of calendar days after the above date that the Contractor receives the notice to proceed, except to the extent that the delay in issuance of the notice to proceed results from the failure of the Contractor to execute the contract and give the required performance and payment bonds within the time specified in the offer.

**CONTRACT RELEASE - SCHEDULE OF PRICES (22-51)(M)
(MAR 12)**

The contractor shall provide services/supplies in accordance with the Release's Statement of Work and Budget.

UNIT 2 — CONTRACT CLAUSES

PAYMENT AND TAXES

FEDERAL, STATE, AND LOCAL TAXES (22-15) (SEP 98)(BPI 22.5.3.4)

- (a) The contract price shall include all applicable Federal, State, and local taxes and duties.
- (b) The contract price shall be increased by the amount of any after-imposed Federal excise tax or duty, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price.
- (c) The contract price shall be decreased by the amount of any after-relieved Federal excise tax or duty.
- (d) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the CO.
- (e) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (f) Notwithstanding any of the above provisions for adjustment of the contract price in the event of a change in a Federal excise tax or duty after the contract date, no increase in the contract price shall be made for any duty imposed under the Tariff Act of 1930, as amended, (19 U.S.C. 1303) or the Anti-dumping Act of 1921, as amended (19 U.S.C. 160-171).

WASHINGTON STATE SALES AND USE TAXES (22-17) (SEP 98)(BPI 22.5.3.4)

- (a) The Supreme Court has ruled that the Washington State Sales and Use Taxes apply to Federal contracts. Therefore, it is the responsibility of the offerors to take Washington State Tax Statutes into account when preparing their offers.
- (b) Offerors should not take into account or include a factor for the State of Washington Sales or Use Tax which may be levied on Government-furnished materials or equipment in connection with performance of this contract. Any assessment by the State of Washington against the contractor shall be reported immediately to the CO. The contractor shall be reimbursed by BPA for payment of any tax authorized to be paid by the CO by an appropriate contract modification. The reimbursement shall be limited to the actual tax amount assessed by the State of Washington. The contractor hereby authorizes BPA to enter into such negotiations and arrangements with the State of Washington as it may deem appropriate in resolving the amount of applicable tax(es).

IGC ELECTRONIC FUNDS TRANSFER PAYMENT (22-54) (DEC 04)

- (a) Payment Method. Payments under this contract, including invoice and contract financing payments, will be made by electronic funds transfer (EFT). Contractors are required to provide its taxpayer identification number (TIN) and other necessary banking information as per paragraph (c) of this clause to receive EFT payment.
- (b) Contractor EFT arrangement with a financial institution or authorized payment agent. The Contractor shall designate to BPA, as per paragraph (c) of this clause, and maintain at its own expense, a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under all BPA contracts, unless the BPA Vendor File Maintenance Team is notified of a change as

per paragraph (d) of this clause. An initial designation should be submitted after award, but no later than three weeks before an invoice or contract financing request is submitted for payment. **Electronic Funds Transfer will only be approved to one EFT account number per Vendor name and location.**

- (c) Submission of EFT banking information to BPA. The Contractor shall submit EFT enrollment banking information directly to BPA Vendor File Maintenance Team, using Substitute IRS Form w9e, Request for Taxpayer Identification Number and Certification. This form is available either from the Contracting Officer(CO) or from the Vendor File Maintenance Team. Submit completed enrollment form to the Vendor Team. Contact and mailing information:

Bonneville Power Administration
PO Box 491
ATTN: NSSS - MODW Vendor Maint.
Vancouver, WA 98666-0491

E-mail Address: VendorMaintenance@BPA.gov
Phone: (360) 418-2800
Fax: (360) 418-8904

- (d) Change in EFT information. In the event that EFT information changes or the Contractor elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the Contractor shall be responsible for providing the changed information to the BPA Vendor File Maintenance Team office. The Vendor File Maintenance Team must be notified 30 days prior to the date such change is to become effective.
- (e) Suspension of Payment. BPA is not required to make any payment under this contract until receipt of the correct EFT payment information from the Contractor.
- (f) EFT and prompt payment. BPA shall pay no penalty on delay of payment resulting from defective EFT information. BPA will notify the Contractor within 7 days of its receipt of EFT information which it determines to be defective.
- (g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the Assignment of Claims clause of this contract, the assignee shall provide the assignee's EFT information required by paragraph (c) of this clause.

**PAYMENTS IN ARREARS (25-50)
(JUN 09)**

- (a) The contractor shall submit proper invoices on a monthly basis in arrears to:

Bonneville Power Administration
(Program Analyst-KEWB-4)
PO Box 3621
Portland OR 97208-3621
fwinvoices@bpa.gov

A proper invoice must include all of the following information:

- 1) Name of contractor (must reasonably match the name on the contract);
- 2) Contractor address (only when not set up as Electronic Funds Transfer);
- 3) Invoice date;
- 4) BPA contract number;

- 5) Contractor invoice number (must be a number unique to the contractor and not used on any other invoice with BPA);
 - 6) Invoice Performance Period (e.g., "For work actually performed during the period of June 1 through June 30, 2003"). If the invoice performance period covers more than one budget period or BPA fiscal year, the contractor must provide a sub-total of the costs attributable to each budget period or fiscal year. For example, work performed prior to September 30 should be sub-totaled separately from work performed after September 30);
 - 7) Shipping terms, if applicable (i.e., FOB Destination);
 - 8) Contact name, title and telephone number;
 - 9) For fixed price contracts: Description (including, for example, contract line/sub-line number), price, and quantity of goods and services rendered;
 - 10) For cost reimbursement contracts: Documentation required under section (b), below.
- (b) For Cost Reimbursement Contracts, the contractor will provide a summary of the approved budget by line item for the current budget year and provide cumulative expenditures, for the current contract period, by line item to date. The categories below are the minimum level of documentation required for each line item.

Line Item Description	Minimum Documentation Required	Documentation NOT Required
Salaries – direct labor only	<p>**See note below for exceptions</p> <p>A list, by position title and/or name, showing units of time and pay rate in the same units used in the contract's budget. For example, this could be hours worked multiplied by hourly rate, or in a monthly salary unit.</p> <p>This must be consistent with the labor categories shown in the awarded budget. On a quarterly basis, the COTR may request individual employee names as a "spot-check" to verify the specific individuals whose time is being charged to the contract. Individual invoice approvals shall not be delayed during this "spot-check" and any adjustments, if necessary, shall be made in future payments.</p>	<p>**See note below for exceptions</p> <p>Individual time sheets and employee names.</p>
Salary Fringes	Must be stated at the same rates in the approved indirect rate agreement.	Detailed information supporting fringe benefit amounts, such as insurance policies, etc.

Line Item Description	Minimum Documentation Required **See note below for exceptions	Documentation NOT Required **See note below for exceptions
Travel and transportation (including per diem)	Copy of the summary page of the travel voucher or other document(s) that was used to reimburse the person that traveled. List purpose of travel, destinations, and dates if not on the summary page. A single summary page, rather than individual copies of travel vouchers, is required when more than 5 people traveled during the invoice period.	Airline ticket receipts, hotel receipts, meal receipts, etc.
Vehicles	For GSA vehicles identify the cost per month. Do not bill for costs such as new tires, repairs, etc., since these costs are included in the GSA rental cost. Very limited, legitimate non-GSA covered costs may be allowed. Privately Owned Vehicles (POVs) must show costs in miles multiplied by rate. POVs do not receive additional reimbursement for repairs, and maintenance costs.	Copies of receipts, gas bills, etc.
Training/Tuition	Description of the training received, who received the training, dates of the training, and cost of the training. Level of detail must be adequate to determine whether it is allowable under the F&W Contract Management Manual.	Conference registration receipts, payment vouchers, etc.
Equipment and materials greater than \$10,000 per item (non expendable)	Itemized description of the equipment, date of purchase, purchase cost, model number, and serial number.	Copies of receipts, freight bills, etc.
Equipment less than \$10,000 but more than \$1000 per item	Itemized list of equipment with year purchased.	Copies of receipts, freight bills, etc.
Miscellaneous Supplies and Equipment under \$1000 per item	Summarize the kinds of equipment and miscellaneous supplies by type (e.g., office supplies, power tools, camera, etc.).	Copies of receipts, freight bills, etc.
Operations, repair and maintenance (including computer services)	For repairs and maintenance over \$100, itemize what service was obtained and the cost (e.g., repair of a motor).	Copies of payment vouchers, repair invoices, parts bills, etc.

Line Item Description	Minimum Documentation Required **See note below for exceptions	Documentation NOT Required **See note below for exceptions
Equipment Rental	For rentals, within a one-month period that exceeds \$500, provide description of what was rented, dates or hours of rental, and rental rates and whether rates include operator.	Rental receipts, time sheets, etc.
Easement, Purchase, or lease of land	Specify area and type. For example: Purchase 500-acre Jones property, grazing allotment, in perpetuity. 15-year lease on riparian zone 300-foot buffer on both sides for ½ mile on June Creek.	
Overhead/Other Indirect Costs	Identify the overhead/indirect rate used to calculate the dollar amount. Rates shall be applied consistent with the current rate negotiated by the Cognizant Audit Agency or by the CO. If a revised rate has been approved by the Cognizant Audit Agency, provide a copy of the approved rate agreement to the CO. Identify the line items to which the indirect rate applies.	Itemized lists or records of costs included in overhead or other indirect costs.
Subcontracts (also include when work being billed was performed by subcontractor)	If the subcontract is a <u>cost reimbursement</u> contract, and greater than or equal to 50% of the contract amount, the subcontract costs shall be provided in the same level of detail as those required above for the prime contractor. If the subcontract is a <u>fixed price</u> contract, itemize each subcontractor cost by: vendor name, work accomplishment dates, and amount spent. This applies for both “progress” payments, or “payment in full” (at the end of performed work) according to the vendors subcontract terms.	<u>Cost reimbursement</u> contract: Same guidance as for prime contractor line items. <u>Fixed price</u> contract: itemized receipts.
Summary Financial Information	By line item, provide a summary of the approved budget and cumulative expenditures to date for the current contract period (e.g., March 1 st , 2004 through April 30 th , 2005).	

**More detailed information may be required when certain situations occur such as those listed below where the CO, COTR, and their manager determine more detailed information is needed: (this list is not intended to be all inclusive).

- Amounts billed are inconsistent with the negotiated budget, such as:
 - Fringe benefits are different than negotiated
 - Labor category rates and/or categories are different than negotiated
 - Equipment is different or costs more than negotiated
 - Indirect cost rate is different than Cognizant Audit Agency current approved rate or CO negotiated rate, whichever is appropriate
 - Budget line item is expended at a faster rate than expected based on Work Schedule
 - Extensive line item transfer requests are occurring
 - Overcharges or other invoice abnormalities occur.

(c) Non-itemized and/or incomplete billings will be returned to the contractor without processing for payment until a corrected invoice is received. Allowable costs shall be determined in accordance with the cost principles of the F&W Contract Management Manual and applicable OMB Circular (2 CFR 200, formerly known as A-87) (or BPI Appendix 13A for commercial contractors).

(d) Additionally, invoices will be returned if:

- 1) The amount exceeds the contract award ceiling;
- 2) The invoice billing period is for work performed after the last day of the contract performance period;

(e) Adjustments

(1) Refunds, Rebates or Credits. Separate statements to BPA indicating a credit amount to be applied by BPA to offset future payments will no longer be accepted by BPA.

(A) Active/Current Contracts. Refunds or credits to BPA as a result of previous errors in billing, overpayments, or other rebates or refunds shall be applied by the contractor to the invoice submitted immediately following the identification of the need to issue a refund, credit, or rebate to BPA. The invoice where the credit or refund has been applied shall include an explanation of the reason for the refund or credit. Do not submit the refund or credit as a check or cash.

(B) Inactive/Closed Contracts. Refunds or credits to BPA as a result of previous errors in billing, overpayments, or other rebates or refunds shall be returned to BPA in the form of a check. Contact the CO to determine to whom to address the check. An explanation of the reason for the refund or credit shall be included with the check. Please do not submit cash.

(2) Corrected or Revised Invoices. If the contractor needs to correct or revise a previously submitted but not yet paid invoice, the contractor –agency shall note on the corrected or revised invoice: "Corrected/Revised Invoice – Corrects invoice # _____ previously submitted." The revised invoice must have a new date.

(f) Final payment.

The Contractor shall submit an invoice marked "Final Invoice" promptly upon completion of the work. Upon approval of that invoice and upon the Contractor's compliance with all terms of this contract, the BPA shall promptly pay any allowable costs not previously paid.

**CONTRACT RELEASE CEILING LIMITATION (22-7)(M)
(MAR 12)(BPI 22.1.3)**

- (a) The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the contract ceiling. The contract ceiling includes all estimated costs (both direct and indirect) and any fee allowance. If this is a cost-sharing contract, the contract ceiling includes both BPA's and the Contractor's share of the cost.
- (b) Notification of CO. The Contractor shall notify the CO in writing at the first indication that the total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.
- (c) Revised Estimate. As part of the notification, the Contractor shall provide the CO a revised estimate of the total cost of performing this contract.
- (d) Contract Ceiling.
 - (1) BPA is not obligated to reimburse the Contractor for costs incurred in excess of the contract ceiling specified in the Schedule or, if this is a cost-sharing contract, the estimated cost to BPA specified in the Schedule; and
 - (2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the contract ceiling specified in the Schedule, until the CO notifies the Contractor in writing that the contract ceiling has been increased.
- (e) No notice, communication, or representation, or from any person other than the CO, shall affect this contract's contract ceiling.
- (f) If this contract is terminated or the contract ceiling is not increased, BPA and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

**LIMITATION ON TRAVEL COSTS (22-50)
(SEP 10)**

Costs incurred for lodging, meals, and incidental expenses shall be reimbursed on an actual cost basis to the extent that they do not exceed, on a daily basis, the per diem rates in effect at the time of travel as set forth in the Federal Travel Regulation, prescribed by the General Services Administration, for travel in the conterminous 48 United States. Per Diem shall be authorized for travel in excess of 12 hours and shall not exceed 75% of the daily rate for the first and last day of official travel. Lodging and other expenses exceeding \$75.00 must be supported with receipts, which shall be submitted with the request for payment.

Airline costs will be reimbursed on an actual cost basis to the extent determined reasonable and allocable under Part 13 of the Bonneville Purchasing Instructions. Generally, airline costs will be limited to coach or economy class. Any variation from these requirements must be approved by the Contracting Officer. Contractors may request a letter from the Contracting Officer, authorizing access to an airline, lodging, or other rates negotiated for government travel to the extent such authorization is honored by the service providers.

Per Diem rates are available at: <http://www.gsa.gov/portal/category/21287>

The Federal Travel Regulations are available at: <http://www.gsa.gov/portal/content/102886>

**BASIS OF PAYMENT -- COST-REIMBURSEMENT (22-5)
(SEP 03)(BPI 22.1.3)**

(a) Invoicing.

BPA shall make payments to the Contractor when requested as work progresses in amounts determined to be allowable by the CO. The Contractor shall substantiate invoices by evidence of actual payment and in such form and reasonable detail as required by the CO.

(b) Reimbursing costs.

(1) Costs under this contract will be reimbursed in accordance with BPI Part 13. For the purpose of reimbursing allowable costs (except with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only -

(A) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(B) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for -

(i) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(ii) Direct labor;

(iii) Direct travel. Costs incurred for lodging, meals, and incidental expenses shall be considered reasonable to the extent that they do not exceed on a daily basis the per diem rates in effect at the time of travel as set forth in the Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States. Airline costs will be reimbursed on an actual cost basis to the extent determined reasonable and allocable under Part 13 of the BPI. Any variation from these requirements must be approved by the CO. Contractors may request a letter from the CO authorizing access to airline, lodging, or other rates negotiated for government travel to the extent such authorization is honored by the service providers;

(iv) Other direct in-house costs; and

(v) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts.

(C) The amount of progress payments that have been paid to the Contractor's subcontractors under similar cost standards.

(2) Contractor contributions to any pension, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided, that the Contractor pays contributions to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of the period shall not be included until the contractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.

(3) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to BPA shall be disregarded for purposes of cost reimbursement under this clause.

(c) Final indirect cost rates.

- (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with BPI Part 13 in effect for the period covered by the indirect cost rate proposal.
- (2) The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the CO, submit to the audit activity responsible for negotiating its final indirect cost rates, proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate BPA representative and Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.
- (3) The Contractor and the appropriate BPA representative shall execute a written agreement setting forth the final indirect cost rates. The agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The agreement is incorporated into this contract upon execution.
- (4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(d) Billing rates.

Until final annual indirect cost rates are established for any period, BPA shall reimburse the Contractor at billing rates established by the CO or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates -

- (1) Shall be the anticipated final rates; and
- (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(e) Quick-close-out procedures.

When the Contractor and CO agree, the quick-close-out procedures of BPI Subpart 14.17.5 shall be used.

(f) Audit.

At any time or times before final payment, the CO may have the Contractor's invoices or statements of cost audited. Any payment may be (1) reduced by amounts found by the CO not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(g) Final payment.

- (1) The Contractor shall submit an invoice marked "Final Invoice", promptly upon completion of the work. Upon approval of that invoice, and upon the Contractor's compliance with all terms of this contract, the BPA shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
- (2) The Contractor shall pay to BPA any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by BPA. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the CO. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver an assignment to BPA of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by BPA under this contract.

**INDIRECT COST RATES WITH CARRY FORWARD (22-19)
(NOV 08)(BPI 22.1.3)**

Notwithstanding 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87), the indirect cost rate for this contract will be established based on the estimate of a future period's cost and is not subject to revision. However, differences between the estimated costs and actual costs when they become known are carried forward and are considered in the negotiation of rates for subsequent periods. If actual indirect costs are more than estimated, the amount of the increase is added to the estimate for the next period to determine the fixed rate for the next period. Conversely, if actual indirect costs are less than estimated, the difference between the fixed rate and the actual cost is subtracted from the estimate of the next period to determine the fixed rate for the next period.

GENERAL CONTRACT ADMINISTRATION

**APPLICABLE REGULATIONS (1-1)
(NOV 08)(BPI 1.3.1)**

Purchases made by the Bonneville Power Administration are subject to the policies and procedures outlined in the Bonneville Purchasing Instructions. The BPI is available without charge on the Internet at <http://www.bpa.gov>. Copies are available for purchase from the Head of the Contracting Activity. The public may purchase unbound copies of the BPI from the Head of the Contracting Activity – DGP-7, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208. The cost is \$30.00. Subscriptions are not available.

**CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING (3-4)
(MAY 11) (BPI 3.7.1.1)**

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

“Driving”—(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. (2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

“Text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while driving, dated October 1, 2009.

(c) The Contractor should adopt and enforce policies that ban text messaging while driving —(1) Company-owned or -rented vehicles or Government-owned vehicles; or (2) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$10,000.

AMERICAN RECOVERY AND REINVESTMENT ACT—REPORTING REQUIREMENTS—PROJECTS USING INCREASED BORROWING AUTHORITY ATTRIBUTED TO ARRA (4-48) (OCT 09)(BPI 4.1.3)

(a) Definitions. As used in this clause—

“First-tier subcontract” means a subcontract awarded directly by a Federal Government prime contractor whose contract is attributed to the Recovery Act.

“Jobs” means an estimate of those positions created and filled, or previously existing filled positions, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers prime contractor, and as noted in (d)(3) below first tier subcontractor, positions established in the United States. The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule (173 hours per month). For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each month.

(b) This contract requires the contractor providing products and/or services that are attributed to the American Recovery and Reinvestment Act of 2009 (Recovery Act) to report certain information. These reports will be made available to the public.

(c) Reports shall be submitted no later than 5 calendar days after the end of each calendar month.

(d) The Contractor shall report the following information by email to ARRAJobs@bpa.gov.

(1) The Government contract number, and the order/release number if applicable;

(2) A description of the employment impact of work attributed to the Recovery Act. This narrative should be cumulative for each calendar quarter and only address the impact on the contractor’s workforce. The contractor shall provide—

(i) A description in broad labor categories (construction, engineering services, etc.)

(ii) An estimate of the number of jobs created and jobs retained by the prime contractor, in the United States.

(3) For any first-tier subcontract attributed in whole or in part under the Recovery Act, the prime contractor shall provide detailed information on these first-tier subcontracts as follows:

(i) Name of the subcontractor.

(ii) A description in broad labor categories (construction, professional services, other services etc.)

(iii) An estimate of the number of jobs created and/or jobs retained by the prime contractor, in the United States

The report shall be in the following format:

Contractor (or sub contractor) Name	BPA Contract No. include release no. if applicable	Project Name	Labor Category	No. of Hours	No. of Jobs (FTE)	Zip code where work is being performed (first two digits only)
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**PRINTING (6-2)
(OCT 93)(BPI 6.8.3.1)**

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract: Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8-1/2 by 11 inches, one side only, one color.

- (a) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, silk screening, or the end items produced by such processes.
- (b) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the Contracting Officer in writing and obtain the Contracting Officer's approval prior to acquiring on BPA's behalf production, purchase, and dissemination of printed matter.
- (c) Printing services not obtained in compliance with this guidance may result in the cost of such printing being disallowed.
- (d) The contractor shall include in each subcontract hereunder a provision substantially the same as this clause including this paragraph (d).

**BUY AMERICAN ACT - SUPPLIES (9-3) – MA 56662, MOD 001
(JUL 13)(BPI 9.1.6)**

- (a) The Buy American Act (41 U.S. Code §8301-8305) provides that the Government give preference to domestic source end products.

"Commercially available off-the-shelf (COTS item)"

(1) Means any item of a supply (including construction material) that is:

(1) A commercial item (as defined in BPI 1.8);

(2) Sold in substantial quantities in the commercial marketplace; and

(3) 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 USC App 1702) such as agricultural products and petroleum products.

"Components" means those articles, materials, and supplies, which are incorporated directly into the end products.

"End products" means those articles, materials, and supplies to be acquired for public use under this contract.

"Domestic end product" means (1) an unmanufactured end product mined or produced in the United States or (2) an end product manufactured in the United States, if 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 as the products referred to in (b) (2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

- (b) The Contractor shall deliver only domestic end products, except those

- (1) That BPA determines are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
- (2) For which BPA determines that domestic preference would be inconsistent with the public interest; or
- (3) For which BPA determines the cost to be unreasonable.

(c) In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for an end product that is a COTS item.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, as amended, and Part 9 of the BPI.)

End of Clause

**BUY AMERICAN ACT - CONSTRUCTION MATERIALS (9-5)
(SEP 98)(BPI 9.2.4)**

(a) Agreement

In accordance with the Buy American Act (41 U.S.C. 10a-10d), and Executive Order 10582, (as amended), the Contractor agrees that only domestic construction material will be used (by the Contractor, subcontractors, materialmen, and suppliers) in the performance of this contract, except for nondomestic material listed in the contract.

(b) Domestic construction material

"Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.

(c) Domestic component

A component shall be considered to have been "mined, produced, or manufactured in the United States" (regardless of its source in fact) if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(d) Excluded materials.

The requirements of this clause do not apply to the following raw material and construction material components:

Antimony, as metal or oxide.

Asbestos, amosite, chrysolite, and crocidolite.

Bauxite.

Cadmium, ores and flue dust.

Calcium cyanamide.

Chrome ore or chromite.

Cobalt, in cathodes, rondelles, or other primary ore and metal forms.

Cork, wood or bark and waste.

Diamonds, industrial, stones and abrasives.

Fibers of the following types: jute, jute burlaps, and sisal.

Graphite, natural, crystalline, crucible grade.

Hemp.

Leather, sheepskin, hair type.

Manganese.

Mica.

Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.

Platinum and related group metals.

Quartz crystals.

Rubber, crude and latex.

Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.

**RESTRICTION ON CERTAIN FOREIGN PURCHASES (9-8) – MA 56662, MOD 001
(JUL 13) (BPI 9.3.2.1)**

- (a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
- (b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.
- (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

End of Clause

**REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS--BUY AMERICAN ACT--CONSTRUCTION MATERIALS (9-46)
(AUG 09) (BPI 9.2.5.3)**

(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:

(CO fill in: 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.

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

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

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction

material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American Act.

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

Foreign and Domestic Construction Materials Cost Comparison

Construction material description	Unit of measure	Quantity	Cost (dollars) *
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.] [Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS--BUY AMERICAN ACT--CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (9-48) (AUG 09)(BPI 9.2.5.3)

(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, 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 (Chinese Taipei), or United Kingdom);
- (2) A Free Trade Agreement country (FTA)(Australia, Bahrain, 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 (BPI TI 09-2, subpart 9.2.5.10(a)(1))

(CO Fill in: 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

- (iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

- (1)

- (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

- (A) A description of the foreign and domestic construction materials;
- (B) Unit of measure;
- (C) Quantity;
- (D) Cost;
- (E) Time of delivery or availability;
- (F) Location of the construction project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.
- (iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.
- (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material other than that covered by trade agreements is noncompliant with the applicable Act.

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

Foreign and Domestic Construction Materials Cost Comparison

Construction material description	Unit of measure	Quantity	Cost (dollars) *
Item 1:			
Foreign construction material			
Domestic construction material			

Item 2			
Foreign construction material			
Domestic construction material			

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.][Include other applicable supporting information.]

[* Include all delivery costs to the construction site.]

REQUIRED USE OF AMERICAN IRON, STEEL, AND OTHER MANUFACTURED GOODS--BUY AMERICAN ACT--CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (9-48) ALTERNATE I (AUG 09)(BPI 9.2.5.3)

(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, 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 (Chinese Taipei), or United Kingdom);
- (2) A Free Trade Agreement country (FTA)(Australia, Bahrain, 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.

“Bahrainian, Mexican, or Omani construction material” means a construction material that—

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

(b) Construction materials.

- (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) and the Buy American Act do not apply to Recovery Act designated country construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act, by requiring, unless an exception applies, that all iron, steel, and other manufactured goods used as construction material in the project are produced in the United States; and

(ii) The Buy American Act providing a preference for unmanufactured domestic construction material.

(2) The Contractor shall use only domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(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 (*BPI TI 09-2, subpart 9.2.5.10(a)(1)*)

(CO Fill in: 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

(iii) The application of the restriction of section 1605 of the Recovery Act or the Buy American Act to a particular construction material would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(1)

(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.
- (iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.
- (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the section 1605 of the Recovery Act or the Buy American Act applies, use of foreign construction material other than that covered by trade agreements is noncompliant with the applicable Act.

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

Foreign and Domestic Construction Materials Cost Comparison

Construction material description	Unit of measure	Quantity	Cost (dollars) *
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.][Include other applicable supporting information.]

[* Include all delivery costs to the construction site.]

**EXAMINATION OF RECORDS (12-3) – MA 56662, MOD 001
(JUL 13)(BPI 12.8.8.1)**

- (a) The contractor shall keep accurate and complete accounting records in support of all cost-based billings to BPA in accordance with generally accepted accounting principles and practices. The Comptroller General of the United States, the Contracting Officer, or their representatives, shall have the right to examine, audit, and reproduce any of the Contractor's pertinent records involving transactions related to this contract or any subcontract hereunder. Records includes, but is not limited to, books, documents, and other information regardless of form (e.g., machine readable data) or type (e.g. databases, applications software, data base management software, utilities, etc.) including computations and projections related to proposing, negotiating, pricing, subcontracting, modifying or performing the contract. The purpose of such examination shall be to determine the accuracy, completeness, and currency of costs charged under the contract and/or to verify cost or pricing information submitted to BPA.
- (b) Such documents shall be available for three (3) years after final payment or, in the case of termination, three (3) years from the date of any final termination settlement. Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims have been disposed of.
- (c) The contractor shall insert a clause containing all the terms of this clause, including this paragraph (c), in other than fixed price subcontracts over \$100,000, altering the clause as necessary to identify the contracting parties and the Contracting Officer under the prime contract.

(End of Clause)

**CONTRACTING OFFICER'S REPRESENTATIVES - CONSTRUCTION CONTRACTS (14-1)
(SEP 98)(BPI 14.3.2)**

- (a) The Field Inspector is an authorized representative of the Contracting Officer's Technical Representative (COTR) for technical oversight of contract performance. This includes the functions of inspection and review of work performed.
- (b) The Contracting Officer's Technical Representative (COTR) is responsible for all technical oversight of the contract. The functions of the COTR include interpretation of specifications and drawings, and processing of payments.
- (c) The Contracting Officer's Representative (COR) is the authorized representative of the Contracting Officer for administrative matters, including payment, updated delivery schedules, and changes.
- (d) These representatives are authorized to act for the Contracting Officer in all matters pertaining to the contract, except: (1) contract modifications that change the contract price, technical requirements or time for performance, unless delegated field modification authority (see clause 24-25); (2) suspension or termination of the Contractor's right to proceed, either for default or for convenience of BPA; and (3) final decisions on any matters subject to appeal, as provided in the disputes clause. In addition, the COTR may not make final acceptance under the contract.

CONTRACT ADMINISTRATION REPRESENTATIVES (14-2)
(SEP 98)(BPI 14.3.2)

- (a) In the administration of this contract, the Contracting Officer may be represented by one or more of the following: Contracting Officer's Representative for administrative matters, and Contracting Officer's Technical Representative, Receiving Inspector, and/or Field Inspector for technical matters.
- (b) These representatives are authorized to act on behalf of the Contracting Officer in all matters pertaining to the contract, except: (1) contract modifications that change the contract price, technical requirements or time for performance, unless delegated field modification authority (see clause 24-25); (2) suspension or termination of the Contractor's right to proceed, either for default or for convenience of BPA; and (3) final decisions on any matters subject to appeal, as provided in a disputes clause. In addition, Field Inspectors may not make final acceptance under the contract.

ORDER OF PRECEDENCE (14-3)
(OCT 11)(BPI 14.4.1.1)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule or Budget (excluding the specifications or statement of work); (b) contract clauses; (c) the specifications or statement of work; and (d) other documents, exhibits, and attachments.

CHANGES - COST-REIMBURSEMENT (14-9)
(SEP 98)(BPI 14.10.5.1.1)

- (a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract to any one or more of the following:
 - (1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for BPA in accordance with the drawings, designs, or specifications.
 - (2) Method of shipment or packing.
 - (3) Place of delivery or performance.
 - (4) Description of services to be performed.
 - (5) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (6) BPA-furnished property.
 - (7) Place of inspection or acceptance.
- (b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or if it otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in (1) the estimated cost, delivery or completion schedule, or both; (2) the amount of any fixed fee; and (3) other affected terms and shall modify the contract accordingly.
- (c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order, but not later than final payment.
- (d) Failure to agree to any adjustment shall be a dispute under a disputes clause, if one is included in this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

- (e) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract shall not be increased or considered to be increased except by specific written modification of the contract indicating the revised contract estimated cost and, if this contract is incrementally funded, the additional amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Contract Ceiling Limitation clause of this contract.
- (f) Notwithstanding other provisions herein, only the Contracting Officer, or persons specifically delegated authority to do so by the Contracting Officer, are authorized to orally modify or affect the terms of this contract. Contractor response to oral direction from any other source, is at its own risk of liability.

**CHANGES AND CHANGED CONDITIONS - CONSTRUCTION CONTRACTS (14-11)
(SEP 98)(BPI 14.10.5.1.1)**

- (a) The Contracting Officer may, in writing, order changes in the drawings and specifications within the general scope of the contract.
- (b) The Contractor shall promptly notify the Contracting Officer, in writing, of subsurface or latent physical conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site before proceeding with the work.
- (c) If changes under paragraph (a) or conditions under paragraph (b) increase or decrease the cost of, or time required for performing the work, the Contracting Officer shall make an equitable adjustment (see paragraph (d)) upon assertion of a claim by the Contractor before final payment under the contract.
- (d) The Contracting Officer shall not make an equitable adjustment under paragraph (b) unless--
 - (1) The Contractor has submitted and the Contracting Officer has received the required written notice; or
 - (2) The Contracting Officer waives the requirement for the written notice.
- (e) Failure to agree to any adjustment shall be a dispute under a disputes clause, if one is included in this contract.

**PRICING OF ADJUSTMENTS (14-12)
(SEP 98)(BPI 14.10.5.1.1)**

When costs are a factor in any determination of a contract price adjustment pursuant to the Changes clause or any other modification in connection with this contract, such costs shall be in accordance with the contract cost principles and procedures in Part 13 of the Bonneville Purchasing Instructions which are in effect on the date of this contract.

**MODIFICATION COST PROPOSAL - PRICE BREAKDOWN (14-13)
(SEP 98)(BPI 14.10.5.1.1)**

- (a) The contractor, in connection with any proposal it makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. The breakdown shall be in enough detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by similar price breakdowns from those subcontractors.
- (b) In addition, if the proposal includes a time extension, a justification thereof shall also be furnished. Notwithstanding any other provisions of this contract, it is mutually understood that the time extension for changes in the work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of work. The contract completion dates will be extended only for those specific

elements so delayed and the remaining contract completion dates for all other portions of the work will not be altered.

- (c) The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.

**STOP WORK ORDER (14-14)
(SEP 98)(BPI 14.12.1)**

- (a) The Contracting Officer may order the Contractor to suspend all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of BPA.
- (b) The contractor shall immediately comply with the Contracting Officer's order and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order.
- (c) If a stop work order is issued for the convenience of BPA, the Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, if the order results in a change in the time required for, or the costs properly allocable to, the performance of any part of this contract.
- (d) A claim under this clause shall not be allowed (1) for any cost incurred more than 20 days before the Contractor notified the Contracting Officer of the basis of the claim in writing, and (2) unless the claim stating the amount of time or money requested, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

**RECOVERY ACT SPECIAL TERMS AND CONDITIONS (14-49)
(AUG 09)(BPI 14.20)**

- (a) Preamble: Work performed under this contract 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). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs. Contractors should begin planning activities for their first tier subcontractors, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).
- (b) Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting shall be separate to meet the reporting requirements of the Recovery Act and related guidance from BPA. For projects funded by sources other than the Recovery Act, Contractors should plan to keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.
- (c) The Government continues to refine the implementing instructions of the Recovery Act, particularly with regard to the reporting requirements. The Contractor shall comply with all requirements of the Act, as advised by the CO. If the Contractor believes inconsistencies exist between Recovery Act requirements and other contract requirements, the issues will be referred to the Contracting Officer for reconciliation.
- (d) Be advised that special clauses may apply to projects funded by the Act relating to:
 - (1) Reporting, tracking and segregation of incurred costs;
 - (2) Reporting on job creation and preservation;
 - (3) Publication of information on the Internet;
 - (4) Protecting whistleblowers; and
 - (5) Requiring prompt referral of evidence of a false claim to the Inspector General.

- (e) Definitions: For purposes of this clause, "Covered Funds" means funds attributed to or appropriated under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the contract and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

"Non-Federal employer" means any employer with respect to Covered Funds – the contractor or subcontractor, as the case may be, if the contractor or subcontractor is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

(f) Flow Down Clause

This clause shall be included in every first-tier subcontract.

(1) Segregation and Payment of Costs

The Contractor shall segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects. Where Recovery Act funds are authorized to be used in conjunction with other funding to complete projects, tracking and reporting shall be separate from the original funding source to meet the reporting requirements of the Recovery Act and OMB Guidance.

- (2) Invoices shall clearly indicate the portion of the requested payment that is for work funded by the Recovery Act.

(3) Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

(4) Wage Rates

All laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See April 2, 2009 Attachment 4 <http://www.dol.gov/esa/whd/contracts/dbra.htm>.

(5) Publication

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board (the Board). The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

(6) Registration requirements

Contractor shall ensure that all first-tier subcontractors have a DUNS number and are registered in the Central Contractor Registration (CCR) no later than the date the first report is due.

(7) Utilization of Small Business

Contractor shall to the maximum extent practicable give a preference to small business in the award of subcontracts for projects funded by Recovery Act dollars.

**SUBCONTRACTING WITH DEBARRED OR SUSPENDED ENTITIES (11-7) - MA 56662, MOD 001
(JUL 13) (BPI 11.8.1; BPI 25.1.1)**

- (a) "Commercially available off-the-shelf (COTS) item," as used in this clause means any item of supply (including construction material) that is:
- (1) A commercial item (as defined in BPI 1.8);
 - (2) Sold in substantial quantities in the commercial marketplace; and
 - (3) 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.
- (b) The Government suspends or debar Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor that is debarred, suspended, by any executive agency unless there is a compelling reason to do so.
- (c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended by the Federal Government.
- (d) The Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended (see www.sam.gov).
- (e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that exceed \$30,000 in value and is not a subcontract for commercially available off-the-shelf items

End of Clause

**SUBCONTRACTS (14-7)
(SEP 98)(BPI 14.9.1)**

The Contractor shall not subcontract any work without prior approval of the Contracting Officer, except work specifically agreed upon at the time of award. BPA reserves the right to approve specific subcontractors for work considered to be particularly sensitive. Consent to subcontract any portion of the contract shall not relieve the contractor of any responsibility under the contract.

**SUBCONTRACTS (14-7.1) ALTERNATE I
(SEP 98)(BPI 14.9.1)**

- (a) The Contractor shall not subcontract any work without prior approval of the Contracting Officer, except work specifically agreed upon at the time of award. BPA reserves the right to approve specific subcontractors for work considered to be particularly sensitive. Consent to subcontract any portion of the contract shall not relieve the contractor of any responsibility under the contract.
- (b) (1) If the subcontract is for the management or handling of hazardous or toxic wastes, before work may begin, BPA must receive:
 - (A) a copy of EPA Notification of Hazardous Waste Activity (EPA form 8700-12) or equivalent) and
 - (B) acknowledgment of the notification filing (EPA form 8700-12A or equivalent).
- (2) If the subcontract involves management of PCBs, before work may begin, BPA must receive:
 - (A) a copy of EPA Notification of PCB Activity (EPA form 7710-53 or equivalent), and
 - (B) acknowledgment of the filing (a letter from EPA). The acknowledgment from EPA will include the EPA identification number assigned.

**RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR (14-51)
(JAN 04)**

- (a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- (b) Neither BPA's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to BPA in accordance with applicable law for all damages to BPA caused by the Contractor's negligent performance of any of the services furnished under this contract.
- (c) The rights and remedies of BPA provided for under this contract are in addition to any other rights and remedies provided by law.
- (d) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

**REQUIREMENTS FOR REGISTRATION OF DESIGNERS (14-52)
(JAN 04)**

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the District of Columbia.

**HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (15-6)
(SEP 98)(BPI 15.3.1)**

- (a) The Contractor agrees to submit a Material Safety Data Sheet (Department of Labor Form OSHA-20), as prescribed in Federal Standard No. 313C, for all hazardous material 5 days before delivery of the material whether or not it is listed in Appendix A of the Standard. This obligation applies to all materials delivered under this contract which will involve exposure to hazardous materials or items containing these materials.
- (b) "Hazardous material," as used in this clause, is as defined in Federal Standard No. 313C, in effect on the date of this contract.
- (c) Neither the requirements of this clause nor any act or failure to act by BPA shall relieve the Contractor of any responsibility or liability for the safety of BPA, Contractor, or subcontractor personnel or property.
- (d) The Contractor shall comply with applicable Federal, state, and local laws, codes, ordinances, and with regulations (including the obtaining of licenses and permits) in connection with hazardous material.
- (e) The Contractor shall insert this clause, including this Paragraph (e), with appropriate changes in the designation of the parties, in subcontracts at any tier (including purchase orders) under this contract involving hazardous material.

**KEY PERSONNEL (23-2)(M)
(MAR 12)(BPI 23.1.6)**

Personnel listed as Key Personnel in each release will be considered essential to the work being performed thereunder each release. No diversion shall be made by the Contractor without the written consent of the Contracting Officer.

**DIFFERING SITE CONDITIONS (24-7)
(SEP 98)(BPI 24.5.3.4)**

- (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent to the type of work provided for in the contract. Unless specifically identified in the contract, discoveries of archaeological or historical remains such as graves, fossils, skeletal materials and artifacts protected by the Archaeological Resources Protection Act (36 CFR 1214) are considered type 2 conditions.
- (b) BPA shall investigate the site conditions promptly after receiving the notice. If the Contracting Officer determines that the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.
- (c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

- (d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

FIELD CONTRACT MODIFICATIONS (24-25)
(SEP 98)(BPI 24.5.3.22)

- (a) The purpose of this clause is to establish a procedure whereby one contract modification will be used both to direct field changes of the type specified in the changes clause herein and to settle any question of equitable adjustments that might arise. This procedure shall apply only to those changes having less than \$ _____ **(CO FILL IN amount)** impact to the contract price and 7 calendar days or less time extension.
- (b) When either party desires a change which falls within the category of changes defined in paragraph (a), a field modification form shall be executed by both parties which shall constitute a full, complete, and final settlement for the change directed. The BPA individuals, besides the Contracting Officer, authorized to execute such modifications are: Contracting Officer Representative, Contracting Officer's Technical Representative and/or Field Inspector.
- (c) The Contractor's job superintendent, or other specified representative, shall be authorized to execute said document on behalf of the Contractor thereby legally binding their company. This person shall be on the job site at all times during performance of the contract.

ORAL MODIFICATION (24-26)
(SEP 98)(BPI 24.5.3.23)

Notwithstanding other provisions herein, only the Contracting Officer is authorized to orally modify or affect the terms of this contract. Contractor response to oral contract changes from any other source is at its own risk of liability.

REPORTING REQUIREMENTS (25-1)(M)
(MAR 12)(BPI 25.2.1)

Please see individual contract releases' Statement of Work for specifications and due dates.

CHANGES (25-4)
(SEP 98)(BPI 25.2.1)

Any changes in the project objectives, scope, or key personnel, including any proposed transfer of expenditures between all approved budget line items above 5% of the contract total must be approved by the Contracting Officer. All such changes must be submitted in writing through the Contracting Officer's Technical Representative prior to initiating the change.

AUDIT -- INTERGOVERNMENTAL CONTRACT (25-5)
(NOV 08)(BPI 25.2.1)

- (a) The contractor-agency shall maintain accounting procedures and practices sufficient to reflect properly all costs claimed to have been incurred in performing this agreement. The Contracting Officer, or representatives of the Contracting Officer, shall have the right to examine books, records, documents and other evidence supporting such claimed costs at all reasonable times at the agency's facilities used in performing this agreement and other locations where records pertaining to this agreement are maintained. Such records shall be retained and made available for examination until 3 years after the budget year in which they were created.
- (b) The contractor-agency shall comply with the provisions of OMB Circular A-133. The contractor-agency shall apply provisions of those circulars concerning program levels requiring audits, audit scope, and determinations of this agreement as if it was a Federal assistance program. If an audit is required, a copy of

the audit report shall be sent to the BPA Internal Audit Staff, Mail Stop DN-7, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208 , and other distribution of the report as required by the circular.

PUBLICATION/PRESENTATIONS (25-8)
(SEP 04)(BPI 25.2.1)

All news releases, presentations, publications, or signage and related materials shall acknowledge BPA support for project activities. BPA strongly endorses the publication of project results in scientific journals to facilitate public access and to preserve project data. Copies of news articles, publications, etc. shall be provided to the COTR. When appropriate, Project Managers shall prepare manuscripts for submission to journal editors, giving due credit for BPA's financial support. BPA reserves the right to publish all or part of the reports submitted pursuant to the terms of this contract.

ENDANGERED SPECIES ACT REQUIREMENTS (25-9)
(SEP 98)(BPI 25.2.1)

- (a) To the extent requested by BPA, the contractor-agency shall:
- (1) Participate in consultations and conferences conducted under Section 7 of the Endangered Species Act (ESA);
 - (2) Obtain, or assist BPA in obtaining permits under Section 10 of the ESA, and
 - (3) Provide to BPA all information, materials, documents, records and other assistance requested by BPA for such consultations, conferences, or the acquisition of permits.
- (b) The contractor-agency shall not proceed with action/activities in this agreement until completion of requisite consultations and conferences and the acquisition of necessary permits. To the extent requested by BPA, the contractor-agency shall comply with conditions identified during consultations and conferences and with the provisions of any requisite permit.

BONDS AND INSURANCE

PERFORMANCE AND PAYMENT BONDS (16-1)
(SEP 98)(BPI 16.1.1.3; 16.1.2.2)

- (a) The contractor shall furnish all bonds, including any necessary reinsurance agreements, before receiving a notice to proceed with the work or being allowed to start work.
- (1) Performance Bond shall be furnished on Standard Form 25 in the amount of 100 percent of the original contract price.
 - (2) Payment Bond shall be furnished on Standard Form 25-A in the amount of 100 percent of the original contract price.
- (b) If the performance and payment bonds are in the form of a corporate surety bond signed by an agent or attorney in-fact, a copy of the power of attorney authorizing action on behalf of the surety shall be attached to the bond.
- (c) If the contract price is substantially increased during the course of the contract, and the Contracting Officer determines that an increase in bond amount is required, the increased bond amount shall be evidenced by submitting SF-25 or SF-25A as described in paragraph (a) of this clause.

- (d) The cost of the performance and/or payment bond premiums is to be included in the contract price. No additional payment will be made for bond premiums.
- (e) The Contractor shall promptly furnish additional security required to protect BPA and persons supplying labor or materials under this contract if--
 - (1) Any surety upon any bond furnished with this contract becomes unacceptable to BPA; or
 - (2) Any surety fails to furnish reports on its financial condition as required by BPA.

**INSURANCE (16-2.1) ALTERNATE I
(SEP 09)(BPI 16.3.3)**

- (a) Before commencing work under this contract, the Contractor shall provide to the Contracting Officer certificates of insurance from the insurance company, or an authorized insurance agent, stating the required insurance has been obtained and is in force. The certificate(s) shall identify the Contractor and name BPA as the certificate holder as follows:

Bonneville Power Administration

Attention: Contracting Officer - _____(NSSP-4), Portland, Oregon (fill in name of CO)

The certificate shall also identify the contract number(s) for which coverage is provided, and shall contain a statement that the insurer will endeavor to give notice of cancellation or any material change to the certificate holder at least 30 days before the effective date.

- (b) Throughout the period of the contract the Contractor shall deliver a new certificate of insurance to the Contracting Officer within 10 business days of existing policy expiration, changes, and/or changes in insurance providers. If the Contractor's insurance does not cover the subcontractors involved in the work, the Contractor shall provide the Contracting Officer with certificates of insurance stating that the required insurance has been obtained by the subcontractors.
- (c) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.
- (d) The following minimum kinds and amounts of insurance are applicable in the performance of the work under this contract. All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.
 - (1) **Workers' compensation and employer's liability.** Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. Employer's liability coverage of at least \$1,000,000 shall be required. BPA may require Contractors who are individuals (whether incorporated or not) to carry workers' compensation to protect agency interests. The Contracting Officer shall advise the Contractor regarding specific requirements.
 - (2) **Commercial General liability.** The contractor shall provide commercial general liability insurance (CGL) of at least \$1,000,000 per occurrence. Any policy aggregate limits which apply shall be modified to apply to each location and project. The policy shall name BPA, its officials, officers, employees and agents, as additional insureds with respect to the contractor's performance of services under the contract. The contractor's policy shall be primary and shall not seek any contribution from any insurance or self-insurance programs of BPA. The Contractor's CGL policy shall be issued on an occurrence basis.
 - (3) **Automobile liability.** The contractor shall provide automobile liability insurance covering the operation of all automobiles used in performing the contract. Policies shall provide limits of at least \$1,000,000 per accident and include coverage for all owned, non-owned and hired automobiles.

- (4) **Aircraft liability.** The contractor shall provide aircraft liability insurance. Limits shall be at least \$10,000,000 per occurrence, other than for voluntary settlement. Limits for passenger liability shall be at least \$200,000 multiplied by the number of seats. The insurance policy shall include coverage for owned, non-owned and hired aircraft and name BPA, its officials, officers, employees and agents as additional insureds. The contractor's policy shall be primary and shall not seek any contribution from any insurance or self-insurance programs of BPA.
 - (5) **Watercraft liability.** The contractor shall provide watercraft liability insurance. Limits shall be at least \$1,000,000 per occurrence. The insurance policy shall include coverage for owned, non-owned and hired watercraft and name BPA, its officials, officers, employees and agents as additional insureds. The contractor's policy shall be primary and shall not seek any contribution from any insurance or self-insurance programs of BPA.
 - (6) **Contractor's Pollution Liability Insurance.** The contractor shall provide pollution liability insurance of at least \$5,000,000 per occurrence. Such insurance will include coverage for the clean up, removal, storage, disposal, transportation and/or use of pollutants. The insurance policy shall name BPA, its officials, officers, employees and agents as additional insureds. The contractor's policy shall be primary and shall not seek any contribution from any insurance or self-insurance programs of BPA.
 - (7) **Professional liability.** The contractor shall provide professional liability insurance. Coverage shall be at least \$1,000,000 per occurrence for claims arising out of negligent acts, errors or omissions.
 - (8) **Medical malpractice liability insurance.** The contractor shall maintain medical malpractice liability insurance of at least \$500,000 per occurrence.
- (e) The Contractor shall be reimbursed--
- (1) For that portion (i) of the reasonable cost of insurance allocable to this contract and (ii) required or approved under this clause; and
 - (2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the Contract Ceiling clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by BPA. These liabilities are for--
 - (A) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or
 - (B) Death or bodily injury.
- (f) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)--
- (1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the contract;
 - (2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or
 - (3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's director, officers, managers, superintendents, or other representatives who have supervision or direction of--
 - (A) All or substantially all of the Contractor's business;
 - (B) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(C) A separate and complete major industrial operation in connection with the performance of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall--

- (1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;
- (2) Authorize BPA representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and
- (3) Authorize BPA representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by BPA, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with BPA representatives in any such claim or litigation.

**RESPONSIBILITY FOR DAMAGE OR LOSS OF SUPPLIES (18-6)
(SEP 98)(BPI 18.4.1)**

- (a) The Contractor shall be responsible for the supplies covered by this contract until acceptance, at the designated site, regardless of the point of inspection.
- (b) After delivery and installation at the designated site and prior to acceptance or rejection, BPA shall be responsible for the loss, destruction, or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of BPA acting within the scope of their employment.
- (c) The Contractor shall bear all risks as to rejected supplies after notice of rejection, except that BPA shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction or damage results from the gross negligence of officers, agents, or employees of BPA acting within the scope of their employment.

STANDARDS OF CONDUCT AND BUSINESS PRACTICES

**ORGANIZATIONAL CONFLICTS OF INTEREST (3-2)
(SEP 98)(BPI 3.4.6)**

- (a) The offeror or contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts which could give rise to organizational conflicts of interest, as defined in BPI 3.4.1, and that the offeror or contractor has disclosed all relevant information to the Contracting Officer.
- (b) The offeror or contractor agrees that, if after award, an organizational conflict of interest with respect to this contract is discovered, an immediate and full disclosure in writing shall be made to the Contracting Officer which shall include a description of the action which the contractor has taken, or proposes to take, to avoid or mitigate such conflicts.
- (c) In the event that the contractor was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict to the Contracting Officer, BPA may terminate the contract for default.
- (d) The provisions of this clause shall be included in all subcontracts for work to be performed in aid of the services provided by the prime contractor, and the terms "contract," "contractor," "Contracting Officer" modified appropriately.

**CERTIFICATION, DISCLOSURE, AND LIMITATION REGARDING PAYMENTS TO INFLUENCE CERTAIN
FEDERAL TRANSACTIONS (3-3)
(SEP 98)(BPI 3.5.6)**

(a) As used in this clause:

"Covered Federal action" means:

- (1) The awarding of any Federal contract.
- (2) The extension, continuation, renewal, amendment, or modification of any Federal contract.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and includes Alaskan Natives.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, includes a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes all contractors and subcontractors. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:

- (i) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract or the extension, continuation, renewal, amendment, or modification of any Federal contract.

- (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, Standard Form-LLL, Disclosure of Lobbying Activities, to the Contracting Officer.
- (3) He or she will include the language of this certification in all subcontract awards at any tier and that all sub-recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, U.S. Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10, 000 and not more than \$100,000 for each such failure.
- (d) A contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under this clause if paid for with appropriated funds.
- (e) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (b) of this clause. An event that materially affects the accuracy of the information reported includes--
- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (f) The contractor shall require the submittal of a certification, and if required, a disclosure form, by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
- (g) All subcontractor disclosure forms (but not certifications), shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosure forms to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.
- (h) Any person who makes an expenditure prohibited under this clause or who fails to file or amend the disclosure form to be filed or amended by this clause shall be subject to a civil penalty as provided by 31 U. S. Code 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

**CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING (3-4)
(MAY 11) (BPI 3.7.1.1)**

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

“Driving”—(1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. (2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

“Text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

- (b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while driving, dated October 1, 2009.
- (c) The Contractor should adopt and enforce policies that ban text messaging while driving —(1) Company-owned or -rented vehicles or Government-owned vehicles; or (2) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.
- (d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$10,000.

**CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS (3-10) – MA 56662, MOD 001
(FEB14)([BPI 3.9.4.1](#))**

- (a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the Contractor employee whistleblower protections established at 41 U.S.C. § 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).
- (b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. § 4712.
- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts that exceed \$150,000.

End of Clause

SOCIO-ECONOMIC ISSUES

**SOCIO-ECONOMIC REQUIREMENTS (25-6)
(MAR 10)([BPI 25.2.1](#))**

The contractor-agency agrees to comply with the following Federal Laws and Executive Orders:

- (a) Laws and Regulations relating to Equal Employment Opportunity
- (b) Drug Free Workplace Act of 1988, P.L. 100-690

**BUY AMERICAN ACT - SUPPLIES (9-3) – MA 56662, MOD 001
(JUL 13)([BPI 9.1.6](#))**

- (a) The Buy American Act (41 U.S. Code §8301-8305) provides that the Government give preference to domestic source end products.

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

- (1) Means any item of a supply (including construction material) that is:
 - (1) A commercial item (as defined in BPI 1.8);

(2) Sold in substantial quantities in the commercial marketplace; and

(3) 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 USC App 1702) such as agricultural products and petroleum products.

"Components" means those articles, materials, and supplies, which are incorporated directly into the end products.

"End products" means those articles, materials, and supplies to be acquired for public use under this contract.

"Domestic end product" means (1) an unmanufactured end product mined or produced in the United States or (2) an end product manufactured in the United States, if 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 as the products referred to in (b) (2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

(b) The Contractor shall deliver only domestic end products, except those

- (1) That BPA determines are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
- (2) For which BPA determines that domestic preference would be inconsistent with the public interest; or
- (3) For which BPA determines the cost to be unreasonable.

(c) In accordance with 41 U.S.C. 431, the component test of the Buy American Act is waived for an end product that is a COTS item.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, as amended, and Part 9 of the BPI.)

End of Clause

**RESTRICTION ON CERTAIN FOREIGN PURCHASES (9-8) – MA 56662, MOD 001
(JUL 13) (BPI 9.3.2.1)**

- (a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
- (b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.
- (c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

End of Clause

**SERVICE CONTRACT ACT OF 1965 (10-3)
(OCT 09)(BPI 10.4.4)**

(a) Definitions. "Act," as used in this clause, means the Service Contract Act of 1965, [41 U.S.C. 351, et seq.].

"Contractor," as used in this clause or in any subcontract, shall include the subcontractor, except in the term "BPA Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all service employees regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2) Conforming additional classifications.

(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee not listed therein which is to be employed under the contract [i.e., the work to be performed is not performed by any classification listed in the wage determination] so as to provide a reasonable relationship [i.e., appropriate level of skill comparison] between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits which are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer (CO) no later than 30 days after the unlisted class of employee performs any contract work. The CO shall review the proposed classification and rate and promptly submit the completed SF 1444 [which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves, together with the agency recommendation], and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action, or render a final determination in the event of disagreement, within 30 days of receipt or will notify the CO within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be posted as a part of the wage determination or a written copy shall be furnished to each affected employee.

(iv) Establishing rates.

(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination, depending upon the

circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contract succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the CO of the action taken, but the other procedures in paragraph (c)(2)(ii) of this section need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits, which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of compensation. If the term of this contract is more than two years, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after two years under wage determinations issued by the Wage and Hour Division.

(d) Obligation to Furnish Health & Welfare Benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments only in accordance with Subpart D of 29 CFR Part 4.

(e) Minimum wage. In the absence of a wage determination for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(f) Successor contracts. If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality, and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the wage determination for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor

any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR Part 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR Part 4.10, that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR Part 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for similar services in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) Notification to employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) Records.

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for three years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(A) For each employee subject to the Act --

- (i) Name, address and social security number;
- (ii) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payment in lieu of fringe benefits and total daily and weekly compensation;
- (iii) Daily and weekly hours worked by each employee; and
- (iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(B) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(iv)(B) of this clause will fulfill this requirement.

- (C) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (m) of this clause.
- (2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.
- (3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the CO, upon direction of the Department of Labor and notification of the Contractor, shall take action to suspend of any further payment or advance of funds until the violation ceases.
- (4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (i) Pay periods. The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.
- (j) Withholding of payments and termination of contract. The CO shall withhold or cause to be withheld from the BPA prime contractor under this or any other Government contract with the prime contractor such sums as an appropriate official of the Department of Labor requests, or such sums as the CO decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the CO may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the BPA may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.
- (k) Subcontracts. The Contractor agrees to include this clause in all subcontracts subject to the Act.
- (l) Collective bargaining agreements applicable to service employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the BPA prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the BPA prime contractor shall report such fact to the CO, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, together with a copy of the collective bargaining agreement. Such report shall be made upon commencing performance on the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.
- (m) Seniority Lists. Not less than ten days prior to completion of any contract being performed at a BPA facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a contractor (predecessor) or successor (29 CFR Part 4.173), the incumbent prime contractor shall furnish to the CO a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The CO shall provide this list to the successor contractor at the commencement of the succeeding contract.
- (n) Rulings and interpretations. Rulings and interpretations of the Act are contained in 29 CFR Part 4.
- (o) Variations, tolerances and exemptions involving employment. Notwithstanding any of the provisions in paragraphs (b) through (n) of this clause, the following employees may be employed in accordance with the

following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business.

- (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the DOL (29 CFR Parts 520, 521, 524, and 525).
 - (2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).
 - (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.
- (p) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.
- (q) Disputes concerning labor standards. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes concerning labor standards requirements within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U. S. Department of Labor, or the employees or their representatives.

**LABOR STANDARDS -- PRICE ADJUSTMENT (10-4)
(OCT 93)(BPI 10.3.4)**

- (a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under paragraph (d) below.
- (b) The minimum monetary wages and fringe benefits required to be paid or furnished to service employees under this contract as set forth in the wage determination, shall be subject to adjustment if (1) the period of performance of this contract exceeds two years, (2) the contract contains option provisions specifying that a differing wage determination shall apply thereto, (3) an amendment to the Fair Labor Standards Act is enacted revising the minimum wage rate, (4) a contract modification significantly changes the nature of the work, or, (5) the Department of Labor otherwise directs.

- (c) The contract price or contract unit priced labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with the new rates, or the decrease is voluntarily made by the Contractor.
- (d) Any such adjustment shall be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, material costs, overhead, or profit. (For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour.)
- (e) The Contractor shall notify the Contracting Officer (CO) of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the CO. The Contractor shall promptly notify the CO of any decrease under this clause, but nothing in the clause shall preclude the BPA from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the CO may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on, or determination of, any such adjustment and its effective date.
- (f) The CO or an authorized representative shall have access to and the right to examine any pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

**WAGE DETERMINATION (10-5)
(MAR 10)(BPI 10.4.4)**

The wage determination(s) referred to in the clause 10-3, Service Contract Act, are incorporated into the contract, and are identified as follows:

Decision Number: FILL-IN	Date: FILL-IN
Last Modifications Number: FILL-IN	Date: FILL-IN

(Applicable Wage Determination(s) will be included in each contract release).

**DAVIS-BACON ACT (10-7)
(SEP 98)(BPI 10.4.4)**

- (a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "Apprentices, Trainees, and Helpers." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification

in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b) Additional wage classifications.

(1) The CO shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The CO shall approve an additional classification, and wage rate and fringe benefits therefor, only when all the following criteria have been met:

(A) Except with respect to helpers as defined in 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination.

(B) The classification is utilized in the area by the construction industry.

(C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(D) With respect to helpers, such classification prevails in the area in which the work is performed.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the CO agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the CO to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the CO or will notify the CO within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the CO do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the CO shall refer the questions, including the views of all interested parties and the recommendation of the CO, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the CO or will notify the CO within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) or (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification. Pending approval of the wage rate classification by the Wage and Hour Division per (b)(2) or (b)(3), the CO may unilaterally modify the contract to incorporate wage rates for interim use, as determined by the CO pursuant to (b)(1) of this clause. Whenever payment of such interim wage rate is made as prescribed by the CO pursuant to (b)(1), and the paid wage rate materially differs from the wage rate approved by the Wage and Hour Division pursuant to subparagraphs (b)(2) or (b)(3) of this clause, the CO shall make an equitable adjustment (upward or downward) in the contract price. The amount of the adjustment shall be the difference between the sum of interim wage rate paid and the wage rate approved by the Wage and Hour Division.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided that the Secretary of Labor has found, upon the

written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

- (e) The Contractor shall comply with the requirements of the Copeland ("Anti-Kickback") Act, as amended, (18 U.S.C. 874 and 40 U.S.C. 276c) and its implementing regulations (29 CFR Part 3), which require reasonable procedures in place to prevent and detect unlawful practices to induce or intimidate employees to accept lesser compensation than they are entitled to under a contract of employment.
- (f) Disputes concerning labor standards. The U.S. Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U. S. Department of Labor, or the employees or their representatives.

**WITHHOLDING -- LABOR VIOLATIONS (10-8)
(OCT 93)(BPI 10.4.4)**

The CO may withhold, or cause to be withheld, from the Contractor under this contract, or any other Federal contract with the same Prime Contractor, as much of the otherwise due payments, advances, or guarantee of funds, as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages and fringe benefits required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed, or working on the site of the work, all or part of the wages required by the contract, the CO may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**PAYROLLS AND BASIC RECORDS (10-9)
(OCT 93)(BPI 10.4.4)**

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under paragraph (d) of the clause entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (b) (1) Submission of payroll records to the CO is not required under this contract unless specifically requested by the CO. Providing the payrolls, when requested, shall be prompt, and shall not be considered a change to the contract. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause for the periods identified by the CO. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

- (2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify
 - (A) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;
 - (B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and
 - (C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
 - (3) The submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.
 - (4) The falsification of any of the above certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the CO or authorized representatives of the CO or the Department of Labor. The Contractor or subcontractor shall permit the CO or representatives of the CO or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the CO may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

**APPRENTICES, TRAINEES, AND HELPERS (10-10)
(JUL 94)(BPI 10.4.4)**

- (a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage

determination for the applicable classification. If the DOL determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (c) Helpers. Helpers will be permitted to work on a project if the helper classification is specified on an applicable wage determination or is approved pursuant to the conformance procedures set forth in paragraph (b) of the Davis Bacon Act clause. The allowable ratio of helpers to journeymen employed by the Contractor or subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40% of the total number of journeymen and helpers in each contractor's, or in each subcontractor's own workforce employed on the job site). Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 CFR 5.2(n)(4), shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeymen's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.
- (d) Equal employment opportunity. The utilization of apprentices, trainees, helpers and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246 and 29 CFR Part 30.

**SUBCONTRACTS (LABOR STANDARDS) (10-11)
(JUL 94)(BPI 10.4.4)**

- (a) The Contractor or subcontractor shall include in any subcontracts the clauses entitled "Davis-Bacon Act," "Apprentices, Trainees and Helpers," "Payrolls and Basic Records," "Withholding -- Labor Violations," "Subcontracts (Labor Standards)," "Certification of Eligibility," and "Davis-Bacon Act Wage Rates." The Contractor shall include a clause requiring its subcontractors to include these clauses in any lower-tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.
- (b) Notification of subcontracting.

- (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
- (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- (b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$35,000 shall include this clause, including the goals for minority and female participation stated herein.
- (c) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Goals for minority participation _____ CO INSERT GOALS

Goals for female participation _____ CO INSERT GOALS

(Applicable Goals will be included in each contract release).

Compliance with the goals will be measured against the total work hours performed.

- (d) The Contractor shall provide written notification to the Office of Federal Contract Compliance Programs (OFCCP) area office within 10 working days following award of any construction subcontract in excess of \$35,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the --
 - (1) Name, address, and telephone number of the subcontractor;
 - (2) Employer identification number of the subcontractor;
 - (3) Estimated dollar amount of the subcontract;
 - (4) Estimated starting and completion dates of the subcontract; and
 - (5) Geographical area in which the subcontract is to be performed.
- (e) The Contractor shall implement the affirmative action procedures in subparagraphs (f)(1) through (7) of this clause. The goals stated in this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.
- (f) The contractor shall take affirmative action steps at least as extensive as the following:
 - (1) Ensure a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.
 - (2) Immediately notify the OFCCP area office when the union or unions, with which the Contractor has a collective bargaining agreement, has not referred back to the Contractor a minority or woman sent by the

Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

- (3) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (f)(2) above.
 - (4) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct reviews of this policy with all onsite supervisory personnel prior to initiation of construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
 - (5) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.
 - (6) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.
 - (7) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- (g) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (f)(1) through (7). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant, may be useful in achieving one or more of its obligations under subparagraphs (f)(1) through (7).
- (h) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.
- (i) The contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
- (j) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.
- (k) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Nondiscrimination and Affirmative Action clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance.

**EMPLOYMENT ELIGIBILITY VERIFICATION (10-18)
(MAR 09) (BPI 10.7.2)**

- (a) E-Verify enrollment and verification requirements.
- (1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at the time of the contract award, the Contractor shall:
 - (A) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;
 - (B) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (a) (3) of this section); and
 - (C) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (a)(4) of this section).
 - (2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—
 - (A) All new employees.
 - (i) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract within 3 business days after the date of hire (but see paragraph (a)(3) of this section); or
 - (ii) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph)(3) of this section); or
 - (B) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (4) of this section).
 - (3) If the Contractor is an institution of higher education; a state or local government, or the government of a federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract. The Contractor shall follow the applicable verification requirements at (a)(1) or (a)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.
 - (4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—
 - (A) Enrollment in the E-Verify program; or
 - (B) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirement of the E-Verify program MOU.

(A) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(B) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(b) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(c) Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) -12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(d) *Subcontracts*. The contractor shall include the requirements of this clause, including this paragraph (d) (appropriately modified for identification of the parties), in each subcontract that—

(1) Is for:

(A) Services other than commercial services that are part of the purchase of a commercial-of-the-shelf (COTS) item, performed by the COTS provider and are normally provided for that COTS item;

(B) Construction.

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.

ENVIRONMENT & SAFETY

COVID 19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (15-99) MOD 3 (OCT 2021)

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

(1) *United States or its outlying areas* means—

(i) The fifty States;

(ii) The District of Columbia;

(iii) The commonwealths of Puerto Rico and the Northern Mariana Islands;

(iv) The territories of American Samoa, Guam, and the United States Virgin Islands; and

(v) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

- (b) *Authority.* This clause implements Executive Order 14042, *Ensuring Adequate COVID Safety Protocols* for Federal Contractors, dated September 9, 2021 (published in the Federal Register on September 14, 2021, 86 FR 5098)
- (c) *Compliance.* The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>
- (d) *Subcontracts.* The Contractor shall include the substance of this clause in subcontracts at any tier that exceed \$250,000.00 (simplified acquisition threshold as defined in section 2.101 of the Federal Acquisition Regulation), on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

**CONTRACTOR SAFETY AND HEALTH (15-12) – MA 56662, MOD. 001
(APR 14)([BPI 15.2.4.1](#))**

a) The Contractor shall furnish a place of employment that is free from recognized hazards that cause or have the potential to cause death or serious physical harm to employees; and shall comply with occupational safety and health standards promulgated under the Occupational Safety and Health Act of 1970 (Public Law 91-598). Contractor employees shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to their own actions and conduct.

- (1) All construction contractors working on contracts in excess of \$100,000 shall comply with Department of Labor Contract Work Hours and Safety Standards (40 U.S.C. § 3701 et seq.).
- (2) The Contractor shall comply with
 - (i) National Fire Protection Association (NFPA) National Fire Codes for fire prevention and protection applicable to the work or facility being occupied or constructed;
 - (ii) NFPA 70E, *Standard for Electrical Safety in the Workplace*;
 - (iii) American Conference of Governmental Industrial Hygiene *Threshold Limit Values for Chemical Substances and Physical Agents* and Biological Exposure Indices; and,
 - (iv) Any additional safety and health measures identified by the Contracting Officer.

This clause does not relieve the Contractor from complying with any additional specific or corporate safety and health requirements that it determines to be necessary to protect the safety and health of employees.

- (b) The Contractor bears sole responsibility for ensuring that all contractor's workers performing contract work possess the necessary knowledge and skills to perform the work correctly and safely. The Contractor shall make any training and certification records necessary to demonstrate compliance with this requirement available for review upon request by BPA.
- (c) The Contractor shall hold BPA and any other owners of the site of work harmless from any and all suits, actions, and claims for injuries to or death of persons arising from any act or omission of the Contractor, its subcontractors, or any employee of the Contractor or subcontractors, in any way related to the work under this contract.
- (d) The Contractor shall immediately notify the Contracting Officer (CO), the Contracting Officer's Technical Representative (COTR), and the Safety Office by telephone at (360) 418-2397 of any death, injury, occupational disease or near miss arising from or incident to performance of work under this contract.
 - (1) The BPA Safety Office business hours are 7:00 AM to 4:00 PM Pacific Time. If the Safety Office Officials are not available to take the phone call the contractor shall leave a voicemail that includes the details of the event, and the Contractor's contact information. The Contractor shall periodically repeat the phone call to the Safety Office until the Contractor is able to speak directly with a BPA Safety Official.
 - (2) The Contractor shall follow up each phone call notification with an email to SafetyNotification@BPA.gov immediately for any fatality or within 24 hours for non-fatal events.

- (3) The Contractor shall complete BPA form 6410.15e Contractor's Report of Personal Injury, Illness, or Property Damage Accident and submit the form to the CO, COTR, and Safety Office within five (5) working days of such an occurrence. The Contractor shall include photographs and witness statements with the report.
 - (4) In the case of a Near Miss Incident that does not involve injury, illness, or property damage, the Contractor shall complete BPA Form 6410.18e Contractor's Report of Incident/Near Miss and submit the form to the CO, COTR, and Safety Office within five (5) working days of such an occurrence. The Contractor shall include photographs and witness statements with the report.
- (e) Notification of Imminent Danger and Workers Right to Decline Work
- (1) All workers, including contractors and BPA employees, are responsible for identifying and notifying other workers in the affected area of imminent danger at the site of work. Imminent danger is any condition or practice that poses a danger that could reasonably be expected to cause death or severe physical hardship before the imminence of such danger could be eliminated through normal procedures.
 - (2) A contract worker has the right to ask, without reprisal, their onsite management and other workers to review safe work procedures and consider other alternatives before proceeding with a work procedure. Reprisal means any action taken against an employee in response to, or in revenge for, the employee having raised, in good faith, reasonable concerns about a safety and health aspect of the work required by the contract.
 - (3) A contract worker has the right to decline to perform tasks, without reprisal, that will endanger the safety and health of themselves or of other workers.
 - (4) The Contractor shall establish procedures that allow workers to cease or decline work that may threaten the safety and health of the worker or other workers.
- (f) BPA encourages all contractor workers to raise safety and health concerns as a way to identify and control safety hazards. The Contractor shall develop and communicate a formal procedure for submittal, resolution, and communication of resolution and corrective action to the worker submitting the concern. The procedure shall 1.) encourage workers to identify safety and health concerns directly to their supervisor and employer using the employer's reporting process; and 2.) inform workers that they may raise safety concerns to BPA or the State OSHA. Workers may notify the Safety Office at (360) 418-2397 if the employer's work process does not resolve the worker's safety and health concern. BPA may coordinate the response to a contractor worker's health and safety concerns with the State OSHA when necessary to facilitate resolution.
- (g) BPA employees may direct the contractor to stop a work activity due to safety and health concerns. The BPA employee shall notify the Contractor orally with written confirmation, and request immediate initiation of corrective action. After receipt of the notice the Contractor shall immediately take corrective action to eliminate or mitigate the safety and health concern. When a BPA employee stops a work activity due to a safety and health concern the Contractor shall immediately notify the CO, provide a description of the event, and identify the BPA employee that halted the work activity. The Contractor shall not resume the stopped work activity until authorization to resume work is issued by a BPA Safety Official. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule when BPA stops a work activity due to safety and health concerns that occurred under the Contractor's control.
- (h) The Contractor shall keep a record of total monthly labor hours worked at the site of work. The Contractor shall include a separate calculation of the monthly total labor hours for each subcontractor in the contractor's monthly data. Upon request by the CO, COTR or BPA Safety Office, the Contractor shall provide the total labor hours for a completed month to BPA no later than the 15th calendar day of the following month. The requestor shall identify the required reporting format and procedures.
- (i) The Contractor shall include this clause, including paragraph (i) in subcontracts. The Contractor may make appropriate changes in the designation of the parties to reflect the prime contractor--subcontractor arrangement. The Contractor is responsible for enforcing subcontractor compliance with this clause.

End of Clause

**CONTRACTOR SAFETY AND HEALTH REQUIREMENTS (15-13) - MA 56662 MOD 001
(APR 14)(BPI 15.2.4.1)**

- (a) The Contractor shall prepare a site specific safety plan (SSSP) and submit the SSSP to the Contracting Officer (CO) or the CO's designee. The Contractor is prohibited from performing on site work without written authorization from the CO. The CO is prohibited from issuing an authorization to proceed with on-site work until the BPA Safety Office has reviewed the SSSP and any concerns are resolved.
- (b) The Contractor shall follow the work procedures provided in the *Contractor Safety and Health Requirements For Prime and Subcontractors*. The full text of the *Contractor Safety and Health Requirements for Prime and Subcontractors* is available at <http://www.bpa.gov/Doing%20Business/purchase/Pages/default.aspx>.
- (c) The Contractor shall include this clause in all subcontracts.

End of Clause

PATENTS, DATA, AND COPYRIGHTS

**INFORMATION ASSURANCE (17-20) – MA 56662, MOD. 001
(OCT 11)(BPI 17.6.1.4.1)**

- (a) In performance of this contract, the contractor shall protect all data and information systems under its management and control at all times commensurate with the risk and magnitude of harm that could result to Federal security interests and BPA's missions and programs resulting from a loss or unauthorized disclosure of confidentiality, availability, and integrity of these information or systems.
- (b) The contractor shall maintain an information security and/or data security plan or program consistent with industry standards such as National Institute of Standards and Technology (NIST), as required by the E-Government Act (Public Law 107-347) of 2002, Title III Federal Information Security Management Act (FISMA).
- (c) The BPA Chief Information Officer (CIO), or representatives, shall have the right to examine, audit, and reproduce any of the contractor's pertinent information security and/or data security plan or program.
- (d) The contractor shall adhere to any additional information security requirements identified in the statement of work.
- (e) The contractor, at its sole expense, shall address and correct any deficiencies and/or noncompliance with the terms of the contract as identified by BPA.

End of Clause

**UNAUTHORIZED REPRODUCTION OR USE OF COMPUTER SOFTWARE (23-3)
(SEP 98)(BPI 23.3.1)**

The contractor shall hold BPA harmless for unauthorized reproduction or use of copyrighted or proprietary computer software and/or manuals or other documentation by the contractor's employees or subcontractors in the performance of the contract.

INSPECTION AND WARRANTY

**INSPECTION - SERVICES AND CONSTRUCTION (18-4)
(SEP 98)(BPI 18.3.1)**

- (a) BPA may inspect the work called for by the contract at any time and place. BPA will perform inspections in a manner that will not unduly delay the work.

- (b) If any of the services do not conform with contract requirements (including services performed on a cost-reimbursement or time-and-materials basis), BPA may require the Contractor to perform the services again in conformity with the contract at no cost to BPA. When the defects in services cannot be corrected by re-performance, BPA may deduct from the contract payments an amount which reflects the reduced value of the services performed.
- (c) Neither inspection, lack of inspection, acceptance, nor payment shall relieve the Contractor of any of its obligations under this contract.

**INSPECTION AND ACCEPTANCE - CONSTRUCTION (18-5)
(SEP 98)(BPI 18.3.1)**

- (a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to BPA. All work shall be conducted under the general direction of the Contracting Officer and is subject to BPA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.
- (c) BPA inspections and tests are for the sole benefit of BPA and do not--
 - (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
 - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - (3) Constitute or imply acceptance; or
 - (4) Affect the continuing rights of BPA after acceptance of the completed work under paragraph (i) below.
- (d) The presence or absence of a BPA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.
- (e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. BPA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. BPA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
- (f) The Contractor shall, without charge, replace or correct work found by BPA not to conform to contract requirements, unless in the public interest BPA consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from BPA property.
- (g) If the Contractor does not promptly replace or correct rejected work, BPA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, and may (2) terminate for default the Contractor's right to proceed.
- (h) If, before acceptance of the entire work, BPA decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

- (i) Unless otherwise specified in the contract, acceptance by BPA will be in writing and shall be made as promptly as practicable after completion and inspection of all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or BPA's rights under any warranty or guarantee.

**WARRANTY - CONSTRUCTION (18-12)
(SEP 98)(BPI 18.5.1)**

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If BPA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date BPA takes possession.
- (c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or personal property, when that damage is the result of -
 - (1) The Contractor's failure to conform to contract requirements; or
 - (2) Any defect of equipment, material, workmanship, or design furnished by the Contractor.
- (d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.
- (e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, BPA shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--
 - (1) Obtain all warranties that would be given in normal commercial practice;
 - (2) Require all warranties to be executed, in writing, for the benefit of BPA, if directed by the Contracting Officer; and
 - (3) Enforce all warranties for the benefit of BPA, if directed by the Contracting Officer.
- (h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by BPA nor for the repair of any damage that results from any defect in Government-furnished material or design.
- (i) This warranty shall not limit BPA's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

PROPERTY

BPA-FURNISHED/CONTRACTOR-ACQUIRED PROPERTY (19-1) (SEP 02)(BPI 19.4)

- (a) The Contractor shall manage BPA-furnished, contractor-acquired property in accordance with BPI Appendix 19-A if that appendix is made a part of this contract. If Appendix 19-A is not made a part of this contract, property should be managed in accordance with ASTM Property Management Standards and/or sound industry practices.
- (b) BPA shall deliver to the Contractor, at the time and locations stated in this contract, BPA-furnished property described in the Schedule, statement of work, or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the Changes clause of the contract when--
 - (1) The Contractor submits a timely written request for an equitable adjustment; and
 - (2) The facts warrant an equitable adjustment.
- (c) Title to BPA-furnished property shall remain with BPA, unless specifically identified elsewhere in this contract. The Contractor shall use BPA-furnished property, except as provided for in BPI subpart 19.3, only in connection with this contract. The Contractor shall maintain adequate property control records in accordance with sound industry practices and will make such records available for BPA inspection at all reasonable times.
- (d) Upon delivery of BPA-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except--
 - (1) For reasonable wear and tear;
 - (2) To the extent property is consumed in the performance of this contract; or
 - (3) As otherwise provided for by the provisions of this contract.
- (e) Unless specified elsewhere in this contract, title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in BPA upon the supplier's delivery of such property to the contractor.
- (f) Title to BPA property shall not be affected by its incorporation into or attachment to any property not owned by BPA, nor shall BPA property become a fixture or lose its identity as personal property by being attached to any real property.
- (g) Upon completion of this contract, the Contractor shall follow the instructions of the Contracting Officer regarding the disposition of all property, title to which is held by BPA, which was not consumed in the performance of this contract or previously delivered to BPA. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of BPA property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to BPA as directed by the Contracting Officer.

**CONTRACTOR USE OF GOVERNMENT-OWNED VEHICLES (19-3)
(SEP 98)(BPI 19.8.1)**

In those instances where BPA provides access to sources of Government-owned vehicles for the Contractor's use, the Contractor agrees to indemnify and save and hold harmless BPA from any and all claims and damages or other costs where BPA was not at fault.

TERMINATION

**TERMINATION BY MUTUAL CONSENT (25-13)
(SEP 09)(BPI 25.1.1)**

Termination by mutual consent may be initiated by either party, by oral or written means. A termination for mutual consent is effective upon the execution of an agreement, documented on the Asset Suite Modification of Contract form, by the CO and Contractor which identifies the following:

- (1) Whether the termination is partial or total.
- (2) A description of the terminated portion of the contract, including the item numbers, descriptions, quantity terminated unit and total price of terminated items, and any other explanation to avoid uncertainty or understanding.
- (3) The Contractor unconditionally waives any claim against BPA arising under the terminated portion of the contract or by reason of its termination, including, without limitation, all obligations of BPA to make further payments or to carry out any further undertakings under the terminated portion of the contract.
- (4) BPA acknowledges that the Contractor has no obligation to perform further work or services or to make further deliveries under the terminated portion of the contract.
- (5) Under the terminated portion of the contract, the rights and liabilities of the parties that are reserved.

DISPUTES

**APPLICABLE LAW (21-5)
(MAY 11)(BPI 21.1.2.1)**

This agreement shall be construed in accordance with and governed by federal procurement laws of the United States. Where there is no applicable federal procurement law, the laws of the State of Oregon shall prevail.

**RELEASE OF CLAIMS (21-4)
(SEP 98)(BPI 21.3.10)**

After completion of work, and prior to final payment, the Contracting Officer may, at his or her option, require the Contractor to furnish a release of claims against BPA arising out of the contract, other than claims specifically excepted from the operation of the release.

**DISPUTES (21-2)
(MAY 11)(BPI 21.3.15.1)**

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 USC 601-613).
- (b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within six years after accrual of the claim to the Contracting Officer for a written decision. A claim by BPA against the Contractor shall be subject to a written decision by the Contracting Officer.
- (2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
- (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
- (iii) The certification shall state as follows:
- "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes BPA is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."**
- (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files suit as provided in the Act.
- (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by BPA is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.
- (h) BPA shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if the date is later, until the date of payment. With regard to claims having defective certifications, as defined in BPI 21.3.1, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Secretary of the Treasury during the pendency of the claim.
- (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.