

Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

PUBLIC AFFAIRS

September 25, 2007

In reply refer to: DK-7

Mr. James W. Simpkin
Opportunity Construction Company
878 N Boulder Court
Post Falls, ID 83854

RE: FOIA #07-036

Dear Mr. Simpkin:

This is the Bonneville Power Administration's (BPA) final response to the above referenced request you made under the Freedom of Information Act (FOIA), 5 U.S.A. § 552.

In your letter you requested the following information regarding the Fulton Diversion Dam, BPA Project # 2005-007-00:

1. A "January 2005 Memorandum of Agreement with the BPA for Technical Assistance Services"

BPA has identified and released this responsive document in its entirety.

2. Any and all documents, correspondence, and/or information relative to the Chewuch Basin Council's ability to qualify for, and receive, an "Intergovernmental Contract."

BPA has no responsive documents.

3. Latest version of BP125 – Intergovernmental Contracts, procurement procedure.

BPA has identified and released this responsive document in its entirety.

4. Any and all documents related to the BOR's daily inspection reports for the above referenced project.

BPA has identified 112 responsive documents all of which originate from the Department of the Interior, Bureau of Reclamation (Bureau), Pacific Northwest Construction Office. BPA forwarded these documents to that agency for a determination regarding their release and they have been asked to respond directly to you. The contact information for the Bureau is:

Casey Snyder
Bureau of Reclamation FOIA Officer
PO Box 25007, 84-21300
Denver, CO 80225-0007

If you are dissatisfied with our determination, you may appeal within thirty (30) days of receipt of this letter to Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW, Washington D.C. 20585. Both the envelope and the letter must be clearly marked "Freedom of Information Act Appeal." There will be no charges for this request.

I appreciate the opportunity to assist you with this matter. If you have any questions about this response, please contact my FOIA Specialist, Laura M. Atterbury, at 503-230-7305.

Sincerely,

Christina J. Brannon
Freedom of Information Act Officer

Enclosures:
Responsive Records

cc:
Casey Snyder, Bureau of Reclamation FOIA Officer, Denver, CO



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF RECLAMATION
Pacific Northwest Region
1150 North Curtis Road, Suite 100
Boise, Idaho 83706-1234



MEMORANDUM OF AGREEMENT
BETWEEN
THE BONNEVILLE POWER ADMINISTRATION
AND
THE BUREAU OF RECLAMATION
CONCERNING THE IMPLEMENTATION OF
TRIBUTARY HABITAT PROJECTS FOR THE UPDATED PROPOSED ACTION
OF THE 2004 FCRPS BIOLOGICAL OPINION
(TRIBUTARY HABITAT PROGRAM MOA)

I. PARTIES

The parties to this Memorandum of Agreement (MOA) are Bonneville Power Administration, Department of Energy, (BPA) and the Pacific Northwest Region, Bureau of Reclamation, Department of the Interior (Reclamation).

II. BACKGROUND

The parties, along with the U.S. Army Corps of Engineers, have developed an Updated Proposed Action on their joint operation of the Federal Columbia River Power System (FCRPS). The UPA includes a program to improve the quality of tributary habitat to help provide "off-sets" to the impacts of hydro operations on the survival of certain listed anadromous species (ESUs). Together, the parties have agreed to address specific limiting factors on the survival of these ESUs in specified areas of their passage, spawning and rearing habitats—the Tributary Habitat Program (Tributary Program—a term applicable to this MOA only). The effects of the November 24, 2004 Updated Proposed Action, including this Tributary Program, were evaluated in a revised Biological Opinion (BiOp) on the FCRPS issued by NOAA Fisheries on November 30, 2004 pursuant to section 7 of the Endangered Species Act (ESA).

III. PURPOSE

The purpose of this MOA is to define the roles and responsibilities, including funding commitments, of both parties to ensure timely, and legally adequate implementation of the Tributary Program as defined in the Updated Proposed Action. This MOA defines the commitments for participation by each party as a means to assure that the Tributary Program will be implemented in compliance with the BiOp.

IV. GENERAL PROVISIONS--SCOPE AND DURATION OF THE AGREEMENT

This agreement is effective for Fiscal Years 2005 and 2006 and addresses the Tributary Program. The Tributary Program has the following components:

A. Core Area: The core area for both parties is defined as the Wenatchee, Entiat, and Methow subbasins, tributaries to the Columbia River, in the State of Washington. These subbasins are generally analogous to the HUC 4 stream designations established by USGS of 17020008, 17020010, and 17020011. The parties will undertake habitat protection and improvement actions in these subbasins as actions under the Updated Proposed Action of the 2004 FCRPS BiOp.

B. Potential Future Extension of the Core Area: If needed, the core area may be expanded, by mutual agreement of the parties, to fulfill additional FCRPS BiOp priorities through amendment to this MOA.

C. The specific types of projects or actions addressed in this MOA are limited to those that address four "limiting factors" for habitat condition as defined by NOAA Fisheries. Those limiting factors are:

- o Stream flow
- o Entrainment
- o Channel morphology
- o Riparian protection and enhancement

A more definitive description of different types of actions applicable to the limiting factors of this MOA is contained in the November 24, 2004 Updated Proposed Action.

V. AUTHORITIES

The parties have the collective authorities to implement this MOA and the Tributary Program. Specific statutory authorities include the following:

A. Reclamation is an agency of the Department of the Interior. Funds for Reclamation's participation in the Tributary Program are federally appropriated in annual appropriation acts. Reclamation currently has authority to provide technical assistance for the design and environmental compliance aspects of entrainment and channel morphology projects and to acquire streamflows through purchase or lease for the benefit of ESA listed species. Reclamation does not have generic authority to fund construction for entrainment or channel morphology projects nor to acquire riparian lands or easements. The Administration is expected to support the reintroduction of proposed legislation in the 109th Congress that would provide construction authority to Reclamation for entrainment and channel morphology projects. If the Congress grants this authority during the duration of this MOA, the MOA will be modified as appropriate.

B. BPA has broad authorities under the Bonneville Project Act and the Federal Columbia River Transmission System Act to enter into contracts, agreements, and arrangements upon terms and conditions the BPA Administrator deems necessary to fulfill BPA's obligations. Under the Pacific Northwest Electric Power Planning and Conservation Act, one of BPA's obligations is to "protect, mitigate, and enhance fish and wildlife", and their habitats, affected by the development and operation of the FCRPS. These authorities allow BPA to provide funding to other Federal agencies, including the Bureau of Reclamation, to be used as a non-Federal cost-share for Federal efforts to meet ESA requirements. BPA has the authority to undertake or fund the technical assistance, construction, and land and water acquisitions that address the factors limiting habitat productivity for the listed ESUs.

C. Both BPA and Reclamation have processes whereby they determine sponsorship of fish and wildlife program initiatives. Both agencies are expected to continue to honor those processes under the terms of this agreement.

VI. AGENCY COMMITMENTS AND AGREEMENTS

A. **Lead Agency Responsibilities.** For purposes of NEPA, ESA, and other regulatory compliance, the parties agree BPA will typically be lead agency for entrainment and channel morphology projects implemented under this MOA. The lead agency is ultimately responsible for all aspects of a project; however, as discussed below, the parties may contract with each other or third parties to undertake any appropriate task for a given project.

B. The parties will establish a process to pursue entrainment and channel morphology projects that are jointly managed. That process will confirm the prioritization of project implementation, schedule of implementation, funding mechanisms, reporting and monitoring requirements, and environmental compliance responsibilities. This process may be modified by mutual agreement without amendment of this MOA.

C. **Reclamation Duties:**

1. Reclamation will typically assume responsibility for all technical assistance services, including landowner contacts, engineering designs, construction inspection, and preparation of environmental compliance documents and permit applications on behalf of the lead agency as needed to implement entrainment and channel morphology projects.
2. Reclamation may also fund streamflow acquisitions for instream flows in the Core Area in coordination with BPA as described below.
3. Reclamation will continue to fund streamflow data collection and instream flow studies in the Core Area and will provide the findings from those studies to BPA and its contractors to help inform the selection of appropriate streamflow acquisition projects.

4. Reclamation will continue to request sufficient Federal appropriations to meet its share of the Tributary Program obligation.

D. BPA Duties:

1. BPA will provide all or a portion of the funding needed for the construction and construction management of the entrainment and channel morphology projects for which construction funding is needed. This may include needed non-Federal cost share funds for an otherwise Federally funded project.
2. BPA will utilize its Habitat Improvement Project Section 7 Biological Opinion from NOAA Fisheries to provide ESA compliance. BPA also will use either its Fish and Wildlife Implementation Plan EIS or its Watershed Management Program EIS to ensure appropriate compliance with the National Environmental Policy Act.
3. BPA will assume primary responsibility for funding projects that address the streamflow limiting factor using its existing streamflow acquisition program which was established to comply with RPA Action 151 of the 2000 BiOp.

E. Using its specific statutory contracting authorities, BPA will issue an indefinite delivery/indefinite quantity (ID/IQ) interagency acquisition, signed by a BPA Contracting Officer (CO), to Reclamation, which will accept the contract pursuant to the authority of the Economy Act. The scope of the Interagency Acquisition will embrace pre-design, design, solicitation of bids or offers, award of contracts, contract administration, construction management, and construction for the entrainment and channel morphology projects or actions selected for accomplishment pursuant to this MOA. Upon implementation of an Interagency Acquisition between BPA and Reclamation as described above, Reclamation will be able to act on behalf of BPA to solicit bids or offers, award and administer contracts, manage, and construct entrainment and channel morphology projects.

F. Under the Interagency Acquisition, once a project or action has been selected for implementation, some or all of the above-listed services may be requested by issuance of a funded task order, signed by the BPA Contracting Officer, and accepted by signature of Reclamation's designated official. At a minimum, task orders will identify the specific project or action to be accomplished, the tasks to be performed by Reclamation, the estimated amount of funding required for each task, the projected schedule for accomplishment, the amount of funds to be provided by BPA, if any, and a schedule of funding.

G. For the purposes of management efficiency, the construction costs of some projects may be funded directly by BPA to non-Federal project sponsors. Those projects will be determined on a case-by-case basis.

VII. PROJECT DEVELOPMENT AND SELECTION

A. For Fiscal Year 2005 and 2006, the parties will proceed to implement the projects included in the Action Agencies' Implementation Plan and already selected by Reclamation. In addition, BPA will seek additional flow and riparian enhancement projects to be implemented through its above referenced RPA Action 151 project.

B. When selecting projects for inclusion in the annual Implementation Plans or prioritizing projects for funding, the parties will prefer projects that

- 1) are consistent with existing provincial and subbasin scale plans,
- 2) cost effectively benefit Core Area ESA-listed species and achieve metric goals for the Updated Proposed Action,
- 3) can be implemented during the term of the Biological Opinion,
- 4) require no operation or maintenance funding from either agency,
- 5) are not the responsibility of other Federal agencies to fund, and
- 6) help satisfy trust and treaty responsibilities to Indian tribes.

VIII. COORDINATION PROCESSES

A. The parties will assign representatives to an Action Agency Habitat Team that will develop annual and future year implementation plans. Those implementation plans will provide the overall guidance for the Tributary Program. The implementation plans will accommodate adaptive management in project selection to deal with otherwise unplanned project opportunities, extraordinary permitting issues, or anticipated delays and difficulties in construction.

B. General responsibilities. Each party will designate technical representatives or liaisons for the Tributary Program to coordinate project planning, selection, development, and implementation. The representatives and/or liaisons shall discuss Tributary Program developments and needs (on a weekly basis during construction season, or more frequently as needed). These individuals will share contacts and experience where appropriate to improve implementation of projects.

C. Subject to approval of the affected water user(s), where appropriate, BPA's technical representatives and Reclamation's subbasin liaisons will inform each other of opportunities for stream flow acquisitions and any completed water transactions in the Core Area to avoid duplication of effort, inadvertent competition with each other, or multiple payments on individual transactions.

IX. MISCELLANEOUS PROVISIONS

A. The participation by each agency in the actions and activities under this MOA is contingent upon the availability of future appropriations or funding. Furthermore, execution of this MOA does not obligate any specific amount of agency expenditure in furtherance of this MOA, such expenditures being at the discretion of each agency.

B. This MOA neither delegates any authority or responsibility established by law, limits the discretion, nor alters or affects the statutory and other legal rights of parties, including the rights to legal remedies, or the authorities, responsibilities, or obligations of the parties under relevant laws.

C. Nothing in this Memorandum is intended to affect or impair tribal treaty rights or the trust responsibilities of the signatory Federal agencies.

D. Data management. All Tributary Program data needed to identify and report individual and collective project progress and accomplishments to NOAA Fisheries for the FCRPS Biological Opinion will be housed in the current Action Agency FCRPS BiOp Access database or its successor. BPA may choose also to store and manage any or all Tributary Program data in their PISCES Database. Reclamation may choose also to store and manage any or all Tributary Program data in a separate database.

E. Record Keeping. Reclamation shall keep construction files including preliminary drawings, as-built plans, final inspection documentation and other records related to the planning and design of a project. BPA shall keep environmental compliance files, documentation of ESA and NEPA compliance, and records of coordination activities with the Council. Each party shall make any records or documents related to the Tributary Program available immediately upon request of the other party. Both parties shall cooperate to the fullest extent practicable to ensure appropriate courts, regulatory agencies, and those requesting information pursuant to statutes such as the Freedom of Information Act receive the information in a timely manner.

F. Each party shall bear its own costs and expenses of implementing this MOA unless agreed otherwise.

G. This MOA may be amended only with the agreement of the parties.

H. This MOA will become effective on the date of last signature below and will terminate simultaneously with the Biological Opinion or October 1, 2006, whichever is earlier.

/s/ Gregory K. Delwiche

1/29/05

Gregory K. Delwiche
Vice President, Environment, Fish and Wildlife
Bonneville Power Administration

Date

/s/ Kenneth R. Pedde

1/31/05

Kenneth R. Pedde
Deputy Regional Director, Pacific Northwest Region
Bureau of Reclamation

Date

PART 25 INTERGOVERNMENTAL CONTRACTS

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25.1 GENERAL.

INFORMATION:

(a) "Intergovernmental contract" (IGC) means a contract between BPA and one of the following organizations: State or local governments, publicly-owned colleges or universities, Federally recognized Indian tribes, special districts (PUD's, water districts, school districts), or other federal agencies, both within the Department of Energy and other departments.

(b) "Memorandum of Understanding" (MOU) means a written agreement broadly stating basic understandings of tasks and describing a method for performing these tasks between BPA and another governmental entity. It is a mechanism for coordinating the activities between BPA and another organization. An MOU is not a binding contract. It cannot be used to obligate or commit funds, cannot obligate or require performance, nor is it used to transfer funds from one agency to another. BPA's affected program offices prepare MOUs.

(c) "Contractor-agency" means the entity or organization with which BPA is contracting utilizing an IGC.

(d) An IGC is distinguished from an MOU and a financial assistance agreement in that BPA is acquiring goods or services for its own use, rather than to document an understanding or to support a broad public purpose. An IGC shall not be used to document MOUs or financial assistance agreements.

25.2 CONTENTS OF IGCS.

POLICY: Because public agencies are already accountable to the public and are subject to similar statutes and regulations, fewer contract clauses are necessary in IGCs than for most other types of contracts. Although the policies prescribed in other Parts of the BPI are applicable to IGCs, the clauses prescribed for use by other Parts of the BPI are not required for use in IGCs unless specifically prescribed in this Part.

25.2.1 Content and Clause Usage Prescriptions.

PROCEDURE:

IGCs will be documented using one of the following forms in this priority order: the BES system-generated form for Intergovernmental Contracts, BPA Form F 4220.41, Intergovernmental Contract, or BPA Form 4230.03, Order for Supplies or Services. Purchases of commercial-type supplies/services from contractor agencies (e.g. maps, weather data, etc.)

should typically be made on the Purchase Order form. The BES system-generated form for Intergovernmental Contracts should be used for all other IGCs. If this form is unavailable, then the BPA Form F 4220.41 may be used. IGCs shall cover, as appropriate, the following:

- (1) Period of Performance -- If circumstances permit renewal, then procedures for executing the renewals shall be defined;
- (2) Work Statement -- A work statement shall be included which indicates the responsibilities of BPA and the contractor-agency. A detailed schedule should be included if appropriate, as well as any deliverables that may be required;
- (3) Reporting Requirements -- A description of the required reports shall be provided. The description should include the frequency, contents and the number of reports required. The CO shall include a clause similar to that at 25-1, Reporting Requirements, in IGCs;
- (4) Cost Limitations -- For IGCs which are made on a cost reimbursement or time and materials basis, the CO shall include BPI Clause 22-7, Contract Ceiling Limitation, which limits BPA's obligations if the contractor-agency exceeds the approved funding ceiling;
- (5) Payment and Billing -- The schedule upon which payments are to be made and by what method shall be outlined. The address for receipt of invoices shall be identified in this clause if not already identified on the face page of the award. The clause shall also reference the applicable cost principles to accumulate and charge costs to BPA. See Subpart 25.3 for additional information;
- (6) Changes -- Provisions for changes to the work statement, and changes to the budget shall be defined. The CO shall include a clause similar to that at 25-4, Changes, in IGCs;
- (7) Property -- All capital equipment approvals and inventory reporting requirements shall be specified. The CO shall include a clause similar to Clause 19-1, BPA Furnished/Contractor-Acquired Property, in IGCs where property is furnished or purchased. The CO shall include Clause 19-2, BPA Property Furnished As-Is, where property is furnished in an "as is" condition. The CO shall also include a clause similar to that at 19-4, BPA Property to be Transferred to the Contractor, when BPA property will be transferred to the contractor-agency;
- (8) Termination -- The CO shall include Clause 20-1, Termination for Convenience by Either Party, or Clause 20-2, Termination for Convenience of BPA, in IGCs. Clause 20-3, Termination for Default, generally will not be included in IGCs, but not prohibited where necessary;
- (9) Audit -- Non-Federal contractor-agencies who receive more than \$300,000 in Federal Funding are subject to the Single Audit Act, as amended, (OMB Circular A-133). The CO shall include a clause similar to Clause 25-5, Audit - Intergovernmental Contracts, in non-Federal IGCs;
- (10) Socio-Economic Requirements -- The CO shall include a clause similar to Clause 25-6, Socio-Economic Requirements, in IGCs with non-Federal contractor-agencies exceeding \$100,000;
- (11) In addition to the above, the CO shall also include the following clauses in IGCs:
 - (A) Clause 3-3, Certification, Disclosure and Limitation Regarding Payment to Influence Certain Federal Transactions (requests for proposals for IGCs with non Federal contractor-agencies over \$100,000);
 - (B) Clause 14-2, Contract Administration Representatives; and
 - (C) Clause 25-7, Classified Information (Federal contractor-agencies only);
- (12) The CO shall include the following clauses in IGCs, if applicable to the particular project:
 - (A) Clause 3-2, Organizational Conflicts of Interest, if the IGC is for evaluation services, technical consulting, research and development, or other contractual situations where organizational conflicts of interest typically occur. See BPI 3.4 for additional information;
 - (B) Clause 5-1, Privacy Act, if the IGC is with a nonfederal contractor-agency and it involves the design, development, or operation of a system of records on individuals to accomplish a BPA function. (See BPI 5.1.);
 - (C) Clause 14-15, Scientific and Technical Reporting Requirements, in IGCs which require scientific information to be delivered to BPA;

- (D) Clause 17-2, Patent Rights, in IGCs in which patentable items are possible;
- (E) Clause 17-3, Rights in Data, in IGCs in which copyright data or software may be developed or generated;
- (F) Clause 17-6, Commercial Computer Software--Restricted Rights, in IGCs in which proprietary software may be purchased;
- (G) Clause 18-4, Inspection - Services and Construction (See BPI 25.5);
- (H) Clause 23-2, Key Personnel, in IGCs where key personnel are named in the contract;
- (I) Clause 25-8, Publications/Presentations;
- (J) Clause 25-9, Endangered Species Act Requirements, in IGCs which support the fish and wildlife program;
- (K) Clause 25-10, Annual Formal Project Review/Presentation;
- (L) IGCs providing for the use of BPA funds for construction of public works are subject to the requirements of the Davis-Bacon Act and related regulations. Such IGCs shall contain the clauses required by BPI Part 10; and
- (M) Clause 22-6, Predetermined Final Indirect Cost Rates.
- (N) Clause 15-2 Safety And Health, or similar. Include especially when construction and other outdoor services are to be performed.
- (O) Clause 14-14, Stop Work Order;
- (P) Clause 21-3, Disputes Resolution Process, in IGCs with non-federal entities when it may be useful to protect both parties' interests and in accordance with the requisitioning office's policy;
- (Q) Clause 21-4, Release of Claims, in IGCs in which a release of claims may be necessary;
- (R) Clause 21-5, Applicable Law;
- (S) Clause 22-20, Electronic Funds Transfer Payment in all IGCs where the contractor can receive EFT payments;
- (T) Clause 25-11, Disputes Resolution Process, Federal Agencies (Oct 05)(BPI 22.2.1) in IGCs where this procedural clarification may be useful to protect both parties' interests, and in accordance with the requisitioning office's policy. (See BPI 25.6)

25.3 PAYMENT.

POLICY:

- (a) Payment types. IGC payment types may be either firm fixed price or cost reimbursement. The basis of payment for IGCs shall generally be made in accordance with the priority of BPI 22.1. Firm fixed price IGC payments to contractor-agencies, except Federal, are subject to the Prompt Payment requirements of 22.2, including interest penalty to be paid by BPA for late payment. Cost reimbursement type payment and other contract financing payment methods, as defined in 22.2(c) (such as advance payment), are not subject to the prompt payment requirements described in 22.2.
- (b) Advance payment. As discussed in BPI 22.1.4.1, advance payment must be approved by the HCA, except advance payment to Federal contractor-agencies [see 22.1.4.1(g)]. Advance payment to IGC contractor-agencies, other than Federal, require the prior approval of the CO's purchasing performance manager [see 22.1.4.1(h)].
- (c) Interest on advance payments. Generally an IGC contractor-agency is required to pay BPA daily interest on the amount of advance payments the contractor-agency receives in excess of its current needs, unless waived by the HCA, as per 22.1.4.3. However, Federally recognized Indian tribes, Federal, and State government contractor-agencies and instrumentalities thereof are not required to repay interest earned on advance payments, as described in 22.1.4.3(a).

25.3.1 Clause Usage Prescriptions.

PROCEDURE:

- (a) For payment in arrears:

(1) The CO shall include a clause similar to Clause 25-2, Payment in Arrears, in fixed price IGCs. The CO shall add paragraphs (b) and (c) of Alternate I for cost reimbursement IGCs with non-Federal contractor-agencies. The CO shall substitute paragraph (c) of Alternate II for cost reimbursement IGCs with Federal contractor agencies. The CO shall consult with the program or project office to identify the need for additional specific provisions pertaining to invoice data, receipt, and processing.

(2) The CO shall include a clause similar to Clause 22-12, Payment, in firm fixed price IGCs with non-Federal contractor-agencies (i.e., subject to the Prompt Payment requirements of 22.2).

(b) For payment in advance:

(1) The CO shall include Clause 25-3, Advance Payments and Financial Reports, in IGCs with other than Federally recognized Indian tribes or Federal or State government contractor-agencies and instrumentalities thereof. This clause provides for advances, as per 22.1.4.1, to cover the contractor-agency's next 30 days contract performance expenses and requires accumulated interest on excess advances to be repaid to BPA. The CO may modify the 30 day frequency of advances in paragraph (a) to provide for advances of less than 30 days (see 22.1.4.4). If the CO wants to limit the total value of advance payments, add a paragraph to the clause stating the limits of advance funding.

(2) The CO shall insert the base clause, but delete paragraphs (f) and (g) and substitute paragraph (f) from Alternative I in IGCs with Federally recognized Indian tribes or Federal or State government contractor-agencies and instrumentalities thereof. This provides for advances to cover the next 30 days and waives the repayment to BPA of interest accumulated on advances in excess of the contractor-agency's current needs. The CO may modify the 30 day frequency of advances in paragraph (a) to provide for advances of less than 30 days (see 22.1.4.4).

25.4 COST REIMBURSEMENT STANDARDS.

INFORMATION:

(a) Incurred costs necessary to the performance of the work by a contractor-agency are considered to be allowable for cost reimbursement purposes subject to the provisions of the applicable cost standards for that entity (OMB Circulars A-87, A-21 etc.). Such costs include direct and indirect costs.

(b) Indirect costs are subject to the limitations of the rates negotiated by the cognizant audit office for the contractor-agency. If no such cognizant audit office has been designated for a specific contractor-agency, then BPA assumes cognizance and negotiates the needed indirect rate(s). See BPI 14.17.

(c) IGCs between BPA and other Federal agencies are not covered by specific cost principles. In order to establish a basis for equitably assigning costs to BPA projects, the established accounting standards of that agency will be used as the basis of reimbursing costs.

25.5 QUALITY ASSURANCE.

POLICY: The contractor-agency is responsible for quality. BPA is not obligated to pay for the cost of correcting work (including work performed under cost reimbursement contracts) that does not meet the requirements of the contract.

25.5.1 Clause Usage Prescriptions.

PROCEDURE: Specifications or statements of work shall clearly state the standards of acceptance by which the contractor-agency's work can be measured. The CO may include a clause similar to Clause 18-4, Inspection - Services and Construction, in IGCs. Withholding of payment for work not accepted by BPA shall be coordinated through and approved by the Contracting Officer.

25.6 DISPUTES.

POLICY: Any dispute between BPA and another federal agency, resulting from actions under an IGC awarded in accordance with BPI Part 25, that cannot be reasonably resolved through regular communications and negotiations shall be addressed using the disputes resolution process. The CO may include Clause 25.11 Disputes Resolution Process, Federal Agencies, in IGCs where such provisions may be necessary to protect both parties' interests.

25.50 TEXT OF CLAUSES

The following clauses are referred to in BPI Part 25.

- 25-1 Reporting Requirements
- 25-2 Payment In Arrears
- 25-3 Advance Payment and Financial Reports
- 25-4 Changes
- 25-5 Audit - Intergovernmental Contracts
- 25-6 Socio-Economic Requirements
- 25-7 Classified Information
- 25-8 Publication/Presentations
- 25-9 Endangered Species Act Requirements
- 25-10 Annual Formal Project Review/Presentation
- 25-11 Disputes Resolution Process, Federal Agencies

Clause 25-1 REPORTING REQUIREMENTS (SEP 02)(BPI 25.2.1).

(a) Quarterly/Monthly Progress Reports:

- (1) Shall be submitted no later than 15 days after the end of the quarter/month.
- (2) Three copies submitted to:

Name: _____, Org _____, Routing _____,
Bonneville Power Administration
P.O. Box 3621, Portland, Oregon 97208.

(3) Reports shall include:

- (A) Summary of significant results or activities (if any);
- (B) Brief discussion of: any major problems encountered, changes in work plan, or schedule deviations;
- (C) A short description of planned activities for the following quarter/month; and
- (D) Itemized listing of each non-expendable property item procured under this contract (subcontractors included) greater than \$10,000, and each designated sensitive item (see contract specifications for non-expendable equipment and material).

(b) Annual Reports:

- (1) FY Annual Report shall be prepared and issued by _____. Upon the COTR's request, the project manager shall submit, for BPA approval, a journal manuscript in lieu of an annual report.
- (2) A draft of the Annual report shall be provided to BPA 60 days prior to _____.

(3) Two copies of the BPA approved annual reports shall be submitted to:

Name: _____, Org _____, Routing _____,
Bonneville Power Administration
P.O. Box 3621, Portland, Oregon 97208.

(4) Reports shall include:

- (A) Abstract (limit 600 words);
- (B) Introduction;
- (C) Description of project area;
- (D) Methods and materials;
- (E) Results and discussion of results obtained from the year's work;
- (F) Summary and conclusions;
- (G) Summary of expenditures, including a list of major property purchased during the fiscal year; and
- (H) Supplemental volume or appendices that contain detailed summaries of all data collected.

(c) Final Completion Reports:

(1) The Annual Report format will be used for the Final Report;

(2) A final draft of the Completion Report shall be provided to BPA by _____. Three copies of the BPA approved Final Completion Report will be prepared and issued by _____. Final Completion Report reproduction format will be stipulated during the review of the draft report; and

(3) Three copies of the BPA approved final report shall be submitted to:

Name: _____, Org _____, Routing _____,
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208

(End of clause)

Clause 25-2 PAYMENT IN ARREARS (SEP 04)(BPI 25.3.1)

(a) The contractor-agency shall submit invoices _____ (specify frequency) for work performed, to:

Bonneville Power Administration
(CO Fill-in) Attention
(CO Fill-in) Street Address
(CO Fill-in) City, State, Zip

A proper invoice must include the following information:

1. Contractor name
2. Contractor address
3. Invoice date
4. BPA contract number
5. Contractor invoice number
6. Invoice billing period (e.g., for work performed June 1 – June 30)
7. 1. Shipping terms, if applicable
8. Payment terms (e.g., Net 30)
9. Contact name, title and telephone number
10. Remittance address (required only for contractors not using EFT payment procedures)
11. For Fixed price contracts: Description of item(s) or service(s), unit price, quantity, and extended price.

(End of clause)

Alternate I (SEP 02)

(b) The contractor-agency will supply an itemized listing of expenditures for each budgetary line item set forth in the approved budget, showing as a minimum:

- (1) Salaries (including personnel and the total number of direct labor hours expended);
- (2) Travel and transportation (including per diem);
- (3) Non expendable equipment and materials (greater than \$10,000 per item) - attach supporting documentation, including description, date of purchase, purchase cost, model number, and serial number;
- (4) Expendable equipment and material (sensitive in nature);
- (5) Operations and maintenance (including computer services and publications);
- (6) Overhead;
- (7) The currently approved budget; and
- (8) Cumulative expenditures to date

(c) Non-itemized and/or incomplete billings will be retained for payment processing until correct information has been supplied by the contractor-agency. Allowable costs shall be determined in accordance with the cost principles of OMB Circular _____ and are subject to the limitation of the award ceiling.

(End of Alternate I)

Alternate II (SEP 04)

(c) Non-itemized and/or incomplete billings will be retained for payment processing until correct information has been supplied by the contractor-agency. Costs under this cost reimbursement contract will be accumulated and charged to BPA in accordance with the established accounting standards of the contractor-agency and are limited to those deemed reasonable and allocable to this contract. Payments will not exceed the ceiling of the award.

(End of Alternate II)

Clause 25-3 ADVANCE PAYMENTS AND FINANCIAL REPORTS (SEP 02)(BPI 25.3.1)

(a) Requirements for payment. Advance payments will be made under this contract by electronic funds transfer upon submission by the Contractor-agency and approval by the CO of a written request containing:

- 1 Contract number,
2. Dollar amount of advance payment requested,
3. Period of time covered by advance payment request, and
4. Signature of Technical or Administrative contact person listed on the signature page of the award document.

Submit request for advance payment to:

Bonneville Power Administration
(CO Fill-in) Attention Line
(CO Fill-in) Street Address
(CO Fill-in) City, State, Zip

The contractor-agency is authorized to request BPA funds for contract performance in amounts needed to cover its own disbursements of cash in the next 30 days. The contractor-agency shall report cash disbursements and balances as required by the BPA billing office. The contractor-agency shall apply terms similar to this clause to any advance payments to subcontractors.

(b) Use of funds. Advances may only be used to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, and indirect costs. Advances for other items require approval in writing by the CO. Allowable costs shall be determined in accordance with the cost principles of OMB Circular _____ (CO fill in for non-Federal IGCs, or delete this sentence from Federal IGCs.)

(c) Repayment to BPA. Whenever requested by the CO, the Contractor-agency shall repay to BPA any part of unspent advance payments considered to exceed the Contractor-agency's current requirements.

(d) Maximum payment. When the sum of all unspent advance payments, unpaid interest charges, and other payments exceed _____ (insert percentage) percent of the contract price, BPA shall withhold further payments to the Contractor-agency. On completion or termination of the contract, BPA shall deduct from the amount due to the Contractor-agency all unliquidated advance payments and any interest charges payable. If previous payments to the Contractor-agency exceed the amount due, the excess amount shall be immediately repaid to BPA.

(e) Termination of advance payments. The CO may, by written notice to the contractor-agency, withhold further advance payments on this contract at any time the CO determines the Contractor-agency is not adequately performing.

(f) Interest Required. The contractor-agency shall pay interest to BPA on advance payments received by the contractor-agency in excess of the contractor-agency's current needs. The interest will be paid at the higher of either the Department of Treasury's current value of funds rate or the BPA cost of money. Interest charges shall be deducted from payments, other than advance payments, due the contractor-agency.

(g) Interest Charged to Subcontractors. The Contractor-agency shall charge interest on advance payments to subcontractors and credit the interest to BPA. Interest need not be charged on advance payments to nonprofit educational or research subcontractors for experimental, developmental or research work.

(h) Purchase of property. If this contract authorizes the purchase of property, the contractor-agency shall submit supporting documentation whenever non-expendable equipment (greater than \$10,000 per item) equipment or materials are purchased. Include item description, model number, serial number, date of purchase, and purchase cost.

(i) The contractor-agency will supply, at least quarterly, an itemized listing of expenditures for each budgetary line item set forth in the approved budget, showing as a minimum:

(1) Salaries (including personnel and the total number of direct labor hours expended);

- (2) Travel and transportation (including per diem);
- (3) Non expendable equipment and materials (greater than \$10,000 per item) - attach supporting documentation, including description, date of purchase, purchase cost, model number, and serial number;
- (4) Expendable equipment and material (sensitive in nature);
- (5) Operations and maintenance (including computer services and publications);
- (6) Overhead;
- (7) The currently approved budget; and
- (8) Cumulative expenditures to date

(j) The contractor-agency may submit items 6-8 above on form SF-269A, Financial Status Report, if it is more convenient to do so.

(End of Clause)

Alternate I (Sep 98)

(f) Interest. No interest shall be charged to the contractor-agency for advance payments except for interest charged during a period of default.

(End of Alternate I)

Clause 25-4 CHANGES (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.

(End of clause)

Clause 25-5 AUDIT – INTERGOVERNMENTAL CONTRACT (Sep 98)(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 GN-7, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208, and other distribution of the report as required by the circular.

(End of clause)

Clause 25-6 SOCIO-ECONOMIC REQUIREMENTS (Sep 98)(BPI 25.2.1)

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

- (a) Executive Order 11246, Equal Employment Opportunity
- (b) Drug Free Workplace Act of 1988, P.L. 100-690

(End of clause)

Clause 25-7 CLASSIFIED INFORMATION (Sep 98)(BPI 25.2.1)

The work or services to be performed under this contract does not use or generate classified information.

(End of Clause)

Clause 25-8 PUBLICATION/PRESENTATIONS (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.

(End of clause)

Clause 25-9 ENDANGERED SPECIES ACT REQUIREMENTS (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.

(End of clause)

Clause 25-10 ANNUAL FORMAL PROJECT REVIEW/PRESENTATION (Sep 98)(BPI 25.2.1)

Bonneville Power Administration may require that an annual presentation of the project status shall be given at BPA's Headquarters Offices located at 905 NE. 11th, Portland, Oregon. The following guidelines shall apply:

(a) A mutually agreeable date of the Annual Review/Presentation shall be determined by the BPA - _____ and the contractor-agency.
(Sponsoring Org Name)

(b) The presentation shall be of (outline type required or agreed to, time limitations and specific topics to be covered) such as:

- (1) Describe the problem being addressed, and the objectives of the Project leading to the solution of the problem;
- (2) Briefly describe relevant methods and the experimental design;
- (3) Summarize Project results, activities, and conclusions; and
- (4) Describe the future work schedule, methods to be used, and anticipated results.

(End of clause)

Clause 25-11 DISPUTES RESOLUTION PROCESS, FEDERAL AGENCIES (Oct 05) (BPI 25.2.1)

(a) All disputes arising under or relating to this contract shall be resolved under this clause.

(b) "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. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment or equitable adjustment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by complying with the requirements of this clause, if it is not disputed either as to liability or amount or is not acted upon in a reasonable time.

(c) A claim by the Contractor-Agency shall be made in writing and submitted to the Contracting Officer for a written decision before final payment or within three years after accrual of the claim which ever occurs first. Accrual of a claim occurs on the date when the events which form the basis of the claim were known or should have been known.

(d) A claim by BPA against the Contractor-Agency shall be initiated by the Contracting Officer by asserting BPA's right to compensation and requesting payment from the Contractor-Agency. If the Parties cannot reach mutual agreement on BPA's claim, the BPA Contracting Officer shall issue a written decision, which shall become final and conclusive unless the Contractor-Agency pursues review pursuant to paragraph (e).

(e) For Contractor-Agency claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor-Agency, render a decision within 60 days of receipt of the request. For Contractor-Agency claims in excess of \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor-Agency of the date when the decision will be made. At any time prior to issuance of the Contracting Officer's final decision, either party may request mediation or other alternate disputes resolution process (see paragraph (h)) by a third party in order to assist in settling the claim. Should the Contractor-Agency request the use of an alternate disputes resolution process, the time frames for issuing a CO decision and payment of interest shall be suspended.

(f) The decision of the Contracting Officer shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency unless within 90 days from the date of receipt of such decision the Contractor-Agency or Contracting Officer initiates disputes resolution process with the appropriate Federal agency or using the process described in Subchapter IV of the Administrative Disputes Resolution Act of 1990 (P. Law 101-552, 104 Stat. 2736) with the Seattle Office of the American Arbitration Association at the address,

American Arbitration Association
701 Pike Street, Suite 950
Seattle, WA 98101-4111

whose telephone number is (206) 622-6435 and facsimile number is (206) 343-5679.

(g) The authority of the Contracting Officer does not extend to claims or disputes which by statute or regulation other agencies have exclusive and express authorization to decide (e.g., disputes involving criminal statutes).

(h) Alternative disputes resolution process.

(1) The parties agree to first seek to resolve the dispute through alternative dispute resolution as described by Subchapter IV of the Administrative Disputes Resolution Act of 1990 (P. Law 101-552, 104 Stat. 2736), including, at the request of any party, mediation or binding arbitration, prior to commencing litigation in any other forum. Mediation shall be accomplished as agreed between the parties. Arbitration, if any, shall be done through the Seattle, Washington Office of the American Arbitration Association, and shall be done according to the Commercial Arbitration Rules of the American Arbitration Association, using one arbitrator unless otherwise agreed to by the parties. If the Contractor-Agency rejects BPA's request to use an alternate dispute resolution process, the reason for its rejection shall be furnished to the Contracting Officer.

(2) The parties stipulate that any tribunal to which any controversy or claim is brought should stay its proceedings, except in aid of arbitration, pending completion of arbitration and the issuance of the Arbitrator's award.

(3) Unless otherwise agreed to by the Parties, there shall be no discovery in connection with any dispute resolution process. To the extent that such discovery cannot be effectuated by consent and agreement, it shall be under the supervision of the individual assisting with the dispute resolution.

(i) BPA may pay interest only if applicable to the Contractor Agency and only on the amount found due and unpaid from: (1) the date the Contracting Officer receives the claim, or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate fixed by the Secretary of the Treasury, and applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(j) Unless otherwise agreed to by the Parties the Contractor-Agency 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.

(End of clause)