



Department of Energy

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

PUBLIC AFFAIRS

April 14, 2010

In reply refer to: DK-7

Mr. Patrick Nork
1400 SW 5th Avenue, Suite 700
Portland, OR 97201

RE: FOIA #BPA-2010-00860-F

Dear Mr. Nork:

This is Bonneville Power Administration's (BPA) final response to your request for agency records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You submitted a February 2, 2010, electronic FOIA request for:

1. A copy of the winning proposal by Fluid Market Strategies ("Fluid") in response to the August 26, 2009, BPA RFO for Residential Products Promotion; and
2. A copy of the contract between the winning bidder and BPA.

I address each of these requests below.

1. Winning Proposal

Your request for the winning proposal is denied. Exemption 3 of FOIA requires the withholding of information that is prohibited from disclosure by another federal statute. 5 U.S.C. § 552(b)(3). 41 U.S.C. §253b(m) prohibits an agency from disclosing a proposal that is in the possession or control of the agency, unless that proposal is set forth or incorporated by reference in a contract between the agency and the contractor. Therefore, the winning proposal by Fluid is withheld in its entirety under Exemption 3.¹

2. Fluid Contract

BPA is releasing the entire contract between BPA and Fluid except for one redaction on page 5. This is the only redaction requested by Fluid in response to BPA's inquiry under Executive Order 12,600.

Under Exemption 4 of FOIA, information may be exempt from disclosure if it is "commercial" in nature, is "obtained [by BPA] from a person [Fluid]," and is "privileged or confidential."

¹ Although numerical paragraph 3, page 2 of the Fluid-BPA contract states that contract incorporates by reference Fluid's proposal dated 9/30/09, BPA's CO has confirmed that Fluid's bid did not become part of the contract. The obligations of the contractor are in the Statement of Work. BPA is releasing the entire contract, including the Statement of Work, except for one redaction noted below. Therefore, the provisions of 41 U.S.C. §253b(m) apply to Fluid's proposal.

Here, there is no question that the redacted information in the contract is commercial in nature and that BPA obtained it from Fluid.

Consequently, BPA only must determine whether the information is confidential in nature. To do so, the initial question is whether Fluid submitted the information to BPA voluntarily or involuntarily.² If voluntarily submitted, it is withheld under Exemption 4 without further analysis if Fluid would not customarily make such information available to the public. If Fluid submitted it involuntarily, on the other hand, it is confidential only if its release would likely cause Fluid substantial competitive harm.³

Here, when BPA solicited contract proposals, there was no requirement for potential contractors to submit any discount information. The BPA Contracting Officer for this contract has confirmed this conclusion. Thus, under Exemption 4, Fluid provided this information voluntarily to BPA.⁴ Next, Fluid provided an adequate basis in its response to support its claim that this information is not made generally available to the public.

Therefore, Fluid has met its burden of persuasion under Exemption 4, and the information has been redacted. As such, there is no need for BPA to determine whether the release of the information would likely cause Fluid competitive harm.

If you are dissatisfied with this determination, you may make an appeal within thirty (30) days of receipt of this letter to the Director of Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585. Both the envelope and the letter must be clearly marked "Freedom of Information Act Appeal."

Please contact Laura M. Atterbury, FOIA/Privacy Act Specialist, at (503) 230-7305 with any questions regarding this letter.

Sincerely,



Christina J. Brannon
Freedom of Information Act/Privacy Act Officer

Enclosure: Responsive Document

C: Brian Simmons (Fluid Market Strategies) w/enclosure

² Critical Mass Energy Project v NRC, 975 F2d 871, 879 (DC Cir 1992).

³ See National Parks & Conservation Ass'n v. Morton, 498 F2d 765, 770 (DC Cir 1974). There is no basis here to assert that the release of any involuntarily submitted information would impair BPA's ability to receive similar information in the future; therefore, the analysis is under the "competitive harm prong" of National Parks.

⁴ See e.g. Mallinckrodt v. West, 140 F Supp 2d 1, 5-6 (D DC 2000) (discussing the "voluntary" nature of information regarding rebates under Exemption 4, and distinguishing it from pricing information).

UNITED STATES
GOVERNMENT

CONTRACT

BONNEVILLE
POWER ADMINISTRATION

Mail Invoice To:

See Page 2

Contract : 00045706
Release :
Page : 1

Vendor:

FLUID MARKET STRATEGIES, INC
517 SW FOURTH AVE STE 400
PORTLAND OR 97204

Please Direct Inquiries to:

KRISTA L. MCCRACKEN
Title: CONTRACT SPECIALIST
Phone: 503-230-5383
Fax : 503-230-4508

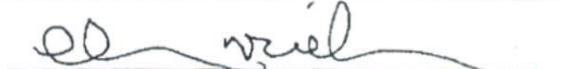
Attn: BRIAN SIMMONS

Contract Title: ENERGY EFFICIENT RESIDENTIAL PRODUCTS PROMOTION

Total Value : \$8,395,575.00
Pricing Method: FIRM FIXED PRICE
Performance Period: 01/11/10 - 01/10/12

**** NOT TO EXCEED ****
Payment Terms: % Days Net 30


Contractor Signature
Brian Simmons / President
Printed Name/Title
1/11/10
Date Signed


BPA Contracting Officer
1/11/10
Date Signed

Contract No. 45706
Residential Products Promotion

Contracting Officer's Technical Representative – Sarah Moore / 503-230-4157 / sfmoore@bpa.gov
Contracting Officer's Representative – Krista McCracken / 503-230-5383 / klmccracken@bpa.gov
Contracting Officer – Chris Nielsen / 503-230-3612 / cnielsen@bpa.gov

This contract is hereby issued as follows and contains the signature page, this page, the terms and conditions and statement of work.

1. In accordance with Clause 7-7M, Performance Period and Options, the base period of performance is January 11, 2010 through January 10, 2012. The option year, if exercised, is January 11, 2012 – January 10, 2013.
2. The maximum contract value awarded for the base period is \$8,395,575 based upon the Schedule of Prices, Clause 22-51M.
3. The contract incorporates by reference the Contractor's Residential Products Promotion proposal dated 09.30.2009 and subsequent clarifications received on November 13, 2009.
4. Partial payments are authorized under this contract.
5. Please submit invoices marked with contract number to the COTR at the e-mail address provided herein or by US Mail to:

Bonneville Power Administration
Attn: Sarah Moore / KLJC-1
PO Box 3621
Portland, OR 97208

**CONTRACT NO. 45706
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UNIT 1 — SCHEDULE

CONTRACT TYPE (7-1)
(SEP 98)(BPI 7.1.9)

This is a firm-fixed price type contract with fixed unit rates per item delivered.

PERFORMANCE PERIOD AND OPTIONS (7-7M)
(AUG 09)(BPI 7.2.7.1)

- (a) This is a two year contract with the option to extend for one additional one year period.
- (b) BPA may bilaterally 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 30 days before the contract expires.

SCHEDULE OF PRICES (22-51M)
(AUG 09)

The contractor is providing a regional program in accordance with the statement of work and pricing herein. The prices below are inclusive of all retail markdown incentives, program management, program administration, marketing support, communication, reporting, travel and indirect costs. Total regional quantities (paid by BPA and utilities) are identified in the Product Description column for informational purposes. The columns for Not-to-Exceed (NTE) Quantity and NTE Amount in the Schedule of Prices reflect BPA's maximum commitment to the regional program. For retail and builder channel programs, BPA provides market level support for the retail/builder markdown model by supporting sales in stores that are not able to assign 100 percent of promotional sales to a participating utility. Historically this BPA portion has not exceeded 28 percent. The not-to-exceed amount for retail/builder markdowns is established at a 30 percent level in this contract. Participating utilities will cover 100 percent of the cost of direct install programs.

The total unit price for each item reflects three cost components and is broken out as incentive fee/administrative fee/installation fee [Ex 4

] The schedule

may be updated twice annually consistent with subsection B.3.b of the Statement of Work.

<u>Item No</u>	<u>Product Description</u>	<u>Not-to-Exceed Quantity</u>	<u>Unit</u>	<u>Unit Price</u> <u>Incentive/Admin/Install Fees</u>	<u>Not-to-Exceed Amount</u>
<i>Base Period (Item Nos. 001 – 013)</i>					
001	Retail mark down – CFL Twists Regional Quantity – 2,500,000	750,000	Each	\$0.75 (\$0.50/\$0.25/\$0.00)	\$562,500
002	Retail Mark Down – Specialty CFL Regional Quantity – 7,825,000	2,347,500	Each	\$2.25 (\$2.00/\$0.25/\$0.00)	\$5,281,875
003	Retail Mark Down – CFL Fixtures, Indoor Regional Quantity – 275,000	82,500	Each	\$8.25 (\$8.00/\$0.25/\$0.00)	\$680,625
004	Retail Mark Down – Showerheads Regional Quantity – 400,000	120,000	Each	\$7.25 (\$7.00/\$0.25/\$0.00)	\$870,000
005	Builder Channel Rebate – CFL Fixtures – Indoor Regional Quantity – 90,000	27,000	Each	\$9.35 (\$8.00/\$0.35/\$1.00)	\$252,450
006	Builder Channel Rebate – CFL twist Regional Quantity – 325,000	97,500	Each	\$0.75 (\$0.50/\$0.25/\$0.00)	\$73,125

<u>Item No.</u>	<u>Product Description</u>	<u>Not-to-Exceed Quantity</u>	<u>Unit</u>	<u>Unit Price Incentive/Admin/ Install Fees</u>	<u>Not-to-Exceed Amount</u>
007	Builder Channel Rebate – Specialty CFL Regional Quantity – 1,000,000	300,000	Each	\$2.25 (\$2.00/\$0.25/\$0.00)	\$675,000
008	Direct Install – Power Strips Regional Quantity – 2,000	0	Each	\$22.60 (\$20.00/\$0.35/\$2.25)	\$0
009	Direct Install – CFL Twist 13-15 watt replacement (60 watt equivalent) Regional Quantity – 525,000	0	Each	\$3.79 (\$1.19/\$0.35/\$2.25)	\$0
010	Direct Install – CFL Twist 18-20 watt replacement (75 equivalent) Regional Quantity – 25,000	0	Each	\$3.99 (\$1.39/\$0.35/\$2.25)	\$0
011	Direct Install – CFL Twist 23-26 watt replacement (100 equivalent) Regional Quantity – 500,000	0	Each	\$4.00 (\$1.65/\$0.35/\$2.00)	\$0
012	Direct Install – Specialty CFL – Reflector Regional Quantity – 400,000	0	Each	\$5.48 (\$2.88/\$0.35/\$2.25)	\$0
013	Direct Install – Showerheads Regional Quantity – 200,000	0	Each	\$11.85 (\$3.50/\$0.35/\$8.00)	\$0
NTE Total Base Period					\$8,395,575
<u>Option Year (Item Nos. 014-026)</u>					
014	Retail mark down – CFL Twists Regional Quantity – 0	0	Each	N/A	\$0
015	Retail Mark Down – Specialty CFL Regional Quantity – 6,875,000	2,062,500	Each	\$2.25 (\$2.00/\$0.25/\$0.00)	\$4,640,625
016	Retail Mark Down – CFL Fixtures, Indoor Regional Quantity – 187,500	56,250	Each	\$8.25 (\$8.00/\$0.25/\$0.00)	\$464,063
017	Retail Mark Down – Showerheads Regional Quantity – 250,000	75,000	Each	\$7.25 (\$7.00/\$0.25/\$0.00)	\$543,750
018	Builder Channel Rebate – CFL Fixtures –Indoor Regional Quantity – 62,500	18,750	Each	\$9.35 (\$8.00/\$0.35/\$1.00)	\$175,313
019	Builder Channel Rebate – CFL twist Regional Quantity – 0	0	Each	N/A	\$0
020	Builder Channel Rebate – Specialty CFL Regional Quantity – 625,000	187,500	Each	\$2.25 (\$2.00/\$0.25/\$0.00)	\$421,875
021	Direct Install – Power Strips Regional Quantity – 0	0	Each	N/A	\$0
022	Direct Install – CFL Twist 13-15 watt replacement (60 watt equivalent) Regional Quantity – 0	0	Each	N/A	\$0
023	Direct Install – CFL Twist 18-20 watt replacement (75 equivalent) Regional Quantity – 0	0	Each	N/A	\$0

<u>Item No.</u>	<u>Product Description</u>	<u>Not-to-Exceed Quantity</u>	<u>Unit</u>	<u>Unit Price Incentive/Admin/ Install Fees</u>	<u>Not-to-Exceed Amount</u>
024	Direct Install – CFL Twist 23-26 watt replacement (100 equivalent) Regional Quantity – 0	0	Each	N/A	\$0
025	Direct Install – Specialty CFL – Reflector Regional Quantity – 250,000	0	Each	\$5.48 (\$2.88/\$0.35/\$2.25)	\$0
026	Direct Install – Showerheads Regional Quantity – 125,000	0	Each	\$11.85 (\$3.50/\$0.35/\$8.00)	\$0
NTE Total Option Year					\$6,245,626
NTE Total Base + Option Year					\$14,641,201

**CONTINUITY OF SERVICES (23-1)
(SEP 98)(BPI 23.1.6)**

- (a) The Contractor recognizes that the services under this contract are vital to BPA and must be continued without interruption and that, upon contract expiration, a successor, either BPA or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- (b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 60 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at a high level of proficiency.
- (c) The Contractor shall also disclose necessary personnel records and allow the successor to conduct on-site interviews. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- (d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

**KEY PERSONNEL (23-2)
(SEP 98)(BPI 23.1.6)**

The personnel listed below are considered to be essential to the work being performed hereunder. No diversion shall be made by the Contractor without the written consent of the Contracting Officer.

Selena Bell Heise, Program Manager

Megan McCabe, Program Manager

Cheryl Fretz, Program Manager

UNIT 2 — CONTRACT CLAUSES

PAYMENT AND TAXES

ELECTRONIC FUNDS TRANSFER PAYMENT (22-20) (OCT 07)(BPI 22.6.2)

- (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.
- (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: NSTS - 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 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.

PAYMENT (22-12)
(SEPT 09)(BPI 22.2.5)

- (a) **Payment Due Date.** Payment (including partial payments or progress payments, if authorized, shall be due not later than thirty (30) calendar days after the later of the date on which BPA actually receives a proper invoice in the designated billing office or the date when the items delivered or completed services are accepted by BPA. According to the Prompt Payment Act, a proper invoice to a Federal Agency is to include bank account information requisite to enable Electronic Funds Transfer (EFT) as method of payment. For purposes of payment only, items will be deemed accepted not later than seven (7) working days after proper delivery. If delivered items or completed services are found defective, the provisions of this paragraph will be reapplied upon receipt of a corrected item or service.
- (b) **Billing Instructions.**
- (1) Invoices must include the contractor's name and address, invoice date, contract number, task order number (if applicable), contract line item number, description of products delivered or work performed, price and quantity of item(s) actually delivered or rendered (amounts billed for work performed under a task order must be separately identified by task order number), and the name and address of the person to whom payment will be made, and name (where practicable), title, phone number, mailing address of person to be notified in event of a defective invoice and bank account information required to enable Electronic Funds Transfer (EFT) as method of payment (Invoices will not require banking information if the contractor has that information on file at BPA). Failure to submit a proper invoice may result in a delay in payment including a rejection of invoice pending receipt of a properly amended invoice.
- (2) Contractors may bill monthly, or at more frequent intervals as may be agreed to by the CO. The contractor may submit invoices electronically (e-mail, fax, etc.).
- (c) **Payment Method.** Payments under this contract will be made by electronic funds transfer whenever possible, or by check in very limited circumstances, at the option of BPA.
- (d) **Prompt Payment Act.** This contract is subject to the provisions of the Prompt Payment Act (31 U.S.C. 3901 et seq.), and regulations at 5 CFR Part 1315.
- (e) **Interest Penalty Payments.** If interest penalty payments are determined due under the provisions of the Prompt Payment Act, payment shall be made at the rates determined by the U.S. Treasury Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611).

DISCOUNTS FOR PROMPT PAYMENT (22-10)
(SEP 98)(BPI 22.2.5)

In connection with any discount offered for prompt payment, time shall be computed from the date shown on the invoice or if no date is shown then from the date BPA receives the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

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).

**INTEREST ON AMOUNTS DUE BPA (22-13)
(SEP 98)(BPI 22.3.1)**

- (a) Notwithstanding any other clause of this contract, all amounts that become payable by the Contractor to BPA under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six month period as fixed by the Secretary until the amount is paid.
- (b) Amounts shall be due at the earliest of the following dates:
 - (1) The date fixed under this contract;
 - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination;
 - (3) The date BPA transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt; and
 - (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification;
- (c) Payment will be due within 30 days of the date of the invoice. The collection actions available under the Debt Collection Act of 1982 (Public Law 97-365), as amended, and the revised Federal Claims Collections Standards (4 CFR 102), will be utilized. Administrative charges and penalties will be charged in accordance with 31 USC 3717, except where prohibited or explicitly provided for by statute or regulation required by statute.

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.

POST AWARD ORIENTATION (14-19)
(SEP 07)(BPI 14.5.3)

The successful offeror will be required to participate in a post award orientation as designated by the Contracting Officer.

SUBCONTRACTS (14-7M)
(AUG 09)(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) Subcontractors working under this contract are required to sign a non-competition agreement for the duration of the performance period. Subcontractors will not independently offer any the services covered by this contract to utilities within BPA's service territory.

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.

CHANGES - FIXED-PRICE (14-8)
(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) Place of delivery or performance.
 - (2) Description of services to be performed.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- (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) Constructive Changes. If the Contractor considers that a BPA action or inaction constitutes a change to the contract (constructive change), and the change is not identified as such in writing and signed by the CO, the

Contractor shall promptly notify the CO in writing. No equitable adjustment will be made for costs incurred more than 20 days before the Contractor gives written notice of the constructive change.

- (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.

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.

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.

PRICE REDUCTION FOR INACCURATE COST OR PRICING INFORMATION (12-2)
(SEP 98)(BPI 12.5.4.1)

BPA retains the right to reduce the contract price, including profit or fee, if the cost or pricing information submitted by the contractor was not complete, accurate, and current at the time of final price agreement. This right applies to the contract as awarded, to any subsequent modifications, and to any data submitted by subcontractors.

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).

**ORDER OF PRECEDENCE (14-3)
(SEP 98)(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 (excluding the specifications or statement of work); (b) contract clauses; (c) the specifications or statement of work; and (d) other documents, exhibits, and attachments.

**BANKRUPTCY (14-18)
(OCT 05)(BPI 14.19.1)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identify of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting officers for all Government contracts against final payment has not been made. This obligation remains in effect until final payment under this contract.

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:

(1) 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.

DRUG-FREE WORKPLACE (3-6)
(SEP 98)(BPI 3.6.4)

- (a) The contractor agrees that with respect to all employees to be employed under this contract it will provide a drug-free workplace as described in this clause.
- (b) Definitions. As used in this clause "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), as from time to time amended, and as further defined in regulation at 21 CFR 1308.11-1308.15, as amended.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means the site(s) for the performance of work done by the contractor in connection with a specific contract at which employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a contractor directly engaged in the performance of work under a Government contract. "Directly engaged" is defined to include all direct cost employees and any other contractor employees who have other than a minimal impact or involvement in contract performance.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

- (c) The Contractor, if other than an individual, shall -- within 30 calendar days after award (unless a longer period is agreed to in writing for contracts of 30 calendar days or more performance duration); or as soon as possible for contracts of less than 30 calendar days performance duration--
- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - (2) Establish an on-going drug-free awareness program to inform such employees about--
 - (A) The dangers of drug abuse in the workplace;
 - (B) The contractor's policy of maintaining a drug-free workplace;
 - (C) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (D) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - (3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (c)(1) of this clause;
 - (4) Notify such employees in writing in the statement required by subparagraph (c)(1) of this clause that, as a condition of continued employment on this contract, the employee will--
 - (A) Abide by the terms of the statement; and
 - (B) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction.
 - (5) Notify the Contracting Officer in writing within ten (10) days after receiving notice under subdivision (c)(4)(B) of this clause, from an employee, or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
 - (6) Within 30 days after receiving notice under subparagraph (c)(4)(B) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (A) Taking appropriate personnel action against such employee, up to and including termination; and/or
 - (B) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
 - (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (c)(1) through (c)(6) of this clause.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (c) of this clause may, pursuant to BPI 3.6.3 render the contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

RESTRICTION ON COMMERCIAL ADVERTISING (3-9)
(OCT 05) (BPI 3.8.1)

The Contractor agrees that without the Bonneville Power Administration's (BPA) prior written consent, the Contractor shall not use the names, visual representations, service marks and/or trademarks of the BPA or any of its affiliated entities, or reveal the terms and conditions, specifications, or statement of work, in any manner, including, but not limited to, in any advertising, publicity release or sales presentation. The Contractor will not state or imply that the BPA endorses a product, project or commercial line of endeavor.

SOCIO-ECONOMIC ISSUES

NONDISCRIMINATION AND AFFIRMATIVE ACTION (10-1)
(APR 09)(BPI 10.2.1)

- (a) The Contractor shall not discriminate against its employees or applicants because of their race, color, religion, sex, national origin, age, status as Disabled or Vietnam Veterans, or physical or mental handicaps. The Contractor certifies that it does not, and will not, maintain segregated facilities or accommodations on the basis of race, color, religion or national origin. Regarding any position for which an employee or an applicant is qualified, the Contractor agrees to take affirmative action to employ, train, advance in employment and retain individuals in accordance with applicable laws and regulations including:
- (1) For nondiscrimination based on race, color, religion, sex or national origin this includes, but is not limited to, the U. S. Constitution, and Parts II and IV of Executive Order 11246, September 24, 1965 (30 Fed. Reg. 12319). Contractor disputes related to compliance with its obligations shall be handled according to the rules, regulations and relevant orders of the Secretary of Labor (See 41 CFR 60).
 - (2) For nondiscrimination based on Disabled or Vietnam Veterans this includes, but is not limited to, the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4012); Executive Order 11701, January 24, 1973 (38 CFR 2675); and the regulations of the Secretary of Labor (41 CFR Part 60-250).
 - (3) For nondiscrimination based on the Handicapped this includes, but is not limited to, Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793); Executive Order 11758, January 15, 1974; and the regulations of the Secretary of Labor (41 CFR Part 60-741).
 - (4) For nondiscrimination based on Age this includes, but is not limited to, Executive Order 11141, February 12, 1964 (29 CFR 2477).
- (b) The Contractor shall include the terms of this clause in every subcontract or purchase order exceeding \$50,000 and shall act as specified by the Department of Labor to enforce the terms and implement remedies.

SERVICE CONTRACT ACT OF 1965 (10-3)
(SEP 98)(BPI 10.3.4)

- (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 to be issued by the Wage and Hour Division.
- (d) Obligation to Furnish Fringe 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.

WAGE DETERMINATION (10-5)
(OCT 93)(BPI 10.3.4)

The hourly rates and fringe benefits to be paid service employees under this contract shall not be less than those listed in the attached Service Contract Act wage determination.

EMPLOYMENT ELIGIBILITY VERIFICATION (10-18)
(NOV 09) (BPI 10.6.2)

- (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 (b)(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 but not subject to an intergovernmental contract; or a surety performing under a takeover agreement entered into pursuant to a performance bond 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, whether existing employees or new hires. 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.

BONDS AND INSURANCE

INSURANCE (16-2) (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
PO Box 3621
Portland, OR 98208

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 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.
 - (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.

PATENTS, DATA, AND COPYRIGHTS

RIGHTS IN DATA (17-3)

(OCT 05)(BPI 17.4.2.1; 17.4.3.1)

- (a) Allocation of rights. Except as otherwise provided in this clause, BPA shall have the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so, in--
- (1) All data first produced in the performance of this contract; and
 - (2) Data delivered under this contract (except for proprietary computer software) that constitute manuals or instructional and training material for installation, operation or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract.
- (b) Copyright.
- (1) Data First Produced in the Performance of the Contract. The Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. The Contractor grants to the Government, and others acting on its behalf, a paid-up non-exclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.
 - (2) Data Not First Produced in the Performance of this Contract. The contractor should not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains a copyright notice, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (b)(1) of this clause;
- (c) Release, publication and use of data.
- (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless otherwise expressly set forth in this contract.
 - (2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.
- (d) Omitted or incorrect markings. Data delivered to BPA without a limited rights notice or a copyright notice shall be deemed to have been furnished with unlimited rights, and BPA assumes no liability for the disclosure, use, or reproduction of such data.
- (e) Protection of limited rights data and proprietary computer software. If the Offeror/Contractor desires to protect data and computer software that embody trade secrets or are commercial or financial and confidential or privileged, that are specified to be delivered under this contract, the Offeror/Contractor shall identify such data and computer software to the Contracting Officer as limited rights data. Limited rights data that are formatted as a computer data base for delivery to BPA are to be treated as limited rights data and not proprietary computer software. All markings to proprietary computer software must be in human-readable form that can be readily and visually perceived and in addition may be in machine-readable form as appropriate and feasible under the circumstances. These markings must be affixed by the contractor to the proprietary computer software before its delivery to BPA. The Contracting Officer may require the delivery of such limited rights data and computer software. If delivery of such data and computer software is so required, the Contractor may affix the following "Limited Rights Notice" to the data, and BPA will thereafter treat the data and computer software in accordance with such Notice:

LIMITED RIGHTS NOTICE

- (a) These data are submitted with limited rights under BPA Contract No. _____ (and subcontract _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that BPA may disclose these data outside the Government for the following purposes, if any, provided that BPA makes such disclosure subject to prohibition against further use and disclosure: (COs may list additional purposes or if none, so state).
- (b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of Notice)

- (f) Subcontracting. The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to BPA under this contract. If a subcontractor refuses to accept terms affording BPA such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer, and shall not proceed with subcontract award without further authorization.
- (g) Relationship to patents. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

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.

WARRANTY - SERVICES (18-11) (SEP 98)(BPI 18.5.1)

- (a) The Contractor warrants that all services performed under this contract will be performed in a professional manner, be free from defects in workmanship and conform to the requirements of this contract. The Contractor further warrants that any materials provided will be free from defects. This warranty is valid for 1 year from date of acceptance by BPA. The Contracting Officer will give written notice of any defect or nonconformance to the Contractor within a reasonable period of time after discovery.
- (b) Corrections shall be at no cost to BPA, and any services or materials corrected or re-performed by the Contractor shall be subject to this clause to the same extent as work initially performed.

TERMINATION

TERMINATION FOR THE CONVENIENCE OF BPA (20-2) (MAY 07)(BPI 20.4.1)

- (a) BPA may terminate all or any part of this contract, at any time, upon written notice to the contractor. Upon receipt of the termination notice, the contractor shall stop work on the terminated portion of the contract.
- (b) The contract amount shall be revised as a result of termination under this clause. On fixed-price contracts the revised amount shall not exceed the pre-termination contract price, excluding payments already received, plus reasonable termination expenses. On cost-reimbursement contracts it will not exceed the total of allowable and allocable costs of performance prior to termination, excluding payments already received, plus reasonable termination expenses, plus an adjustment of the fee on the terminated portion of the contract. No payment will be made for anticipated profits on the terminated portion, or consequential damages, of the contract. The contractor shall submit a settlement proposal within 30 days of the notice of termination.
- (c) The Contracting Officer may direct the disposition of material produced or acquired for the work terminated, or any completed or partially completed items.

TERMINATION FOR DEFAULT (20-3.1) ALTERNATE I (OCT 93)(BPI 20.5.1)

- (a) BPA reserves the right to terminate any or all of any undelivered or unexecuted portion of this contract for cause if the contractor fails to make any delivery, fails to prosecute the work, or to perform as scheduled, or if any of the contract terms are breached. However, the contractor shall not be terminated for default if the failure to perform arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of those causes are: (1) acts of God or of the public enemy, (2) acts of the Government in its sovereign or BPA in its contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather.
- (b) The Contracting Officer may direct the disposition of material produced or acquired for the work terminated, and the disposition of any completed or partially completed items.
- (c) BPA may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to BPA for any excess costs for those supplies or services, including administrative costs.

DISPUTES

APPLICABLE LAW (21-5) (SEP 98)(BPI 21.3.12)

Irrespective of the place of performance, this contract will be construed and interpreted according to the federal common law of government contracts, as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the Federal Government. To the extent that the federal common law of government contracts is not dispositive, the laws of the State of Oregon shall apply.

DISPUTES (21-2) (SEP 98)(BPI 21.3.12)

Disputes arising under or related to this contract will be settled in accordance with Bonneville Purchasing Instructions, Subpart 21.3. 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 pending decision of the Contracting Officer regarding matters in dispute.

UNIT 3 — STATEMENT OF WORK

Energy Efficient Residential Products Promotion

Section A: General

A.1 Goal of this Contract

The goal of this contract is to execute a regional promotion to increase the adoption of energy efficient residential products. Contractor shall develop an energy efficient residential products promotion with program mechanisms including, but not limited to, retail promotion, builder channels, direct-install models, and other innovative mechanisms that provide cost effective opportunities to deliver energy savings. The primary goal of this promotion is to achieve energy savings by encouraging residential consumers to purchase and install high-quality, energy efficient compact fluorescent lamps (CFLs), light fixtures, showerheads, and other energy efficient residential consumer products that have been deemed cost effective by the Regional Technical Forum (RTF).

A.2 Background

The Northwest Power and Conservation Council (Council) sets regional energy savings targets. BPA has committed to ensuring its share of the regional target is achieved. The more savings utilities achieve, the closer BPA is to meeting the Council's targets under the upcoming 6th Power Plan. BPA utilities that achieve savings may claim reimbursement from BPA for qualifying cost-effective conservation measures or may self fund. Qualifying cost-effective measures are those determined to be cost-effective by the Regional Technical Forum (RTF) with deemed savings provided by the RTF. Utilities may choose to participate or leave the promotion at any time with thirty (30) days notice to Contractor. Participating utilities means any utility that signs a Memorandum of Understanding (MOU) with the Contractor (including non-BPA utilities) for the purpose of acquiring savings through this promotion. Utilities shall be responsible for submitting claims for reimbursement in the Planning, Tracking and Reporting (PTR) system.

The Council's 6th Power Plan is expected to be finalized in September 2009 and includes an ambitious increase in the energy savings targets for the Residential sector. Utilizing a regional approach for the recent BPA Change-A-Light (CAL) promotion yielded very positive results for BPA and participating utilities. Work under this contract shall build on the CAL success to increase consumer awareness and market penetration of residential energy efficient products and technologies, delivering greater energy savings to participating utilities. Work under this contract will promote ENERGY STAR®-qualified CFLs for those specialty applications exempted by the 2007 Energy Independence and Security Act (EISA), energy efficient light fixtures, showerheads and other products deemed cost effective by the RTF. With BPA support for the sale of such products, manufacturers are more likely to increase production and target distribution in Northwest retail stores at reduced prices. Building on past program success, BPA is interested in continuing the use of promotional activities in regional retail outlets to include CFLs, light fixtures, and other technologies appropriate to these retail channels. In addition, BPA is interested in the promotion of energy efficient technologies through builder channels, direct-install program models, and other innovative mechanisms that increase consumer adoption of energy efficient residential products through cost effective means.

The Northwest Energy Efficiency Alliance (NEEA) is developing upstream opportunities for consumer electronics and other residential measures as part of its 2010 Operating Plan. BPA is committed to keeping regional programs coordinated with NEEA's long-term strategies for increasing energy efficiency through market transformation in the Pacific Northwest. To that end, this promotion shall stay coordinated with NEEA's operating plan as it evolves.

A.3 Location of the Project

Work under this contract shall occur primarily in Contractor's place of business, although trips to retail stores located throughout the region, including Washington, Oregon, Idaho, Montana, and parts of Wyoming, Nevada and California may be necessary.

A.4 BPA Furnished Property and Services

BPA staff will perform the following tasks:

- Work closely with the participating utilities to design the overall initiative framework including, determining types of products for inclusion and a schedule for introducing new products into the program.
- Provide direction, feedback, and oversight to Contractor regarding strategy, development, implementation and program management.
- Provide guidelines, oversight and approval of marketing materials and communication templates.
- Provide a briefing on the BPA Residential Market Segmentation Study
- Coordinate the process for getting new measures deemed by the RTF, as needed.
- Approve the list of products to be included in the promotion.
- Promote the benefits of the promotion with utilities in the region.
- Provide coordination of promotion with NEEA's 2010 Operating Plan.

A.5 Contractor-Furnished Property or Services

Contractor is required to provide all property and services in support of this contract except those listed in A.4 above.

A.6 Definitions

- "BPA region" refers to the states of Washington, Oregon, Idaho, Montana, and parts of Nevada, California and Wyoming. http://www.bpa.gov/corporate/pubs/EX_A_BPA_Service_Area.pdf
- "BPA qualified measures" refer to cost effective measures that meet criteria for RTF approval but have not yet been approved.
- "Builder channels" refer to builder-oriented distribution channels including, but not limited to lighting, plumbing and building supply distributors.
- "Cost-effective measures" refer to measures that have a Total Resource Cost (TRC) benefit/cost ratio of at least one.
- "Deemed measures" refer to cost effective measures approved by the RTF and available for utilities to claim in the PTR system.
- "Direct-install" refers to program models that are able to document that a deemed measure was installed at a given residence providing the what, when, where and by whom.
- "Retail outlet" refers to stores including, but not limited to, do-it-yourself home improvement stores, variety, hardware and grocery stores.
- "Participating utilities" refers to a BPA utility, or any other Pacific Northwest utility that chooses to sign a MOU with the Contractor for the purpose of acquiring savings through this promotion.
- "Percentage allocation" refers to percentages of sales of product allocated to each participating utility, based on utility service territory and store customer territory, by each specific retail location.

Section B: Technical Approach

B.1 Methodology

Contractor shall design and deliver a promotion that effectively increases the sale of residential energy efficient products with cost effective savings through the methodology included below. The promotion shall be designed to address the full spectrum of BPA customer utilities. The promotion shall include program delivery methodologies for retail promotion using the following approaches: (a) retail markdown and builder channels, (b) direct-installs and (c) any other innovative delivery mechanisms that delivers a high return on cost effective energy savings for the effort. Initial promotion shall utilize a retail markdown, as a continuation of the BPA promotion of ENERGY STAR specialty CFLs, with expansion into light fixtures, showerheads and other residential energy efficiency measures.

B.1.a. Retail Mark-down and Builder Channel approaches shall include:

- Products meeting Product Requirements as listed in B.3 below.
- Products already available at the retail outlet or negotiated as a new product with the retailer.
- Negotiation with retailer and manufacturer of markdown levels that make the best use of funds, but still

- motivate consumer or builder to purchase.
- Programming changes in retail price in store level systems associated with the chosen SKU/UPC-code.
- Negotiation for additional shipments for the promotional product SKU/UPC-code as needed, to maintain product availability in store.
- Marketing materials to encourage purchase, identify utilities involved, and indicate benefits to consumers (shelf hangers, store banners, web site).
- Designated premium shelf placement of product.
- Negotiation of additional contributions from retailer or manufacturer to provide additional focus on energy efficient products, particularly those included in the promotion.
- Plan for informing and training store personnel about promotional items and their benefits.

B.1.b. Direct-Install approach shall include:

- Products meeting Product Requirements as listed in B.3 below.
- Negotiation of bulk purchase opportunities that make the best use of funds.
- Marketing and educational materials to encourage interest, identify benefits to consumers, and identify utility sponsorship (product inserts, postcards, web site).
- Mechanism to capture necessary documentation of products installed.
- Comprehensive training curriculum and materials to ensure good customer service, proper installation of products and accurate documentation of products installed.
- Use of local resources/contractors within each utilities service territory, where available.
- Dissemination of information on safe work practices to Direct Install contractors and documentation that each Direct Install contractor has liability insurance coverage.
- Coordination through local utility partners.

B.1.c. Other innovative delivery mechanisms proposed shall include:

- Products meeting Product Requirements as listed in B.3 below.

B.2 Specific Tasks and requirements

Contractor shall perform the following tasks to ensure the successful delivery of this regional promotion, in the areas of (a) management, (b) communication and marketing, (c) reporting and (d) research:

B.2.a. Management

- Program Targets (Retail & Builder Channels). Contractor shall implement a program that effectively increases the sale of residential energy efficient products in retail outlets such as home improvement, hardware, variety, drug and grocery stores; and through builder channels.
- Program Targets (Direct-Install). Contractor shall implement a program that effectively leverages direct installation opportunities to increase the installation of residential energy efficient products.
- Utility Recruitment. Contractor shall develop a plan for communicating the promotion offer to all BPA utilities to support a collaborative regional promotion and to coordinate maximum participation. While not part of the work specifically supported by BPA, the Contractor shall communicate and/or coordinate with neighboring investor owned utilities (IOUs) for the purpose of promoting a regional collaborative effort. Contractor shall make an extra effort to provide outreach to smaller utilities. Communications shall be delivered via email to an approved contact list within BPA email communication protocol, consistent with the BPA brand identity, and shall include a copy (cc:) to the corresponding BPA Energy Efficiency Representative. Contractor shall assist in additional communication and coordination with other program implementers for utilities who elect to not join the BPA-sponsored promotion. Utilities shall sign a Memorandum of Understanding with Contractor.
- Utilities may join or leave the program at any time during the promotion, by providing thirty (30) days notice in writing to Contractor. Contractor shall continue to work to recruit utilities throughout the promotion and provide BPA with an update on recruitment activities and utility status as a part of the monthly report.

Utilities may participate in the program in one of two ways:

1. A utility may participate via payments to Contractor and claim reimbursement under the current BPA Implementation Manual.
 2. Utilities may opt to self-fund the program without receiving reimbursement and may contract directly with Contractor.
- **Manufacturer/Retailer Recruitment.** Contractor shall develop manufacturer and retailer recruitment plan to maximize savings and opportunity across BPA's service territory with both large and small retailers. Contractor shall develop opportunities with small local retail stores and/or on-line purchasing opportunities in territories lacking large chain stores. Contractor shall develop or build upon existing relationships with manufacturers to increase the presence in retail and builder channels of the energy efficient products being promoted. Contractor shall enter into a Memorandum of Understanding with manufacturers and retailers, to ensure agreement with the promotional goals of this contract.
 - **Subcontractors.** Contractor shall notify BPA prior to hiring the services of a subcontractor for the execution of any work under this contract.

B.2.b. Communication and Marketing

- **Marketing.** Contractor shall create an effective marketing plan utilizing (1) best practices for effective marketing of energy efficiency products and (2) the recently completed residential market segmentation studies conducted in the region by BPA. BPA will provide a briefing on the BPA Residential Market Segmentation Study. Contractor shall implement and update the marketing plan to incorporate new products, as needed, throughout the promotion. Contractor shall develop a draft marketing plan for BPA review and comment and shall provide updated plans as they are developed.
- **Marketing materials.** Contractor shall produce marketing materials that include, but are not limited to, header boards, aisle violators and floor stickers. Contractor shall provide retail field representatives to support participating retailers and builder outlets to train sales associates on promotion details, set up in-store signage, and check and refresh product displays. The program field representatives shall replenish the participating stores' point of purchase (POP) materials to maintain a persistent presence for the duration of the promotion. Contractor shall work with retail partners to encourage persistence of promotional signage during the entire promotional period. Contractor shall regularly verify the persistent presence of marketing materials. All marketing materials shall be consistent with the BPA brand and approved by BPA prior to production.
- **Utility Communication.** Contractor shall develop a communication plan to keep all participating utilities and corresponding BPA Energy Efficiency Representatives informed about the promotion, updates, and any promotion events or activities. Communications shall be delivered via email to an approved contact list within BPA email communication protocol, consistent with the BPA brand identity. Contractor shall submit communication templates to BPA, in advance, for review.
- **Manufacturer/Retailer Communication.** Contractor shall develop communication and implementation efforts with retail and builder channels to ensure that all store personnel are aware of the promotion, participating utilities' sponsorship, and benefits to consumers. Contractor shall develop or build upon existing relationships with manufacturers to increase the presence in retail and builder channels of the energy efficient products being promoted.
- **Field Services.** Contractor shall provide field service staff to provide in-store training to store personnel about the promotion, deliver point of purchase marketing materials and document retailer compliance with the promotion. Field services staff shall also collect information to document primary store contacts, the availability of products, and uniformity of pricing.

B.2.c. Reporting

- **Percentage allocations and sales projections.** Contractor shall provide BPA and participating utilities with a percentage allocation for projected sales for all stores at the beginning of the promotion for invoicing purposes. Contractor shall update these percentage allocations of sales projections twice per year on July 1 and January 1 of each year of the promotion to assist utilities with their budgeting process. In the event that participating utilities do not claim 100% of the percentage allocation, BPA will pay for the remaining percentage not claimed and paid for by participating eligible public utilities regardless of the public service

territory in which the sales occurred. Contractor shall submit these reports electronically to BPA and participating utilities.

- Monthly invoices. Contractor shall provide monthly invoices accompanied by a monthly sales allocation report, itemized by individual promotional product and based on actual sales allocated to participating utilities and BPA. Contractor shall submit these reports electronically to BPA and participating utilities. Invoices shall indicate the corresponding reference number from the PTR system. BPA will provide assistance with identifying appropriate PTR reference numbers. The final invoice from Contractor for products sold shall be the basis for reimbursement claimed by the participating utility. Contractor shall maintain all sales reports and invoices by store and shall track all shipments of new products. These records shall be made available to BPA upon request.
- Monthly activity reports. Contractor shall provide a monthly report of promotional activities, with details of activity type by utility service territory or region. Contractor shall submit these reports electronically to BPA and participating utilities.

B.2.d. Research

Product Review and Analysis. Contractor shall assist with analysis process for getting new products deemed as cost-effective measures through the RTF, as needed to support adding new products to this promotion. Contractor shall ensure that all products included in the promotion meet technology and quality specifications as described in B.3 below. Contractor shall stay current on changes in standards and shall inform BPA of any national or regional code changes that may impact products included in, or being considered for, the promotion.

B.3 Products to be considered for inclusion in the Promotion

B.3.a. Product selection

Contractor shall submit lists of proposed products, as original Excel worksheets, via electronic transmission prior to inclusion in the promotion. List of proposed products shall include, but not be limited to product's make, model, description, store SKU or ISDN, rationale for program eligibility, corresponding PTR system reference number and markdown cost per unit (if applicable). BPA will provide determination of program eligibility within 45 days of receipt of the proposed product list. BPA reserves the right to exclude products.

B.3.b. Product changes

Contractor shall have the opportunity to propose the addition or removal of products from the product list twice annually. Contractor may also propose adjustments to the incentive (retail mark down) portion of the unit cost of products. Proposals are due on November 1 and May 1 during the contract period. Should BPA accept the proposed changes to the product list or incentive portion of the unit cost of products, the contract will be formally amended to incorporate such changes into the Schedule of Prices.

B.3.c. Product criteria

All products shall be deemed as cost effective measures by the RTF or as BPA qualified measures and:

- Products shall be ENERGY STAR qualified, if covered by ENERGY STAR, or similar criteria as determined by BPA, or
- Products shall meet industry-recognized standards such as International Organization for Standards (ISO), American National Standards Institute (ANSI), or Illuminating Engineers Society (IES).

B.3.d. Potential Product list (may include, but is not limited to):

- ENERGY STAR CFLs exempted from the 2007 Energy Independence and Security Act (EISA) and the Energy Policy Act of 2005 (EPAAct).
- ENERGY STAR CFL light fixtures (suggested categories are not necessarily inclusive of all potential opportunities)
- Recessed can fixtures and retrofit kits

- Ceiling flush mount CFL or GU-24 fixtures
- Outdoor fixtures with motion sensors and/or daylight sensors
- Linear fluorescent fixtures
- LED lights and light fixtures
- LED downlight retrofit kits and recessed can fixtures
- Screw in "reflector style" LED bulbs
- Under-cabinet task lighting
- Sconces, pendants and other fixtures
- Residential lighting-control technologies such as daylight sensors or occupancy sensors
- Plug load devices such as "smartstrips", battery charging systems, external power adapters
- Showerheads

B.4 Required Plans/Reports and Schedule

Implementation shall begin upon contract award. The program period ends on 9/30/2011. Final report shall be due on 12/31/2011.

Contractor will submit all plans and reports electronically via email. BPA will respond with comments and revisions within two weeks of receipt.

Plan/Report	Due Date
Proposed list of qualified products	Within two weeks of contract award
Final Work Plan <ul style="list-style-type: none"> ▪ BPA approved product list including make, model number, qualification (i.e. Energy Star), kWh, price point, incentive level ▪ Product samples ▪ Historical sales data, if available ▪ Proposed start date for promotion ▪ Sales data reporting sample ▪ Marketing plan ▪ Store list ▪ Retailer promotional support , if available ▪ Consumer demographic data, if available ▪ Damaged product replacement plan 	Within four weeks of contract award
Final Implementation plan	Within six weeks of contract award
Marketing plan and retail coordination plan	Within six weeks of contract award
Builder channel plan and direct installation plan	Within eight weeks of contract award
Regular meetings with BPA	Weekly meetings, beginning within two weeks of contract award
Regular meetings with participating utilities	Minimum of twice per year
Monthly sales data reports and activity reports	Monthly, before the 15 th of the month, beginning first month following launch
Updated percentage allocations	January 1 and July 1
Final report	December 31, 2011

UNIT 4 — WAGE DECISION

WD 05-2441 (Rev.-8) was first posted on www.wdol.gov on 10/20/2009

REGISTER OF WAGE DETERMINATIONS UNDER
THE SERVICE CONTRACT ACT
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON D.C. 20210

Shirley F. Ebbesen Division of
Director Wage Determinations

Wage Determination No.: 2005-2441
Revision No.: 8
Date Of Revision: 10/15/2009

States: Oregon, Washington

Area: Oregon Counties of Clackamas, Clatsop, Columbia, Gilliam, Hood River,
Marion, Multnomah, Polk, Sherman, Tillamook, Wasco, Washington, Yamhill
Washington Counties of Clark, Cowlitz, Klickitat, Pacific, Skamania, Wahkiakum

Fringe Benefits Required Follow the Occupational Listing

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
01000 - Administrative Support And Clerical Occupations		
01011 - Accounting Clerk I		13.72
01012 - Accounting Clerk II		15.62
01013 - Accounting Clerk III		19.23
01020 - Administrative Assistant		21.67
01040 - Court Reporter		19.59
01051 - Data Entry Operator I		11.84
01052 - Data Entry Operator II		13.93
01060 - Dispatcher, Motor Vehicle		19.59
01070 - Document Preparation Clerk		13.33
01090 - Duplicating Machine Operator		13.33
01111 - General Clerk I		12.14
01112 - General Clerk II		13.25
01113 - General Clerk III		16.38
01120 - Housing Referral Assistant		20.42
01141 - Messenger Courier		12.94
01191 - Order Clerk I		11.84
01192 - Order Clerk II		13.66
01261 - Personnel Assistant (Employment) I		15.71
01262 - Personnel Assistant (Employment) II		19.59
01263 - Personnel Assistant (Employment) III		20.55
01270 - Production Control Clerk		20.55
01280 - Receptionist		14.41
01290 - Rental Clerk		14.53
01300 - Scheduler, Maintenance		16.38
01311 - Secretary I		16.38
01312 - Secretary II		18.32
01313 - Secretary III		20.42
01320 - Service Order Dispatcher		17.15
01410 - Supply Technician		21.67
01420 - Survey Worker		19.59
01531 - Travel Clerk I		13.17
01532 - Travel Clerk II		14.34
01533 - Travel Clerk III		15.44

01611 - Word Processor I	13.65
01612 - Word Processor II	15.71
01613 - Word Processor III	19.59
05000 - Automotive Service Occupations	
05005 - Automobile Body Repairer, Fiberglass	19.42
05010 - Automotive Electrician	18.29
05040 - Automotive Glass Installer	17.48
05070 - Automotive Worker	17.48
05110 - Mobile Equipment Servicer	15.71
05130 - Motor Equipment Metal Mechanic	19.22
05160 - Motor Equipment Metal Worker	17.48
05190 - Motor Vehicle Mechanic	18.38
05220 - Motor Vehicle Mechanic Helper	14.78
05250 - Motor Vehicle Upholstery Worker	16.62
05280 - Motor Vehicle Wrecker	17.48
05310 - Painter, Automotive	18.29
05340 - Radiator Repair Specialist	17.48
05370 - Tire Repairer	13.76
05400 - Transmission Repair Specialist	19.22
07000 - Food Preparation And Service Occupations	
07010 - Baker	12.61
07041 - Cook I	12.86
07042 - Cook II	14.31
07070 - Dishwasher	9.08
07130 - Food Service Worker	10.15
07210 - Meat Cutter	15.94
07260 - Waiter/Waitress	9.92
09000 - Furniture Maintenance And Repair Occupations	
09010 - Electrostatic Spray Painter	16.58
09040 - Furniture Handler	11.96
09080 - Furniture Refinisher	16.85
09090 - Furniture Refinisher Helper	13.62
09110 - Furniture Repairer, Minor	15.32
09130 - Upholsterer	16.58
11000 - General Services And Support Occupations	
11030 - Cleaner, Vehicles	10.33
11060 - Elevator Operator	11.77
11090 - Gardener	14.65
11122 - Housekeeping Aide	11.77
11150 - Janitor	11.77
11210 - Laborer, Grounds Maintenance	11.63
11240 - Maid or Houseman	11.31
11260 - Pruner	10.59
11270 - Tractor Operator	13.25
11330 - Trail Maintenance Worker	11.63
11360 - Window Cleaner	12.69
12000 - Health Occupations	
12010 - Ambulance Driver	19.04
12011 - Breath Alcohol Technician	18.82
12012 - Certified Occupational Therapist Assistant	21.54
12015 - Certified Physical Therapist Assistant	20.68
12020 - Dental Assistant	17.18
12025 - Dental Hygienist	35.91
12030 - EKG Technician	27.56
12035 - Electroneurodiagnostic Technologist	27.56
12040 - Emergency Medical Technician	19.04
12071 - Licensed Practical Nurse I	18.73
12072 - Licensed Practical Nurse II	20.94
12073 - Licensed Practical Nurse III	23.38
12100 - Medical Assistant	14.92
12130 - Medical Laboratory Technician	17.03

12160 - Medical Record Clerk	13.76
12190 - Medical Record Technician	15.39
12195 - Medical Transcriptionist	16.82
12210 - Nuclear Medicine Technologist	34.63
12221 - Nursing Assistant I	9.03
12222 - Nursing Assistant II	10.14
12223 - Nursing Assistant III	11.08
12224 - Nursing Assistant IV	12.42
12235 - Optical Dispenser	15.92
12236 - Optical Technician	14.41
12250 - Pharmacy Technician	15.48
12280 - Phlebotomist	12.42
12305 - Radiologic Technologist	28.35
12311 - Registered Nurse I	26.94
12312 - Registered Nurse II	34.82
12313 - Registered Nurse II, Specialist	34.82
12314 - Registered Nurse III	42.13
12315 - Registered Nurse III, Anesthetist	42.13
12316 - Registered Nurse IV	49.93
12317 - Scheduler (Drug and Alcohol Testing)	23.32
13000 - Information And Arts Occupations	
13011 - Exhibits Specialist I	20.00
13012 - Exhibits Specialist II	24.77
13013 - Exhibits Specialist III	28.66
13041 - Illustrator I	18.35
13042 - Illustrator II	22.74
13043 - Illustrator III	27.81
13047 - Librarian	25.88
13050 - Library Aide/Clerk	13.53
13054 - Library Information Technology Systems Administrator	23.36
13058 - Library Technician	15.52
13061 - Media Specialist I	17.04
13062 - Media Specialist II	19.06
13063 - Media Specialist III	21.24
13071 - Photographer I	15.13
13072 - Photographer II	16.92
13073 - Photographer III	20.96
13074 - Photographer IV	25.64
13075 - Photographer V	31.02
13110 - Video Teleconference Technician	17.33
14000 - Information Technology Occupations	
14041 - Computer Operator I	16.61
14042 - Computer Operator II	18.58
14043 - Computer Operator III	20.71
14044 - Computer Operator IV	23.01
14045 - Computer Operator V	25.49
14071 - Computer Programmer I	(see 1) 19.37
14072 - Computer Programmer II	(see 1) 24.02
14073 - Computer Programmer III	(see 1)
14074 - Computer Programmer IV	(see 1)
14101 - Computer Systems Analyst I	(see 1)
14102 - Computer Systems Analyst II	(see 1)
14103 - Computer Systems Analyst III	(see 1)
14150 - Peripheral Equipment Operator	16.61
14160 - Personal Computer Support Technician	23.01
15000 - Instructional Occupations	
15010 - Aircrew Training Devices Instructor (Non-Rated)	28.55
15020 - Aircrew Training Devices Instructor (Rated)	34.03
15030 - Air Crew Training Devices Instructor (Pilot)	40.63
15050 - Computer Based Training Specialist / Instructor	28.55

15060 - Educational Technologist	31.06
15070 - Flight Instructor (Pilot)	40.63
15080 - Graphic Artist	20.77
15090 - Technical Instructor	19.92
15095 - Technical Instructor/Course Developer	24.64
15110 - Test Proctor	17.79
15120 - Tutor	17.79
16000 - Laundry, Dry-Cleaning, Pressing And Related Occupations	
16010 - Assembler	9.69
16030 - Counter Attendant	9.69
16040 - Dry Cleaner	12.18
16070 - Finisher, Flatwork, Machine	9.69
16090 - Presser, Hand	9.69
16110 - Presser, Machine, Drycleaning	9.69
16130 - Presser, Machine, Shirts	9.69
16160 - Presser, Machine, Wearing Apparel, Laundry	9.69
16190 - Sewing Machine Operator	12.97
16220 - Tailor	13.74
16250 - Washer, Machine	10.51
19000 - Machine Tool Operation And Repair Occupations	
19010 - Machine-Tool Operator (Tool Room)	18.37
19040 - Tool And Die Maker	24.38
21000 - Materials Handling And Packing Occupations	
21020 - Forklift Operator	14.63
21030 - Material Coordinator	19.23
21040 - Material Expediter	19.23
21050 - Material Handling Laborer	13.22
21071 - Order Filler	12.36
21080 - Production Line Worker (Food Processing)	14.63
21110 - Shipping Packer	14.07
21130 - Shipping/Receiving Clerk	14.07
21140 - Store Worker I	12.47
21150 - Stock Clerk	16.40
21210 - Tools And Parts Attendant	14.63
21410 - Warehouse Specialist	14.63
23000 - Mechanics And Maintenance And Repair Occupations	
23010 - Aerospace Structural Welder	24.93
23021 - Aircraft Mechanic I	23.74
23022 - Aircraft Mechanic II	24.93
23023 - Aircraft Mechanic III	26.17
23040 - Aircraft Mechanic Helper	18.78
23050 - Aircraft, Painter	21.93
23060 - Aircraft Servicer	21.45
23080 - Aircraft Worker	22.57
23110 - Appliance Mechanic	17.48
23120 - Bicycle Repairer	13.76
23125 - Cable Splicer	28.71
23130 - Carpenter, Maintenance	18.60
23140 - Carpet Layer	20.85
23160 - Electrician, Maintenance	29.99
23181 - Electronics Technician Maintenance I	19.53
23182 - Electronics Technician Maintenance II	24.43
23183 - Electronics Technician Maintenance III	25.80
23260 - Fabric Worker	20.54
23290 - Fire Alarm System Mechanic	23.07
23310 - Fire Extinguisher Repairer	18.08
23311 - Fuel Distribution System Mechanic	24.42
23312 - Fuel Distribution System Operator	19.15
23370 - General Maintenance Worker	19.18
23380 - Ground Support Equipment Mechanic	23.74
23381 - Ground Support Equipment Servicer	21.45

23382 - Ground Support Equipment Worker	22.57
23391 - Gunsmith I	18.08
23392 - Gunsmith II	20.58
23393 - Gunsmith III	23.06
23410 - Heating, Ventilation And Air-Conditioning Mechanic	20.65
23411 - Heating, Ventilation And Air Contditioning Mechanic (Research Facility)	21.76
23430 - Heavy Equipment Mechanic	21.84
23440 - Heavy Equipment Operator	22.58
23460 - Instrument Mechanic	25.07
23465 - Laboratory/Shelter Mechanic	21.83
23470 - Laborer	12.37
23510 - Locksmith	18.24
23530 - Machinery Maintenance Mechanic	22.46
23550 - Machinist, Maintenance	25.12
23580 - Maintenance Trades Helper	13.40
23591 - Metrology Technician I	25.07
23592 - Metrology Technician II	26.42
23593 - Metrology Technician III	27.78
23640 - Millwright	25.71
23710 - Office Appliance Repairer	20.53
23760 - Painter, Maintenance	18.24
23790 - Pipefitter, Maintenance	29.46
23810 - Plumber, Maintenance	26.30
23820 - Pneudraulic Systems Mechanic	23.06
23850 - Rigger	22.72
23870 - Scale Mechanic	20.58
23890 - Sheet-Metal Worker, Maintenance	22.18
23910 - Small Engine Mechanic	16.32
23931 - Telecommunications Mechanic I	24.93
23932 - Telecommunications Mechanic II	26.13
23950 - Telephone Lineman	22.46
23960 - Welder, Combination, Maintenance	19.16
23965 - Well Driller	23.01
23970 - Woodcraft Worker	26.15
23980 - Woodworker	14.24
24000 - Personal Needs Occupations	
24570 - Child Care Attendant	10.95
24580 - Child Care Center Clerk	14.34
24610 - Chore Aide	10.83
24620 - Family Readiness And Support Services Coordinator	14.01
24630 - Homemaker	16.21
25000 - Plant And System Operations Occupations	
25010 - Boiler Tender	24.10
25040 - Sewage Plant Operator	20.71
25070 - Stationary Engineer	24.10
25190 - Ventilation Equipment Tender	17.61
25210 - Water Treatment Plant Operator	20.71
27000 - Protective Service Occupations	
27004 - Alarm Monitor	19.94
27007 - Baggage Inspector	11.61
27008 - Corrections Officer	23.17
27010 - Court Security Officer	25.14
27030 - Detection Dog Handler	16.79
27040 - Detention Officer	23.17
27070 - Firefighter	26.29
27101 - Guard I	11.61
27102 - Guard II	16.79
27131 - Police Officer I	25.94

27132 - Police Officer II	28.82
28000 - Recreation Occupations	
28041 - Carnival Equipment Operator	11.83
28042 - Carnival Equipment Repairer	12.56
28043 - Carnival Equipment Worker	9.64
28210 - Gate Attendant/Gate Tender	14.69
28310 - Lifeguard	11.50
28350 - Park Attendant (Aide)	16.43
28510 - Recreation Aide/Health Facility Attendant	11.75
28515 - Recreation Specialist	17.53
28630 - Sports Official	13.09
28690 - Swimming Pool Operator	19.18
29000 - Stevedoring/Longshoremen Occupational Services	
29010 - Blocker And Bracer	22.50
29020 - Hatch Tender	22.50
29030 - Line Handler	22.50
29041 - Stevedore I	21.13
29042 - Stevedore II	23.87
30000 - Technical Occupations	
30010 - Air Traffic Control Specialist, Center (HFO) (see 2)	36.96
30011 - Air Traffic Control Specialist, Station (HFO) (see 2)	25.48
30012 - Air Traffic Control Specialist, Terminal (HFO) (see 2)	28.07
30021 - Archeological Technician I	15.96
30022 - Archeological Technician II	17.85
30023 - Archeological Technician III	22.65
30030 - Cartographic Technician	22.35
30040 - Civil Engineering Technician	24.48
30061 - Drafter/CAD Operator I	15.96
30062 - Drafter/CAD Operator II	17.85
30063 - Drafter/CAD Operator III	20.12
30064 - Drafter/CAD Operator IV	24.91
30081 - Engineering Technician I	14.69
30082 - Engineering Technician II	16.51
30083 - Engineering Technician III	19.54
30084 - Engineering Technician IV	25.76
30085 - Engineering Technician V	31.76
30086 - Engineering Technician VI	36.82
30090 - Environmental Technician	22.18
30210 - Laboratory Technician	19.18
30240 - Mathematical Technician	22.35
30361 - Paralegal/Legal Assistant I	16.24
30362 - Paralegal/Legal Assistant II	22.18
30363 - Paralegal/Legal Assistant III	27.13
30364 - Paralegal/Legal Assistant IV	32.84
30390 - Photo-Optics Technician	22.35
30461 - Technical Writer I	20.60
30462 - Technical Writer II	27.71
30463 - Technical Writer III	31.45
30491 - Unexploded Ordnance (UXO) Technician I	23.49
30492 - Unexploded Ordnance (UXO) Technician II	28.42
30493 - Unexploded Ordnance (UXO) Technician III	34.06
30494 - Unexploded (UXO) Safety Escort	23.49
30495 - Unexploded (UXO) Sweep Personnel	23.49
30620 - Weather Observer, Combined Upper Air Or (see 2)	20.12
Surface Programs	
30621 - Weather Observer, Senior (see 2)	21.33
31000 - Transportation/Mobile Equipment Operation Occupations	
31020 - Bus Aide	12.68
31030 - Bus Driver	17.89
31043 - Driver Courier	14.29
31260 - Parking and Lot Attendant	10.48

31290 - Shuttle Bus Driver	15.36
31310 - Taxi Driver	11.15
31361 - Truckdriver, Light	15.29
31362 - Truckdriver, Medium	18.77
31363 - Truckdriver, Heavy	19.62
31364 - Truckdriver, Tractor-Trailer	19.62
99000 - Miscellaneous Occupations	
99030 - Cashier	12.12
99050 - Desk Clerk	11.50
99095 - Embalmer	24.90
99251 - Laboratory Animal Caretaker I	11.05
99252 - Laboratory Animal Caretaker II	11.86
99310 - Mortician	27.05
99410 - Pest Controller	15.69
99510 - Photofinishing Worker	13.46
99710 - Recycling Laborer	18.50
99711 - Recycling Specialist	21.69
99730 - Refuse Collector	16.12
99810 - Sales Clerk	13.43
99820 - School Crossing Guard	13.42
99830 - Survey Party Chief	23.68
99831 - Surveying Aide	13.96
99832 - Surveying Technician	19.13
99840 - Vending Machine Attendant	16.64
99841 - Vending Machine Repairer	19.64
99842 - Vending Machine Repairer Helper	16.94

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$3.35 per hour or \$134.00 per week or \$580.66 per month

VACATION: 2 weeks paid vacation after 1 year of service with a contractor or successor; 3 weeks after 5 years, and 4 weeks after 15 years. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (Reg. 29 CFR 4.173)

HOLIDAYS: A minimum of ten paid holidays per year, New Year's Day, Martin Luther King Jr's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (A contractor may substitute for any of the named holidays another day off with pay in accordance with a plan communicated to the employees involved.) (See 29 CFR 4174)

THE OCCUPATIONS WHICH HAVE NUMBERED FOOTNOTES IN PARENTHESES RECEIVE THE FOLLOWING:

1) COMPUTER EMPLOYEES: Under the SCA at section 8(b), this wage determination does not apply to any employee who individually qualifies as a bona fide executive, administrative, or professional employee as defined in 29 C.F.R. Part 541. Because most Computer System Analysts and Computer Programmers who are compensated at a rate not less than \$27.63 (or on a salary or fee basis at a rate not less than \$455 per week) an hour would likely qualify as exempt computer professionals, (29 C.F.R. 541.400) wage rates may not be listed on this wage determination for all occupations within those job families. In addition, because this wage determination may not list a wage rate for some or all occupations within those job families if the survey

data indicates that the prevailing wage rate for the occupation equals or exceeds \$27.63 per hour conformances may be necessary for certain nonexempt employees. For example, if an individual employee is nonexempt but nevertheless performs duties within the scope of one of the Computer Systems Analyst or Computer Programmer occupations for which this wage determination does not specify an SCA wage rate, then the wage rate for that employee must be conformed in accordance with the conformance procedures described in the conformance note included on this wage determination.

Additionally, because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the application of the computer professional exemption. Therefore, the exemption applies only to computer employees who satisfy the compensation requirements and whose primary duty consists of:

(1) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;

(2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or

(4) A combination of the aforementioned duties, the performance of which requires the same level of skills. (29 C.F.R. 541.400).

2) AIR TRAFFIC CONTROLLERS AND WEATHER OBSERVERS - NIGHT PAY & SUNDAY PAY: If you work at night as part of a regular tour of duty, you will earn a night differential and receive an additional 10% of basic pay for any hours worked between 6pm and 6am. If you are a full-time employed (40 hours a week) and Sunday is part of your regularly scheduled workweek, you are paid at your rate of basic pay plus a Sunday premium of 25% of your basic rate for each hour of Sunday work which is not overtime (i.e. occasional work on Sunday outside the normal tour of duty is considered overtime work).

HAZARDOUS PAY DIFFERENTIAL: An 8 percent differential is applicable to employees employed in a position that represents a high degree of hazard when working with or in close proximity to ordnance, explosives, and incendiary materials. This includes work such as screening, blending, drying, mixing, and pressing of sensitive ordnance, explosives, and pyrotechnic compositions such as lead azide, black powder and photoflash powder. All dry-house activities involving propellants or explosives. Demilitarization, modification, renovation, demolition, and maintenance operations on sensitive ordnance, explosives and incendiary materials. All operations involving regrading and cleaning of artillery ranges.

A 4 percent differential is applicable to employees employed in a position that represents a low degree of hazard when working with, or in close proximity to ordnance, (or employees possibly adjacent to) explosives and incendiary materials which involves potential injury such as laceration of hands, face, or arms of the employee engaged in the operation, irritation of the skin, minor burns and the like; minimal damage to immediate or adjacent work area or equipment being used. All operations involving, unloading, storage, and hauling of ordnance, explosive, and incendiary ordnance material other than small arms ammunition. These differentials are only applicable to work that has been specifically designated by the agency for ordnance, explosives, and incendiary material differential pay.

**** UNIFORM ALLOWANCE ****

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an

employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition, April 2006, unless otherwise indicated. Copies of the Directory are available on the Internet. A links to the Directory may be found on the WHD home page at <http://www.dol.gov/esa/whd/> or through the Wage Determinations On-Line (WDOL) Web site at <http://wdol.gov/>.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and 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), be classified by the contractor 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 classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. (See Section 4.6 (C) (vi)) When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report

of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).

4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.

5) The contracting officer transmits the Wage and Hour decision to the contractor.

6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.