

# ATTACHMENT 3

## TABLE OF CONTENTS

<b>UNIT 1 — SCHEDULE</b>	<b>3</b>
CONTRACT TYPE (7-1)(M)	3
MASTER AGREEMENT: BASIC TERMS (7-6)(M)	3
PERFORMANCE PERIOD AND OPTIONS (7-7)	4
LABOR STANDARDS – PRICE ADJUSTMENT (10-4)	5
KEY PERSONNEL (23-2)	6
<b>UNIT 2 — CONTRACT CLAUSES</b>	<b>7</b>
<b>PAYMENT AND TAXES</b>	<b>7</b>
ELECTRONIC FUNDS TRANSFER PAYMENT (22-20)	7
INVOICES AND PAYMENT FOR TASK ORDERS OR TASK ASSIGNMENTS (22-53)	8
BASIS OF PAYMENT – PROGRESS PAYMENTS (22-3)	8
PAYMENT (22-12)	8
DISCOUNTS FOR PROMPT PAYMENT (22-10)	9
WITHHOLDING (22-9)	9
FEDERAL, STATE, AND LOCAL TAXES (22-15)	9
INTEREST ON AMOUNTS DUE BPA (22-13)	10
<b>GENERAL CONTRACT ADMINISTRATION</b>	<b>10</b>
APPLICABLE REGULATIONS (1-1)	10
CONTRACT ADMINISTRATION REPRESENTATIVES (14-2)	11
STOP WORK ORDER (14-14)	11
CHANGES - FIXED-PRICE (14-8)	11
MODIFICATION COST PROPOSAL - PRICE BREAKDOWN (14-13)	12
PRICING OF ADJUSTMENTS (14-12)	13
PRICE REDUCTION FOR INACCURATE COST OR PRICING INFORMATION (12-2)	13
RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR (14-51)	13
REQUIREMENTS FOR REGISTRATION OF DESIGNERS (14-52)	13
ORDER OF PRECEDENCE (14-3)	13
<b>STANDARDS OF CONDUCT AND BUSINESS PRACTICES</b>	<b>14</b>
ORGANIZATIONAL CONFLICTS OF INTEREST (3-2)	14
CERTIFICATION, DISCLOSURE, AND LIMITATION REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (3-3)	14
DRUG-FREE WORKPLACE (3-6)	16
CONTRACTOR COMPLIANCE WITH BPA POLICIES (3-8)	18
<b>SOCIO-ECONOMIC ISSUES</b>	<b>18</b>
UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS (8-3)	18
NONDISCRIMINATION AND AFFIRMATIVE ACTION (10-1)	19

SERVICE CONTRACT ACT OF 1965 (10-3)	19
WAGE DETERMINATION NOT AVAILABLE (10-6)	25
<b>BONDS AND INSURANCE</b>	<b>25</b>
INSURANCE (16-2)	25
<b>PATENTS, DATA, AND COPYRIGHTS</b>	<b>26</b>
RIGHTS IN DATA--EXISTING AUDIOVISUAL WORKS (17-4)	26
RIGHTS IN DATA--WORKS MADE FOR HIRE (17-5)	27
<b>INSPECTION AND WARRANTY</b>	<b>28</b>
INSPECTION - SERVICES AND CONSTRUCTION (18-4)	28
<b>TERMINATION</b>	<b>28</b>
TERMINATION FOR CONVENIENCE BY EITHER PARTY (20-1)	28
TERMINATION FOR DEFAULT (20-3.1) ALTERNATE I	28
<b>DISPUTES</b>	<b>29</b>
APPLICABLE LAW (21-5)	29
RELEASE OF CLAIMS (21-4)	29
DISPUTES (21-2)	29
<b>UNIT 3 — STATEMENT OF WORK</b>	<b>30</b>
<b>A. GENERAL OVERVIEW</b>	<b>30</b>
A.1 BACKGROUND	30
A.2 GOALS	31
A.3 DEFINITIONS	31
<b>B. TECHNICAL REQUIREMENTS</b>	<b>32</b>
B.1 GENERAL REQUIREMENTS	32
B.2 SPECIFIC REQUIREMENTS	32
B.3 RELEASES UNDER MASTER AGREEMENTS PROCEDURES	33
B.4 PROJECT MANAGEMENT	33
B.5 DELIVERABLES	33
B.6 PRICING	33
B.7 BONNEVILLE AND /OR CONTRACTOR-FURNISHED PROPERTY	34
B.8 SCHEDULE	34

## UNIT 1 — SCHEDULE

### CONTRACT TYPE (7-1)(M) (DEC 04)(BPI 7.1.9)

Orders placed against the Master Agreement will be made on a Firm, Fixed-Price type basis.

### MASTER AGREEMENT: BASIC TERMS (7-6)(M) (DEC 04)(BPI 7.2.5.2.1)

- (a) Effective Period. This agreement is effective upon receipt and acceptance of this Agreement and continues until canceled by BPA or the Contractor in writing, or the date in Block 5, Page 1 of this master agreement, whichever occurs first.
- (b) BPA's Obligation. This agreement places no obligation on BPA to purchase a minimum amount of supplies or services. BPA is obligated only to the extent of authorized orders actually placed against this agreement.
- (c) Order Placement, Confirmation and Contract Formation. Orders less than \$5,000.00 may be placed without any further competition. Orders exceeding \$5000.00 may be competed, as the Contracting Officer determines appropriate, within the pool of Master Agreement Contractors. This agreement sets forth pre-established rates and the competition will consist of a level of effort bases on the agreed upon rates. Orders may also be issued orally or by facsimile. Orders may also be issued electronically as an unalterable, electronic read-only formatted document transmitted via the Internet. A binding order will be formed when the Contracting Officer or his/her authorized representative transmits to the Contractor a complete and legible order that includes an order (release) number and the contract number, and receives from the Contractor a written or facsimile or electronic Internet confirmation. An order or confirmation transmitted via facsimile or the Internet will be deemed "writings." There is no limit on the number of orders that may be issued, unless otherwise limited in the Schedule of Items.
- (d) Order Numbers. An "order number" will be the identifying number for each order placed against this agreement. Both this order number and the Master Agreement Number must be included on all correspondence, packing lists, invoices, etc.
- (e) Delivery Tickets. All deliveries made under this agreement shall be accompanied by a delivery ticket or sales slip which shall contain the following minimum information: (1) Name of Contractor; (2) Master Agreement Number; (3) Date of order; (4) Name of BPA employee placing order; (5) Order number; (6) Itemized list of supplies or services furnished (quantity, unit price, and extended price, less discounts; and (7) Date of delivery or shipment.
- (f) Variation In Quantity. No variation in the quantity of any item ordered will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this agreement or in any specific order.
- (g) Transportation Charges. No allowance will be made for packing, cartage, carting, or transportation charges unless specifically provided elsewhere in this agreement or unless provided at the time a specific order is placed.
- (h) Inspection and Acceptance. Inspection and acceptance will be at the place specified in each order for delivery or performance.

(i) Taxes and Duties. The price includes all applicable Federal, State, and local taxes and duties in effect on the date an order is placed, but does not include any taxes from which BPA, the Supplier, or any specific order is exempt. Upon request of the Supplier, BPA shall furnish a Tax Exemption Certificate or similar evidence of exemption, if appropriate, with respect to any such tax not included in the price pursuant to this clause.

(j) Payment.

(1) Payment Due Date. Payment 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. 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.

(2) Invoices. Suppliers may invoice monthly or at more frequent intervals as may be agreed to by the CO. Invoices shall include:

- supplier's name and address;
- invoice date;
- master agreement number;
- order number;
- description of products delivered or work performed;
- price and quantity of item(s) actually delivered or rendered identified separately by order number,
- the name and address of the person to whom payment will be made, and
- name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

If the order is for supplies, each invoice shall also contain a reference to each delivery ticket and shall be supported by a copy of the delivery ticket. Failure to submit a proper invoice may result in a delay in payment.

(3) Prompt Payment Act. This agreement is subject to the provisions of the Prompt Payment Act (31 U.S.C. 3901 et seq.), and the regulations at 5 CFR Part 1315.

(4) 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).

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

(a) This is a **one** year contract with options to extend for **4** additional **one**-year periods.

- (b) BPA may unilaterally extend the term of this contract by written notice to the Contractor. BPA will give the Contractor preliminary notice of its intent to extend at least 30 days before the contract expires.

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

- (a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under paragraph (d) below.
- (b) The minimum monetary wages and fringe benefits required to be paid or furnished to service employees under this contract as set forth in the wage determination, shall be subject to adjustment if (1) the period of performance of this contract exceeds two years, (2) the contract contains option provisions specifying that a differing wage determination shall apply thereto, (3) an amendment to the Fair Labor Standards Act is enacted revising the minimum wage rate, (4) a contract modification significantly changes the nature of the work, or, (5) the Department of Labor otherwise directs.
- (c) The contract price or contract unit priced labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with the new rates, or the decrease is voluntarily made by the Contractor.
- (d) Any such adjustment shall be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, material costs, overhead, or profit. (For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour.)
- (e) The Contractor shall notify the Contracting Officer (CO) of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the CO. The Contractor shall promptly notify the CO of any decrease under this clause, but nothing in the clause shall preclude the BPA from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the CO may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on, or determination of, any such adjustment and its effective date.
- (f) The CO or an authorized representative shall have access to and the right to examine any pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

**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.  
(List key personnel below)

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## UNIT 2 — CONTRACT CLAUSES

### PAYMENT AND TAXES

#### ELECTRONIC FUNDS TRANSFER PAYMENT (22-20) (JUN 01)(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: TLOS - 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.

**INVOICES AND PAYMENT FOR TASK ORDERS OR TASK ASSIGNMENTS (22-53)  
(SEP 98)**

- (a) For Task Orders/Assignments placed on a time and materials basis, BPA shall reimburse the Contractor for work performed hereunder in amounts which total shall not exceed the agreed-upon ceiling amount for each task order issued, unless expenditure of an additional amount is approved in writing by the Contracting Officer. Invoices shall be submitted in accordance with the payment provisions specified in the clause titled "Payment".
- (b) For Task Orders/Assignments placed on a fixed price basis, BPA shall pay the Contractor for work performed hereunder in accordance with the payment schedule described in the Task Order. Invoices shall be submitted in accordance with the payment provisions specified in the clause titled "Payment".

**BASIS OF PAYMENT – PROGRESS PAYMENTS (22-3)  
(SEP 98)(BPI 22.1.3)**

- (a) Progress payments. BPA shall make progress payments as the work proceeds based on the stage or percentage of work accomplished. The Contractor shall furnish a breakdown of the work as a percentage of the total contract price, in such detail as required by the CO.
- (b) Title to all material and work covered by progress payments shall pass to BPA at the time of payment. This shall not be construed as--
  - (1) Relieving the Contractor from the sole responsibility for all work upon which payments have been made or the restoration of any damaged work; or
  - (2) Waiving the right of BPA to require the fulfillment of all of the terms of the contract.
- (c) Partial Payments. Unless otherwise specified, payment shall be made after acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.
- (d) Final Payment. BPA shall pay the amount due the Contractor under this contract after completion and acceptance of all work and after presentation of a release of all claims against BPA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of any assignee if the Contractor's claim to amounts payable under this contract has been assigned.

**PAYMENT (22-12)  
(SEP 98)(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. 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, and mailing address of person to be notified in event of a defective invoice. Failure to submit a proper invoice may result in a delay in payment.
- (2) Contractors may bill monthly, or at more frequent intervals as may be agreed to by the CO.
- (c) Payment Method. Payments under this contract will be made by electronic funds transfer whenever possible, or by check, 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 Office of Management and Budget Circular A-125.
- (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.

**WITHHOLDING (22-9)**  
**(SEP 98)(BPI 22.1.5.1)**

- (a) The CO reserves the right to withhold an amount not to exceed 10 percent of the contract price if determined necessary to protect BPA's interests.
- (b) Upon completion and acceptance of each severable item of work for which the price is stated separately in the contract, payment shall be made for the completed work, less liquidated damages (if any), without withholding of a percentage.

**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)  
(SEP 98)(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 – CK, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208. The cost is \$30.00. Subscriptions are not available.

**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.

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

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

**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) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for BPA in accordance with the drawings, designs, or specifications.
  - (2) Method of shipment or packing.

- (3) Place of delivery or performance.
  - (4) Description of services to be performed.
  - (5) Time of performance (i.e., hours of the day, days of the week, etc.).
  - (6) BPA-furnished property.
  - (7) Place of inspection or acceptance.
- (b) If any such change causes an increase or decrease in the 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.

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

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

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

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

**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.

## **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.

**CONTRACTOR COMPLIANCE WITH BPA POLICIES (3-8)  
(SEP 98)(BPI 3.7.1)**

(a) The contractor shall comply with all BPA policies affecting the BPA workplace environment. Examples of specific policies are:

(1) Harassment-free workplace;

(2) Non-smoking workplace;

(3) Firearms and other weapons (BPAM 1073);

(4) Safety and health (clauses 15-2 and 15-4);

(5) Visits to BPA substations, rights-of-way work sites, other electrical hazardous work sites, and non-electrical hazardous work sites;

(6) Standards of conduct regarding transmission information (BPI 3.2); and

(7) Dissemination of Critical and Sensitive Information, Including Information Pertaining to Critical Infrastructure (BPAM 1081).

(b) The contractor shall obtain from the CO information describing the policy requirements. A contractor who fails to enforce workplace policies is subject to suspension or default termination of the contract.

**SOCIO-ECONOMIC ISSUES**

**UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED  
BUSINESS CONCERNS (8-3)  
(SEP 98)(BPI 8.3.4)**

(a) It is the policy of the United States that small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts.

(b) Prime contractors shall establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

- (c) The Contractor hereby agrees to carry out the policies in (a) and (b) in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the Department of Energy as may be necessary to determine the extent of the Contractor's compliance with this clause.
- (d) As used in this contract, the terms "small business concern" and "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

**NONDISCRIMINATION AND AFFIRMATIVE ACTION (10-1)  
(SEP 98)(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 FR 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 60-1.1).
  - (2) For nondiscrimination based on Disabled or Vietnam Veterans this includes, but is not limited to, the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended (38 U.S.C. 4012)(the Act); Executive Order 11701, January 24, 1973 (38 CFR 2675, January 29, 1973); 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)(the Act); Executive Order 11758, January 15, 1974; and the regulations of the Secretary of Labor (41 FR 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 NOT AVAILABLE (10-6)  
(OCT 93)(BPI 10.3.4)**

A U.S. Department of Labor Wage Determination applicable to the specified locality and classes of service employees to be utilized under the resultant contract is not available at this time. Offerors are reminded of the successful contractor's obligation to comply with the minimum wage requirements of Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. BPA may incorporate a wage determination if it becomes available and may require its effective date to be retroactive to the date of award. If incorporated and it requires the Contractor to pay higher wages, the contract shall be equitably adjusted.

**BONDS AND INSURANCE**

**INSURANCE (16-2)  
(SEP 03)(BPI 16.3.3)**

- (a) 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 \$100,000 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) **General liability.** The contractor shall provide 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 insureds with respect to the contractor's performance of services. The contractor's policy shall be primary to 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.
  - (4) **Professional liability.** The contractor shall provide professional liability insurance. Coverage shall be at least \$1,000,000 per occurrence for claims arising out of negligent acts, errors or omissions.
- (b) 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.
- (c) Before commencing work under this contract, the Contractor shall provide to the Contracting Officer certificates of insurance from the insurance company stating the insurance required has been obtained and is in force. The certificate(s) shall identify the contractor and the contract(s) for which coverage is provided, and shall contain a statement that the insurer will give notice of cancellation or any material change to the CO at least 30 days before the effective date. In addition, the contractor shall provide certificates as the policies are renewed throughout the period of the contract. If the contractor's insurance does not cover the subcontractors involved in the work, the contractor shall provide certificates stating that the required insurance has been obtained by the subcontractors.

## PATENTS, DATA, AND COPYRIGHTS

### RIGHTS IN DATA—EXISTING AUDIOVISUAL WORKS (17-4) (SEP 98)(BPI 17.4.3.1)

- (a) Except as otherwise provided in this contract, the Contractor grants to the Government, and others acting on its behalf, a paid-up non-exclusive, irrevocable, worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract.
- (b) The Contractor shall indemnify BPA and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless BPA provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by BPA and incorporated in data to which this clause applies.

**RIGHTS IN DATA--WORKS MADE FOR HIRE (17-5)  
(SEP 98)(BPI 17.4.4.1)**

(a) Allocation of Rights.

(1) BPA shall have--

(A) Unlimited rights, meaning the right of the Government 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 whatsoever, and to have or permit others to do so, in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (b) of this clause for copyright.

(B) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data, in accordance with subparagraph (b)(1) of this clause.

(C) The right to limit the release and use of certain data in accordance with paragraph (c) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with subparagraph (b)(1) of this clause, the right to establish claim to copyright subsisting in data first produced in the performance of this contract.

(b) Copyright.

(1) Data first produced in the performance of this contract.

(A) The Contractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without the prior written permission of the Contracting Officer. If a claim to copyright is made, 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.

(B) If BPA desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in subdivision (b)(1)(A) of this clause, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(2) Data not first produced in the performance of this contract. The Contractor shall 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 contain 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 and use restrictions. Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract, nor shall the Contractor release, reproduce, distribute, or publish any data first produced in the performance

of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

- (d) Indemnity. The Contractor shall indemnify BPA and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless BPA provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules or regulations to participate in the defense thereof, and obtains the contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; nor do these provisions apply to material furnished to the Contractor by BPA and incorporated in data to which this clause applies.

## **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.

## **TERMINATION**

### **TERMINATION FOR CONVENIENCE BY EITHER PARTY (20-1) (SEP 98)(BPI 20.3.1)**

Either party may terminate all or any part of this contract at any time upon 30 days written notice to the other party. Termination costs will be negotiated between the parties. Notwithstanding the Disputes clause of this contract, if the parties are unable to agree upon the termination costs, the parties may utilize the services of the American Arbitration Association to assist in resolving the issue.

### **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.

### **RELEASE OF CLAIMS (21-4) (SEP 98)(BPI 21.3.12)**

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

### **DISPUTES (21-2) (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

### A. GENERAL OVERVIEW

Bonneville Power Administration (Bonneville) is contemplating how to improve the acquisition of conservation in the service territories of utilities or federal agencies served by Bonneville. As part of this initiative, Bonneville has determined to utilize private sector expertise for a variety of professional support activities. In addition to general technical expertise, Bonneville intends for the contractors to identify projects, which may qualify for implementation under its conservation programs. Bonneville is targeting the industrial sector at this time, but other sectors may be added if this approach proves successful.

This Master Agreement provides engineering and technical services, which include energy audits, feasibility studies, plant assessments, conservation project identification and implements, and measurement and verification (refer to Technical Requirements, Section “B” for details). The contractor may also identify potential work, at its own expense, and submit a proposal to Bonneville; which may, at its sole discretion, accept or reject or fund for further investigation. Implementation of a project proposal will only be funded as negotiated under the requirements of Bonneville’s conservation program.

#### A.1 BACKGROUND

Bonneville is a self-funded, cost-based federal agency within the U.S. Department of Energy. Based in the Pacific Northwest, Bonneville markets power from 31 federal hydro projects, one non-federal nuclear plant, and several other non-federal power plants. Bonneville’s conservation and efficiency initiatives operate under provisions of the 1981 Pacific Northwest Electric Power Planning and Conservation Act (PL 96-501 sub sections of Sections 6 and 9). Under the Act, the Pacific Northwest Electric Power Planning and Conservation Council was created to assist Bonneville in determining its conservation objective (targets). Bonneville believes it is necessary to engage the private sector in certain areas in order to achieve those conservation targets.

Historically, Bonneville met its obligations through programs it designed and implemented. However, today Bonneville has limited federal technical staff available for supporting our distribution utility customers in identifying and implementing projects. Bonneville has tested several alternatives to support federal staff in this effort. Over the last five years Bonneville has implemented Master Agreements with a number of engineering firms. However, the anticipated workload did not materialize due to budget constraints. This fiscal year Bonneville has identified a need to engage industrial and other large energy users in a more targeted approach so the regions conservation targets can be met.

To address the conservation target concerns, Bonneville identified the industrial sector as a primary focus for project development and execution. Because of the complexity of projects in this sector Bonneville will need the assistance of highly qualified personnel to help Bonneville employees implement its programs in this sector. The goal of the contracts is to increase the conservation acquisitions from the industrial sector and to test both the service contracting process as well as the methods of seeking and implementing projects.

## A.2 GOALS

The objective of this Agreement is for the Bonneville to obtain a pool of qualified engineering firms with expertise and experience in identifying, designing, evaluating, implementing and measuring a variety of conservation projects.

In addition Bonneville will maintain a pool of highly qualified technical experts to help implement a large variety of conservation services in such a way as to reduce the procurement costs associated with the normal competitive process. While the major focus of this effort will be on electrical energy conservation in industrial facilities, Bonneville may also take advantage of the contractor's full range of resources and expertise in commercial and agricultural facilities.

The Master Agreements will allow Bonneville to issue individual Releases, which may include the following tasks:

- ❑ Technical expertise to develop conservation projects, which comply with Bonneville funded programs.
- ❑ Development of scoping study(s) that analyzes the facility for potential conservation measures, including cost estimates, potential energy savings and estimated program incentives from both Bonneville and other entities.
- ❑ Development of Proposals, or Project Proposals as requested. This may include a more detailed study. A detailed study could include design of the measure, bid estimates, and pre and post installation metering, commissioning, and other activities as directed by Bonneville.
- ❑ Technical review of an existing Project Proposal prepared by another party. This would include assessment of the validity and reasonableness of the energy savings analysis and cost estimates.
- ❑ Travel to Projects located within the Bonneville service territory. Project location will vary on a case-by-case basis.

## A.3 DEFINITIONS

ENERGY CONSERVATION – Any reduction in electric power consumption as a result of increases in the efficiency of energy use, production, or distribution. For project implementation purposes this definition will follow the requirements of the specific program rules.

FISCAL YEAR – Bonneville's fiscal year (FY) begins October 1 and ends September 30.

INDUSTRIAL SECTOR – An inclusive term for Industrial Facilities which are defined as any fixed equipment, building, or complex for the production of goods in connection with, or as part of, any process or system, and, in general, within which the majority of energy use is not devoted to HVAC, or to meet the potable hot water energy load requirements of the facility. Electrical utility distribution systems, institutional buildings (hospitals, schools, jails, etc.), and irrigation scheduling projects are excluded. Large projects in the irrigation sector may be considered under this definition.

MASTER AGREEMENT - A contractual agreement defining how and under what circumstances Bonneville power would contract for specific tasks under subsequent releases.

PROPOSAL – A written plan put forward for consideration by the contractor to Bonneville staff for a determination on possible funding under a Master Agreement Release.

PROJECT PROPOSAL – A written plan put forward for consideration for funding under a specific Bonneville Conservation Program rules. Often submitted after the implementation of a Proposal (see above).

RELEASE – A contractual document implementing Statements of Work under existing Master Agreements with specific vendors.

STATEMENT OF WORK – those documents attached to Master Agreements and to subsequent Releases, which define the purpose and task to be implemented and funded under the contractual agreement(s).

## **B. TECHNICAL REQUIREMENTS**

### **B.1 GENERAL REQUIREMENTS**

The specific requirements listed below represents a sampling of the potential technical task for which Bonneville may require assistance. We anticipate there may be other activities requiring technical expertise related to gathering and sharing of information, performing energy related audits and analysis, training, or other technical support functions Bonneville may require not currently listed below.

### **B.2 SPECIFIC REQUIREMENTS**

#### General Requirements

All services shall be within Bonneville’s service territory in the Pacific Northwest and in keeping with Bonneville’s conservation program requirements and consistent with the terms of Bonneville’s contracts with its customers.

“Conservation Services” may include, but not be limited to:

- ❑ Energy audits, feasibility studies, energy and water efficiency project plans,
- ❑ Engineering and design studies, project cost and financial analysis,
- ❑ Implementation of conservation projects, which may include commissioning, and measurement and verification tasks,
- ❑ Preparation of necessary documentation to qualify a project for funding assistance under Bonneville or other incentive programs as applicable,
- ❑ Presentation and marketing of proposed energy conservation potential to utility, industry and/or facility decision makers,
- ❑ Sub-metering and data analysis of utilities including but not limited to water, air, steam, natural gas and electricity,

- Measurement and Verification consistent with the Regional Technical Forum's established Protocols: (<http://www.ipmvp/org/> or other recognized standards acceptable to BPA.)

### **B.3 RELEASES UNDER MASTER AGREEMENTS PROCEDURES**

Each Release will be awarded based on Bonneville's determination of the best buy to meet their needs. This would include a review of the geographic location of the work, availability of resources, pricing and degree of difficulty associated with the statement of work and other mitigating factors.

### **B.4 PROJECT MANAGEMENT**

Bonneville is the project manager for directing all work under the Master Agreement. Bonneville must approve each potential project prior to any effort undertaken by the contractor for which the contractor will expect payment. A contractor must not begin work on a project until a duly authorized Release has been received.

### **B.5 DELIVERABLES**

The expected deliverables may vary with each approved project and shall be described in the Statement of Work accompanying each Release. Either party may accept or reject any proposed project.

### **B.6 PRICING**

Due to the varied locations of the work to be performed and the relatively short time frame for completion of this work, it is anticipated that U.S. Department of Labor Wage Determinations may not be available at the time Releases under the Master Agreement are issued. Contractors are reminded of their obligation to comply with minimum wage requirements of Section 6(a)(1) of the Fair Labor Standard Act of 1938, as amended. Bonneville may incorporate a wage determination as it becomes available and require its effective date to be retroactive to the date of award. If incorporated, and the contractor is required to pay higher wages, the Task Order will be equitably adjusted.

Travel expenses are reimbursable in accordance with the Federal Travel Regulations and may vary depending on the location of the work. These rates are available at: <http://policyworks.gov/org/main/mt/homepage/mtt/perdiem/perd05d.html>

Hourly rates, profit, overhead and other costs agreed upon prior to award will be utilized for all work performed under the Master Agreement. Labor rates for disciplines subject to the Service Contract Act may be adjusted for each Release if the SCA Wage Determination requires the contractor to pay the employee more than the rate established in the Agreement. Labor rates may be renegotiated on the anniversary of the Master Agreement, if and when the option year is exercised. The level of effort will be negotiated on each Release.

A post-award conference with the Contracting Officer's Technical Representative (COTR) will be required to discuss the implementation process for development of a Release. Costs incurred by

the contractor for this conference will be born by the contractor. Bonneville will make every effort to implement this conference without incurring travel costs to the contractor.

#### **B.7 BONNEVILLE AND /OR CONTRACTOR-FURNISHED PROPERTY**

Any government or contractor-furnished property required for performance will be addressed in each Release. Equipment needs and transportation methods may vary within each statement of work and will be negotiated on a case-by-case basis.

#### **B.8 SCHEDULE**

Bonneville will begin the implementation of Industrial initiatives immediately upon the creation of Master Agreements. However the actual Statements of Work for Releases under the Agreements will vary over the life of the Agreement. Some Agreements may see Releases immediately and some may never result in a Release for work. Should a Release be initiated, work shall be approached as indicated in the Statement of Work under each Release.