

**PART 3
STANDARDS OF CONDUCT AND BUSINESS PRACTICES**

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3.1 STANDARDS OF CONDUCT REGARDING PURCHASING AND ASSISTANCE.

3.1.1 General.

POLICY: BPA purchasing (including financial assistance, see Bonneville Financial Assistance Instructions, subpart 1.3.1) policy shall be to conduct its purchasing activities in a manner that complies with the ethical standards of conduct for employees of the Executive Branch. Inasmuch as a fiduciary responsibility exists for BPA employees involved in the conduct of purchasing activities, such BPA employees shall avoid any conflict of interest or the appearance of such in the conduct of BPA purchasing activities. Employees' conduct must be such that they would not hesitate to make full public disclosure of their actions at any time. "Conflict of interest" includes, but is not limited to the following:

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- (a) Use of public office for private gain;
- (b) Giving preferential treatment to any firm, person or organization for other than sound business reasons;
- (c) Impeding BPA efficiency or economy;
- (d) Lack of complete independence or impartiality;
- (e) Making decisions on behalf of BPA outside official channels;
- (f) Adversely affecting the public's confidence in the ability of BPA to conduct its affairs with integrity and in a fair and equitable manner; or
- (g) Accepting gratuities or other things of value or special favors.

3.1.2 Conduct of Purchasing and Assistance Activities.

POLICY:

(a) BPA purchases (including financial assistance) shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. The general rule is to maintain the integrity of purchasing practices, strictly avoiding any conflict of interest or even the appearance of a conflict of interest in BPA-contractor relationships. This subpart 3.1 and BPI Appendix 3-A provide BPA-wide policy for the conduct of every BPA purchase of supplies or services (including construction) and financial assistance. In conducting such BPA purchases and financial assistance--

(1) Employees and former employees of BPA who participate personally and substantially, as defined in BPI Appendix 3-A, Section 2, shall comply with the standards of ethical conduct of 5 CFR Part 2635, as well as those specific to DOE included in 5 CFR Part 3301 and 10 CFR Part 1010 and 48 CFR Subpart 903.1, as supplemented by this subpart 3.1 and BPI Appendix 3-A;

(2) All other persons, including competing contractors, shall not knowingly engage in prohibited conduct as defined by this subpart 3.1 and BPI Appendix 3-A.

(b) During the conduct of any BPA purchase (including financial assistance), no BPA employee who participates personally and substantially during the conduct of a BPA purchase shall knowingly:

(1) Solicit or accept, directly or indirectly, any promise of future employment or business opportunity from, or engage, directly or indirectly, in any discussion of future employment or business opportunity with a competing contractor, except as provided in BPI 3.1.4.

(2) Ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any compensation, gratuity, or other thing of value from any competing contractor for such purchase; or

(3) Disclose any contractor proposal information or source selection information regarding such purchase directly or indirectly to any person other than a person authorized by the CO to receive such information.

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(c) During the conduct of any BPA purchase (including financial assistance), any person other than those authorized by the CO to receive such information shall not, other than as provided by law, knowingly obtain contractor proposal information or source selection information before the award of a BPA contract to which the purchase information relates.

3.1.3 Annual Certification by BPA Employees.

POLICY:

(a) In coordination with BPA General Counsel, the HCA relies upon the annual certification by all BPA employees regarding ethical standards of conduct for employees of the Executive Branch (5 CFR Part 2635, as well as those specific to DOE included in 5 CFR Part 3301 and 10 CFR Part 1010 and 48 CFR Subpart 903.1, as supplemented by this subpart 3.1 and BPI Appendix 3-A) as the basis for BPA employee certification of standards of conduct for purchasing and financial assistance activities of BPA. Therefore, the HCA will no longer separately maintain annual certifications for standards of conduct regarding purchasing and assistance, relying instead upon the annual ethics briefing and certifications maintained by BPA General Counsel.

(b) The standards of conduct regarding purchasing and assistance specifically applies to the following BPA employees:

- (1) All GS-1101, 1102, 1105, and GS-1106 series employees;
- (2) All employees delegated Contracting Officer authority who are not included in category (1) above;
- (3) All COTRs and Field Inspectors; and
- (4) All employees who "participate personally and substantially in the conduct of a BPA purchase," as defined in BPI Appendix 3-A, Section 2.

3.1.4 Disqualification.

PROCEDURE:

(a) A BPA employee participating personally and substantially during the conduct of a BPA purchase (including financial assistance) who wishes to discuss future employment or business opportunities with a competing contractor during the conduct of a purchase shall submit to the HCA, prior to initiating or engaging in such discussions, a written proposal of disqualification from further participation in the purchase which relates to that competing contractor. The proposal shall:

- (1) Identify the purchase involved;
- (2) Describe the nature of the employee's participation in the purchase and specify the approximate dates or time period of participation; and
- (3) Identify the competing contractor and describe its interest in the purchase.

(b) If the HCA determines that the employee's further participation is not essential to the conduct of the purchase and that disqualification will not jeopardize the integrity of the purchasing process, the HCA may grant written approval of the disqualification proposal.

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3.1.5 Processing Violations or Possible Violations.

PROCEDURE:

(a) If the CO receives or obtains information of a violation of BPI 3.1, the CO shall determine whether the reported violation has any impact on the pending award or selection of the source.

(1) If the CO concludes that there is no impact on the purchase, the CO shall discuss that conclusion with the First Level performance manager. With the concurrence of that individual, the CO shall, without further approval, proceed with the purchase.

(2) If the First Level performance manager does not agree with that conclusion, he or she shall advise the CO to withhold award and shall promptly forward the information and documentation to the HCA.

(3) If the CO determines that the violation, or possible violation, impacts the purchase, the CO shall promptly forward the information to the HCA.

(b) The HCA receiving any information describing a violation of BPI 3.1 shall review all information available and take appropriate action. If the HCA determines that award is justified by urgent and compelling circumstances, or is otherwise in the interests of BPA, the contracting officer may be authorized to award the contract.

3.1.6 Questions Regarding Standards of Conduct.

PROCEDURE: Other than the HCA procedures in BPI subparts 3.1.4 and 3.1.5, should any BPA employee, in his or her judgement, be confronted with any situation where a violation of ethical standards of conduct and business practices is an issue, such person shall review the standards of conduct and seek the advice of the Agency Ethics Official, as necessary.

3.1.7 Clause Usage Prescriptions.

PROCEDURE: COs shall insert Clause 3-1, Purchasing Standards of Conduct, in all solicitations expected to exceed \$100,000, except commercial supplies, commercial services, and commercial construction.

3.2 STANDARDS OF CONDUCT REGARDING INDEPENDENT FUNCTIONING & TRANSMISSION INFORMATION.

3.2.1 Information.

(a) In 1997, BPA voluntarily committed to separate its Power Merchant Function from its Transmission Function, and to conduct its future operations consistent with the Federal Energy Regulatory Commission (FERC) Standards of Conduct (SOC), per 18 CFR Part 358. All BPA employees, contractors, consultants, and agents (collectively "Employee") shall comply with the BPA procedures implementing the SOC, originally filed with FERC January 3, 1997, and as may be further amended. Should any BPA Employee become aware of a violation of the SOC, the Employee is obligated to immediately notify the supervisor and the Chief Compliance Officer at SOC@BPA.gov.

(b) The SOC contain three basic principles:

(1) Independent Functioning. Requires BPA to operationally and physically separate its transmission function activities from its power merchant function activities so that no

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- transmission customer, including BPA's own Power Merchant Function organization, obtains preferential access to BPA's transmission system.
- (2) Nondiscriminatory Information Access. Requires all existing and potential BPA transmission customers, including BPA's own Power Merchant Function organization, have equal access to nonpublic transmission system information and customer information.
 - (3) Open Access Transmission Tariff (OATT) Implementation. Requires BPA to strictly enforce all OATT provisions and implement it in a nondiscriminatory manner.

(c) Purpose of the SOC: To assure fair competition in the open access transmission market through compliance with its basic principles. BPA's Power Merchant Function organization is a BPA transmission customer. Therefore, the SOC obligates BPA to ensure that its Power Merchant Function (1) cannot make transmission policies and decisions, (2) does not receive preferential access to transmission over BPA's other non-affiliated transmission customers by receiving transmission information prior to its competitors, and (3) is not treated in a manner that results in discriminatory treatment against other customers. In general, the information access regulations are a one-way prohibition against information disclosures of non-public information about the transmission system, transmission customers, and potential transmission customers. In the event that information is improperly disclosed, the Chief Compliance Officer must be immediately notified and a notice of the disclosure must be posted to BPA's OASIS within 24 hours.

(d) Definitions.

"Chief Compliance Officer" means BPA's designated Chief Compliance Officer who is authorized to direct a compliance program that implements BPA's compliance with the SOC.

"Employee" means any BPA employee, contractor, consultant or agent, unless otherwise indicated.

"Nonpublic" means not posted on BPA's OASIS or otherwise simultaneously available to all transmission customers.

"Open Access Same-time Information System (OASIS)" means a real-time information-sharing system that enables all buyers and sellers of electricity to access the transmission information for all other buyers and sellers. The purpose is to create a common communication platform to eliminate unfair advantages between utility transmission owners and their affiliates.

"Power Merchant Employee" or "Power Merchant function" means those BPA Employees that engage in marketing, sales or brokering of wholesale energy, including, but not limited to: making wholesale power merchant decisions and/or business rules; developing power merchant policy; and directing, organizing, or executing power merchant activities. BPA identifies the Power Merchant Employees on the SOC compliance website organizational charts.

"Shared Support Employees" or "Shared Employees" or "Shared Support Function" means those BPA Employees that are not specifically engaged in Transmission functions or Power Merchant Functions. BPA identifies its Shared Support Employees on its SOC compliance website organizational charts.

"Transmission Function Employee" or "Transmission Function" means those BPA Employees that conduct transmission system operations of reliability functions, including, but not limited to, those who are engaged in day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission related operations. BPA identifies such employees on its SOC compliance website organizational charts.

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"Transmission Provider" means the utility owning transmission. BPA is a transmission provider.

3.2.2 Policy.

It is BPA's policy that BPA Employees engaged in all phases of purchasing and contract administration activity, and all contractors performing work for BPA, shall comply with the SOC as described above.

3.2.3 Procedure.

Contracting Officers shall contact the BPA SOC Compliance Officer to address any concerns regarding this issue. Requisitioners, COTRs, and Field Inspectors shall contact both the CO and the Chief Compliance Officer to address and resolve SOC issues.

3.3 RESERVED.

3.4 ORGANIZATIONAL CONFLICTS OF INTEREST.

3.4.1 Policy.

(a) BPA will avoid situations which place an offeror in a position where the offeror's judgment may be biased. Such situations may occur due to any past, present, or currently planned interest, financial or otherwise, that the offeror may have which relates to the work to be performed under the proposed contract, or where the offeror's performance of such work may provide it with an unfair competitive advantage.

(b) Organizational conflicts of interest (OCIs) shall be identified, prior to solicitation if possible, and be adequately avoided or mitigated. No award shall be made until the potential OCIs have been evaluated by the CO.

(c) The award of a contract for the design of a particular project and the award of a contract for related, follow-on implementation work to the same individual, firm, parent firm, or its subsidiaries is prohibited, except with the approval of the HCA. There is no prohibition against including both engineering design and construction on a single project in a single contract.

3.4.2 Disclosure of OCI.

PROCEDURES:

(a) The offeror or contractor shall provide information which describes in a concise manner all relevant facts concerning any past, present or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed and bearing on whether the offeror or contractor has a possible organizational conflict of interest. The offeror or contractor may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization, and how that structure or system would avoid or mitigate such organizational conflicts.

(b) In the absence of any relevant interests referred to above, the offeror or contractor shall indicate to the CO that to its best knowledge and belief no such facts exist relevant to possible OCIs.

(c) BPA will consider the information obtained and may seek additional relevant information, if needed. All such information, and any other relevant information known to BPA, will be used to determine whether an award to the offeror may create an organizational conflict of interest. If

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such a conflict of interest is found to exist, BPA may (1) impose appropriate conditions which avoid such conflict, (2) disqualify the offeror, or (3) determine that it is otherwise in the best interest of BPA to contract with the offeror by including appropriate conditions mitigating such conflict in the contract awarded.

(d) COs shall obtain information relative to organizational conflicts of interest for the following types of contracts: (1) evaluation services or activities; (2) technical consulting and management support services and professional services; (3) research and development; or (4) other contractual situations where a contract may result in an unfair competitive advantage or potential biased analysis or recommendation. When an unsolicited proposal is accepted, the CO shall determine OCI before or during the negotiation process.

(e) COs shall attempt to determine whether such conflicts exist prior to the solicitation of offers. Whenever possible, such information should be verified during negotiation.

3.4.3 Remedies for Nondisclosure.

INFORMATION: The refusal to provide adequate information may result in disqualification for award. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for award. If such nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated for default. The contractor may also be disqualified from subsequent BPA contracts, and be subject to such other remedial action as may be permitted or provided by law or in the resulting contract.

3.4.4 Evaluation, Findings and Contract Award.

PROCEDURES:

(a) In all cases of potential organizational conflicts of interest, COs shall obtain approval prior to award of contracts. The First Level performance manager is the approving official if the OCI is mitigated; otherwise, the HCA must approve the award.

(b) The CO shall evaluate all relevant information pertaining to OCI for a specific contract. Upon a finding that a conflict exists, the CO may:

(1) Disqualify the offeror from award; or

(2) Avoid such conflicts by including conditions in the resulting contract; or

(3) Award the contract, but mitigate the conflict with an appropriate clause in the contract. This alternative may be used only after a written finding that the conflict cannot be avoided and that award of the contract to the offeror is in the best interests of BPA. Such a finding may be justified in situations such as where public emergency requires the award or where the work or services cannot otherwise be obtained.

(c) The CO shall document an OCI finding in the document of award decision. (See BPI Part 12.8.2)

3.4.5 Action In Lieu of Termination.

PROCEDURE: If, after award, a possible OCI is identified by the contractor but the CO determines that it would not be in the best interests of BPA to terminate the contract, the CO shall take every reasonable action to avoid or mitigate the effects of the conflict.

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3.4.6 Clause Usage Prescriptions.

PROCEDURE: Clause 3-2, Organizational Conflicts of Interest, shall be used in solicitations and contracts of the type listed in 3.4.2(d) exceeding \$100,000, including IGCs with other than Federal agencies.

3.5 LIMITATIONS ON PAYMENTS TO INFLUENCE TRANSACTIONS.

3.5.1 Prohibitions.

POLICY:

(a) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract from using appropriated funds to pay 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 in connection with the awarding of any Federal contract or the modification of any Federal contract.

(b) The Act also requires offerors to furnish a declaration consisting of both a certification and a disclosure. These requirements are contained in Clause 3-3, Certification, Disclosure and Limitation Regarding Payments to Influence Certain Federal Transactions.

(1) By signing its offer, an offeror certifies that no appropriated funds have been paid or will be paid in violation of the prohibitions in 31 U.S.C. 1352.

(2) The disclosure shall identify if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal action) 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 in connection with a Federal contract.

(c) The prohibitions of the Act do not apply under the following conditions;

(1) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in paragraph (a) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (c)(1)(A) of this section, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(i) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities;

(ii) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

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(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

- (i) Providing any information, not specifically requested, about a covered Federal action;
- (ii) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,
- (iii) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507, and other subsequent amendments.

(E) Only those activities expressly authorized by subparagraph (c)(1) of this section are permitted under this section.

(2) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in paragraph (a) of this section, does not apply in the case of --

- (i) payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any proposal or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action;
- (ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any proposal or application for that Federal action, or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons, other than officers or employees of a person requesting or receiving a covered Federal action, include consultants and trade associations.

(B) For purposes of subdivision (c)(2)(A) of this section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications, with the intent to influence, made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission, or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services, but not directly in the preparation, submission or negotiation of a covered Federal action.

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(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivision (c)(2)(A)(i) and (ii) of this section are permitted under this section.

(E) The reporting requirements of 3.5.2(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

3.5.2 Certifications and Disclosures.

PROCEDURE:

(a) By signing its offer, any contractor who requests or receives a Federal contract exceeding \$100,000 certifies that it shall submit with its offer the disclosures required by Clause 3-3, Certification, Disclosure and Limitation Regarding Payments to Influence Certain Federal Transactions. Disclosures under this section shall be submitted to the CO using OMB standard form LLL, Disclosure of Lobbying Activities.

(b) 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 (a) of this section. 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.

(c) The contractor shall require the certification, and if required, a disclosure form, by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(d) 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 CO 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.

(e) Certifications are not required for modifications, extensions, amendments, continuations, or renewals made to awards that were made prior to February 9, 1990.

3.5.3 Policy.

The CO shall obtain certifications and disclosures prior to the award or modification of any contract exceeding \$100,000.

3.5.4 Processing Suspected Violations.

PROCEDURE: Suspected violations of the requirements of the Act shall be referred to the HCA.

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3.5.5 BPA Procedures.

(a) Obtaining disclosures before award. COs shall obtain any disclosure form as required by clause 3-3, Certification, and Disclosure and Limitation Regarding Payments to Influence Certain Federal Transactions, from persons receiving contracts, and IGCs to other than Federal government agencies, which exceed \$100,000, unless the disclosure was obtained as a part of a solicitation process for the contract. This disclosure form should be obtained before award, but may be obtained after award if necessary.

(b) Obtaining disclosures upon completion of modifications. COs shall obtain any disclosure form, if required by clause 3-3, Certification, Disclosure and Limitations Regarding Payments to Influence Certain Federal Transactions, from persons receiving extensions, continuations, renewals, amendments, or modifications of any contract and IGCs to other than Federal government agencies which exceed \$100,000, or which causes the total award to exceed \$100,000. The exercise of a prepriced option is exempted from this requirement. This disclosure form should be obtained before the modification is signed by the CO.

(c) Disclosure forms. The required disclosure form is, Standard Form (SF) LLL, Disclosure of Lobbying Activities, Instructions for completion of SF-LLL, and SF-LLL-A, Continuation Sheet. COs shall provide copies of this exhibit to requesters when necessary. COs should order SF-LLL and SF-LLL-A through regular ordering procedures. Electronic copies of these forms are available on the GSA internet website.

(d) Disposition of disclosure forms. COs shall retain a copy of any disclosure forms received in the contract file, and will forward the originals to the HCA who will be responsible for forwarding the original forms to the Department for the semiannual compilation of data.

3.5.6 Clause Usage Prescriptions.

PROCEDURE: Clause 3-3, Certification, Disclosure and Limitation Regarding Payments to Influence Certain Federal Transactions, shall be included in solicitations and contracts, including IGCs, with other than Federal agencies, which are expected to exceed \$100,000.

3.6 DRUG-FREE WORKPLACE.

3.6.1 Policy.

(a) No individual shall be awarded a contract unless he/she agrees as a condition of the contract that he/she will maintain a drug-free workplace.

(b) No firm (any contractor other than an individual) shall be considered for a contract that equals or exceeds \$100,000 unless it agrees to maintain a drug-free workplace.

(c) The CO may rely on the name of the contractor and the CO's personal knowledge of the contractor to determine whether the organization is a firm or an individual.

3.6.2 Applicability.

INFORMATION: This subpart applies to all contracts and intergovernmental contracts, except --

(a) Transactions executed prior to March 18, 1989, including modifications, task orders or extensions to such transactions;

(b) Contracts valued below \$100,000; however, the requirements of this subpart shall apply to contracts of any value if the contract is awarded to an individual;

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(c) Contracts or those parts of contracts that are to be performed outside of the United States, its territories, and its possessions.

(d) Intergovernmental contracts with Federal agencies or Tribes.

3.6.3 Penalties.

PROCEDURE:

(a) After determining in writing that adequate evidence to suspect any of the causes at paragraph (c) of this section exist, the CO may suspend contract payments. The matter will then be referred to the HCA for review.

(b) After determining in writing that any of the causes at paragraph (c) of this section exists, and review by the HCA, the CO may terminate the contract for default.

(c) The specific causes for suspension of contract payments, termination of a contract for default, or suspension and debarment are--

(1) The offeror has failed to comply with the requirements of clause 3-6, Drug-Free Workplace; or

(2) That such a number of contractor employees have been convicted of violations of criminal drug statutes occurring in the workplace to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace.

(d) A determination under this subpart to suspend contract payments, terminate a contract for default, or debar or suspend a contractor may be waived by the HCA for a particular contract, only if such waiver is necessary to prevent a severe disruption of BPA's operations to the detriment of the Federal Government or the general public.

3.6.4 Clause Usage Prescriptions.

PROCEDURE: COs shall insert clause 3-6, Drug-Free Workplace, in solicitations and contracts of any dollar value if the contract is expected to be awarded to an individual and in other solicitations and contracts expected to equal or exceed \$100,000, except contracts for commercial supplies, commercial services, commercial construction, and IGCs with other Federal agencies or Tribes and contracts performed outside the United States, its territories, and its possessions.

3.7 CONTRACTOR COMPLIANCE WITH BPA POLICIES.

(a) ***POLICY:*** BPA policies addressing personal behaviors apply to all BPA employees and to BPA contractors working or visiting on site. COs are responsible for assuring that BPA contractors are informed of these policies and that contractor managers are required to enforce these policies during all work performed at BPA.

(b) ***INFORMATION:*** The BPA work environment includes areas in and around BPA buildings, facilities, fitness centers, vehicles, food service areas and break locations, and any other areas or conveyances where BPA employees work or where work-related activities occur, including official travel.

(c) ***PROCEDURE:*** Contractor personnel should be given copies and directed to provide, to employees and subcontractors, published information regarding BPA's policies and available resources for dealing with behavior issues in the workplace. The CO may take remedial action to

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enforce these policies. If the inappropriate conduct does not cease, the CO may suspend the contract or terminate it for default.

3.7.1 Clause Usage Prescriptions.

PROCEDURE: COs shall include clause 3-8, Contractor Compliance with BPA Policies, in solicitations and contracts requiring the contractor to perform work on BPA premises.

3.8 RESTRICTION ON COMMERCIAL ADVERTISING

POLICY: It is BPA's policy to restrict contractors from referring to BPA contracts in commercial advertising in a manner that states or implies that BPA approves or endorses the product or service, or considers it superior to other products or services. The intent of this policy is to prevent the appearance of BPA preference toward any product or service.

3.8.1 Clause Usage Prescriptions.

PROCEDURE: COs shall include clause 3-9, Restriction on Commercial Advertising, in all solicitations and contracts for information technology hardware, software or services, or where a non-disclosure agreement has been included (see BPI 11.4.3), or when the requisitioning office deems necessary to protect BPA's interests.

3.50 TEXT OF CLAUSES.

The following clauses are referenced in BPI Part 3:

- 3-1 Purchasing Standards of Conduct
- 3-2 Organizational Conflicts of Interest
- 3-3 Certification, Disclosure and Limitation Regarding Payments to Influence Certain Federal Transactions.
- 3-4 Reserved.
- 3-5 Reserved
- 3-6 Drug-Free Workplace
- 3-7 Reserved
- 3-8 Contractor Compliance with BPA Policies
- 3-9 Restriction on Commercial Advertising

Clause 3-1 PURCHASING STANDARDS OF CONDUCT (Sep 98)(BPI 3.1.7)

(a) No person, other than as provided by law or authorized by the CO, shall knowingly obtain contractor proposal information or source selection information before award of a BPA purchase to which the information relates.

(b) "Competing contractor," as used in this clause, means any entity that is, or is likely to become, a competitor for or a recipient of a contract or subcontract under a BPA purchase, and includes any other person acting on behalf of such an entity.

(c) During the conduct of any BPA purchase of property or services, no competing contractor or any officer, employee, representative, agent, or consultant of any competing contractor shall knowingly:

- (1) Make, directly or indirectly, any offer or promise of future employment or business opportunity to any BPA employee participating personally and substantially during the conduct of a BPA purchase, except as provided in BPI 3.1.4;

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(2) Offer, give, or promise to offer or give, directly or indirectly any money, gratuity, or other thing of value to any BPA employee participating personally and substantially during the conduct of a BPA purchase; or

(3) Solicit or obtain, directly or indirectly, from any BPA officer or employee, prior to the award of a contract any contractor proposal information or source selection information regarding such purchase.

(End of clause)

Clause 3-2 ORGANIZATIONAL CONFLICTS OF INTEREST (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.

(End of clause)

Clause 3-3 CERTIFICATION, DISCLOSURE, AND LIMITATION REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS. (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

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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

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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.

(End of clause)

Clause 3-4 RESERVED

Clause 3-5 RESERVED

Clause 3-6 DRUG-FREE WORKPLACE (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.

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"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.

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(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.

(End of clause)

Clause 3-7 RESERVED

Clause 3-8 CONTRACTOR COMPLIANCE WITH BPA POLICIES (Sep 09)(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 1086);
- (4) Safety and health clauses in this contract;
- (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);
- (7) Dissemination of Critical Program Information (BPA Security Standards Manual, Chapter 300-2); and
- (8) Identity verification and background screening for all contractors, and pre-approval for non-US Citizen access to BPA facilities, as prescribed by the BPA Security office procedures.

(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.

(End of clause)

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

The Contractor agrees that without the Bonneville Power Administration's (BPA) prior written consent, the Contractor shall not use the names, visual representations, service marks and/or trademarks of the BPA or any of its affiliated entities, or reveal the terms and conditions, specifications, or statement of work, in any manner, including, but not limited to, in any

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advertising, publicity release or sales presentation. The Contractor will not state or imply that the BPA endorses a product, project or commercial line of endeavor.

(End of clause)