Department of Energy

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

PUBLIC AFFAIRS

January 27, 2012

In reply refer to: DK-7

A Professional Law Corporation
Attn: Daniel Minutillo
841 Blossom Hill Road, Suite 206
P.O. Box 20698
San Jose, CA 95160-20698

FOIA #BPA-2012-00330-F

Dear Mr. Minutillo:

This is a partial response to your request for information that you made to the Bonneville Power Administration (BPA) under the Freedom of Information Act (FOIA), 5 USC § 552.

You requested the following:

- Biomark's offer submitted to BPA in response to the PIT Tags solicitation which is the subject of the protest as attached, including, but not limited to business proposal/ specifications, representations and certifications, signed offer and award form and related documents, and any other document included in Biomark's offer.

Response:
Exemption 3 of FOIA requires the withholding of information that is prohibited from disclosure by another federal statute. 5 USC 552(b)(3). 41 USC 253b(m) prohibits an agency from disclosing under FOIA a proposal that is in the possession or control of the agency, unless that proposal is set forth or incorporated by reference in a contract between the agency and the contractor. The losing proposals cannot be released, and since the winning proposal was not set forth or incorporated by reference into the contract, it cannot be disclosed either. Therefore, BPA cannot release any of the proposals, or any correspondence that discuss or clarify those proposals.

Also, further Exemption 4 review is ongoing for documents found associated with the awarded contract.

- Any document(s) containing the technical specifications of the Biomark PIT Tags provided to BPA regarding the awarded contract.

Response:
Further Exemption 4 review is ongoing for documents found associated with the awarded contract.

- The contract for PIT Tags between Biomark and BPA which is the subject of the protest as attached, and any addendum or attachment thereto.

Response:
Further Exemption 4 review is ongoing for documents found associated with the awarded contract.

- Any document containing any pricing information for the Biomark PIT Tags provided to BPA from Biomark regarding the awarded contract.

Response:
Further Exemption 4 review is ongoing for documents found associated with the awarded contract.

- Any document which waves any ISO requirement mentioned in the above mentioned solicitation.

Response:
No responsive documents.

- Any document regarding the subject procurement which mentions ISO requirements.

Response:
Supplied in initial RFP. No responsive documents.

- Any and all document(s) containing technical specifications of the reader system used in the actual operation of the dam and in the testing protocol for sample transponders provided to BPA by offerors regarding the above mentioned solicitation, including, but not limited to, design documents, blueprints, parts lists, software specifications, and white papers.

Response:
Further Exemption 4 review is ongoing for documents found associated with the awarded contract.

- Any and all documentation or materials submitted by Biomark or other vendors referring to the glass encapsulation of PIT Tags and/or bio-compatibility thereof.

Response:
Documents submitted in the proposals - Exemption 3 of FOIA applies - see above Exemption 3 description. Also, further Exemption 4 review ongoing for documents found associated with the awarded contract.

Pursuant to 10 CFR 1004.8, if you are dissatisfied with this determination, or the adequacy of the search, you may appeal in writing within 30 calendar days of receipt of a final response letter. The appeal should be made to the Director, Office of Hearings and Appeals, HG-1, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA Appeal is being made.

Due to the extensive processing time of this request there are no applicable fees. A further response will be provided upon completion of the Exemption 4 review.

I appreciate the opportunity to assist you. Please contact Kim Winn, Communications Specialist at 503-230-7305 with any questions about this letter.

Sincerely,

/s/Christina J. Munro
Christina J. Munro
Freedom of Information Act/Privacy Act Officer

Department of Energy

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

PUBLIC AFFAIRS

May 16, 2012

In reply refer to: DK-7

A Professional Law Corporation
Attn: Daniel Minutillo
841 Blossom Hill Road, Suite 206
P.O. Box 20698
San Jose, CA 95160-20698

FOIA #BPA-2012-00330-F

Dear Mr. Minutillo:

This is the final response to your request for information that you made to the Bonneville Power Administration (BPA) under the Freedom of Information Act (FOIA), 5 USC § 552.

In the partial release dated January 27, 2012 (enclosed), BPA informed you that further Exemption 4 review was required on five of the eight items you had requested. This review was completed on May 11, 2012. The individual responses are below.

You requested:

- Any document(s) containing the technical specifications of the Biomark PIT Tags provided to BPA regarding the awarded contract.

Response:
BPA is releasing the specifications in the contract with Biomark. Those standards were provided to BPA by the co-agency on the project, the National Oceanic and Atmospheric Administration, and are therefore not protected under Exemption 4. See "Part B – Technical" of the enclosed contract (pages 27, 28, 30 and 31).

- Any document containing any pricing information for the Biomark PIT Tags provided to BPA from Biomark regarding the awarded contract.

Response:
BPA is withholding the unit pricing information in the contract under Exemption 4.

Under Exemption 4, information may be exempt from disclosure if it is "commercial" in nature, is "obtained [by BPA] from a person (Biomark)," and is "privileged or confidential." Here, there is no question that the unit pricing information in the contract is commercial in nature, and that

BPA obtained it from Biomark. In addition, the unit prices consist of commercial information submitted involuntarily to BPA.

BPA has determined that Biomark's requested redactions are warranted. The Contracting Officer (CO) for the BPA-Biomark contract confirmed that Biomark operates in a competitive market. BPA has also concluded that Biomark has met its burden to show a likelihood of substantial competitive harm if these prices were to be released.

- Any and all document(s) containing technical specifications of the reader system used in the actual operation of the dam and in the testing protocol for sample transponders provided to BPA by offerors regarding the above mentioned solicitation, including, but not limited to, design documents, blueprints, parts lists, software specifications, and white papers.

Response:
What information BPA has in regard to the reader system is reflected in the contract and released in its entirety.

- Any and all documentation or materials submitted by Biomark or other vendors referring to the glass encapsulation of PIT Tags and/or bio-compatibility thereof.

Response:
What information BPA has in regard to the glass encapsulation of PIT Tags and/or bio-compatibility that is in the contract and released in its entirety. See "Part A – General" of the enclosed contract (pages 26). The other documentation in regard to the glass encapsulation of PIT Tags and/or bio-compatibility was in the Biomark bid and is withheld under Exemption 3 as explained in the partial release dated January 27, 2012.

Pursuant to 10 CFR 1004.8, if you are dissatisfied with this determination, or the adequacy of the search, you may appeal in writing within 30 calendar days of receipt of a final response letter. The appeal should be made to the Director, Office of Hearings and Appeals, HG-1, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA Appeal is being made.

Due to the extensive processing time of this request there are no applicable fees.

I appreciate the opportunity to assist you. Please contact Kim Winn, Communications Specialist, at 503-230-7305 with any questions.

Sincerely,

/s/Christina J. Munro
Christina J. Munro
Freedom of Information Act/Privacy Act Officer

Enclosed: CD with responsive documents.

UNITED STATES GOVERNMENT

PURCHASE ORDER

Bonneville Power Administration

Mail Invoice To:
fwinvoices@bpa.gov
F & W Invoices - KEWB-4
P. O. Box 3621
Portland OR 97208-3621

Purchase Order : **00054893**
Revision :
Release : **00000**
Printed : **10/13/11**
Page : **1**

Contractor:
BIOMARK INC
703 S AMERICAN BLVD
SUITE 150
BOISE ID 83702

Attn: Dean Park

****** BLANKET ORDER TEMPLATE ******

Please Direct Inquiries to:

KRISTI J. VAN LEUVEN
Title: CONTRACT SPECIALIST
Phone: 503-230-3605
Fax : 503-230-4508

SHIPMENT & INVOICE MUST BE MARKED WITH BPA PO # TO BE ACCEPTED. NOTIFY CONTACT ABOVE WITH UPDATED SHIPPING SCHEDULES

Payment Terms % **Days Net** 30 **Days** **ERS:** N **Tax Exempt: 93-0334712**

Blanket Purchase Order Effective From 10/01/11 **through** 09/30/14
Max Value: $10,000,000.00 **Min Rel Value:** **Max Qty:**

Freight Term
FOB DEST, PREPAID, CHARGED

Final Destination

Line	*Qty*	*UP*	*Item Description*	*Unit Price*	*Extended Price*
0001		EA	**Catalog ID:** 0001006963 0	Ex 4	

TAG, PASSIVE INTEGRATED, RADIO FREQUENCY IDENTIFICATION, 12.48MM.

Line	*Qty*	*UP*	*Item Description*	*Unit Price*	*Extended Price*
0002		EA	**Catalog ID:** 0001013597 0	Ex 4	

TAG, PASSIVE INTEGRATED, RADIO FREQUENCY IDENTIFICATION, 23MM, HIGH PERFORMANCE PIT TAG.
Mfr/Vendor: BIOMARK INC
Model : BIO23.B.01
Part :

UNITED STATES GOVERNMENT	PURCHASE ORDER	Bonneville Power Administration

Mail Invoice To:
fwinvoices@bpa.gov
F & W Invoices - KEWB-4
P. O. Box 3621
Portland OR 97208-3621

Purchase Order	:	**00054893**
Revision	:	
Release	:	**00000**
Printed	:	**10/13/11**
Page	:	**2**

Purchase Order Total Amount

TOTAL THIS PO:

BPA Contracting Officer	Vendor Signature (If Req'd)
Jose I. Moyer	Dean Park, President
Date Signed 10/19/2011	Date Signed 10/17/11

* * * **End of Purchase Order** * * *

Passive Integrated Transponder (PIT) Tags
Master Contract 54893

BPA TECHNICAL POINT OF CONTACT (COTR): SHARON GRANT (503) 230-5215
BPA CONTRACTING OFFICER REPRESENTATIVE: KRISTI VAN LEUVEN (503) 230-3605

This contract includes the following documents:

1. Face page and page 2 with Signature
2. This page 3 and page 4
3. Terms and Conditions
4. Specification
5. Quality Assurance

Purchase of tags under this contract shall be made in accordance with the terms and conditions and through the issuance of Releases for purchase. The delivery date and location will be indicated on the Release.

The BPA COTR is authorized to perform the following:

- Inspect and review work performed;
- Inspect or witness test presentations or other activities;
- Interpret Technical Specifications;
- Approve submitted deliverables/reports (including property inventory reports);
- Approve invoices;
- Reject nonconforming services, materials, or equipment; and
- Maintain a file of all Contractor property acquisition and disposition documents.

The COTR is not authorized to perform the following:

- Contract Modifications that change the contract price, technical requirements or time for performance;
- Suspension or termination of the Contractor's right to proceed, either for default or for convenience of BPA;
- Final decisions on any matters subject to appeal, as provided in a disputes clause

Please mail invoices with contract # to:

Bonneville Power Administration
Attn: **Fish & Wildlife Invoices / KEWB-4**
PO Box 3621
Portland, OR 97208-3621
fwinvoices@bpa.gov

We now have a central mailbox to use for invoices. It is located at fwinvoices@bpa.gov. All invoices should be submitted in PDF format. Please put the following information in

the email subject line: entity/contract number/invoice performance period/invoice #invoice amt. when mailing future invoices. A separate email is required for each invoice.

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UNIT 1 — SCHEDULE

CONTRACT TYPE (7-1)
(SEP 98)(BPI 7.10)

This is a master contract with firm fixed price releases to be issued as indicated iin Clause 7-5.

INDEFINITE-QUANTITY CONTRACT: ORDERING (7-5)
(SEP 02)(BPI 7.2.5.1.1)

(a) This is an indefinite-quantity contract. The Contractor shall furnish to BPA, when and if ordered, the supplies or services specified in the Schedule of Items. The quantities of supplies and services specified in the Schedule of Items are estimates only and are not purchased by this contract. Delivery or performance shall be at locations designated in orders.

(b) Only orders placed by individuals, or by BPA offices, that are specifically designated in writing by the Contracting Officer, are valid orders. If mailed, a delivery order is considered "issued" when BPA deposits the order in the mail. 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.”

(c) Except for any limitations on quantities shown below, there is no limit on the number of orders that may be issued.

(1) Minimum, Individual Order: $1,000

(2) Maximum, Individual Order: $3,500,000

(d) All orders are subject to the Terms and Conditions of this contract. In the event of conflict between an order and this contract, the contract shall control.

PERFORMANCE PERIOD (7-7)
(SEP 98)(BPI 7.2.7.1)

This is a three year contract. The period of performance may be extended for an additional 3 years if agreed by both parties. A revised Schedule of Prices for the additional period will be negotiated.

SCHEDULE OF PRICES (22-51)
(MAY 08)

The contractor shall provide the following in accordance with the attached Specification/Statement of Work, the attached Terms and Conditions and the Quality Assurance information. Note: Items 3 and 4 are provided to BPA with a minimum purchase of 1million of the 12mm tags. Items 3 and 4 will be provided at no cost during the 3 year period of performance.

Item No.	Description	Quantity	Unit	Unit Price
1	12 mm Tag SST1	TBD	Each	Ex 4
2	23 mm Tag	TBD	Each	Ex 4
3.	20/20 Readers (Model DF202 FS1001 Replacement)	40 max	Each	Ex 4
4.	Professional Service Hours	Up to 300 annually	Each	Ex 4

Minimun and Maximimum order quantites are provide in Section B.1 of the Specifications below.

UNIT 2 — CONTRACT CLAUSES

PAYMENT AND TAXES

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

(a) Payment Method. Payments under this contract, including invoice and contract financing payments, will be made by electronic funds transfer (EFT). Contractors are required to provide its taxpayer identification number (TIN) and other necessary banking information as per paragraph (c) of this clause to receive EFT payment.

(b) Contractor EFT arrangement with a financial institution or authorized payment agent. The Contractor shall designate to BPA, as per paragraph (c) of this clause, and maintain at its own expense, a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under all BPA contracts, unless the BPA Vendor File Maintenance Team is notified of a change as per paragraph (d) of this clause. An initial designation should be submitted after award, but no later than three weeks before an invoice or contract financing request is submitted for payment.

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

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

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

(d) Change in EFT information. In the event that EFT information changes or the Contractor elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the Contractor shall be responsible for providing the changed information to the BPA Vendor File Maintenance Team office. The Vendor Maintenance Team must be notified 30 days prior to the date such change is to become effective.

(e) Suspension of Payment. BPA is not required to make any payment under this contract until receipt of the correct EFT payment information from the Contractor.

(f) EFT and prompt payment. BPA shall pay no penalty on delay of payment resulting from defective EFT information. BPA will notify the Contractor within 7 days of its receipt of EFT information which it determines to be defective.

(g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the Assignment of Claims clause of this contract, the assignee shall provide the assignee's EFT information required by paragraph (c) of this clause.

PAYMENT (22-12)
(AUG 11)(BPI 22.2.5)

(a) Payment Due Date. Payment (including partial payments or progress payments, if authorized, shall be due not later than thirty (30) calendar days after the later of the date on which BPA actually receives a proper invoice in the designated billing office or the date when the items delivered or completed services are accepted by BPA. According to the Prompt Payment Act, a proper invoice to a Federal Agency is to include

bank account information requisite to enable Electronic Funds Transfer (EFT) as method of payment. For purposes of payment only, items will be deemed accepted not later than seven (7) calendar days after proper delivery. If delivered items or completed services are found defective, the provisions of this paragraph will be reapplied upon receipt of a corrected item or service.

(b) Billing Instructions.

(1) Invoices must include the contractor's name and address, invoice date, contract number, task order number (if applicable), contract line item number, description of products delivered or work performed, price and quantity of item(s) actually delivered or rendered (amounts billed for work performed under a task order must be separately identified by task order number), and the name and address of the person to whom payment will be made, and name (where practicable), title, phone number, mailing address of person to be notified in event of a defective invoice and bank account information required to enable Electronic Funds Transfer (EFT) as method of payment (Invoices will not require banking information if the contractor has that information on file at BPA). Failure to submit a proper invoice may result in a delay in payment including a rejection of invoice pending receipt of a properly amended invoice.

(2) Contractors may bill monthly, or at more frequent intervals as may be agreed to by the CO. The contractor may submit invoices electronically (e-mail, fax, etc.).

(c) Payment Method. Payments under this contract will be made by electronic funds transfer whenever possible, or by check in very limited circumstances, at the option of BPA.

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

(e) Interest Penalty Payments. If interest penalty payments are determined due under the provisions of the Prompt Payment Act, payment shall be made at the rates determined by the U.S. Treasury Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611).

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

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

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

(a) The contract price shall include all applicable Federal, State, and local taxes and duties.

(b) The contract price shall be increased by the amount of any after-imposed Federal excise tax or duty, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price.

(c) The contract price shall be decreased by the amount of any after-relieved Federal excise tax or duty.

(d) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the CO.

(e) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $250.

(f) Notwithstanding any of the above provisions for adjustment of the contract price in the event of a change in a Federal excise tax or duty after the contract date, no increase in the contract price shall be made for any duty

imposed under the Tariff Act of 1930, as amended, (19 U.S.C. 1303) or the Anti-dumping Act of 1921, as amended (19 U.S.C. 160-171).

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

(a) Notwithstanding any other clause of this contract, all amounts that become payable by the Contractor to BPA under this contract (net of any applicable tax credit under the Internal Revenue Code (26˚U.S.C.˚1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract;

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination;

(3) The date BPA transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt; and

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification;

(c) Payment will be due within 30 days of the date of the invoice. The collection actions available under the Debt Collection Act of 1982 (Public Law 97-365), as amended, and the revised Federal Claims Collections Standards (4 CFR 102), will be utilized. Administrative charges and penalties will be charged in accordance with 31 USC 3717, except where prohibited or explicitly provided for by statute or regulation required by statute.

GENERAL CONTRACT ADMINISTRATION

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

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

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

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

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

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

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.

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.

EXAMINATION OF RECORDS (12-3)
(SEP 98)(BPI 12.8.8.1)

(a) The contractor shall keep accurate and complete accounting records in support of all cost-based billings to BPA in accordance with generally accepted accounting principles and practices. The Comptroller General of the United States, the Contracting Officer, or their representatives, shall have the right to examine, audit, and reproduce any of the Contractor's pertinent records involving transactions related to this contract or any subcontract hereunder. Records includes, but is not limited to, books, documents, and other information regardless of form (e.g., machine readable data) or type (e.g. data bases, applications software, data base management software, utilities, etc.) including computations and projections related to proposing, negotiating, pricing, subcontracting, modifying or performing the contract. The purpose of such examination shall be to determine the accuracy, completeness, and currency of costs charged under the contract and/or to verify cost or pricing information submitted to BPA.

(b) Such documents shall be available for three (3) years after final payment or, in the case of termination, three (3) years from the date of any final termination settlement. Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims have been disposed of.

(c) The contractor shall insert a clause containing all the terms of this clause, including this paragraph (c), in other than fixed price subcontracts over $100,000, altering the clause as necessary to identify the contracting parties and the Contracting Officer under the prime contract.

ORDER OF PRECEDENCE (14-3)
(SEP 98)(BPI 14.4.1.1)

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

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

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

STANDARDS OF CONDUCT AND BUSINESS PRACTICES

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:

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

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, Standard Form-LLL, Disclosure of Lobbying Activities, to the Contracting Officer.

(3) He or she will include the language of this certification in all subcontract awards at any tier and that all sub-recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, U.S. Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10, 000 and not more than $100,000 for each such failure.

(d) A contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under this clause if paid for with appropriated funds.

(e) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (b) of this clause. An event that materially affects the accuracy of the information reported includes--

(1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

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

(g) All subcontractor disclosure forms (but not certifications), shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosure forms to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.

(h) Any person who makes an expenditure prohibited under this clause or who fails to file or amend the disclosure form to be filed or amended by this clause shall be subject to a civil penalty as provided by 31 U. S. Code 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

CONTRACTOR POLICY TO BAN TEXT MESSAGING WHILE DRIVING (3-4)
(MAY 11) (BPI 3.7.1)

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

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

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

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

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

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

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

(a) The contractor agrees that with respect to all employees to be employed under this contract it will provide a drug-free workplace as described in this clause.

(b) Definitions. As used in this clause "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), as from time to time amended, and as further defined in regulation at 21 CFR 1308.11-1308.15, as amended.

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

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

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

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

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

(c) The Contractor, if other than an individual, shall -- within 30 calendar days after award (unless a longer period is agreed to in writing for contracts of 30 calendar days or more performance duration); or as soon as possible for contracts of less than 30 calendar days performance duration--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an on-going drug-free awareness program to inform such employees about--

(A) The dangers of drug abuse in the workplace;

(B) The contractor's policy of maintaining a drug-free workplace;

(C) Any available drug counseling, rehabilitation, and employee assistance programs; and

(D) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (c)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (c)(1) of this clause that, as a condition of continued employment on this contract, the employee will--

(A) Abide by the terms of the statement; and

(B) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction.

(5) Notify the Contracting Officer in writing within ten (10) days after receiving notice under subdivision (c)(4)(B) of this clause, from an employee, or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subparagraph (c)(4)(B) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(A) Taking appropriate personnel action against such employee, up to and including termination; and/or

(B) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (c)(1) through (c)(6) of this clause.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (c) of this clause may, pursuant to BPI 3.6.3 render the contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

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

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

SOCIO-ECONOMIC ISSUES

BUY AMERICAN ACT - SUPPLIES (9-3)
(SEP 98)(BPI 9.1.6)

(a) The Buy American Act (41 U.S. Code 10a-d) provides that the Government give preference to domestic source end products.

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

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

"Domestic end product" means (1) an unmanufactured end product mined or produced in the United States or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in (b) (2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

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

(1) That BPA determines are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(2) For which BPA determines that domestic preference would be inconsistent with the public interest; or

(3) For which BPA determines the cost to be unreasonable.

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

RESTRICTION ON CERTAIN FOREIGN PURCHASES (9-8)
(MAY 11) (BPI 9.3.2)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at *http://www.treas.gov/offices/enforcement/ofac/sdn*. More information about these

restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at http://www.treas.gov/offices/enforcement/ofac.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

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

(a) The Contractor shall not discriminate against its employees or applicants because of their race, color, religion, sex, national origin, age, status as Disabled or Vietnam Veterans, or physical or mental handicaps. The Contractor certifies that it does not, and will not, maintain segregated facilities or accommodations on the basis of race, color, religion or national origin. Regarding any position for which an employee or an applicant is qualified, the Contractor agrees to take affirmative action to employ, train, advance in employment and retain individuals in accordance with applicable laws and regulations including:.

(1) For nondiscrimination based on race , color, religion, sex or national origin this includes, but is not limited to, the U. S. Constitution, and Parts II and IV of Executive Order 11246, September 24, 1965 (30 Fed. Reg. 12319). Contractor disputes related to compliance with its obligations shall be handled according to the rules, regulations and relevant orders of the Secretary of Labor (See 41 CFR 60).

(2) For nondiscrimination based on Disabled or Vietnam Veterans this includes, but is not limited to, the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4012); Executive Order 11701, January 24, 1973 (38 CFR 2675); and the regulations of the Secretary of Labor (41 CFR Part 60-250).

(3) For nondiscrimination based on the Handicapped this includes, but is not limited to, Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793); Executive Order 11758, January 15, 1974; and the regulations of the Secretary of Labor (41 CFR Part 60-741).

(4) For nondiscrimination based on Age this includes, but is not limited to, Executive Order 11141, February 12, 1964 (29 CFR 2477).

(b) The Contractor shall include the terms of this clause in every subcontract or purchase order exceeding $50,000 and shall act as specified by the Department of Labor to enforce the terms and implement remedies.

NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE NATIONAL LABOR RELATIONS ACT (10-6)
(DEC 10) (BPI 10.3.1)

(a) During the term of this contract, the Contractor shall post a notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places, in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2 (d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous' places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any website that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of labor's website that contains the full text of the poster. The link to the Department's website, as referenced 'in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required notice, printed by the Department of Labor, can be:

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office or the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs; or

(2) Provided by the Federal contracting agency, if requested; or

(3) Downloaded from the Office of Labor-Management Standards web site at:

www.dol.gov/olms/regs/compliance/EO13496.htm; or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the Employee Notification referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the Employee Notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a)-(d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14. Such other sanctions or remedies may be imposed as are provided by 29 CFR Part 471, which implements E.O. 13496 or as otherwise provided by law.

(f) Subcontracts

(1) The Contractor shall include the substance of the provisions of paragraphs (a)-(f) of this clause in every subcontract that exceeds $10,000 unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor and subcontractor are not permitted to procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this subpart.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for non compliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

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

(a) E-Verify enrollment and verification requirements.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at the time of the contract award, the Contractor shall:

(A) *Enroll*. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(B) *Verify all new employees*. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (a) (3) of this section); and

(C) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (a)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(A) All new employees.

(i) *Enrolled 90 calendar days or more*. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract within 3 business days after the date of hire (but see paragraph (a)(3) of this section); or

(ii) *Enrolled less than 90 calendar days*. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph)(3) of this section); or

(B) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (4) of this section).

(3) If the Contractor is an institution of higher education; a state or local government, or the government of a federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract. The Contractor shall follow the applicable verification requirements at (a)(1) or (a)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—

(A) Enrollment in the E-Verify program; or

(B) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

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

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

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

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

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

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

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

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

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

(1) Is for:

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

(B) Construction.

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

(3) Includes work performed in the United States.

INSPECTION AND WARRANTY

INSPECTION - SUPPLIES (18-2)
(SEP 98)(BPI 18.3.1)

(a) The Contractor shall provide and maintain a quality system covering supplies ("supplies" includes equipment, fabrication processes, raw materials, and intermediate assemblies) in accordance with Unit 3 and 4 of this contract.

(b) BPA may inspect and test all supplies called for by the contract at any place and time. If inspection and tests are performed on the Contractors' site, the Contractor shall provide BPA reasonable facilities and assistance. Except as otherwise provided in the contract, BPA shall bear the expense of BPA inspections or tests made at other than the Contractor's or subcontractor's premises; provided that, in case of rejection, BPA shall not be liable for any reduction in the value of inspection or test samples. BPA is not obligated to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract. BPA will perform inspections and tests in a manner that will not unduly delay the work.

(c) The Contractor may be charged for BPA's costs of inspection if supplies are not ready at the time specified by the contract for inspection and tests or where prior rejection makes reinspection and retesting necessary. If the Contractor fails to perform tests required by the contract, BPA may perform the tests and charge the Contractor for the costs of such.

(d) BPA may either reject or require correction of nonconforming supplies.

(e) If this contract provides for inspection at the factory (see Unit 3 and 4), supplies shall not be shipped until all factory tests and inspections have been made and the supplies released by BPA's Contracting Officer's Technical Representative (COTR), unless waived in writing by the Contracting Officer or an authorized representative.

(1) If the BPA COTR exercises BPA's right of inspection at the factory, then the materials and equipment will not be reinspected at destination other than for shipping damage and shortages; however, this will apply only to (i) those items specifically inspected at the factory, and (ii) those characteristics and attributes which are verified during factory inspection.

(2) Factory inspection and release for shipment shall not constitute acceptance of the contract items by BPA.

(f) Inspections and tests by BPA do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Lack of inspection by BPA shall not relieve the Contractor of any obligations under this contract.

ACCEPTANCE - SUPPLIES (18-67)
(JUL 09)

(a) Contractor maintains full ownership of equipment until BPA has determined that the equipment meets or exceeds all specifications and requirements within the contract and all deliverables have been delivered, received, and accepted.

(b) Unless explicitly accepted or rejected earlier, acceptance shall occur 60 days after date of delivery. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in this contract.

WARRANTY - SUPPLIES (18-8)
(SEP 98)(BPI 18.5.1)

(a) The Contractor warrants that the supplies ("supplies" includes equipment, fabrication processes, raw or finished materials, and intermediate assemblies) conform to contract requirements. The Contractor also warrants that supplies are free of design defects (except defects in BPA-provided final designs) and defects in materials or workmanship.

(b) The Contractor shall replace or repair any supplies which fail in operation within 12 months from the date of receipt. The Contracting Officer will give written notice of any defect or nonconformance to the Contractor within a reasonable period of time after discovery. Replacements of contract items shall be made promptly and on an FOB destination basis. BPA will install replacements at no expense to the Contractor.

(c) Supplies replaced under the provisions of this warranty shall remain the property of BPA unless the Contractor wishes to obtain ownership. In this case, the Contractor shall notify BPA of such in writing not later than the date of receipt by BPA of the replacement supplies. The Contractor is responsible for packaging and shipping costs.

(d) The rights and remedies of BPA provided in this clause are in addition to and do not limit any rights afforded to BPA by any other clause of this contract or under applicable Federal or State law, including the Uniform Commercial Code.

TERMINATION

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

(a) BPA may terminate all or any part of this contract, at any time, upon written notice to the contractor. Upon receipt of the termination notice, the contractor shall stop work on the terminated portion of the contract.

(b) The contract amount shall be revised as a result of termination under this clause. On fixed-price contracts the revised amount shall not exceed the pre-termination contract price, excluding payments already received, plus reasonable termination expenses. On cost-reimbursement contracts it will not exceed the total of allowable and allocable costs of performance prior to termination, excluding payments already received, plus reasonable termination expenses, plus an adjustment of the fee on the terminated portion of the contract. No payment will be made for anticipated profits on the terminated portion, or consequential damages, of the contract. The contractor shall submit a settlement proposal within 30 days of the notice of termination.

(c) The Contracting Officer may direct the disposition of material produced or acquired for the work terminated, or any completed or partially completed items.

TERMINATION FOR DEFAULT (20-3.1) ALTERNATE I
(MAY 11)(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, provided that the Contractor provides notice to the Contracting Officer that a force majeure event has occurred within a reasonable period of time after occurrence. Examples of those events 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)
(MAY 11)(BPI 21.1.2.1)

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

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

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 USC 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within six years after accrual of the claim to the Contracting Officer for a written decision. A claim by BPA against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding $100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows:

"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes BPA is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of $100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For contractor-certified claims over $100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by BPA is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) BPA shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if the date is later, until the date of payment. With regard to claims having defective certifications, as defined in BPI 21.3.1, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Secretary of the Treasury during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

UNIT 3 — SPECIFICATIONS

PART A - GENERAL

A.1. Goal of this contract

This contract is for the purchase and distribution of 134.2 kHz, full duplex (FDX)-B Passive Integrated Transponder (PIT) tags to approximately 40 governmental participants (State, Federal, Tribal and local) within the Federal Columbia River Power System (FCRPS). Bonneville Power Administration (BPA) will purchase the tags and the vendor will provide them to the Pacific States Marine Fisheries Commission (PSMFC) who is responsible for the final distribution to the program participants.

A.2. Background

BPA partners with the various participants throughout the region to implement its fish and wildlife program. This program seeks to protect, mitigate, enhance, and recover fish and wildlife populations in the Columbia River Basin impacted by the operation of the FCRPS.

BPA has purchased and used PIT tags to mark juvenile and adult fish in the Columbia River Basin for over 15 years as a research and management tool for monitoring the movement of juvenile and adult salmonids. Through research and testing, PIT tag technology has been shown to be a reliable and effective method of identification and monitoring. The PIT tags are usually injected subcutaneously into juvenile salmonids typically using a hypodermic needle and syringe.

A PIT tag is a glass-encased radio frequency identification device that is labeled “passive” because it does not contain an internal battery. In the case of FDX systems, the tag is continuously energized while in the antenna field; it then continuously modulates the electromagnetic field producing a unique pattern, which is processed by the transceiver to yield a unique tag code. The tag code along with the transceiver identification and date-time information are recorded by specialized software programs and then uploaded into a central database, the PIT Tag Information System (PTAGIS) maintained by Pacific Marine Fisheries Commission (PSMFC).

The data collected during the tagging process as well as when the fish pass through the different detection facilities are made instantly available via the internet to agencies and researchers. As a result, analysts are able to monitor data collected over the life of the fish, using the data extensively for research and monitoring needs.

PART B - TECHNICAL

B.1. General Requirements

1. Requested Tags: BPA will be ordering FDX-B PIT tags of two different lengths: 12-12.5 mm (standard), and 20-23 mm full duplex tags. Tags from the first category must have average diameters of ≤ 2.14 mm. As indicated on the chart below, BPA will primarily be purchasing the 12 mm tags. However program participants have requested additional sizes be available so the following quantities are expected.

Tag Length	Minimum Annual Order	Maximum Annual Order
12-12.5 mm	800,000	1,500,000
20-23 mm	1,000	10,000

2. Manufacturing
   a. The manufacturer of the tag shall have been issued a manufacturers code by the International Committee for Animal Recording (ICAR) for tag coding purposes.
   b. Subsequent to contracting, if Vendor wants to upgrade the specifications of its tags, Vendor will pay BPA to test the upgraded product.
3. Packaging Requirements
   a. Tags shall be packaged in quantities of 100 per vial or container.
   b. Full boxes shall contain a quantity of 100 vials (i.e., 10,000 tags) (generally for standard tags).
   c. Each shipment of full boxes and/or loose vials shall be accompanied by a compact disc (CD) with the following content.
      1) For each full box, there should be one ASCII file named <BoxCode>.asc where,
         a) <BoxCode> is BBdddddd (Two upper-case characters followed by six decimal digits); and
         b) Each line in the file should contain <VialCode>^<TagCode> (the separator between VialCode and TagCode is ^ caret character). The <VialCode> is VVVdddddd (three upper-case characters followed by six decimal digits) and each <TagCode> is given in 3.10 hexadecimal format (CCC.hhhhhhhhhh) (International Organization for Standardization (ISO) standard: Three-character manufacturer code in hexadecimal digits, followed by a 'period,' followed by ten hexadecimal digits).
      2) For each individual vial (not part of a full box), the CD shall contain one ASCII file named <VialCode>.txt where <VialCode> is described as above and each line in the file is like <TagCode> as described above.
      3) In particular, <BoxCode> and <VialCode> values shall be distinct between vendors. Note that BoxCodes from the previous vendor were Bdddddd (one upper-case character followed by six digits) while VialCodes were VVddddd (two upper-case characters followed by five digits), so they would never be duplicated by values from another vendor that follows the rules defined above.
   d. Boxes and vials shall be marked (human-readable and bar-code) with the <BoxCode> and <VialCode> values named in the files on the CD.

B.2. Specific Requirements

1. Tag Length: 12-12.7 mm (Standard)
   a. Physical Properties
      1) Transponders that conform to the ISO 11784/11785 FDX-B specifications. For example, they must be energized by a 134.2-kHz field.
      2) Glass encapsulated injectable tags.
      3) The fisheries community prefers tags with average lengths of ≤ 12.5 mm, but shall accept tags with average lengths of ≤ 12.7 mm.
      4) Tags with average diameters of ≤ 2.14 mm; they must fit into the bore of a standard 12-gauge or smaller needle.
      5) The fisheries community prefers tags with weights of ≤ 0.106 g.
   b. Electrical Properties
      1) Tags with resonant frequency values of 131.7-136.7 kHz.
      2) Tags with turn-on voltage values ≤ 500 mV as measured on PSMFC's Automated PIT Tag Test System (APTTS).
      3) Tags with modulation values ≥ 90%.
      4) Tags with bandwidth values ≤ 6 kHz.
   c. Manufacturing Requirements
      1) Ability to produce 375,000 tags per quarter year.
2. Tag Length: 20-23 mm (Specialty)
   a. Limited quantities of the 20-23 mm specialty tags are expected to be ordered.
   b. Physical Properties of Tags
      1) Transponders that conform to the ISO 11784/11785 FDX-B specifications. For example, they must be energized by a 134.2-kHz field.
      2) Glass encapsulated injectable tags.
      3) Average lengths of 20 ≤ X ≤ 23.5 mm.
      4) Tags with average diameters of ≤ 3.95 mm.
      5) Average weight of ≤ 0.644 g when measured in air.
   c. Electrical Properties
      1) Tags with resonant frequency values of 131.7-136.7 kHz.
      2) Tags with turn-on voltages values ≤ 200 mV as measured on the APTTS
      3) Tags with modulation values ≥ 90%
      4) Tags with bandwidth values ≤ 6 kHz
   d. Manufacturing Requirements
      1) Ability to produce 10,000 per year.

B.3. Statement of Work

1. PIT tags shall be manufactured according to required specifications, and quality assurance measures will be maintained during all phrases of the manufacturing process. PSMFC, as BPA's representatives, will test a portion of the tags received from the Vendor for quality assurance.

   Deliverable: Upon inspection by BPA's representatives, tags shall meet the requirements of quality required according to the tag type specifications provided within this request.

2. PIT tags shall be shipped to PSMFC, Kennewick, Washington office. PSMFC will house the inventory of tags and deliver tags to BPA's various project sites throughout the region.

   Deliverable: Shipments will be timely and packaged according to specifications.

3. Project Management

   a. Vendor's representative shall coordinate all work included in this contract with BPA's Contract Officer's Technical Representative (COTR), Sharon Grant.

      Sharon Grant

      Bonneville Power Administration

      sdgrant@bpa.gov

      (503) 230-5215

      P.O. Box 3621 KEWU-4

      Portland, OR 97208-3621

   b. Communication shall be maintained between the Vendor and the BPA COTR such that if a deadline cannot be met, the vendor will contact BPA to negotiate an amended deadline in a timely manner.

   c. Coordination between the Vendor and PSMFC shall be required in the conveyance of inventory.

   d. Vendor shall notify BPA upon shipment of tags and provide an invoice, which includes the Purchase Order and Release number as issued by BPA. Upon receipt and verification from PSFMC, payment will be issued.

   Deliverable: Project managed successfully and communication maintained between the parties.

B.4. Time Schedule

PIT tag purchase orders will be submitted to the Vendor by email outlining the product needed and a required delivery date. BPA shall provide at least 60 days lead time from the date the order is placed until delivery is required. The contractor shall guarantee delivery within the 60-day lead time. If the contractor cannot meet the 60-day lead time, BPA shall receive a reduction in the price per tag as negotiated in the schedule. Upon acceptance by the Vendor, a confirmation email shall be submitted to the COTR.

- If any design changes are made to any of the PIT tag models accepted through this process, the manufacturer shall make notification and supply samples for evaluation/qualification of the new (revised) model.
- PSMFC samples a minimum of 1% of tags received from the manufacturer.
- If 3% of the evaluated tags fail QA testing for a given shipment, the entire shipment shall be sent back to the manufacturer for re-evaluation and remedy.

Parameters checked using the APTTS (Automated PIT Tag Test System) are:

- Check for missing tags.
- Check for non-functioning tags.
- Check for length and diameter - optically measure the length and diameter of the tag.
- Check for turn-on voltage - increase the 134.2kHz excitation voltage until the tag activates.
- Check for resonant frequency and bandwidth - excite the tag with a voltage signal (see individual tag section for excitation level) swept in frequency from 124.2kHz to 144.2kHz (in 0.025kHz steps) and record the response from the tag.
- Check for modulation percentage - measure the modulation percentage while the tag is activated with a 134.2kHz signal (see individual tag section for excitation level).

Parameters checked not using the APTTS are:

- Weight
- Pressure Test
- Drop Test

A failing tag will:

- Fail any test and/or be outside one or more of the below thresholds:

12MM

Resonant frequency and bandwidth testing will be performed at 0.1 volts excitation. Modulation percentage testing will be performed at 0.61 volts excitation.

A passing SST-1 12mm PIT tag will:

- Be successfully read
- Be 12.7mm or less in length
- Be 2.14mm or less in diameter
- Weigh 0.106g or less
- Have a turn-on voltage of 500mV or less
- Have a resonant frequency between 131.7kHz and 136.7kHz
- Have a bandwidth that is 6kHz or less
- Have a modulation percentage that is 90% percent or greater

23MM

Resonant frequency and bandwidth testing will be performed at 0.1 volts excitation. Modulation percentage testing will be performed at 0.4 volts excitation.

A passing (BIO 23.B) 23mm PIT tag will:

- Be successfully read
- Be 23.5mm or less in length
- Be 3.95mm or less in diameter
- Weigh 0.644g or less
- Have a turn-on voltage of 200mV or less
- Have a resonant frequency between 131.7kHz and 136.7kHz
- Have a bandwidth that is 6kHz or less
- Have a modulation percentage that is 90% percent or greater