

**RESEARCH, DEVELOPMENT & DEMONSTRATION
COOPERATIVE AGREEMENT**

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UNIT 1 – TERMS & CONDITIONS

**REGULATIONS APPLICABLE TO BPA FINANCIAL ASSISTANCE (4-1)
(BFAI 4.10) (OCT 15)**

The Bonneville Power Administration's financial assistance function is managed and executed solely in accordance with the Bonneville Financial Assistance Instructions (BFAI). The BFAI is available without charge on the Internet at <http://www.bpa.gov/Doing%20Business/finassist/Pages/default.aspx>.

**NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (4-2)
(BFAI 4.10) (OCT 15)**

The recipient shall comply with 10 CFR 1040 which provides that "...no person shall, on the ground of race, color, national origin, sex (when covered by section 16 and section 401), handicap, or age, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment, where a primary purpose of the Federal financial assistance is to provide employment or when the delivery of services is affected by the recipient's employment practices (under section 504, all grantee and subgrantee employment practices are covered regardless of the purpose of the program), in connection with any program or activity receiving Federal financial assistance from the Department of Energy."

**EXAMINATION OF RECORDS (4-3)
(BFAI 4.10) (SEP 04)**

- (a) The recipient shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this award. The Financial Assistance Officer or a representative shall have the right of access to any books, documents, papers, or other records of recipients and subrecipients which are pertinent to the award, in order to make audits, examinations, excerpts and transcripts.
- (b) Such material shall be made available at the office of the recipient, at all reasonable times, for inspection, audit or reproduction, until the expiration of 3 years from the date of final payment under this award or for such longer period, if any, as is required by applicable statute. If any litigation, claim, negotiation, audit or other action involving the records has been started prior to the expiration of the 3 year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3 year period whichever is later.

**REPORTING PROGRAM PERFORMANCE (4-4.M)
(BFAI 4.10)(FEB 16)**

- (a) Frequency. Unusual events having a negative impact on the project should be reported to the Project Technical Representative (PTR) as soon as they are discovered. In addition, a status report is due monthly to the PTR and Project Manager. A final report on the project must be submitted in accordance with the project description and project schedule but no later than 30 days after project completion.
- (b) Contents. A status report template will be provided by BPA. The report should contain a comparison of the actual accomplishments to those planned for the period. If the project is not on schedule, a brief explanation of the reason is required. Unusual situations encountered which impacted the costs or effectiveness of the project should be identified and explained. Other elements to report on include items such as activities/accomplishments, challenges, financial status (estimated spending and cost share), planned activities, and overall project status (green, yellow, red).

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REIMBURSEMENT PAYMENT AND FINANCIAL REPORTING REQUIREMENTS (4-6.M) (BFAI 4.10)(FEB 16)

Payment for services performed under this award will be reimbursed by Vendor Express payment after performance of the services. Recipient requests for reimbursements, and recipient financial reporting requirements shall be made as follows:

Reimbursements. Standard Form 270, Request for Advance and Reimbursement, or FAO approved equivalent, shall be used when requesting reimbursement for costs incurred on the project. Every request submitted must show the Federal and non-Federal cost share (if applicable), unless written authorization is provided to report compliance of cost share obligations on an alternate basis. Requests should not be made more frequently than monthly and shall be submitted to the Project Technical Representative (PTR). Requests shall be accompanied by:

- (i) A summary of the approved budget, by line item, and cumulative expenditures by line item to date. Cost share shall be reported for the period of the request and cumulative to date.
- (ii) Documentation to support payment and cost share obligations. Acceptable supporting documentation may include invoices on appropriate letterhead, time cards, travel vouchers, equipment purchase requisitions, printouts from internal financial systems, and indirect/unallowable cost justifications. Upon request by BPA, you are required to provide additional supporting documentation. BPA may deny reimbursement for any failure to comply with these requirements. Additional guidance for documentation may be obtained from the Financial Assistance Officer.

ENVIRONMENTAL PROTECTION (4-7) (BFAI 4.10)(OCT 15)

The recipient shall ensure that the facilities under its ownership, lease or supervision which will be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violation Facilities and that it will notify BPA of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

INDEMNIFICATION (4-8M) (BFAI 4.10)(FEB 16)

Each party shall be responsible for its own negligent acts or omissions and the negligent acts or omissions of its employees, officers, or director's, to the extent allowed by law.

ACKNOWLEDGMENT OF SUPPORT (4-9) (BFAI 4.10)(SEP 10)

Publication of the results of this award is encouraged. The recipient shall include in any article or other announcement that is published an acknowledgment that the project was supported, in whole or in part, by BPA (award number may be included), but that such support does not constitute an endorsement by BPA of the views expressed therein.

DISPUTES (4-10) (BFAI 4.10) (SEP 04)

- (a) Except as otherwise provided in this award, any unresolved dispute concerning a question of fact arising under this award shall be decided by the Financial Assistance Officer (FAO), who shall reduce that decision to writing and mail, or otherwise furnish a copy thereof to the Recipient. The decision of the Financial Assistance Officer shall be final and conclusive. The FAO's decision may be appealed to the BPA HCA. The decision of the BPA HCA shall be final and conclusive.

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- (b) This clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above; provided, that nothing in this award shall be construed as making final the decision of any administrative official, representative, or board, based on a question of law.
- (c) The use of alternate disputes resolution processes are encouraged, and may be used as negotiated between the parties.

TRAVEL (4-11) (BFAI 4.10)(SEP 04)

- (a) Domestic travel may be an appropriate charge to this award, and prior authorization for specific trips is not required. In accordance with the applicable cost principles, reasonable, necessary, and allowable travel costs may be charged on an actual basis or per diem basis in lieu of actual costs incurred, provided the method used results in charges consistent with those normally allowed by the organization in its regular operations and travel is at less than business class common carrier fare, unless otherwise approved in advance by the Financial Assistance Officer.
- (b) Foreign travel may be charged to this award without prior approval if detailed in the approved budget. If foreign travel is required, but not detailed in the approved budget, it must be approved in writing by the Financial Assistance Officer prior to beginning the travel. Foreign travel will be reimbursed on the same basis as domestic travel.

PREDETERMINED FINAL INDIRECT COST RATES (22-6) (JUL 13)(BPI 22.1.3)

- (a) Notwithstanding the Basis of Payment -- Cost Reimbursement clause of this contract, the allowable indirect costs under this contract shall be obtained by applying predetermined final indirect cost rates to bases agreed upon by the parties, as specified below.
- (b) Not later than 90 days after the expiration of the Contractor's fiscal year, the Contractor shall submit to the cognizant CO and to the cognizant Federal agency, proposed predetermined final indirect cost rates and supporting cost data. The proposed rate shall be based on the Contractor's actual cost experience during that fiscal year. Negotiations of predetermined final indirect cost rates shall begin as soon as practical after receipt of the Contractor's proposal.
- (c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the BPI Part 13 in effect on the date of this contract.
- (d) Predetermined rate agreements in effect on the date of this contract shall be incorporated into the contract. The CO and Contractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The indirect cost rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The agreement is incorporated into this contract upon execution.
- (e) Pending establishment of predetermined final indirect cost rates for any fiscal year (or other period agreed to by the parties), the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the CO, subject to appropriate adjustment when the final rates for that period are established.
- (f) If for any fiscal year the parties fail to agree to predetermined final indirect cost rates, the allowable indirect costs shall be obtained by applying final indirect cost rates established in accordance with the Basis of Payment -- Cost Reimbursement clause.

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- (g) Allowable indirect costs for the period from the beginning of performance until the end of the Contractor's fiscal year shall be obtained using the predetermined final indirect cost rates and the bases shown in the Schedule.

FINANCIAL ASSISTANCE OFFICER'S REPRESENTATIVE (4-12) (BFAI 4.10)(SEP 04)

The Financial Assistance Officer's Representative (FAOR) shall have all the rights, powers, and privileges of the Financial Assistance Officer necessary to the administration of the award: provided, however, that the FAOR is not empowered to execute modifications to the award, to make a final decision of any matter which would be subject to appeal, or to suspend or terminate for any cause the recipient's right to proceed.

PROJECT TECHNICAL REPRESENTATIVE (4-13) (BFAI 4.10)(SEP 04)

- (a) The Project Technical Representative (PTR) is the authorized representative of the Financial Assistance Officer (FAO) for technical actions performed in relation to the award. This includes the functions of (1) review of work performed; and (2) interpretation of technical program requirements.
- (b) The PTR is not authorized to act for the FAO in the following matters: (1) modifications that change the amount of award, technical requirements or time for performance; (2) suspension or termination of the recipient's right to proceed; and (3) final decisions on any matters subject to appeal.

FIELD REPRESENTATIVE (4-14M) (BFAI 4.10)(FEB 14)

- (a) The Field Representative (FR) will be appointed by Financial Assistance Officer (FAO) or the Project Technical Representative (PTR) and is authorized by the PTR for reviewing project accomplishments and recipient's technical reports, and interpretation of award requirements.
- (b) The Field Representative (FR) is not authorized to act in the following matters: (1) modifications that change the award amount or general direction of the project; (2) suspension or termination of the recipient's right to proceed; (3) approval of financial requests and reports, and (4) final decisions on any matters subject to appeal.
- (c) Project Manager's (PM) must be delegated specific authority as a Field Representative (FR) by the PTR or FAO to act in accordance with this clause.

COST REIMBURSEMENT BASIS (4-15) (BFAI 4.10)(SEP 04)

This award is funded on a cost reimbursement basis without fee or profit, not to exceed the amount awarded as indicated on the face page and is subject to a refund of unexpended funds to BPA.

BPA-FURNISHED EQUIPMENT OR MATERIAL (4-16) (BFAI 4.10)(SEP 04)

- (a) The recipient hereby releases and agrees to hold BPA, or persons acting upon behalf of the BPA harmless for any and all liability of every kind and nature whatsoever resulting from the receipt, shipping, installation, operation, handling, condition, use and maintenance of the material furnished by BPA under this award.
- (b) Neither BPA nor persons acting on behalf of BPA make any warranty or other representation, express or implied, that the material provided under this award will accomplish the results for which it is requested or intended.

**SUSPENSION OR TERMINATION (4-17)M
(BFAI 4.10)(MAR 16)**

(a) Definitions.

- (1) "Suspension" is an action by BPA that temporarily suspends BPA support under the award pending corrective action by the Recipient or pending a decision by BPA to terminate the award.
- (2) "Termination" means the cancellation of BPA sponsorship, in whole or in part, at any time prior to the date of completion.

(b) Suspension or Termination for cause.

- (1) Notice of Suspension. Prior to issuing a suspension notice, efforts will be made by BPA and the recipient to informally resolve disagreements. If informal efforts fail, BPA may issue a notice of suspension that specifies the date on which the suspension will take effect. During the suspension, BPA may withhold further payment and prohibit the recipient from incurring additional obligations of funds pending corrective action by the recipient or a decision by BPA to terminate. BPA shall allow all necessary and proper costs that the recipient could not reasonably avoid during the period of suspension provided that they would otherwise be allowable.
- (2) Notice of Termination for Cause. Prior to issuing a termination notice, efforts will be made by BPA and the recipient to informally resolve disagreements. If informal efforts fail, BPA may issue a notice of termination that will take effect as stated in the letter. The Financial Assistance Officer shall determine the severity of the violation that caused the termination for cause, and determine what costs are appropriate for reimbursement.

(c) Termination for convenience. BPA may unilaterally terminate the award in whole or in part when the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds or when the project will not accomplish the purpose for which the award was made. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. BPA shall allow full credit to the recipient for the BPA share of the noncancellable costs, properly incurred by the recipient prior to termination.

(d) Authority to issue notices. The Financial Assistance Officer is the only person authorized to suspend or terminate the award.

**CHANGE OR ABSENCE OF THE PRINCIPAL INVESTIGATOR OR DESIGNATED KEY PERSONNEL (4-18)M
(BFAI 4.10)(FEB 16)**

Since BPA funding of this project is based, to a significant extent, on the qualifications and level of participation of the Principal Investigator(s), or key personnel, a change of Principal Investigator(s), or key personnel, or their level of effort is considered a change in the approved project. The approval of BPA must be obtained prior to any change of the Principal Investigator or key personnel who have been identified as key personnel. In addition, any continuous absence of the Principal Investigator or key personnel in excess of 3 months, or plans for the Principal Investigator or key personnel to become substantially less involved in the project than was indicated in the approved application requires BPA prior approval. The recipient must contact the Financial Assistance Officer (FAO) immediately upon becoming aware that any of these changes are likely and must receive FAO approval before effecting any such change. (List key personnel below)

**REQUIREMENT FOR AUDIT (4-21)
(BFAI 4.10)(OCT 15)**

The recipient shall comply with the provisions of 2 CFR 200 Subpart F concerning program levels requiring audits and audit scope. If an audit is required, a copy of the audit report shall be submitted to the BPA Internal Audit Staff, Mail Stop CN-7, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208, and other distribution of the report as required by the circular.

**PERSONAL PROPERTY MANAGEMENT (4-23)
(BFAI 4.10) (OCT 15)**

(a) This clause provides guidance for the utilization and disposition of personal property furnished by BPA or acquired in whole or in part with BPA funds, or whose cost was charged to a project supported by BPA funds. Also see BPI Clause 19-1.

(b) BPA-owned personal property.

(1) The following BPA property will be provided for use in this award: **FAO instruction:** List BPA property to be provided, or "None", as appropriate.

(2) Title remains vested in BPA. The recipient shall submit an annual reconciled physical inventory listing by October 1 of each year of such property in its custody to the PTR.

(3) Upon completion of the award, or when the property is no longer needed, the recipient shall provide an inventory of the property to BPA and request disposition instructions.

(c) Recipient-acquired personal property.

(1) When the recipient acquires personal property using BPA funds, in whole or in part, title vests with the recipient.

(2) BPA will request the recipient to transfer title to the following property at the end of the project: **FAO Instruction:** List the property which BPA will require to be transferred, or "NONE" if none will be required to be transferred.

(3) BPA reserves the right to transfer title to the property listed below to itself or a third party at the completion of the project.

FAO Instruction: List the property which BPA is reserving the right to transfer title here. If there is none, and all property is to be retained by the recipient, insert "NONE".

(4) If BPA does not provide disposition instructions for property identified in (b)(3) within 120 days of the end of the project, BPA relinquishes the right to transfer title and the recipient may retain the property, or dispose of it as appropriate.

(5) BPA does not reserve the right to transfer title to the following personal property. The recipient may retain, use or dispose of this property.

FAO Instruction: List the property which BPA does not wish to retain the right to transfer title, or "None", as appropriate.

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- (6) The recipient shall submit a reconciled physical inventory listing by October 1 every second year of the award of personal property in its control.
- (d) Property Management Standards for property which BPA will, or reserves the right to, require the transfer of title at the conclusion of the award:
 - (1) Property records shall be maintained which include a description of the property, source of property, including award number, acquisition date, location, use and condition of the property and the date the information was reported, unit acquisition cost, ultimate disposition of property, and date of disposition.
 - (2) The recipient shall maintain a system to ensure adequate safeguards to prevent loss, damage, or theft of the property.
 - (3) The recipient shall follow adequate maintenance procedures to keep the property in good condition.

BPA PROPERTY TO BE GRANTED (4-25) (BFAI 4.10) (SEP 04)

The following BPA property is granted to the recipient for use in the work supported by this award. Title to the property vests with the recipient upon receipt. The recipient shall submit an annual reconciled physical inventory listing by October 1 of each year of such property in its custody to the PTR. Following completion of the project and submission of the final report, if one is required, the recipient is relieved of accountability for the property.

FAO Instruction: List all property to be given to the recipient.

BUDGET CHANGES AND LINE ITEM TRANSFERS (4-26) (BFAI 4.10) (SEP 04)

If unanticipated project needs arise, the recipient is authorized to make budget line item transfers not exceeding twenty-five per cent of the total approved budget per year. Reallocation of funds exceeding this amount must have the prior written approval of the FAO. The recipient shall send a written request for such budget changes to the FAO through the Project Technical Representative. The FAO will respond to the request within 30 days.

Recipients or subrecipients shall obtain prior approval whenever any of the following changes are anticipated:

- (a) Changes in the scope or the objective of the project or program that will require a budget revision.
- (b) The need for additional funding.

INCREMENTAL FUNDING (4-27) (BFAI 4.10) (SEP 04)

This project is not fully funded at the time of the award. It is anticipated that further BPA funding will be provided on an incremental basis. If funds are not available for any reason, BPA shall be under no obligation to provide funding for any additional portion of the project. If BPA does not fund the balance of the effective period, the award will be terminated when the funds committed by BPA have been expended.

COST SHARE (4-50) (BFAI 1.3.3 & 4.10) (MAR 13)

The total estimated project cost is the sum of the BPA share and the Recipient share of the estimated project costs. BPA's share may not exceed 50 percent of the project's total cost. The Cost Share Budget constitutes the cost share requirement for this project. BPA shall not pay profit to the Recipient for performing this project.

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- (a) Recipient shall maintain records of all projects costs claimed as cost sharing, including in-kind costs, as well as records of cost to be paid by BPA. Such records are subject to audit.
- (b) In the event of a change to the cost share type or source, Recipient shall provide written notification to the Financial Assistance Officer.
- (c) If Recipient discovers it may be unable to provide cost sharing of at least the amount identified in the Cost Share Budget, Recipient shall immediately provide written notification to the Financial Assistance Officer. The notification shall indicate whether you will continue or phase out the project. If you plan to continue the project, the notification must describe how replacement cost sharing will be secured or the scope will be modified to comply with the cost sharing requirement.
- (d) Failure to obtain and maintain the required level of cost share during the project period of performance is grounds for Termination. BPA may terminate this agreement per Clause 4-17, Suspension or Termination, without notice if the Recipient is unable to obtain and/or maintain the required level of cost share during the project period of performance.

PERFORMANCE PERIOD AND STAGE GATES (4-51) (BFAI 4.10)(MAR 13)

- (a) The work to be performed under the Agreement shall commence on the date specified on the signature page or upon Agreement execution, whichever is later, and shall continue until the date specified on the signature page. In the event a pre-award authorization is granted, the performance period begins effective with the date provided on the authorization.
- (b) The performance period is subject to the Project Description's Project Stage Gates.
 - (1) Stage gates are decision points for deciding whether the project should continue, be delayed, stopped or re-scoped. Stage gates occur at least once before the end of a project. Stage gates are based upon the essential performance elements (breakthroughs) that have to happen for the rest of the project to be worth doing and before the project can go any further.
 - (2) BPA will authorize performance of subsequent stage gates identified in the Statement of Work. In the event a determination is made to exercise a subsequent stage gate, the Project Manager (PM) or Project Technical Representative (PTR) will issue a written authorization to proceed with work included in the subsequent stage gate. The PM/PTR's stage gate authority is limited to stage gates that have been funded by the Agreement or Modification to the Agreement.
 - (3) The decision to exercise a stage gate is a unilateral option reserved for BPA.
- (c) The performance period is subject to formal presentation of the project status at the annual Technology Innovation Summit review, which acts as a further evaluation point for BPA to determine if the project is meeting BPA's overall strategic objectives, priorities, and its relative fit in BPA's portfolio compared to other projects. Any decision to stop a project after the summit will be based on Clause 4-17(c), Termination for Convenience and include a mutually agreed upon stop date.
- (d) The performance period may be extended via bi-lateral modification.

SUBCONTRACTING WITH DEBARRED OR SUSPENDED ENTITIES (11-7) (JUL 13) (BPI 11.8.1; BPI 25.1.1)

- (a) "Commercially available off-the-shelf (COTS) item," as used in this clause means any item of supply (including construction material) that is:

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- (1) A commercial item (as defined in BPI 1.8);
 - (2) Sold in substantial quantities in the commercial marketplace; and
 - (3) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.
- (b) The Government suspends or debar Contractors to protect the Government's interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor that is debarred, suspended, by any executive agency unless there is a compelling reason to do so.
- (c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended by the Federal Government.
- (d) The Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended (see www.sam.gov).
- (e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that exceed \$30,000 in value and is not a subcontract for commercially available off-the-shelf items

CERTIFICATION, DISCLOSURE, AND LIMITATION REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (3-3) (JUL 13)(BPI 3.5.5.1)

- (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.

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"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 \$150,000 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--

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- (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 \$150,000 under the Federal contract.
- (g) All subcontractor disclosure forms (but not certifications), shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosure forms to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.
- (h) Any person who makes an expenditure prohibited under this clause or who fails to file or amend the disclosure form to be filed or amended by this clause shall be subject to a civil penalty as provided by 31 U. S. Code 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

DRUG-FREE WORKPLACE (3-6) (JUL 13)(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--

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- (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.
- (e) The requirements of this clause shall not apply to
- (1) Solicitations and contracts for the acquisition of commercial items and services.
 - (2) Subcontracts at any tier for the acquisition of commercial items or commercial components at any tier.

**ORDER OF PRECEDENCE (14-3M)
(FEB 14)(BPI 14.4.1.1)**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the terms and conditions; (b) the incorporated project description; and (c) other documents, exhibits, and attachments.

**HOMELAND SECURITY (14-17)
(DEC12)(BPI 14.18.3)(BPI 17.4.1.1)**

- (a) If any portion of the Contractor's maintenance or support service is located in a foreign country, then the Contractor will disclose those foreign countries to BPA to determine if the foreign country is on the Sensitive Country List or is a Terrorist Country as determined by the United States Department of State. BPA will notify the Contractor in writing whether or not it can allow an intangible export of BPA's Critical Information or if a Deemed Export License is required.
- (b) The Contractor shall notify the CO in writing in advance of any consultation with a foreign national or other third party that would expose them to BPA Critical Information. BPA will approve or reject consultation with the third party.
- (c) Notification of Security Incident. The Contractor shall immediately notify BPA's Office of the Chief Information Officer (OCIO) Chief Information Security Officer (CISO) of any security incident and cooperate with BPA in investigating and resolving the security incident. In the event of a security incident, the Contractor shall notify the CISO by telephone at 503-230-5088 and ask for a Cyber Security Officer. BPA may also provide in writing to the Contractor alternate phone numbers for contacting Cyber Security Officers. A call back voice message may be left but not the details of the Security Incident.

**AUTHORIZATION AND CONSENT-RESEARCH, DEVELOPMENT, AND DEMONSTRATION CONTRACTS
(17-1.1)
(JUL 13)(BPI 17.6.4.1.1)**

- (a) BPA authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.
- (b) The terms of this clause shall apply to subcontracts at any tier whether or not incorporated into such subcontracts.

**PATENT RIGHTS - OWNERSHIP BY THE CONTRACTOR (17-2.1)
(JUL 13)(BPI 17.4.1.1, BPI 17.5.2.8.1)**

- (a) Contractor's rights.
 - (1) Ownership. The Contractor may retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.
 - (2) License. The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (b) of this clause. The Contractor's license extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part, and includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at contract award. The license is transferable only with the written approval of the agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.
- (b) Contractor's obligations.

- (1) The Contractor shall disclose in writing each subject invention to the CO within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure shall identify the inventor(s) and this contract under which the subject invention was made. It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure shall also identify any publication, on sale (i.e., sale or offer for sale), or public use of the subject invention, or whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, the Contractor shall promptly notify the CO of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.
- (2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer within 2 years of disclosure to the agency. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.
- (3) The Contractor shall file either a provisional or a non-provisional patent application on an elected subject invention within 1 year after election. However, in any case where a publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Contractor shall file the application prior to the end of that statutory period. If the Contractor files a provisional application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The Contractor shall file patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or non-provisional) or 6 months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- (4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (b)(1), (b)(2), and (b)(3) of this clause.

(c) Government's rights—

- (1) Ownership. The Contractor shall assign to the agency, on written request, title to any subject invention—
 - (A) If the Contractor fails to disclose or elect ownership to the subject invention within the times specified in paragraph (b) of this clause, or elects not to retain ownership; provided, that the agency may request title only within 60 days after learning of the Contractor's failure to disclose or elect within the specified times.
 - (B) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (b) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (b) of this clause, but prior to its receipt of the written request of the agency, the Contractor shall continue to retain ownership in that country.
 - (C) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.
- (2) License. If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

(d) Contractor action to protect the Government's interest.

- (1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—

- (A) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and
 - (B) Assign title to the agency when requested under paragraph (c) of this clause and to enable the Government to obtain patent protection for that subject invention in any country.
- (2) The Contractor shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Contractor's format, each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (b) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by paragraph (b)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- (3) The Contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.
- (4) The Contractor shall include, within the specification of any United States nonprovisional patent and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under **(to be inserted at award)** awarded by the Bonneville Power Administration. The Government has certain rights in the invention."
- (e) Reporting on utilization of subject inventions. The Contractor shall submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information as the agency may reasonably specify. The Contractor also shall provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (f) of this clause. The Contractor also shall mark any utilization report as confidential/proprietary to help prevent inadvertent release outside the Government. As required by 35 U.S.C. 202(c)(5), the agency will not disclose that information to persons outside the Government without the Contractor's permission.
- (f) March-in rights. The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency in effect on the date of contract award.
- (g) Subcontracts. The Contractor shall include the substance of this clause in all subcontracts.

**RIGHTS IN DATA-- CREATION OF NEW WORK (17-5.1M)
(FEB 16)(BPI 17.5.4.1.1)**

Except as otherwise provided herein, the Contractor grants to BPA a fully paid-up, non-exclusive, irrevocable, worldwide, perpetual license to copy, prepare derivative works and perform or display publicly, by or on behalf of BPA, for all the material or subject matter produced under this contract, hereinafter referred to as Work Product. Work Product means recorded information, regardless of form or the media on which it is stored, including any other copyrightable products or materials arising from performance under this contract.

**INFRINGEMENT INDEMNIFICATION - PATENTS (17-7.2)
(JAN 14)(BPI 17.6.4.2.2.1)**

- (a) The Contractor shall indemnify BPA and its officers, agents, and employees against liability, including costs, for infringement of any United States patent arising out of the manufacture or delivery of supplies, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of BPA of such supplies or construction work.
- (b) This indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by BPA of the suit or action alleging such infringement and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in its defense.

Further, this indemnity shall not apply to—

- (1) An infringement resulting from compliance with specific written instructions of the CO directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor;
- (2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or
- (3) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

**PATENT AND COPYRIGHT INFRINGEMENT NOTICE (17-13)
(JUL 13)(BPI 17.6.4.3.1.1)**

- (a) The Contractor shall report to the CO, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.
- (b) In the event of any claim or suit against BPA on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, the Contractor shall furnish to BPA, when requested by the CO, all evidence and information in the Contractor's possession pertaining to such claim or suit. Such evidence and information shall be furnished at the expense of BPA except where the Contractor has agreed to indemnify BPA.
- (c) The terms of this clause shall apply to subcontracts at any tier whether or not incorporated into such subcontracts.

**INFORMATION ASSURANCE (17-20)
(OCT 11)(BPI 17.6.1.4.1)**

- (a) In performance of this contract, the contractor shall protect all data and information systems under its management and control at all times commensurate with the risk and magnitude of harm that could result to Federal security interests and BPA's missions and programs resulting from a loss or unauthorized disclosure of confidentiality, availability, and integrity of these information or systems.
- (b) The contractor shall maintain an information security and/or data security plan or program consistent with industry standards such as National Institute of Standards and Technology (NIST), as required by the E-Government Act (Public Law 107-347) of 2002, Title III Federal Information Security Management Act (FISMA).

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- (c) The BPA Chief Information Officer (CIO), or representatives, shall have the right to examine, audit, and reproduce any of the contractor's pertinent information security and/or data security plan or program.
- (d) The contractor shall adhere to any additional information security requirements identified in the statement of work.
- (e) The contractor, at its sole expense, shall address and correct any deficiencies and/or noncompliance with the terms of the contract as identified by BPA.