

**PART 14**  
**GENERAL CONTRACT ADMINISTRATION POLICIES**

**Table of Contents**

14.1	CONTRACT MANAGEMENT. ....	2
14.2	BASIC RESPONSIBILITY FOR CONTRACT ADMINISTRATION. ....	2
14.3	ASSIGNMENT OF CONTRACT ADMINISTRATION. ....	3
14.3.1	Designation of Contracting Officer's Representatives. ....	3
14.3.2	Clause Usage Prescriptions. ....	3
14.4	BASIC CONTRACT ADMINISTRATION CLAUSES. ....	3
14.4.1	Order of Precedence Clause. ....	3
14.4.1.1	Clause Usage Prescriptions. ....	3
14.4.2	Other Rights at Law Clause. ....	3
14.4.2.1	Clause Usage Prescriptions. ....	3
14.5	COMMUNICATIONS WITH SUPPLIERS. ....	4
14.5.1	Relationships with Suppliers. ....	4
14.5.2	Protecting Agency Critical Information. ....	4
14.5.3	Clause Usage Prescriptions. ....	4
14.6	VARIATION IN QUANTITY. ....	4
14.6.1	Supply Contracts. ....	5
14.6.1.1	Clause Usage Prescriptions. ....	5
14.6.2	Service and Construction Contracts. ....	5
14.6.2.1	Clause Usage Prescriptions. ....	5
14.7	USE OF GOVERNMENT SUPPLY SOURCES BY SUPPLIERS. ....	5
14.8	USE OF DOE EXCESS EQUIPMENT. ....	6
14.9	BPA CONSENT TO SUBCONTRACT. ....	6
14.9.1	Clause Usage Prescriptions. ....	6
14.10	CONTRACT MODIFICATIONS AND CHANGES. ....	6
14.10.1	Definitions. ....	6
14.10.2	Policy. ....	7
14.10.3	Types of Contract Modifications. ....	7
14.10.4	Extension of Contracts. ....	7
14.10.5	Changes. ....	8
14.10.5.1	Changes Made with a Changes Clause. ....	8
14.10.5.1.1	Clause Usage Prescriptions. ....	8
14.10.5.2	Changes Made without a Changes Clause. ....	9
14.10.6	Forms. ....	9
14.11	EXERCISING OPTIONS. ....	9
14.12	SUSPENSION AND STOP WORK ORDERS. ....	9
14.12.1	Clause Usage Prescriptions. ....	10
14.13	NOVATION AND CHANGE-OF-NAME AGREEMENTS. ....	10
14.13.1	Definitions. ....	10
14.13.2	Responsibility for Executing Agreements. ....	11
14.13.3	Agreement to Recognize a Successor in Interest (Novation Agreement). ....	11
14.13.4	Processing Agreements. ....	13
14.13.5	Contractor's Change of Name. ....	13
14.14	Reserved. ....	13
14.15	USE OF PRIVATELY-OWNED US FLAG VESSELS. ....	13
14.15.1	Clause usage prescriptions. ....	14
14.15.2	Remedy for U.S. Flag Vessel Noncompliance. ....	14
14.16	CONTRACTOR PERFORMANCE MEASURES. ....	14
14.17	INDIRECT COST RATES. ....	14
14.17.1	General Discussion. ....	14
14.17.2	Cognizant Federal (Audit) Agency. ....	15

**BONNEVILLE PURCHASING INSTRUCTIONS**  
**Part 14 -- General Contract Administration Policies**

---

14.17.2.1	Cognizant Federal Agency – State, Local, and Federally-Recognized Indian Tribal Governments. ....	15
14.17.2.2	Cognizant Federal Agency -- Nonprofit Organizations. ....	15
14.17.2.3	Cognizant Federal Agency - Educational Institutions. ....	16
14.17.3	Indirect Cost Rates. ....	16
14.17.3.1	Provisional Rates. ....	16
14.17.3.2	Final Indirect Cost Rates. ....	17
14.17.3.3	Predetermined Final Indirect Cost Rates. ....	17
14.17.3.4	Fixed Indirect Cost Rates with Carry-Forward. ....	17
14.17.4	Limitations on Indirect Cost Rates. ....	18
14.17.5	Quick-Close-Out of Cost-Reimbursement Contracts. ....	18
14.18	HOMELAND SECURITY. ....	19
14.18.1	Definitions. ....	19
14.18.2	BPA Designation and Policy. ....	20
14.18.3	Clause Usage Prescriptions. ....	20
14.19	BANKRUPTCY. ....	20
14.19.1	Clause Usage Prescriptions. ....	21
14.50	TEXT OF CLAUSES. ....	21
Clause 14-1	CONTRACTING OFFICER'S REPRESENTATIVES - CONSTRUCTION CONTRACTS. ....	21
Clause 14-2	CONTRACT ADMINISTRATION REPRESENTATIVES. ....	22
Clause 14-3	ORDER OF PRECEDENCE. ....	22
Clause 14-4	OTHER RIGHTS AT LAW. ....	22
Clause 14-5	VARIATION IN QUANTITY - SUPPLY CONTRACTS. ....	22
Clause 14-6	VARIATION IN ESTIMATED QUANTITY- SERVICE AND CONSTRUCTION CONTRACTS. ....	22
Clause 14-7	SUBCONTRACTS. ....	23
Clause 14-8	CHANGES - FIXED-PRICE. ....	23
Clause 14-9	CHANGES - COST-REIMBURSEMENT. ....	24
Clause 14-10	CHANGES - TIME AND MATERIALS. ....	25
Clause 14-11	CHANGES AND CHANGED CONDITIONS - CONSTRUCTION CONTRACTS. ....	25
Clause 14-12	PRICING OF ADJUSTMENTS. ....	26
Clause 14-13	MODIFICATION COST PROPOSAL - PRICE BREAKDOWN. ....	26
Clause 14-14	STOP WORK ORDER. ....	26
Clause 14-15	Reserved. ....	27
Clause 14-16	REQUIREMENT FOR U.S. FLAG VESSELS. ....	27
Clause 14-17	HOMELAND SECURITY. ....	28
Clause 14-18	BANKRUPTCY. ....	28
Clause 14-19	POST AWARD ORIENTATION. ....	28

**14.1 CONTRACT MANAGEMENT.**

**POLICY:** Contracts shall be managed to insure that BPA receives a specific product or service in a timely manner. Situations occasionally arise where the insistence upon strict compliance with contractual requirements may not be in the best interests of BPA. In certain circumstances, a relaxation of the contractual requirements, with or without consideration from the contractor, may be in the best interest of BPA. If such a situation arises, the CO shall document the circumstances in the official file. If the CO intends to substantially alter the obligations of the parties without consideration, the CO shall obtain the concurrence of the HCA prior to execution.

**14.2 BASIC RESPONSIBILITY FOR CONTRACT ADMINISTRATION.**

(a) **POLICY:** COs are responsible for administering contracts covered by the BPI. This is accomplished through a team effort with the program office, working through CORs and COTRs.

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **Part 14 -- General Contract Administration Policies**

---

(b) **POLICY:** The CO shall only designate as COTR those personnel who have been formally trained and certified as a COTR.

(c) **INFORMATION:** General information concerning the technical administration of contracts may be found in BPI Appendix 14-A, Contracting Officer's Technical Representative's Guide for Contract Administration.

#### **14.3 ASSIGNMENT OF CONTRACT ADMINISTRATION.**

##### **14.3.1 Designation of Contracting Officer's Representatives.**

**POLICY:** The CO shall advise the Contractor in writing at the time of initial assignment and whenever a change is made in the CO, COR, or COTR on a contract. COTRs shall notify the Contractors and the CO in writing at the time of initial assignment and whenever a change is made in the field inspector(s) on a contract.

##### **14.3.2 Clause Usage Prescriptions.**

###### **PROCEDURE:**

(a) The CO may include a clause similar to 14-1, Contracting Officer's Representatives - Construction Contracts, in construction solicitations and contracts in lieu of clause 14-2, Contract Administration Representatives, if desired.

(b) The CO shall include a clause similar to 14-2, Contract Administration Representatives, in solicitations and contracts, including IGCs, which require the involvement of representatives of the CO.

#### **14.4 BASIC CONTRACT ADMINISTRATION CLAUSES.**

##### **14.4.1 Order of Precedence Clause.**

**INFORMATION:** It is generally helpful to include an Order Of Precedence clause in contracts to assist the parties in case of inconsistencies. As a general rule of contract law, specific terms take precedence over general terms and "custom" terms take precedence over pre-printed terms.

###### **14.4.1.1 Clause Usage Prescriptions.**

**PROCEDURE:** A clause similar to Clause 14-3, Order of Precedence, shall be included in all solicitations and contracts over \$50,000 except those for commercial supplies and services. COs should modify the clause to meet the needs of a particular purchase. If the contractor's proposal is incorporated into the contract, the clause shall be modified to identify its place in the order of precedence.

##### **14.4.2 Other Rights at Law Clause.**

**INFORMATION.** In order to preserve BPA's rights under the common law, a clause similar to those used by commercial organizations is provided.

###### **14.4.2.1 Clause Usage Prescriptions.**

**PROCEDURE:** The CO shall include Clause 14-4, Other Rights at Law, in solicitations and contracts under \$50,000, and in solicitations and contracts of any dollar amount for commercial supplies, commercial services, or commercial construction.

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **Part 14 -- General Contract Administration Policies**

---

#### **14.5 COMMUNICATIONS WITH SUPPLIERS.**

(a) **INFORMATION:** COs are encouraged to establish close working relationships with suppliers and representatives of the CO so that the supplier and BPA personnel are working on the contract as a team. Post award orientation, either through personal, telephone, or written correspondence, is one means to continue the teamwork begun during the negotiation phase. COs shall conduct a post-award orientation at the beginning of each new award, with the exception of Releases under a Master contract for which an orientation has already been conducted or purchases that are commercial, low dollar, and repetitive.

(b) Continuing communications are also essential to ensure that the teamwork continues on the contract. Such communications have among their objectives:

- (1) to be sure persons working on the contract understand the objectives of the contract;
- (2) to identify and address any potential problem areas or scheduling difficulties before they have an adverse impact on either BPA or the contractor; and
- (3) to ensure that the persons involved in the project are approaching it with a common goal.

(c) Such communications should occur:

- (1) Whenever either party detects a problem
- (2) Prior to and following significant milestones
- (3) Routinely throughout the life of the contract effort, even though no problems have been encountered.

##### **14.5.1 Relationships with Suppliers.**

**POLICY:** BPA supports the development of close working relationships with its suppliers. Such relationships are less adversarial, and produce a better value product. The objective of such relationships is to jointly execute projects in a supportive and cooperative manner. BPA shall administer contracts with the objective of developing positive long-term relationships (See subpart 7.2.1.) Such relationships are typically referred to as partnering, strategic alliances, supplier management, and other similar terms.

##### **14.5.2 Protecting Agency Critical Information.**

**POLICY:** COs and COTRs shall take necessary steps to control and protect Critical Information (CI) that is distributed to contractors during contract performance, and after contract completion, including but not limited to daily or other regular communications by telephone, letter, e-mail, or fax, when issuing change orders or negotiating modifications, conducting site visits and inspections, etc. See BPI 11.4.3.

##### **14.5.3 Clause Usage Prescriptions.**

**PROCEDURE:** The CO may include Clause 14-19, Post Award Orientation, in solicitations and contracts when a post award orientation is appropriate.

#### **14.6 VARIATION IN QUANTITY.**

(a) **PROCEDURE:** COs should consider using a variation in quantity clause in circumstances where quantities of work required by the contract are estimated, where manufacturing or packaging processes common in the industry do not result in exact quantities being produced, or similar circumstances. Typically, such clauses are used only in fixed-price type contracts with unit-priced items.

(b) **POLICY:** Variation in quantity clauses shall not be used in place of options to acquire additional quantities based on possible future requirements. They are to be used to determine pricing for BPA's known requirements that may vary from those stated in the contract because of

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **Part 14 -- General Contract Administration Policies**

---

manufacturing processes or existing physical conditions. They are not to be used to price new requirements.

#### **14.6.1 Supply Contracts.**

**INFORMATION:** Variation in quantity clauses provide that BPA may accept a variation of quantity in the items called for if the variation is caused by packaging or manufacturing processes typical in the industry. Variations are permissible as either increases or decreases from the stated quantity, and are typically stated as percentages. No standard percentages are prescribed -- they should be developed jointly between the contractor and BPA during the negotiation process, taking into consideration the commercial practices applied to the specific product or service.

##### **14.6.1.1 Clause Usage Prescriptions.**

**PROCEDURE:** The CO may include a clause similar to 14-5, Variation in Quantity - Supply Contracts, in solicitations and contracts where the CO believes it would be useful. The CO may modify or delete paragraph (b) as appropriate to the purchase.

#### **14.6.2 Service and Construction Contracts.**

**INFORMATION:** Some types of service contracts (e.g. brush cutting, window cleaning) and construction contracts may provide for variation in estimated quantities of unit price items. When the variation between the estimated quantity and the actual quantity of an item exceeds the established range, BPA and the contractor, at the request of either, will negotiate for a revised unit price for the units of work actually performed outside the established range.

##### **14.6.2.1 Clause Usage Prescriptions.**

**PROCEDURE:** The CO may include a clause similar to 14-6, Variation in Estimated Quantity -- Service and Construction Contracts, in solicitations and contracts where the CO believes it would be useful. The standard variation is 10% for services contracts and 25% for construction contracts. However, the CO may change the standard variation if desirable.

#### **14.7 USE OF GOVERNMENT SUPPLY SOURCES BY SUPPLIERS.**

**POLICY.** CO's may authorize contractors to use Government supply sources if supplies or services are required by a contract. Generally this would be most useful in cost-reimbursement contracts, but it may also be useful in other types of contracts. COs should weigh the incremental cost of such authorization and use of the Government supply system against the potential savings before providing the authorization. Such supply sources include:

- (a) General Services Administration
- (b) Department of Defense
- (c) Department of Veterans Affairs
- (d) Federal Supply Schedules
- (e) Interagency Fleet Management System
- (f) US Bureau of Reclamation
- (g) US Corps of Engineers

**BONNEVILLE PURCHASING INSTRUCTIONS**  
**Part 14 -- General Contract Administration Policies**

---

**14.8 USE OF DOE EXCESS EQUIPMENT.**

**INFORMATION:** BPA cost reimbursement contractors may make use of excess BPA or other Federal Agency equipment if this would be a good business decision. Upon written request by the contractor and approval by the CO, the Property Management functional group in Supply Chain Services will arrange for such property.

**14.9 BPA CONSENT TO SUBCONTRACT.**

(a) **INFORMATION:** Consent to subcontract can be addressed at two levels. The first level involves the approval of the action of subcontracting itself. The second level involves the review and approval of the qualifications of a specific subcontractor proposed to be used for a specific activity.

(b) **INFORMATION:** Consent to subcontract is normally useful in the following types of situations:

- (1) The work to be subcontracted is complex.
- (2) The dollar value of the subcontracted effort is substantial.
- (3) BPA's interest is not protected by competition among subcontractors.
- (4) Environmentally sensitive issues are involved.
- (5) Hazardous materials are involved.
- (6) The initial contract award was based upon the proposed subcontractor's capabilities.

This list is not an all-inclusive one. There may be other circumstances which would make it prudent to impose the restriction to require BPA approval before subcontracting a portion of the contract. The decision to require subcontracting approval is at the discretion of the CO.

(c) **POLICY:** BPA approval of the use of specific subcontractors is also optional at the discretion of the CO. A review of the qualifications and approval of proposed subcontractors should be required when BPA considers the contract effort to be sensitive and desires stricter accountability.

**14.9.1 Clause Usage Prescriptions.**

**PROCEDURE:** The CO may include a clause similar to 14-7, Subcontracts, in solicitations and contracts where it is determined that consent to subcontract is required. Use the clause with its Alternate I when the effort to be subcontracted involves the management or handling of hazardous or toxic wastes. When using Alternate I, add a subparagraph (a) designator to the basic clause, and add paragraph (b) of the alternate.

**14.10 CONTRACT MODIFICATIONS AND CHANGES.**

**14.10.1 Definitions.**

**INFORMATION:**

"Administrative change" means a unilateral contract change that does not substantially affect the rights of the parties (e.g., a change in the paying office or accounting data).

"Constructive change" means an act or failure to act by the CO (or representatives of the CO) which will be construed as if a change was actually issued.

"Contract modification" means any written change in the terms of a contract.

"Change Order" means a written order, signed by the CO directing the contractor to make a change that the Changes clauses authorize the CO to order without the contractor's concurrence.

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **Part 14 -- General Contract Administration Policies**

---

#### **14.10.2 Policy.**

(a) Only COs, or persons delegated specific authority to execute contract modifications by a CO (see 2.3.3), may execute contract modifications.

(b) Contract modifications should be priced before their execution, if this can be done without adversely affecting the interests of BPA.

(c) COs shall convene a Strategy Panel in accordance with the procedures at BPI 6.15 prior to executing modifications that meet any of the criteria as developed by Sourcing Services.

#### **14.10.3 Types of Contract Modifications.**

**INFORMATION:** Contract modifications fall into the following categories:

(a) **Bilateral.** A bilateral modification is a contract modification that is agreed to jointly by the CO and the contractor. The contractor's oral or written agreement will be sufficient to indicate contractor agreement. Bilateral modifications are used to --

- (1) Make negotiated equitable adjustments when necessary;
- (2) Definitize quick-response contracts; or
- (3) Reflect other agreements of the parties which modify the terms of contracts; or
- (4) Make changes requested by the contractor.

(b) **Unilateral.** A unilateral modification is a contract modification that is made by the CO without advance concurrence by the contractor. Unilateral modifications are used to--

- (1) Make administrative changes;
- (2) Issue changes under the changes clause; or
- (3) Make changes authorized by clauses other than a changes clause (e.g., Property clause, Options clause, Differing Site Conditions clause.)

#### **14.10.4 Extension of Contracts.**

(a) **POLICY:** Unilateral extensions. Contracts may be extended by issuing a unilateral modification whenever such right is provided in the contract and the appropriate factors concerning exercise of options (see 7.2.7 and 14.11) have been considered. The official file as identified in BPI 12.8.2, should explain why the CO ordered the extension.

(b) **POLICY:** Bilateral extensions - unexpired contracts. Where the contract has not expired and there is no option giving BPA the right to extend contract performance, such extension may be negotiated with the contractor. The official file, as identified in BPI 12.8.2, shall explain why the CO negotiated the extension.

(c) **POLICY:** Bilateral extensions - expired contracts. Where a contract has expired by its terms but BPA has permitted performance to continue to meet its needs, the contract may be extended by mutual agreement, incorporating all the terms of the original contract. The effective date of the modification shall be the expiration date of the original contract. A new contract expiration date shall be established.

(d) **PROCEDURE:** With regard to paragraph (c) above, the reason for the delay in extending the expired contract and the reason(s) that such action is in BPA's best interests, shall be documented as identified in BPI 12.8.2. The Contracting Officer and Contractor may mutually agree to extend a contract that has been expired for no more than six months. Any extension of a contract that expired more than three (3) months prior must be requested in writing to and approved by the HCA.

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **Part 14 -- General Contract Administration Policies**

---

#### **14.10.5 Changes.**

##### **14.10.5.1 Changes Made with a Changes Clause.**

(a) **INFORMATION:** BPA contracts may contain a "Changes" clause that permits the CO to make unilateral changes within the general scope of the contract. These changes are accomplished by issuing written contract modifications (sometimes called change orders). The contractor must continue performance of the contract as changed, except that in cost-reimbursement or incrementally-funded contracts the contractor is not obligated to continue performance or incur costs beyond the dollar limit established in the contract. Pricing of equitable adjustments should be based on the variance in the cost of performance of the contract work following the change as compared to the contract cost before the change.

(b) **POLICY:** Changes clauses are not generally used in transactions for commercial items, unless such contracts include ancillary complexities such as staged deliveries, multiple delivery sites, etc.

(c) **POLICY:** Although unilateral changes are permitted under the clause, it is generally preferable to execute a bilateral change in order to obtain the agreement of both parties, and to avoid subsequent disagreements. Bilateral changes should be used except when BPA and the contractor cannot quickly agree on the terms of the change, including price, and work must proceed. Only the CO or a person designated by the CO may reach agreement on pricing adjustments. Whenever possible, BPA prefers changes to be priced before work is initiated on the change.

(d) **POLICY:** Normally payments are not made for work performed under undefinitized change orders. The CO may authorize provisional payment if such payments are in BPA's interest.

(e) **PROCEDURE:** The CO should, whenever possible, confirm that all elements of the change have been resolved by including a release in the definitizing bilateral agreement similar to:

"This modification constitutes the total equitable adjustment for the changes described herein."

(f) **PROCEDURE:** The reasons for entering into both unilateral and bilateral modifications, including price or cost as appropriate, shall be documented in the official file as identified in BPI 12.8.2 for changes within the scope of the contract. See Subpart 4.2.1 for a general discussion of documentation standards.

(g) **PROCEDURE:** Changes outside the scope of the contract shall be documented per BPI 12.8.2, as if the transaction was a new award.

(h) **PROCEDURE:** COs should use a Changes clause when it is necessary to reserve the right for BPA to unilaterally order the types of changes described in paragraph (a) of the Changes clauses. Changes clauses are not normally used in contracts for commercial - type supplies or services unless such contracts include ancillary complexities such as staged deliveries, multiple delivery sites, etc.

##### **14.10.5.1.1 Clause Usage Prescriptions.**

###### **PROCEDURE:**

(a) The CO may include a clause similar to 14-8, Changes - Fixed-Price, in solicitations and fixed-price contracts when the CO may want to direct the contractor to make specific changes in the work during the contract. The CO may modify paragraph (a) to reflect the specific portions of the contract to be subject to the clause.

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **Part 14 -- General Contract Administration Policies**

---

(b) The CO may include a clause similar to 14-9, Changes - Cost-Reimbursement, in solicitations and cost-reimbursement contracts when the CO may want to direct the contractor to make specific changes in the work during the contract. The CO may wish to modify paragraph (a) to reflect the specific portions of the contract to be subject to the clause.

(c) The CO may include a clause similar to 14-10, Changes - Time and Materials, in solicitations and time and materials contracts when the CO may want to direct the contractor to make specific changes in the work during the contract. The CO may wish to modify paragraph (a) to reflect the specific portions of the contract to be subject to the clause.

(d) The CO may include a clause similar to 14-11, Changes and Changed Conditions - Construction Contracts, in solicitations and contracts for construction as appropriate. However, this clause will generally not be used in commercial construction contracts.

(e) The CO shall include clause 14-12, Pricing of Adjustments, in solicitations and contracts exceeding \$50,000 except those for commercial supplies and services, including construction.

(f) The CO may include clause 14-13, Modification Cost Proposal - Price Breakdown, in solicitations and contracts when appropriate.

#### **14.10.5.2 Changes Made without a Changes Clause.**

**PROCEDURE:** Contract changes may be negotiated with the contractor when the contract does not contain a changes clause. Pricing of such changes shall be based on, but not necessarily limited to, costs of the changed work, including appropriate overhead charges and profits; the impact on changed and unchanged work, etc.

#### **14.10.6 Forms.**

**PROCEDURE:** The Business Enterprise System electronically generated contract amendment form, or BPA F 4220.06 Modification of Contract, shall be used for contract modifications.

### **14.11 EXERCISING OPTIONS.**

(a) **POLICY:** An option provides a unilateral right in the contract by which, for a specified time, the CO may elect to exercise the terms of the option. The decision to exercise options shall be based on the best buy for BPA.

(b) **PROCEDURE:**

(1) Options are discussed in Subpart 7.2.7.

(2) COs shall consider the following before deciding whether or not to exercise an option:

(A) Will exercising this option, considering an analysis of prices, an examination of the market, evaluation of the contractor performance, and administrative expense of re-competing the requirement obtain the best buy for BPA?

(B) Are funds available?

(C) Does the requirement covered by the option fulfill an existing need?

(D) How critical is BPA's need for continuity of operations and what are the potential costs of disrupting operations?

(3) Upon exercise of an option, the CO will document in the official file, per BPI 12.8.2.

### **14.12 SUSPENSION AND STOP WORK ORDERS.**

(a) **INFORMATION:** Definitions:

"Suspension of work" means a temporary cessation of activity by the contractor under a specific contract.

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **Part 14 -- General Contract Administration Policies**

---

"Stop work order" means a written notice to the contractor to suspend work.

(b) **INFORMATION:** Situations may arise during the conduct of a contract that might cause the CO to order a suspension of work, such as:

- (1) Delays caused by waiting for a decision from BPA;
- (2) Weather-related reasons;
- (3) Technological advancement;
- (4) Production or engineering breakthroughs;
- (5) Realignment of BPA programs or objectives;
- (6) Public safety concerns, including identified unsafe work practices and safety hazards;
- (7) Emergency situations or other urgent conditions;
- (8) Differing site conditions; and
- (9) Violation of substantive contract terms, including BPA's safety, smoking, harassment-free workplace, or other policies.

(c) **PROCEDURE:** Except for safety related issues, generally, only the CO is authorized to suspend work. Most often the decision to suspend work will be made jointly by the CO and the program office, citing Clause 14-14, Stop Work Order, as the basis for suspension of work. However, in cases of public safety concerns (including identified unsafe work practices and safety hazards), emergency situations, or other urgent conditions, either the CO or COTR or field inspector shall promptly notify the Contractor of noncompliance with safety requirements of the contract. The Contractor is required to take immediate corrective action as per the contract Safety and Health clause (see Clause 15-2, Safety and Health, or Clause 15-4, Safety, Health and Property Protection – Services). If the Contractor fails or refuses to promptly correct the public safety, emergency or urgent condition, the CO, COTR or field inspector may suspend all or any portion of work affected by the noncompliance, pending discussion with the program and Safety office. Suspensions of work may be ordered orally, but should be followed up with a written stop work order. The stop work order should include information related to the following, as appropriate:

- (1) A description of the work to be suspended, including whenever applicable, identified unsafe work practices or work hazards;
- (2) Instructions concerning the contractor's issuance of further orders for materials or services;
- (3) Guidance to the contractor on action to be taken on any affected subcontracts; and
- (4) Other suggestions for minimizing the contractor's costs.

(d) **PROCEDURE:** As soon as feasible after the stop work order is issued, the CO should work with the program office, and the Safety Office whenever public safety (including work and safety hazards) are involved, to resolve the outstanding issues, and make a decision to terminate the contract, cancel the stop-work order, or continue the stop work order while the issues are being resolved.

#### **14.12.1 Clause Usage Prescriptions.**

**PROCEDURE:** The CO may include a clause similar to 14-14, Stop Work Order, in solicitations and contracts when it is desirable to retain the right to suspend the work during contract performance.

#### **14.13 NOVATION AND CHANGE-OF-NAME AGREEMENTS.**

##### **14.13.1 Definitions.**

**INFORMATION:**

**BONNEVILLE PURCHASING INSTRUCTIONS**  
**Part 14 -- General Contract Administration Policies**

---

"Change-of-name agreement" means a legal instrument executed by the contractor and BPA recognizing a legal change of the contractor's name without disturbing the original contractual rights and obligations of the parties.

"Novation agreement" means a legal instrument executed by (a) the contractor (transferor), (b) the successor in interest (transferee), and (c) BPA, by which, among other things, the transferor guarantees performance of the contract; the transferee assumes all obligations under the contract; and BPA recognizes the transfer of the contract and related assets.

**14.13.2 Responsibility for Executing Agreements.**

**POLICY:** The CO shall be responsible for processing and executing novation and change of name agreements.

**14.13.3 Agreement to Recognize a Successor in Interest (Novation Agreement).**

(a) **INFORMATION:** BPA may, if in its interest, recognize a third party as the successor in interest to a BPA contract. Such transfers usually result when another company purchases the original contracting firm. The CO may also consider such actions when the original contractor is unable to perform and another viable contractor stands willing to assume the rights and duties under the contract.

(b) **INFORMATION:** When it is in BPA's interest not to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to BPA, and the contract may be terminated for default should the original contractor not perform.

(c) **PROCEDURE:** When a contractor asks BPA to recognize a successor in interest, the CO shall obtain from the contractor two signed copies of the proposed novation agreement signed by the original contractor and the successor in interest.

(d) **PROCEDURE:** When recognizing a successor in interest to a BPA contract is consistent with BPA's interest, the responsible CO shall execute a novation agreement with the transferor and the transferee. It shall ordinarily provide that --

- (1) The transferee assumes all the transferor's obligations under the contract;
- (2) The transferor waives all rights under the contract against BPA;
- (3) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and
- (4) Nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.

(e) **PROCEDURE:** The CO generally should use the following format for agreements when the transferor and transferee are corporations and all of the transferor's assets are transferred. This format may be adapted to fit specific cases, and may be used as a guide in preparing similar agreements for other situations.

(f) **PROCEDURE:** The CO shall coordinate with the BES Vendor Maintenance Team to ensure that the contractor's BES vendor record information is updated, including new TAX ID if changed. Use form BPA 4220.01e, Request New or Change Vendor Profile to collect the new information. The CO may complete this form, or send it to the Contractor for completion and submittal to the BES Vendor Maintenance Team.

**BONNEVILLE PURCHASING INSTRUCTIONS**  
**Part 14 -- General Contract Administration Policies**

---

NOVATION AGREEMENT

The purpose of the agreement is to recognize \_\_\_\_\_(transferee) as the successor in interest to \_\_\_\_\_(transferor) under BPA Contract No(s). \_\_\_\_\_.

(1) The Transferor hereby transfers all rights and obligations under the contract(s) to the Transferee as of \_\_\_\_\_(date). By making such transfer, the Transferor waives any claims or rights it may have under the contract(s). The transferor guarantees performance of the contract by the transferee.

(2) The Transferee agrees to assume all rights and obligations transferred in paragraph (1), and understands that, as of the date specified, it stands in the same legal position as if it had been the original contractor.

(3) BPA recognizes the Transferee as the Transferor's successor in interest under the subject contract(s). Pursuant to this agreement, the Transferee becomes entitled to all rights and interests under the contract(s) as if the Transferee were the original contractor.

(4) Except as provided in this agreement, nothing in it shall be construed as (a) a waiver of any rights BPA may have against the Transferor, or (b) relieving the transferor or transferee from compliance with any Federal law.

The parties hereby execute this agreement as of the date specified in paragraph (1)

BONNEVILLE POWER ADMINISTRATION

By.....

Title.....

(NAME OF TRANSFEROR)

By.....

Title.....

(NAME OF TRANSFEREE)

By.....

Title.....

(End of Agreement)

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **Part 14 -- General Contract Administration Policies**

---

#### **14.13.4 Processing Agreements.**

***PROCEDURE:***

- (a) The contractor shall submit a written request to the CO to recognize a successor in interest to one or more contracts.
- (b) The CO shall confer with program offices and Disbursement Operations to obtain a list of affected contracts, and request prompt submission of any comments, which shall include technical considerations, if appropriate.
- (c) The CO shall determine whether or not it is in BPA's interest to recognize the proposed successor in interest on the basis of the comments received from the affected parties, and whether or not the proposed successor is a viable supplier.
- (d) The CO shall (1) forward a signed copy of the executed novation to the transferor and to the transferee and (2) retain a signed copy in the case file.
- (e) The CO shall prepare the Business Enterprise System electronically generated contract amendment form, or form BPA F 4220.06 Modification of Contract, for each affected contract, incorporating a copy of the agreement. The modification shall be distributed in the usual manner.
- (f) The CO shall ensure that the BES Vendor Maintenance Team receives the information to update the Vendor Record. See BPI 14.3.3 (f)

#### **14.13.5 Contractor's Change of Name.**

***PROCEDURE:***

- (a) If only a change of the contractor's name is involved and BPA's and contractor's rights and obligations remain unaffected, the parties shall execute an agreement to reflect the name change. The contractor shall submit a written request to the CO to change the name.
- b) The CO shall prepare a contract modification in the new name of the firm, and reference in the body of the modification the former name and date of the supplier's request. The modification should be similar to: "This modification changes the name of the contractor from \_\_\_\_\_(CO enter the old firm name) to that shown above. This change is made at the request of the contractor dated \_\_\_\_\_(CO insert date of request.)"

#### **14.14 Reserved.**

#### **14.15 USE OF PRIVATELY-OWNED US FLAG VESSELS.**

- (a) ***INFORMATION:*** BPA has experienced excessive damage from the cross-country rail shipment of sensitive materials acquired from foreign vendors. BPA has determined that it is in its interest to require shipment of sensitive foreign materials by ocean vessel to the port nearest the site where the material will be used
- (b) ***PROCEDURE:***
  - 1) COs shall not require the use of U.S. Vessels for shipment of sensitive materials unless a U.S.-Flag Vessel serves a port in the BPA service area allowing minimal handling in rail shipment. In order to achieve the requirement that BPA obtain U.S. Flag Vessel shipping for 50 percent of the gross tonnage of foreign-produced materials, a provision requiring 100 percent of the gross tonnage for a contract will be used in those instances where it is not anticipated that

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **Part 14 -- General Contract Administration Policies**

---

damage will be caused by rail shipment and where contracts involve foreign manufacturing of materials or equipment.

2) Subcontracts for purchase of commercial items or components are exempt from the use of U.S. Flag Vessels.

#### **14.15.1 Clause usage prescriptions.**

**PROCEDURE:** The CO shall include the clause at 14-16, Requirement for U.S. Flag Vessels, in solicitations and contracts that exceed \$100,000 and which will involve ocean transportation of materials or equipment not easily damaged during cross country rail shipments, except subcontracts for purchase of commercial items or components.

#### **14.15.2 Remedy for U.S. Flag Vessel Noncompliance.**

**PROCEDURE:** If, after award of the contract, the contractor is unable to obtain a U.S. Flag Vessel, it may request BPA to waive the requirements of the clause at 14-16, Requirement for U.S. Flag Vessels. Such request will be supported by documentation in the official file showing that no U.S. Flag Vessel was available, and that a timely attempt was made to obtain one. If the CO waives the applicable clause, the difference in cost between the U.S. Flag and Foreign Flag Vessel shipping costs will be added to or deducted from the contract by modification as appropriate.

### **14.16 CONTRACTOR PERFORMANCE MEASURES.**

(a) **POLICY:** All aspects of a contractor's performance, including safety record, may be key considerations when making source selection decisions for future awards (See BPI 11.8.) COs are encouraged to provide regular feedback to contractors to help contractors continually improve their performance. However, COs are under no obligation to do so. It is the responsibility of the contractor to develop and maintain a solid reputation of performance. See 21.3.2 for information on handling disagreements on contractor performance evaluations.

(b) **INFORMATION:** Formal and informal systems which track contractors long term performance are useful to continually improve the quality of supplies and services purchased by BPA. There are many such systems available. Informal systems may be no more complex than regular communications with the BPA regarding a particular contractor's performance for specific transactions. Formal systems may also include supplier rating systems and preference programs such as supplier certifications, preferred suppliers, etc. Factors considered in these various systems vary, but always include past experience with the contractor.

(c) **PROCEDURE:** Operational contracting offices may develop procedures to implement contractor performance measurement systems. Such systems shall be as administratively simple as possible. The complexity and cost of developing and managing such systems should be commensurate with the probable benefits. In general, such systems should be designed to emphasize the measurement of performance for those supplies or services which are repeatedly bought by BPA and are most critical to meet BPA's mission. When possible, such systems should be designed to encourage superior performance as well as identify substandard performance.

### **14.17 INDIRECT COST RATES.**

#### **14.17.1 General Discussion.**

**INFORMATION:**

(a) "Indirect costs" are those costs which are not readily identified as direct costs and which benefit more than one cost objective. Costs may be allocated (1) on the basis of benefit - e.g.,

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **Part 14 -- General Contract Administration Policies**

---

the cost benefits both the contract and other work and can be distributed to them in reasonable proportion to the benefits received; or (2) on the basis of necessity to the overall operation of the contractor's business (e.g., supervision, management, facilities cost, insurance, utilities, etc.).

(b) "Indirect cost rate" means the percentage or dollar factor that expresses the ratio of indirect expense incurred in a given period to direct labor cost, manufacturing cost, or other appropriate base for the same period.

(c) "Indirect cost rate caps" are ceilings which can be negotiated by the CO which act as a limit (or ceiling) on the allowable rates applied to each contract. If a Cognizant Federal Agency (CFA) has established indirect rates, caps may be set at lower than the rate determined by the CFA, but generally should not be set higher than the rate determined by the CFA. Indirect cost rate caps are typically not used when predetermined final indirect cost rates have been established by the CFA for educational institutions.

(d) The determination and application of indirect cost rates to contracts is a complicated subject, and cannot be covered thoroughly in the BPI. This subpart briefly introduces the subject. Further detailed information concerning application to a specific contract may be obtained from experienced purchasing personnel, or the BPA Internal Audit staff.

#### **14.17.2 Cognizant Federal (Audit) Agency.**

(a) **INFORMATION:** "Cognizant Federal Agency" (CFA) means the agency having the major financial interest in the organization. In some cases, the CFA may be BPA. The CFA is responsible for establishing indirect cost rates for the organization on behalf of all Federal agencies. The CO should contact the CFA to determine the existence of audits addressing proposed indirect costs. Requests for audit support should request the minimum information necessary to determine the best buy. A listing of CFA offices is contained in the Directory of Federal Contract Audit Offices, available form DCAA. Questions regarding audit offices may be referred to the Defense Contract Audit Agency, Attn: CMO Publications Officer, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, Virginia 22060-6219.

(b) **POLICY:** In general, COs shall accept and use the indirect cost rates established by the CFA subject to any specific limitation or cap negotiated for the contract (see 14.17.4). The CO shall not request a preaward audit of indirect cost rates unless the information available from an existing audit completed within the preceding 12 months is considered inadequate for determining the reasonableness of proposed indirect costs.

(c) **POLICY:** When BPA is the CFA, BPA's Manager of Internal Audit Services is hereby delegated authority as the cognizant CO for establishing, negotiating and approving such indirect cost rates on behalf of BPA.

#### **14.17.2.1 Cognizant Federal Agency – State, Local, and Federally-Recognized Indian Tribal Governments.**

**INFORMATION:** 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87), establishes the cognizant agency concept and procedures for determining a cognizant agency for approving state, local, and federally-recognized Indian tribal government indirect costs associated with federally-funded programs and activities. The indirect cost rates negotiated by the cognizant agency will be used by all Federal agencies that also award contracts to these same state, local, and federally-recognized Indian tribal governments.

#### **14.17.2.2 Cognizant Federal Agency -- Nonprofit Organizations.**

**INFORMATION:** 2 CFR Part 230, Cost Principles for Non-Profit Organization (OMB Circular A-122), concerning cost principles for nonprofit organizations establishes the cognizant agency

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **Part 14 -- General Contract Administration Policies**

---

concept and procedures for determining a cognizant agency for approving nonprofit organization indirect costs associated with federally-funded programs and activities. The indirect cost rates negotiated by the cognizant agency will be used by all Federal agencies that also award contracts to these same nonprofit organizations.

#### **14.17.2.3 Cognizant Federal Agency - Educational Institutions.**

(a) **INFORMATION:** 2 CFR Part 220, Cost Principles for Educational Institutions (OMB Circular A-21), assigns either Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD) as the CFA for each educational institution, responsible for the negotiation of indirect cost billing rates and, where appropriate, predetermined final indirect cost rates for use by all Federal agencies.

(b) **INFORMATION:** Most CFA's establish predetermined final indirect cost rates for the payment of reimbursable indirect costs under cost reimbursement research and development contracts with universities, colleges, or other educational institutions. If they have been established, their use must be extended to all the institution's Government contracts.

(c) **POLICY:** Post-determined final indirect cost rates shall be used in the settlement of indirect costs for all cost-reimbursement contracts with educational institutions, unless predetermined final indirect cost rates are authorized and used. COs shall use provisional (billing) rates established by the CFA to reimburse the contractor for work performed during a period not covered by predetermined rates.

#### **14.17.3 Indirect Cost Rates.**

(a) **POLICY:** COs shall use the final indirect cost rates of a commercial organization for a given period, which shall be binding on all the cost-reimbursement contracts of the organization for the period, subject to any specific limitation in a contract or advance agreement; unless the quick closeout procedure in 14.17.5 is used.

(b) **INFORMATION:** Various types of indirect cost rates are discussed below. The choice of which type of rate to use in a specific transaction is subject to negotiation between the contractor and the CO. The types of rates typically used at BPA are:

- (1) Provisional (or billing) Indirect Cost Rates (see 14.17.3.1);
- (2) Final Indirect Cost Rates (see 14.17.3.2);
- (3) Predetermined Final Indirect Cost Rates (see 14.17.3.3); and
- (4) Fixed Indirect Cost Rates with Carry forward (See 14.17.3.4).

##### **14.17.3.1 Provisional Rates.**

(a) **INFORMATION:** "Provisional rates" (often referred to as "billing rates") are indirect cost rates established temporarily for interim reimbursement of incurred indirect costs and adjusted, as necessary, until establishment of final indirect cost rates. They are rates established in anticipation of performance, and are subject to annual review or final audit at the end of contract performance. Provisional rates are negotiated, and may be based on the rate established by the CFA, or negotiated between the CO and the contractor. Negotiating a lower provisional rate may reduce interim billings for indirect costs. In contracts without indirect cost rate caps, BPA will pay the final audited rate for the entire period of performance, regardless of the provisional rate established at the beginning of, or during, the contract, and paid throughout the contract performance period. This could result in a refund to BPA if the audited rate is lower than the provisional rate, or require BPA to make an additional payment to the contractor if the final audited rate is higher than the provisional rate. Any amounts due to higher final rates are still subject to the contract price ceiling and the contract ceiling clause.

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **Part 14 -- General Contract Administration Policies**

---

(b) **PROCEDURE:** The CO shall establish a provisional rate on the basis of recent review, previous audits or experience, or similar reliable data or experience of other contracting activities. In establishing the provisional rate, the CO should ensure that it is as close as possible to the final indirect cost rate anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the CO determines that the value of contracts requiring use of a provisional rate does not warrant submission of a detailed provisional rate proposal, the provisional rate may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and non-recurring costs and to reflect new or changing conditions. In establishing the provisional rate, the CO may request advisory audit services from BPA Internal Audit or other audit organizations when deemed necessary.

(c) **PROCEDURE:** Once established, provisional rates may be prospectively or retroactively revised by mutual agreement of the CO and the contractor, at either party's request, to prevent substantial overpayment or underpayment.

#### **14.17.3.2 Final Indirect Cost Rates.**

(a) **INFORMATION:** "Final indirect cost rates" are established based on audits which determine the actual costs for the covered period and agreed upon by the CO and the contractor as final.

(b) **PROCEDURE:** When BPA is the CFA, the CO shall assure that the contractor submits a final annual indirect cost rate proposal together with supporting cost or pricing data in accordance with the clause at 22-5, Basis of Payment - Cost Reimbursement. The proposal shall be submitted within 90 days after expiration of the contractor's fiscal year and shall reflect actual cost experience for that period.

#### **14.17.3.3 Predetermined Final Indirect Cost Rates.**

##### **INFORMATION:**

(a) "Predetermined final indirect cost rates" are typically established by the CFA only for educational institutions with cost reimbursement research and development contracts based on an estimate of the costs to be incurred during the covered period. They are established at the beginning of the contract, and are not subject to audit at the end of the contract. (See clause 22-6.) They may be modified during the contract period if negotiated between the parties. COs may accept a lower predetermined rate than was established by the CFA if it is offered by the institution. However, the CO shall not attempt to negotiate such a lower rate (see 14.17.2.3).

(b) Predetermined final indirect cost rates may be negotiated by BPA COs for other than cost reimbursement research and development contracts with educational institutions when the contractor has not been assigned to a CFA for negotiation of indirect cost rates. Situations where a CO may want to consider negotiation of predetermined final indirect cost rates are:

- (1) Where the contractor is a newly formed entity with no previous cost experience;
- (2) Where BPA has had a long term relationship with the contractor and the contractor has had a history of relatively stable indirect cost rates; or
- (3) Where the indirect cost rate could be frequently manipulated by small business owners.

#### **14.17.3.4 Fixed Indirect Cost Rates with Carry-Forward.**

##### **INFORMATION:**

(a) Fixed indirect cost rates with carry-forward are typically established by the CFA for state and local governments, including Indian tribes. They are a blend of both provisional (billing) rates and predetermined final indirect cost rates. Like the predetermined final rate, a rate is established based on the estimate of a future period's cost and is not subject to revision. However, differences between the estimated costs and actual costs, when they become known, are carried

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **Part 14 -- General Contract Administration Policies**

---

forward and are considered in the negotiation of rates for subsequent periods. As an example, if an agency's costs are more than estimated, the amount of the increase is added to the estimate for the next period to determine the fixed rate for the next period. Conversely, if an agency's costs are less than estimated, the difference between the fixed rate and the actual cost is subtracted from the estimate of the next period to determine the fixed rate for the next period. (See Clause 22-19.)

- (b) The fixed rate with carry forward is not used where:
- (1) There is only short term or widely fluctuating Federal funding;
  - (2) There is likelihood of organizational change; or
  - (3) There is a fluctuating level of operation which would make the projection of costs unrealistic.

#### **14.17.4 Limitations on Indirect Cost Rates.**

##### ***INFORMATION:***

- (a)
- (1) Some situations may make it prudent to provide a final indirect cost rate ceiling or cap in a contract. Examples of such circumstances are when the proposed contractor;
    - (A) Is a new or recently reorganized company, and there may be no past or recent record of incurred indirect costs;
    - (B) May have a recent record of a rapidly increasing indirect cost rate due to a declining volume of sales without a commensurate decline in indirect expenses;
    - (C) May be seeking to enhance its competitive position in a particular circumstance by basing its proposal on indirect costs rates lower than those that may reasonably be expected to occur during contract performance, thereby causing a cost overrun; or
    - (D) Will participate (share) in the costs of the contract by accepting indirect cost rates lower than the anticipated actual rates. In such cases, a negotiated indirect cost rate ceiling may be incorporated into the cost-sharing contracts for prospective application.
  - (2) In such cases, indirect cost rate caps covering the final indirect cost rates may be negotiated and specified in the contract. This ceiling (cap) may be negotiated as an individual rate for each indirect cost category (i.e., labor overhead, materials overhead, general and administrative expense, etc.) or may be negotiated as a composite of all indirect expenses (e.g., "all indirect expenses added together shall not exceed 134.5% of allowable direct costs"). In either case care should be taken to ensure the cap conforms to the contractor's indirect rate accounting practices.
- (b) When ceiling (cap) provisions are utilized, the contract shall also provide that
- (1) BPA will not be obligated to pay any additional amount should the final indirect cost rates exceed the negotiated ceiling (cap) rates unless required by law or regulation, and
  - (2) In the event the final indirect costs rates are less than the negotiated ceiling (cap) rates, BPA shall make payment based on the actual final indirect cost rate.

#### **14.17.5 Quick-Close-Out of Cost-Reimbursement Contracts.**

##### ***PROCEDURE:***

- (a) COs may negotiate settlement of indirect costs for a specific cost-reimbursement contract in advance of the determination of final indirect cost rates if--
- (1) The contract is physically complete;
  - (2) The amount of unsettled indirect costs to be allocated to the contract is relatively insignificant; and
  - (3) Agreement can be reached on a reasonable estimate of allocable dollars.

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **Part 14 -- General Contract Administration Policies**

---

(b) Use of the quick-close-out procedure provided for by Clause 22-5, Basis of Payment - Cost Reimbursement, shall be subject to agreement that the determination of indirect costs is final for the contract it covers and that no adjustment shall be made to other contracts for over- or under-recoveries of costs allocable to the contract covered by the agreement.

(c) Indirect cost rates used in the quick close-out of a contract shall not be considered a binding precedent when establishing the final indirect cost rates for other contracts.

#### **14.18 HOMELAND SECURITY.**

##### **14.18.1 Definitions**

"Critical Information" means any information which must be safeguarded from loss, misuse, compromise, unauthorized, access, or modification, because such actions may adversely affect the business, security or other interests of the government, or the privacy of individuals; or which may otherwise be used by BPA's competitors or adversaries (including, but not limited to, other utilities, contractors, foreign interests, or disgruntled employees) to harm or embarrass BPA, or to gain and unfair advantage. Examples of Critical Information include confidential legal strategies, employee personnel files, contract negotiations, pricing and business strategies, active investigations, critical infrastructure addresses, e-mail addresses, physical and personal system entry codes, badges, equipment (model numbers, name, quantity, software (vendor, product name), passwords, or data. Critical Information can exist in the form of printed documents, electronically stored information, telecommunications traffic, or the spoken work.

"Cyber Security" means those measures used to safeguard electronic systems capable of electronically creating, storing, viewing, using or transmitting data; to prevent unauthorized access to electronic systems; to safeguard electronic systems against espionage, sabotage, damage, and theft; and to reduce the exposure to threats which could result in a disruption or denial of service.

"Data," means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. Data are discreet elements of information processed in a computer system, printed on paper or other medium such as CD-ROM, DVD, or diskette, and the analysis, combination or association of such elements can impart both content and context. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

"Export" means the transfer of anything to a "FOREIGN PERSON" by any means, anywhere, anytime, or the knowledge that what is being transferred to a "U.S. PERSON" will be further transferred to a "FOREIGN PERSON."

"Foreign Contractor" means a person, who does not live in the United States and is not a U.S. citizen, or an entity, residing in a foreign country that provides technical support and maintenance services for an entity in the United States.

"Foreign National" means any person who is not a citizen or permanent resident alien of the United States. A foreign national is considered to be from a Sensitive Country if he/she is a citizen residing in a country or is employed by the government of an institution of a country on the Sensitive Country List. A foreign national is subject to the "deemed export" rule except a foreign national who (1) is granted permanent residence, as demonstrated by the issuance of a permanent resident visa (i.e., "Green Card"); or (2) is granted U.S. citizenship; or (3) is granted status as a "protected person" under 8 U.S.C. 1324b(a)(3).

"Information" is the meaning derived by a human being from associated data elements appearing in a certain order.

## **BONNEVILLE PURCHASING INSTRUCTIONS**

### **Part 14 -- General Contract Administration Policies**

---

“Intangible Exports” means technical information transmitted through electronic media, such as telephone, facsimiles and electronic mail.

“Physical Security” means those measures used to safeguard personnel; to prevent unauthorized access to equipment, facilities, material, and documents; to safeguard them against espionage, sabotage, damage, and theft; and to reduce the exposure to threats, which could result in a disruption or denial of service.

“Security Incident” means intended or actual harm or injury to an employee, contractor or visitor, Government or personal property, or unauthorized access, use, sabotage, theft or vandalism of Government or personal property.

“Sensitive Country List” means a country in which particular attention is given during the review and approval process for Foreign Visits & Assignments. Countries may be designated as sensitive for reasons of national security, nuclear nonproliferation, regional instability, threat to national economic security, or terrorism support.

“Terrorist Country” means a sponsor of international terrorism as designated by the U.S. Secretary of State. These countries presently include Iran, Iraq, Syria, Libya, Cuba, North Korea, and Sudan.

#### **14.18.2 BPA Designation and Policy.**

**POLICY:** It is BPA’s policy to protect the agency facilities and Critical Information (CI). See BPI 11.4.3

**POLICY:** The U.S. Department of Homeland Security designates BPA as part of the critical national infrastructure. Information concerning the physical and technical infrastructure of BPA’s existing and future power or transmission operations or information systems, which may be represented in data, drawings, notes, or oral presentations is deemed information critical to maintaining national security. This information shall not be exported tangibly or intangibly to countries on the U.S. DOE Sensitive Country List or to any country designated as a Terrorist Country by the U.S. Department of State. Any intended export of this information must have the prior written approval of BPA and be in accordance with all laws of the United States. Breach of this section shall be reported immediately to BPA Cyber Security at 503-230-3082 or at 503-230-4679.

#### **14.18.3 Clause Usage Prescriptions.**

**PROCEDURE:** COs shall include Clause 14-17 Homeland Security in solicitations and contracts when:

- 1) BPA is contracting for hardware, software or services;
- 2) A non-disclosure agreement has been included; or
- 3) Any other instance where the requisitioner or CO determines it is necessary to protect BPA’s interests.

#### **14.19 BANKRUPTCY.**

(a) **POLICY:** The contracting officer shall take prompt action to determine the potential impact of a contractor bankruptcy on BPA in order to protect the interests of BPA.

(b) **PROCEDURE:**

- (1) When notified of bankruptcy proceedings, contracting officers shall, at a minimum—
  - (A) Furnish the notice of bankruptcy to legal counsel and other appropriate agency offices (e.g., contracting, financial, property) and affected buying activities;

**BONNEVILLE PURCHASING INSTRUCTIONS**  
**Part 14 -- General Contract Administration Policies**

---

- (B) Determine the amount of BPA's potential claim against the contractor (in assessing his impact, identify and review any contracts that have not been closed out, including those physically completed or terminated);
  - (C) Take actions necessary to protect BPA's financial interests and safeguard BPA property; and
  - (D) Furnish pertinent contract information to the legal counsel representing BPA.
- (2) The contracting officer shall consult with legal counsel prior to taking any action regarding the contractor's bankruptcy proceedings.

**14.19.1 Clause Usage Prescriptions.**

**PROCEDURE:** COs shall include clause at 14-18, Bankruptcy, in all solicitations and contracts exceeding \$100,000, except IGC's.

**14.50 TEXT OF CLAUSES.**

The following clauses are referred to in BPI Part 14:

- 14-1 Contracting Officer's Representatives - Construction Contracts
- 14-2 Contract Administration Representatives
- 14-3 Order of Precedence
- 14-4 Other Rights at Law
- 14-5 Variation in Quantity- Supply Contracts
- 14-6 Variation in Estimated Quantity -- Service and Construction Contracts
- 14-7 Subcontracts
- 14-8 Changes - Fixed-Price
- 14-9 Changes - Cost-Reimbursement
- 14-10 Changes - Time and Materials
- 14-11 Changes And Changed Conditions - Construction Contracts
- 14-12 Pricing of Adjustments
- 14-13 Modification Cost Proposal- Price Breakdown
- 14-14 Stop Work Order
- 14-15 Reserved
- 14-16 Requirement for U. S. Flag Vessels
- 14-17 Homeland Security
- 14-18 Bankruptcy

**Clause 14-1 CONTRACTING OFFICER'S REPRESENTATIVES - CONSTRUCTION CONTRACTS (Sep 98) (BPI 14.3.2)**

(a) The Field Inspector is an authorized representative of the Contracting Officer's Technical Representative (COTR) for technical oversight of contract performance. This includes the functions of inspection and review of work performed.

(b) The Contracting Officer's Technical Representative (COTR) is responsible for all technical oversight of the contract. The functions of the COTR include interpretation of specifications and drawings, and processing of payments.

(c) The Contracting Officer's Representative (COR) is the authorized representative of the Contracting Officer for administrative matters, including payment, updated delivery schedules, and changes.

(d) These representatives are authorized to act for 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

**BONNEVILLE PURCHASING INSTRUCTIONS**  
**Part 14 -- General Contract Administration Policies**

---

or for convenience of BPA; and (3) final decisions on any matters subject to appeal, as provided in the disputes clause. In addition, the COTR may not make final acceptance under the contract.

(End of clause)

**Clause 14-2 CONTRACT ADMINISTRATION REPRESENTATIVES (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.

(End of clause)

**Clause 14-3 ORDER OF PRECEDENCE (Sep 98)(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.

(End of Clause)

**Clause 14-4 OTHER RIGHTS AT LAW (Oct 05)(BPI 14.4.2.1)**

BPA, as an independent agency in the Department of Energy, reserves any other rights it may have at law, unless superseded specifically by this contract.

(End of Clause)

**Clause 14-5 VARIATION IN QUANTITY - SUPPLY CONTRACTS (Aug 02) (BPI 14.6.1.1)**

(a) A variation in the quantity of any contract item will not be accepted unless the variation has been caused by conditions of packing or allowances in manufacturing processes, and then no more than \_\_\_\_\_% more or less than the specified quantity. This percentage variation applies to each item separately, without regard to designated delivery location.

(b) BPA may retain excess quantities up to \$100 in value without compensating the contractor for the increased quantity, and the contractor waives all rights, title or interest therein.

(End of clause)

**Clause 14-6 VARIATION IN ESTIMATED QUANTITY- SERVICE AND CONSTRUCTION CONTRACTS. (Sep 98)(BPI 14.6.2.1)**

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the item varies more than \_\_\_\_\_ (usually 10% for service contracts and 25% for construction

**BONNEVILLE PURCHASING INSTRUCTIONS**  
**Part 14 -- General Contract Administration Policies**

---

contracts) from the estimated quantity, an equitable adjustment in the unit price of units performed outside of the established range shall be made at the request of either party, if the variation in quantity alters the cost of the performance of the work.

(End of Clause)

**Clause 14-7 SUBCONTRACTS. (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.

(End of Clause)

**Alternate I (Sep 98)**

(b)(1) If the subcontract is for the management or handling of hazardous or toxic wastes, before work may begin, BPA must receive:

(A) a copy of EPA Notification of Hazardous Waste Activity (EPA form 8700-12) or equivalent) and

(B) acknowledgment of the notification filing (EPA form 8700-12A or equivalent).

(2) If the subcontract involves management of PCBs, before work may begin, BPA must receive:

(A) a copy of EPA Notification of PCB Activity (EPA form 7710-53 or equivalent), and

(B) acknowledgment of the filing (a letter from EPA). The acknowledgment from EPA will include the EPA identification number assigned.

(End of Alternate I)

**Clause 14-8 CHANGES - FIXED-PRICE. (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.

**BONNEVILLE PURCHASING INSTRUCTIONS**  
**Part 14 -- General Contract Administration Policies**

---

(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.

(End of clause)

**Clause 14-9 CHANGES - COST-REIMBURSEMENT. (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 estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or if it otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in (1) the estimated cost, delivery or completion schedule, or both; (2) the amount of any fixed fee; and (3) other affected terms and shall modify the contract accordingly.

(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) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract shall not be increased or considered to be increased except by specific written modification of the contract indicating the revised contract estimated cost and, if this contract is incrementally funded, the additional amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Contract Ceiling Limitation clause of this contract.

(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.

**BONNEVILLE PURCHASING INSTRUCTIONS**  
**Part 14 -- General Contract Administration Policies**

---

(End of clause)

**Clause 14-10 CHANGES - TIME AND MATERIALS. (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 change causes an increase or decrease in any hourly rate, the ceiling price, 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

- (1) ceiling price;
- (2) hourly rates;
- (3) delivery schedule; and
- (4) other affected terms, and shall modify the contract accordingly.

(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) Notwithstanding the terms and conditions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the revised contract estimated cost and, if this contract is incrementally funded, the additional amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Contract Ceiling Limitation clause of this contract.

(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.

(End of clause)

**Clause 14-11 CHANGES AND CHANGED CONDITIONS - CONSTRUCTION CONTRACTS. (Sep 98)(BPI 14.10.5.1.1)**

(a) The Contracting Officer may, in writing, order changes in the drawings and specifications within the general scope of the contract.

(b) The Contractor shall promptly notify the Contracting Officer, in writing, of subsurface or latent physical conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site before proceeding with the work.

**BONNEVILLE PURCHASING INSTRUCTIONS**  
**Part 14 -- General Contract Administration Policies**

---

(c) If changes under paragraph (a) or conditions under paragraph (b) increase or decrease the cost of, or time required for performing the work, the Contracting Officer shall make an equitable adjustment (see paragraph (d)) upon assertion of a claim by the Contractor before final payment under the contract.

(d) The Contracting Officer shall not make an equitable adjustment under paragraph (b) unless--  
(1) The Contractor has submitted and the Contracting Officer has received the required written notice; or  
(2) The Contracting Officer waives the requirement for the written notice.

(e) Failure to agree to any adjustment shall be a dispute under a disputes clause, if one is included in this contract.

(End of clause)

**Clause 14-12 PRICING OF ADJUSTMENTS (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.

(End of Clause)

**Clause 14-13 MODIFICATION COST PROPOSAL - PRICE BREAKDOWN (Sep 98)(BPI 14.10.5.1.1)**

(a) The contractor, in connection with any proposal it makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. The breakdown shall be in enough detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by similar price breakdowns from those subcontractors.

(b) In addition, if the proposal includes a time extension, a justification thereof shall also be furnished. Notwithstanding any other provisions of this contract, it is mutually understood that the time extension for changes in the work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of work. The contract completion dates will be extended only for those specific elements so delayed and the remaining contract completion dates for all other portions of the work will not be altered.

(c) The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.

(End of clause)

**Clause 14-14 STOP WORK ORDER (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.

**BONNEVILLE PURCHASING INSTRUCTIONS**  
**Part 14 -- General Contract Administration Policies**

---

(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.

(End of clause)

**Clause 14-15 Reserved.**

**Clause 14-16 REQUIREMENT FOR U.S. FLAG VESSELS (DEC 12)(BPI 14.15.1)**

(a) The Contractor shall use a privately owned U.S. flag commercial vessel, to ship no less than 50 percent of the gross tonnage involved in this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities to the extent such vessels are available at rates that are fair and reasonable for United States flag commercial vessels. Privately owned U.S. flag commercial vessel means one of the following: a vessel (1) registered and operated under the laws of the United States, (2) used in commercial trade of the United States, (3) owned and operated by U.S. citizens, including a vessel under voyage or time charter to the Government, or (4) a Government-owned vessel under bareboat charter to, and operated by U.S. citizens.

(b)

(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) the Contracting Officer and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, D.C. 20590. Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in kilograms and cubic meters if available.
- (I) Total ocean freight revenue in U.S. dollars.

(c) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, D.C. 20590, Phone: (202) 366-4610.

(d) In the event that the contractor is unable to obtain a U.S. Flag Vessel, it may request BPA to waive the requirements of this clause. Such request will be supported by documentation showing that no U.S. flag vessel was available, and that a timely attempt was made to obtain one. If the CO waives the applicable clause, the difference in cost between the U.S. Flag and Foreign Flag

**BONNEVILLE PURCHASING INSTRUCTIONS**  
**Part 14 -- General Contract Administration Policies**

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Vessel shipping costs will be added to or deducted from the contract by modification, as appropriate.

(e) Where a contract may involve shipment on U.S. Flag vessels, BPA may furnish information on the award to the Maritime Administration so that it can assist the Contractor in locating such vessels. However, Maritime's relationship to the Contractor is noncontractual.

(f) The requirement to use U.S. Flag vessels for shipment shall not apply to subcontracts for commercial items or components.

(End of clause)

**Clause 14-17 HOMELAND SECURITY (Dec 12) (BPI 14.18.3)**

(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.

(End of clause)

**Clause 14-18 BANKRUPTCY (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 identity 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.

(End of Clause)

**Clause 14-19 POST AWARD ORIENTATION (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.

(End of Clause)