

**PART 22  
PAYMENTS AND TAXES**

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### 22.1 BASIS OF PAYMENT.

(a) **POLICY:** Payment provisions shall be drawn with an eye to balancing the equities of the protection of BPA's interests against adequately compensating the contractor for supplies delivered or services performed.

(b) **PROCEDURE:** COs shall consider the following order of preference when establishing a basis for payment in award documents:

- (1) Single Payments (Lump Sum) - one payment made after completion and acceptance of all work.
- (2) Partial Payments - full payment for completed separately priced items in the contract. Multiple payments are anticipated.
- (3) Progress Payments - multiple payments made during performance based on a percentage or stage of completion.
- (4) Advance Payments - advances of money in anticipation of performance.

#### 22.1.1 Single Payments and Partial Payments.

(a) **INFORMATION:** Single payments are one (lump sum) payment made after completion and acceptance of all work.

(b) **INFORMATION:** Partial payments are payments authorized under a contract, made upon completion of the delivery of one or more complete units (or one or more distinct items of service), called for, delivered, and accepted by BPA under the contract. Although partial payments are generally treated as a method of payment and not as a method of contract financing, the use of partial payments can assist contractors to participate in BPA contracts.

(c) **PROCEDURE:** There are certain circumstances that could indicate that partial payments are inappropriate, and should be prohibited. Those circumstances include:

- (1) When the additional administrative time required to issue two or more payments may not be cost effective.
- (2) When partial delivery of individual components does not constitute a usable item on its own.

#### 22.1.2 Progress Payments.

(a) **POLICY:** Where progress payments are authorized, BPA will make progress payments on the basis of percentage or stage of completion. Typical progress payment provisions call for payment of part of the contract price only when a completed stage of work (milestone) or a completed component can be said to be of value to BPA in the event the contract were to be terminated at that point. However, progress payment schedules can be negotiated that will allow payment based on an estimated percentage of completion.

(b) **PROCEDURE:**

- (1) The CO may provide for progress payments if the contractor:
  - (A) Will not be able to bill for the first delivery of products, or other performance milestones, for a substantial time after work is scheduled to begin, and

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- (B) Will make expenditures for contract performance during the pre-delivery period that have a significant impact on the contractor's working capital.
- (2) When there is reason to doubt the amount of a progress payment request, only the doubtful amount should be withheld, subject to later adjustment after review or audit; any clearly proper and due amounts should be paid without awaiting resolution of the differences.
- (3) Post-payment reviews may be made when considered desirable by the CO to determine the validity of progress payments already made and those expected to be made. The post-payment review should include a review of whether or not the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion.

#### **22.1.3 Clause Usage Prescriptions.**

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

- (a) The CO shall include Clause 22-2, Basis of Payment -- Progress Payments (Construction Contracts), in all fixed-price construction solicitations and contracts when progress payments are anticipated. The CO may modify the percentage specified in paragraph (a) for payment of material delivered on site but not yet installed. The CO may include the clause in solicitations and contracts when a fixed price service contract for dismantling, demolition or removal of improvements is expected.
- (b) The CO may include a clause similar to 22-3, Basis of Payment - Progress Payments, in fixed-price solicitations and contracts for other than construction when progress payments are anticipated.
- (c) The CO shall include Clause 22-4, Basis of Payment -- Time-and-Materials Contracts, in solicitations and contracts when a time-and-materials basis for payment is contemplated.
- (d) The CO shall include Clause 22-5, Basis of Payment -- Cost Reimbursement, in all cost reimbursement contracts.
- (e) The CO shall include Clause 22-6, Predetermined Final Indirect Cost Rates, in Intergovernmental Contract's (IGCs) and other solicitations and contracts when a cost-reimbursement contract with an educational institution is contemplated and predetermined final indirect cost rates are to be used.
- (f) The CO shall include Clause 22-7, Contract Ceiling Limitation, in intergovernmental contracts and other solicitations and contracts if a cost-reimbursement or time-and-materials contract is contemplated.
- (g) The CO shall include Clause 22-19, Fixed Indirect Cost Rates with Carry-forward, in Intergovernmental Contracts (IGCs) and other contracts when a cost-reimbursement contract is contemplated, and fixed indirect cost rates with carry-forward are to be used.

#### **22.1.4 Advance Payments.**

##### ***POLICY:***

- (a) "Contract financing," as defined in 22.2(c), shall be provided by BPA only to the extent actually needed for prompt and efficient performance, considering the availability of private financing. Any undue risk of monetary loss to BPA through the financing shall be avoided. Advance payment is a form of contract financing.
- (b) Contract financing methods are intended to be self-liquidating through contract performance. BPA may use the methods only for financing of contractor working capital, not for the expansion of contractor-owned facilities or the acquisition of fixed assets.

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(c) Advance payments shall be authorized sparingly. They should be authorized only if partial payments or progress payments are not feasible and private financing is not reasonably available.

#### **22.1.4.1 Authorized Advance Payments.**

**PROCEDURE:** The items authorized for advance pay below do not require additional review and approval by the HCA. All others not identified below require submittal to the HCA (see 22.1.4.2) for approval. Payments under time-and-material or cost-reimbursement contracts made to small businesses in advance of their payment to their suppliers or subcontractors (see BPI Clauses 22-4 and 22-5) are not considered advance payments under this subpart.

- (a) Rent (leases, and rental agreements, including meeting and lodging room rentals);
- (b) Tuition and conference registration fees;
- (c) Insurance premiums;
- (d) Extension or connection of public utilities for BPA buildings or installations;
- (e) Subscriptions to publications - interpreted to include electronic methods of data recording. Software subscription services are therefore authorized;
- (f) Purchases of supplies or services in foreign countries, if the purchase price does not exceed \$10,000 and the advance payment is required by the laws or regulations of the foreign country concerned;
- (g) Advance payments to Federal agencies; and
- (h) Advance payments to Intergovernmental Contract (IGC) organizations other than Federal agencies, as defined in 25.1(a), require prior approval by the CO's purchasing Performance Manager. Requirements for approval shall be similar to the HCA approval procedure in 22.1.4.2.

#### **22.1.4.2 Requirements for Approval of Other Advance Payments.**

**PROCEDURE:** The CO shall transmit the following together with a recommendation of approval of a contractor's request for advance payment to the HCA:

- (a) A summary of the solicitation or contract requirements;
- (b) Comments on (1) the contractor's need for advance payments and (2) potential benefits to BPA from providing advance payments;
- (c) CO's proposed actions to minimize BPA's risk of loss from providing advanced payment;
- (d) Proposed advance payment contract terms; and
- (e) Justification of any proposal for waiver of interest charges (see 22.1.4.3).

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#### **22.1.4.3 Interest on Advance Payments.**

***POLICY:***

(a) BPA will charge interest daily on the amount of advance payments received by the Contractor in excess of the Contractor's current needs. Federally recognized Indian Tribes, Federal agencies, State governments or instrumentalities thereof, as defined in 25.1(a), will not be required to repay interest earned on advanced payments. The CO may, however, require Contractor-agencies, other than Federal agencies as defined in 25.1(a) and (c), to pay interest on unliquidated amount of advances that the CO determines unreasonably exceeds that Contractor-agency's current needs. The interest will be charged at the higher of Department of Treasury current value of funds rate or the BPA cost of borrowing rate.

(b) The HCA may authorize advance payments without requiring repayment of interest if advantageous to BPA.

#### **22.1.4.4 Payment of Advances.**

(a) ***POLICY:*** Advance payments shall be processed in the following manner. Letters of Credit are not authorized at BPA. Payments will be made by electronic funds transfer. Payment will only be made by direct Treasury check when electronic funds transfer is not possible.

(1) 30-Day Advance: The contractor is authorized to request, in writing, BPA funds in amounts needed to cover its own disbursements of cash in the next 30 calendar days for contract performance. The contractor's request typically requires 5 working days for processing. The 30-day advance is the preferred method of providing advance funds to a contractor.

(2) Less than 30-Day Advance: In lieu of a Letter of Credit, the contractor is authorized to request BPA funds in amounts needed to cover its own disbursements of cash for periods of less than 30 calendar days for contract performance. When this payment method is selected, BPA will deposit funds in the contractor's designated account within 5 working days after BPA receipt of the request. The request shall be made to BPA's Disbursement Operations as required by its procedures. This method of providing advance funds to a contractor is the least preferred method and shall be used sparingly.

(b) ***INFORMATION:*** BPA may terminate advance payments if the contractor is unwilling or unable to minimize the elapsed time between receipt of the advance and disbursement of the funds. In lieu of termination, the CO may require the contractor to not request BPA funds until the contractor's checks are ready to be forwarded to the payees.

#### **22.1.4.5 Clause Usage Prescriptions.**

***PROCEDURE:***

(a) Where the CO wants advances to cover the next 30 days and accumulated interest to be repaid to BPA: The CO shall include Clause 22-8, Advance Payments, in all solicitations and contracts when advance payments, other than those authorized under subpart 22.1.4.1, are contemplated. If the CO wants to limit the total value of advance payments, add a paragraph to the clause stating the limits of advance funding.

(b) Where the CO wants advances to cover the contractor's immediate (less than 30-day) needs and accumulated interest to be repaid to BPA: The CO shall substitute paragraph (a) shown in Alternate I.

(c) Where the CO wants advances to cover the contractor's immediate (less than 30-day) needs and payment of accumulated interest to BPA has been waived in accordance with subpart

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22.1.4.3: The CO shall substitute paragraphs (a) and (k) shown in Alternate II and delete paragraph (l)

(d) Where the CO wants advances to cover the next 30 days and payment of accumulated interest to BPA has been waived in accordance with 22.1.4.3, the CO shall substitute paragraph (k) shown in Alternate III and delete paragraph (l).

(e) See BPI 25.3 for Advance Payment clauses applicable to Intergovernmental contracts.

### 22.1.5 Withholding.

(a) **POLICY:** The CO shall not routinely withhold funds from contractor payments. The CO shall consider a withholding only when a contractor has not achieved satisfactory progress during any period for which a payment is to be made or when the CO expects difficulty in the timely and complete receipt of information required by the contract or when BPA has no verifiable record of past performance.

(b) **INFORMATION:** Withholding should not be used as a substitute for good contract management, and COs should not withhold funds without cause. Decisions to withhold and the specific amount to be withheld shall be made by the CO on a case-by-case basis. Such decisions will be based on the CO's assessment of past performance and the likelihood that such performance will continue.

(c) **PROCEDURE:**

(1) Generally, the CO shall not withhold an amount greater than 10% of the total contract amount, and shall withhold only in those specific instances where the CO has determined, in writing, that it is necessary to protect the interests of BPA.

(2) Upon completion of all contract requirements, withheld amounts shall be promptly released for payment.

#### 22.1.5.1 Clause Usage Prescriptions.

**PROCEDURE:** The CO may include Clause 22-9, Withholding, in all solicitations and contracts except when a cost reimbursement contract, a contract for commercial supplies, commercial services, or commercial construction is contemplated. The CO may add a paragraph similar to paragraph (c) shown in Alternate 1 when equipment warranties, specified written warranties, owner's manuals, operating instructions or other documentation is required by the contract. The CO shall specify the maximum percentage of the contract amount to be withheld.

### 22.2 PROMPT PAYMENT.

(a) **POLICY:** Payments shall be made in accordance with the Prompt Payment regulations at 5 CFR Part 1315. All written contracts shall specify payment due dates and proper invoice requirements.

(b) **PROCEDURE:**

(1) Payment will be based on receipt of a proper invoice (as defined in 22.2(c), satisfactory contract performance, and receipt of the recipient's Taxpayer Identification Number (TIN) and other banking information required to process payment (see 4.1.2 and 22.6).

(2) (Reserved.)

(3) When specifying the frequency of billing, full consideration should be given to the time and resources required by BPA to process multiple payments. Generally, contractors may bill no more often than monthly, unless the CO approves a more frequent period. Billings under cost reimbursement contracts are usually not accepted more frequently than every two weeks.

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(4) Except as provided by 22.6(d), disagreements shall be referred to the CO for final decision after consulting with such other BPA offices as determined necessary by the CO.

(5) Questions concerning delinquent payments should be directed to the designated billing office.

(c) **INFORMATION:** Definitions: As used in this part –

"Certified Invoice" means, as used within this subpart, written evidence which indicates BPA acceptance of services performed by the contractor.

"Contract financing payments" means authorized disbursement of monies prior to acceptance of supplies or services including advance payments, progress payments based on cost, progress payments (other than under construction contracts or architect-engineer contracts) based on a percentage or stage of completion where payment is not based upon acceptance of work delivered or rendered for which a price is separately stated, and interim payments on cost-type contracts.

"Designated billing office" means the BPA office or person designated in the contract to receive the contractor's invoices.

"Due date" means the date on which payment should be made according to the terms of the contract.

"Payment date" means the date on which a check for payment is dated or the date electronic funds transfer is made.

"Proper invoice" means a bill or written request for payment (invoice) containing all necessary information required by BPA's Disbursement Operations for payment, as described in the billing instructions within the contract payment clause and other terms and conditions for invoice submission contained in the contract.

"Receiving report" means written documentation or data entered into the BPA ERP system that indicates BPA acceptance of supplies delivered.

### 22.2.1 Prompt Payment Discounts.

(a) **POLICY:** COs are encouraged to negotiate meaningful discounts for prompt payment whenever possible.

(b) **INFORMATION:**

(1) Decisions to accept or not accept a prompt payment discount are made by BPA Cash Manager based on the value of the discount offered compared to BPA cost of money. There is no minimum time period for which discounts will be taken; any discount will be taken if determined cost effective by the BPA Cash Manager. When BPA cost of money exceeds the value of the discount, the discount will not be taken.

(2) Information on this policy can be obtained from the BPA Cash Manager.

### 22.2.2 Payment Due Dates.

(a) **POLICY:** For the sole purpose of computing an interest penalty that might be due the contractor, COs shall establish a period for acceptance that reflects the minimum time necessary for inspection or testing. The period shall be no shorter than 7 days nor longer than 30 days after the contractor has delivered supplies or performed services in accordance with the terms and conditions of the contract.

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(b) **INFORMATION:**

(1) The due date for most transactions, (e.g. lump sum payments, partial payments, etc.) shall be not later than the 30th day after BPA receives a proper invoice in the designated billing office, or not later than the 30th day after BPA acceptance of supplies delivered or services rendered, whichever is later.

(2) For all progress payments except construction, the due date shall be not later than the 30th day after BPA approval of contractor estimates of work or of services accomplished. For the sole purpose of computing an interest penalty that might be due the contractor, BPA approval shall be deemed to have occurred constructively on the 7th day after the contractor estimates are received by BPA.

(3) Progress payments under construction contracts shall be due not later than the 14th day after receipt of a proper invoice by the designated billing office. The CO has the discretion to specify a longer period, not to exceed 30 days, if more time is required to afford BPA a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract.

(4) For payment of any amounts retained by the CO, the due date shall be not later than the 30th day after approval by the CO for release to the contractor.

(5) Final Payments shall be due not later than the 30th day after BPA receives a proper invoice in the designated billing office, or not later than the 30th day after BPA acceptance of the work or services, whichever is later. On final payments where the amount is subject to contract settlement actions, acceptance shall be deemed to have occurred on the effective date of the contract settlement.

#### **22.2.3 Interest Penalties.**

**INFORMATION:**

(a) An interest penalty shall be paid automatically without request from the contractor, when all of the following conditions, if applicable, have been met:

(1) A proper invoice has been received.

(2) Contractor has provided its taxpayer identification number (TIN) and other banking information necessary to process payment, as per 31 U.S.C. 3332 (see 22.6).

(3) There is no disagreement over quantity, quality, or contractor compliance with any contract requirement.

(4) In the case of a final invoice, the payment amount is not subject to dispute or to further contract settlement negotiations between BPA and the contractor.

(5) BPA paid the contractor after the due date.

(6) Interest owed is over \$1.00 in value.

(b) The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date.

(c) Interest penalties under the Prompt Payment Act will not continue to accrue (1) after the filing of a claim for such penalties under the disputes clause of the contract, if included, or (2) for more than 1 year.

(d) Interest penalties are not required on payment delays due to defective invoices, disagreement between BPA and contractor over the payment amount, or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the disputes clause.

(e) No interest penalty shall be paid to the contractor as a result of delayed contract financing payments (see 22.2(c) for definition of "contract financing payments").

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### **22.2.4 Documentation of Acceptance.**

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

(a) For payment purposes, BPA acceptance will be documented on either a receiving report or by a contractor invoice certified by the COTR. The invoice may be transmitted electronically, provided that the Contracting Officer or designated billing office can verify the invoice is a legitimate submission from the contractor. The receiver or approving party shall enter the receipt or invoice information into the BPA ERP system within 3 business days of receipt or acceptance of the goods or services to ensure timely payment processing. Contractors are required to submit all original invoices and supporting documentation to the address indicated within the contract. The receiving report or invoice shall, as a minimum, include the following:

- (1) Contract number or other authorization for supplies delivered or services performed;
- (2) Description of supplies delivered or services performed;
- (3) Quantities of supplies received and accepted, if applicable; and
- (4) Date supplies delivered or services performed.

The following information is on the receiving report, or added by the COTR to the invoice:

- (1) Date supplies or services were accepted by the designated BPA official (or progress payment request was approved); and
- (2) Signature, printed name, and title of the designated BPA official responsible for acceptance or approval.

(b) The designated billing office, as indicated in the contract, shall mark each invoice with the date the invoice is received.

### **22.2.5 Clause Usage Prescriptions.**

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

(a) The CO may include Clause 22-10, Discounts for Prompt Payment, in fixed price solicitations and contracts.

(b) The CO shall include Clause 22-11, Payment -- Construction Contracts, in solicitations and contracts for construction when progress payments are anticipated and Clause 22-2, Basis of Payment -- Progress Payments (Construction Contracts), is used. Paragraph (b)(1), Payment Due Dates, may be modified to establish a due date longer than 14 days if the CO justifies the need in writing. The face page of the award form shall indicate the address to which invoices are to be sent for processing.

(c) The CO shall include Clause 22-12, Payment, in all solicitations and contracts for service and supply, including Intergovernmental Contracts with Indian Tribes and all non-Federal governmental entities paid in arrears (see 25.3). Do not use this clause when contract financing will be used (see definition at 22.2(c)). It shall also be included in construction solicitations and contracts when progress payments are not anticipated (i.e., payment will be made only on a single payment or a partial payment basis.) The CO may modify the clause to change the frequency of payments (see BPI 22.2). The face page of the award form shall indicate the address to which invoices are to be sent for processing.

### **22.3 INTEREST ON AMOUNTS DUE BPA.**

#### ***POLICY:***

(a) BPA shall apply interest charges to any contract debt unpaid after 30 days from the issuance of a demand, unless:

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- (1) The contract specifies another due date or procedure for charging or collecting interest; or
- (2) The contract is a kind excluded under 22.3.1; or
- (3) The contract or debt has been exempted from interest charges under BPA Financial Operations procedures.

(b) If not already applicable under the contract terms, interest on contract debt shall be made an element of any agreement entered into on deferment of collection.

### 22.3.1 Clause Usage Prescriptions.

**PROCEDURE:** The CO shall include Clause 22-13, Interest on Amounts Due BPA, in solicitations and contracts in excess of \$100,000 for non-commercial goods or services.

### 22.4 ASSIGNMENT.

(a) **POLICY:** Normally BPA will permit assignments in order to aid contractors in obtaining independent financing. As assignments are common practice in the commercial marketplace, BPA will accept assignment documents prepared by a financial institution and signed by an officer of the financial institution. However, when the contract provides for advance payments, assignment of contract payments will not be permitted.

(b) **INFORMATION:**

- (1) "Assignment of contract payments" means the transfer or making over by the contractor to a bank, trust company, or other financing institution, as security for a loan to the contractor, of its right to be paid by BPA for contract performance.
- (2) An assignment of contract payments extinguishes the right of the transferor (assignor, contractor) to all future payments due under the contract, and establishes that right in the transferee (assignee, financial institution). Requests from contractors or financial institutions regarding assignments are processed by the CO. Generally a contractor will advise the CO that an assignment is contemplated. The assignment becomes effective upon written acknowledgment by the CO.
- (3) Extent of assignee's protection. BPA may not recover payments made to the assignee. This immunity of the assignee is effective whether the contractor's liability arises from or independently of the assigned contract.
- (4) A contractor may assign payments due or to become due under a contract if all the following conditions are met:
  - (A) The assignment is made to a bank, trust company, or other financing institution, including any Federal lending agency;
  - (B) The assignment covers all unpaid amounts payable under the contract; and
  - (C) The contract terms do not expressly prohibit the assignment.

(c) **PROCEDURE:**

- (1) Upon notification of a desire for an assignment, the CO shall:
  - (A) Notify the disbursing officer of the pending assignment.
  - (B) Use BPA form 4220.09 Instrument of Assignment to complete the action, or the bank generated forms if they contain the same content as the BPA form.
  - (C) Immediately notify the disbursing officer when assignment is accepted and ensure delivery of the instrument to the disbursing officer. This is especially important to ensure that the payment is made to the assignee (see 22.6.1).
- (2) A release of assignment is required whenever the contractor wishes to reestablish its right to receive further payments after the contractor's obligations to the assignee have been satisfied and a balance remains due under the contract.

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### **22.5 TAXES.**

#### ***POLICY:***

(a) COs shall consult BPA's Office of General Counsel before determining whether or not a tax is valid or applicable or before obtaining exemption from, or refund of, a tax.

(b) While state governments are prohibited from directly taxing the Federal Government, BPA shall pay all applicable state taxes imposed on contractors as part of the award price. Contract modifications will be issued to reimburse the contractor for any Federal excise taxes or duties which are passed by Congress after award or as to which exemptions are removed after award. The contractor shall be responsible for any state or local taxes which are passed or increased or as to which exemptions are removed or reduced after award; and there shall be no additional compensation from BPA for any such taxes.

(c) When the constitutional immunity of BPA from state or local taxation may reasonably be at issue, contractors should be discouraged from negotiating independently with taxing authorities if the contract contains a tax escalation clause.

(d) COs will refer prospective offerors to their own legal counsel for a determination as to the applicability of taxes to contractors doing business with BPA.

(e) COs should solicit prices on a tax-exclusive basis when it is known that BPA is exempt from these taxes and the exemption is at least \$250.

(f) BPA shall take maximum advantage of available Federal excise tax and duty exemptions.

(g) The contract price of supplies shall not include the manufacturers' excise tax on parts or accessories purchased by BPA for use in the manufacture of any article.

#### **22.5.1 General.**

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

(a) Federal excise taxes are levied on the sale or use of particular supplies or services. An excise tax is similar to a sales tax. The most common excise taxes are --

(1) Manufacturers' excise taxes imposed on certain motor-vehicle articles, gasoline, lubricating oils, coal, fishing equipment, firearms, shells, and cartridges sold by manufacturers, producers, or importers; and

(2) Special-fuels excise taxes imposed at the retail level on diesel fuel and special motor fuels.

(b) Federal excise taxes are usually paid by the seller and included in the sales price. Sometimes the law exempts the Federal Government from these taxes. COs should solicit prices on a tax-inclusive basis when no exemption exists and on a tax-exclusive basis when it is known that BPA is exempt from these taxes.

#### **22.5.2 General Exemptions.**

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

(a) No Federal manufacturers' or special-fuels excise taxes are imposed in many contracting situations as, for example, when the supplies are for any of the following:

(1) The exclusive use of any state or political subdivision,

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- (2) Further manufacture, or resale for further manufacture (this exemption does not include tires and inner tubes),
- (3) A nonprofit educational organization, or
- (4) Emergency vehicles.

(b) The Secretary of the Treasury has exempted the United States from the communications excise tax imposed in 26 U.S.C. 4251, when the supplies and services are for the exclusive use of the United States.

(c) The Secretary of the Treasury has exempted the United States from the federal highway vehicle users tax imposed in 26 U.S.C. 4481. The exemption applies whether the vehicle is owned or leased by the United States.

#### **22.5.3 Applicability of State and Local Taxation.**

(a) ***POLICY:***

- (1) Generally, purchases and leases made by and for BPA's use are exempt from state and local taxation. For specific advice and assistance, COs shall contact BPA's Office of General Counsel.
- (2) BPA shall pay all applicable state and local taxes imposed on contractors as part of the award price. For specific advice and assistance, COs shall contact BPA's Office of General Counsel.
- (3) BPA shall take maximum advantage of all available exemptions in excess of \$250 from state and local taxation.
- (4) The applicability of state and local taxes to purchases by BPA may depend on the place and terms of delivery. When the contract price will be substantial, alternative places and terms of delivery should be considered in light of possible tax consequences.
- (5) Prime contractors and subcontractors shall not normally be designated as agents of BPA for the purpose of claiming immunity from state or local sales or use taxes. Before any designation is made, the matter shall be referred to the HCA for review.
- (6) When purchases are not made by BPA itself, but by a prime contractor or by a subcontractor under a prime contract, the right to an exemption shall be determined by the legal counsel of the contractor or subcontractor.
- (7) Frequently, property (including property acquired under the progress payments clause or under the BPA property clause of cost-reimbursement contracts) owned by BPA is in the possession of a contractor or subcontractor. Situations may arise in which states or localities assert the right to tax BPA property directly or to tax the contractor's or subcontractor's possession of, interest in, or use of that property. BPA's Office of General Counsel shall review such cases and advise the CO on the appropriate course of action.

(b) ***INFORMATION:*** The imposition of state and local taxes may result in special contract considerations including the following:

- (1) With coordination of BPA's Office of General Counsel, a contract may state that the contract price includes or excludes a specified tax or require that the contractor take certain actions with regard to payment, nonpayment, refund, protest, or other treatment of a specified tax. Such special treatment may be appropriate when there is doubt as to the applicability or allocability of the tax, or when the applicability of the tax is being litigated.
- (2) Indefinite-delivery contracts (including those for leased equipment) may require the contractor to furnish equipment in more than one state. As states and local governments impose a wide variety of sales, property, use, or other taxes, the CO shall consider the risk to BPA of having contractors include taxes in the contract price when the place of delivery is not known at the time of contract award.

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#### **22.5.3.1 State and Local Tax Exemptions.**

(a) **INFORMATION:** Evidence of exemptions. Evidence needed to establish exemption or immunity from state or local taxes depends on the grounds for the exemption or immunity claimed, the parties to the transaction, and the requirements of the taxing jurisdiction. Such evidence may include the following:

- (1) A copy of the contract or relevant portion.
- (2) Copies of purchase orders, shipping documents, credit-card-imprinted sales slips, paid or acknowledged invoices, or similar documents that identify BPA as the buyer.
- (3) A State or local form indicating that the supplies or services are for the exclusive use of BPA.
- (4) Any other State or locally required document for establishing general or specific exemption.
- (5) Shipping documents indicating that shipments are in interstate or foreign commerce.

(b) **PROCEDURE:** Furnishing proof of exemption. If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemptions, as follows:

- (1) Under a cost-reimbursement contract: At the discretion of the CO.
- (2) Under a fixed price contract: If requested by the contractor and the contractor either certifies that the contract price does not include the tax or, if the transaction is for property which is tax exempt, consents to a reduction in the contract price.

#### **22.5.3.2 State of Washington Sales and Use Taxes.**

##### **INFORMATION:**

(a) The State of Washington has enacted legislation subjecting materials to be incorporated into construction projects and BPA-owned property, materials and equipment used by contractors in constructing projects in the State of Washington to sales and use taxes.

(b) Washington State gasoline tax.

The Revised Code of Washington (RCW) at Chapter 82.36 imposes a tax on gasoline sold, used, or distributed in the state. The tax is imposed on the distributor, and is passed on as a cost to the purchaser. On such a tax, BPA has no basis to claim immunity, and must pay costs.

(c) Washington State diesel fuel tax.

The Revised Code of Washington (RCW) at Chapter 82.38 imposes a tax on the users of diesel fuel within the state. This tax may not be imposed on BPA, and the State specifically recognizes the federal exemption at RCW 82.38.80.

#### **22.5.3.3 State of Idaho Use Tax.**

**INFORMATION:** The State of Idaho has enacted legislation subjecting BPA-owned property, materials and equipment used by contractors in constructing projects for BPA to a use tax. Examples include tower steel, conductor, hardware and accessories, and substation equipment and materials installed by contractors. Also included are materials purchased by contractors in constructing a facility and which form a part of that facility. Not included are materials consumed, partially or entirely in performing the construction.

#### **22.5.4 Contracts for Expert/Consultant Services.**

(a) **INFORMATION:** Prior to entering into a contract for expert/consultant services, BPA, or an independent party, shall determine if the expert/consultant qualifies as an independent contractor.

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(b) **POLICY:** If the analysis by BPA or an independent party determines a proposed expert/consultant is an independent contractor, BPA may contract directly with that expert/consultant and will issue an IRS form 1099 to the expert/consultant that is an independent contractor.

If the analysis determines a proposed expert/consultant is not an independent contractor, BPA will contract for the services of that expert/consultant through one of its third party supplemental labor contractors who will issue an IRS tax form W-2 to that employee.

#### **22.5.5 Contracts for Supplemental Labor Services.**

(a) **INFORMATION:** Supplemental Labor is non-government employee labor contracted and billed on an hourly or daily basis performing tasks for BPA. The labor is used to augment existing BPA staff levels or to fill gaps in the Federal workforce.

(b) **POLICY:** BPA shall acquire all supplemental labor services through a third party supplemental labor contractor. BPA shall not enter into direct contracts with any individuals for supplemental labor services. Third party supplemental labor contractors shall issue their employees assigned to BPA an IRS tax form W-2.

#### **22.5.6 Clause Usage Prescriptions.**

##### **PROCEDURE:**

(a) The CO shall include Clause 22-14, Taxes -- Indefinite Delivery Contracts, in solicitations and contracts for equipment (including leased equipment) and services, when a fixed price indefinite delivery contract is contemplated and the place or places of delivery could be in more than one state and are not specifically known at the time of contracting.

(b) The CO shall include Clause 22-15, Federal, State and Local Taxes, in solicitations and contracts over \$100,000 if a fixed price or time and materials contract is contemplated for other than commercial supplies and services (including construction).

(c) The CO shall include Clause 22-16, Taxes and Duties, in all solicitations and contracts under \$100,000, and in solicitations and contracts of any dollar amount for commercial supplies, commercial services, or commercial construction.

(d) The CO shall include Clause 22-17, Washington State Sales and Use Taxes, in all solicitations and contracts requiring construction to be performed wholly or partly in the State of Washington.

(e) The CO shall include Clause 22-18, State of Idaho Use Tax, in all solicitations and contracts requiring construction in the State of Idaho.

(f) The CO shall include Clause 22-22, Contracts for Expert/Consultant Services with Independent Contractors, in all solicitations and contracts for Expert and Consultant Services with Independent Contractors.

(g) The CO shall include Clause 22-23, Contracts for Supplemental Labor, in all solicitations and contracts for Supplemental Labor services.

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### 22.6 ELECTRONIC FUNDS TRANSFER.

#### **POLICY:**

(a) Electronic funds transfer (EFT) shall be used as the primary payment method for contract invoice and contract financing payments as required by 31 U.S.C. 3332(e), with only limited exceptions. Government purchase card transactions are not subject to the requirements of this subpart.

(b) Exempted from the EFT payment method are:

(1) A contract or agreement which uses a government purchase card as the exclusive means of payment; and

(2) Contracting conditions that limit the use of EFT payment, as described in 31 CFR 208.3(c) (such as, emergency, security, or foreign payment considerations). The CO shall coordinate with the Vendor File Maintenance Team and Disbursement Operations on alternatives to EFT payment, and document the official file with a record of such discussions and the selected payment alternative.

(c) EFT payment processing requires that the Contractor provide its taxpayer identification number (TIN) and other banking information necessary for EFT payment processing. This information is required by 31 U.S.C. 3332 and 7701 as a condition of payment (see 4.1). BPA will protect against improper disclosure of a Contractor's EFT banking information.

(d) **PROCEDURE:** The Contractor shall submit banking information to the BPA Vendor File Maintenance Team, as per Clause 22-20, Electronic Funds Transfer Payment. BPA will not require a Contractor to resubmit its TIN and other banking information for each contract, provided this information is current and on file with BPA. If the Contractor's banking information has changed, the Contractor shall be responsible to verify and resubmit changed information directly to the Vendor File Maintenance Team.

#### 22.6.1 Assignment of Claims.

**INFORMATION:** Disbursement Operations will utilize the most current banking information that the Contractor has submitted to the Vendor File Maintenance Team to process EFT payment, unless otherwise notified by the Contractor. A timely and properly executed assignment of claims (see 22.4) is critical for ensuring payment to the assignee, and not to the Contractor's account. EFT information which shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims, is considered to be incorrect EFT information within the meaning of the "Suspension of Payment" paragraph of Clause 22-20, Electronic Funds Transfer Payment.

#### 22.6.2 Clause Usage Prescriptions.

#### **PROCEDURE:**

(a) The CO shall include Clause 22-20, Electronic Funds Transfer Payment, in all solicitations and contracts not otherwise exempt by 22.6(b).

(b) Oral solicitations (see 11.10.1) or oral solicitations and resultant oral contracts for commercial services, such as commercial utility services (see 11.2) must be paid by EFT, unless otherwise exempt by 22.6(b). When conducting an oral solicitation, the CO shall advise the Contractor that payment will be made by EFT, except as noted in 22.6(b), and include Clause 22-20, Electronic Funds Transfer Payment, in any written contract resulting from oral solicitation procedures. If not already on file, the CO shall notify the Contractor of procedures for submission of the required

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banking information to the Vendor Maintenance Team, in the manner and time period required by Clause 22-20, Electronic Funds Transfer Payment.

### **22.7 RESERVED.**

### **22.50 TEXT OF CLAUSES.**

The following clauses are referenced in Part 22:

- 22-1 Reserved
- 22-2 Basis of Payment -- Progress Payments (Construction Contracts)
- 22-3 Basis of Payment -- Progress Payments
- 22-4 Basis of Payment -- Time-and-Materials Contracts
- 22-5 Basis of Payment -- Cost Reimbursement
- 22-6 Predetermined Indirect Cost Rates
- 22-7 Contract Ceiling Limitation
- 22-8 Advance Payments
- 22-9 Withholding
- 22-10 Discounts for Prompt Payment
- 22-11 Payment -- Construction Contracts
- 22-12 Payment
- 22-13 Interest on Amounts Due BPA
- 22-14 Taxes -- Indefinite Delivery Contracts
- 22-15 Federal, State and Local Taxes
- 22-16 Taxes and Duties
- 22-17 Washington State Sales and Use Taxes
- 22-18 State of Idaho Use Tax
- 22-19 Fixed Indirect Cost Rates with Carry-forward
- 22-20 Electronic Funds Transfer Payment
- 22-21 Reserved
- 22-22 Contracts for Expert/Consultant Services with Independent Contractors
- 22-23 Contracts for Supplemental Labor Services

### **Clause 22-1 (Reserved)**

### **Clause 22-2 BASIS OF PAYMENT -- PROGRESS PAYMENTS (CONSTRUCTION CONTRACTS) (Sep 98)(BPI 22.1.3)**

(a) Progress payments. BPA shall make progress payments as the work proceeds based on its assessment of the stage or percentage of work accomplished. BPA may include in the calculation of progress, 75 percent of the cost of material delivered to the site but not yet installed. The Contractor shall submit supplier invoices to verify such cost of material. The Contractor shall furnish a breakdown of the work as a percentage of total contract price, in such detail as required by the CO. (See Clause 24-10, Price Data Sheet).

(b) Interest on unearned amounts. After making a request for progress payment, if all or a portion of the request constitutes a payment for performance by the Contractor (or any subcontractors or suppliers) that fails to conform to the requirements of the contract, the Contractor shall (1) notify the CO of the performance deficiency and (2) pay BPA an amount equal to interest on the unearned amount from the date of receipt of the unearned amount until the date that the performance deficiency has been corrected or until the contractor reduces the amount of any subsequent request for progress payments by the unearned amount.

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(c) Title to all material and work covered by progress payments made shall pass to BPA at the time of payment. This shall not be construed as--

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of BPA to require the fulfillment of all of the terms of the contract.

(d) Performance and payment bond premiums paid by the Contractor will be reimbursed by BPA after the Contractor has furnished evidence of full payment to the surety.

(e) Partial Payments. Unless otherwise specified, payment shall be made after acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

(f) Final Payment. BPA shall pay the amount due the Contractor under this contract after completion and acceptance of all work and after presentation of a release of all claims against BPA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of any assignee if the Contractor's claim to amounts payable under this contract has been assigned. The release forms will be provided by BPA.

(End of clause)

#### **Clause 22-3 BASIS OF PAYMENT -- PROGRESS PAYMENTS (Sep 98)(BPI 22.1.3)**

(a) Progress payments. BPA shall make progress payments as the work proceeds based on the stage or percentage of work accomplished. The Contractor shall furnish a breakdown of the work as a percentage of the total contract price, in such detail as required by the CO.

(b) Title to all material and work covered by progress payments shall pass to BPA at the time of payment. This shall not be construed as--

(1) Relieving the Contractor from the sole responsibility for all work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of BPA to require the fulfillment of all of the terms of the contract.

(c) Partial Payments. Unless otherwise specified, payment shall be made after acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

(d) Final Payment. BPA shall pay the amount due the Contractor under this contract after completion and acceptance of all work and after presentation of a release of all claims against BPA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of any assignee if the Contractor's claim to amounts payable under this contract has been assigned.

(End of clause)

#### **Clause 22-4 BASIS OF PAYMENT -- TIME-AND-MATERIALS CONTRACTS (Sep 98)(BPI 22.1.3)**

BPA shall pay the Contractor as follows after submission of invoices approved by the CO. The Contractor shall be reimbursed for items and services purchased directly for the contract only when cash, checks, or other forms of actual payment have been made for such purchased items or services.

(a) Hourly Rate.

(1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates

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shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. The Contractor shall substantiate invoices by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the CO.

(2) Overtime. The hourly rates shall not be varied by virtue of the Contractor having performed work on an overtime basis unless the CO has specifically authorized overtime and the contract includes overtime rates.

(b) Materials. Allowable costs of direct materials shall be determined by the CO in accordance with Part 13 of the BPI in effect on the date of this contract. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices, consistent with Part 13 of the BPI. Direct materials are those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of the end product.

(c) Travel Costs. Costs incurred for lodging, meals, and incidental expenses shall be reimbursed on an actual cost basis to the extent that they do not exceed on a daily basis the per diem rates in effect at the time of travel as set forth in the Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States. Airline costs will be reimbursed on an actual cost basis to the extent determined reasonable and allocable under Part 13 of the BPI. The CO must approve any variation from these requirements. Contractors may request a letter from the Contracting Officer authorizing access to lodging, or other rates negotiated for government travel to the extent such authorization is honored by the service providers.

(d) Subcontracts. The cost of subcontracts that are authorized under the subcontracts clause of this contract shall be reimbursable costs under this clause, if such costs are consistent with Part 13 of the BPI. Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor. Reimbursable costs shall not include any costs arising from the letting, administration or supervision of performance of the subcontract, if the costs are included in the hourly rates in the Schedule.

(e) Responsibility to obtain best overall price. To the extent able, the Contractor shall--  
(1) Obtain materials, subcontracts, and travel at the most advantageous prices available with due regard to securing prompt delivery of satisfactory products and services; and  
(2) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits and additionally, give credit to BPA for any amounts that have accrued to the benefit of the Contractor or would have accrued except for the fault or neglect of the contractor. When unable to take advantage of the benefits, the Contractor shall promptly notify the CO and give the reasons.

(f) Material the Contractor regularly sells to the public. If the nature of the work to be performed requires the Contractor to furnish material which is regularly sold to the general public in the normal course of business by the Contractor, the price to be paid for such material, notwithstanding (e)(1) above, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to BPA; provided, that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

(g) Audit. At any time before final payment under this contract the CO may audit the invoices and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the CO not to have been properly payable and shall also be subject to reduction for overpayments or to increase for

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underpayments. Upon receipt and approval of the invoice designated by the Contractor as the "final invoice" and substantiating material, and upon compliance by the Contractor with all terms of this contract, BPA shall promptly pay any balance due the Contractor.

(h) Refunds. The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to BPA. The Contractor and each assignee shall assign to BPA all such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the CO.

(End of clause)

#### **Clause 22-5 BASIS OF PAYMENT -- COST REIMBURSEMENT (Feb 94)(BPI 22.1.3)**

(a) Invoicing.

BPA shall make payments to the Contractor when requested as work progresses in amounts determined to be allowable by the CO. The Contractor shall substantiate invoices by evidence of actual payment and in such form and reasonable detail as required by the CO.

(b) Reimbursing costs.

(1) Costs under this contract will be reimbursed in accordance with BPI Part 13. For the purpose of reimbursing allowable costs (except with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only -

(A) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(B) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for -

(i) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(ii) Direct labor;

(iii) Direct travel. Costs incurred for lodging, meals, and incidental expenses shall be considered reasonable to the extent that they do not exceed on a daily basis the per diem rates in effect at the time of travel as set forth in the Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States. Airline costs will be reimbursed on an actual cost basis to the extent determined reasonable and allocable under Part 13 of the BPI. Any variation from these requirements must be approved by the CO. Contractors may request a letter from the CO authorizing access to airline, lodging, or other rates negotiated for government travel to the extent such authorization is honored by the service providers;

(iv) Other direct in-house costs; and

(v) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts.

(C) The amount of progress payments that have been paid to the Contractor's subcontractors under similar cost standards.

(2) Contractor contributions to any pension, profit-sharing, or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; provided, that the Contractor pays contributions to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of the period shall not be included until the contractor actually makes the payment. Accrued costs for such

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contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.

(3) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to BPA shall be disregarded for purposes of cost reimbursement under this clause.

(c) Final indirect cost rates.

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with BPI Part 13 in effect for the period covered by the indirect cost rate proposal.

(2) The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the CO, submit to the audit activity responsible for negotiating its final indirect cost rates, proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate BPA representative and Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(3) The Contractor and the appropriate BPA representative shall execute a written agreement setting forth the final indirect cost rates. The 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.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(d) Billing rates.

Until final annual indirect cost rates are established for any period, BPA shall reimburse the Contractor at billing rates established by the CO or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates:

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(e) Quick-close-out procedures.

When the Contractor and CO agree, the quick-close-out procedures of BPI subpart 14.17.5 shall be used.

(f) Audit.

At any time or times before final payment, the CO may have the Contractor's invoices or statements of cost audited. Any payment may be (1) reduced by amounts found by the CO not to constitute allowable costs or (2) adjusted for prior overpayments or underpayments.

(g) Final payment.

(1) The Contractor shall submit an invoice marked "Final Invoice", promptly upon completion of the work. Upon approval of that invoice, and upon the Contractor's compliance with all terms of this contract, the BPA shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to BPA any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by BPA. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the CO. Before final payment under this contract, the Contractor and each assignee

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whose assignment is in effect at the time of final payment shall execute and deliver an assignment to BPA of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by BPA under this contract.

(End of clause)

#### **Clause 22-6 PREDETERMINED FINAL INDIRECT COST RATES (Jul 94)(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.

(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.

(End of clause)

#### **Clause 22-7 CONTRACT CEILING LIMITATION (Sep 98)(BPI 22.1.3)**

(a) The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the contract ceiling. The contract ceiling includes all estimated costs (both direct and indirect) and any fee allowance. If this is a cost-sharing contract, the contract ceiling includes both BPA's and the Contractor's share of the cost.

(b) Notification of CO. The Contractor shall notify the CO in writing at the first indication that the total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

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(c) Revised Estimate. As part of the notification, the Contractor shall provide the CO a revised estimate of the total cost of performing this contract.

(d) Contract Ceiling.

(1) BPA is not obligated to reimburse the Contractor for costs incurred in excess of the contract ceiling specified in the Schedule or, if this is a cost-sharing contract, the estimated cost to BPA specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the contract ceiling specified in the Schedule, until the CO notifies the Contractor in writing that the contract ceiling has been increased.

(e) No notice, communication, or representation, or from any person other than the CO, shall affect this contract's contract ceiling.

(f) If this contract is terminated or the contract ceiling is not increased, BPA and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(End of clause)

### **Clause 22-8 ADVANCE PAYMENTS (Sep 98)(BPI 22.1.4.5)**

(a) Requirements for payment. Advance payments will be made under this contract by electronic funds transfer upon submission of invoices by the Contractor, and approval by the CO. The contractor is authorized to request BPA funds for contract performance in amounts needed to cover its own disbursements of cash in the next 30 days. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.

(b) Use of funds. Advances may only be used to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, and indirect costs. Advances for other items require approval in writing by the CO.

(c) Repayment to BPA. Whenever requested by the CO, the Contractor shall repay to BPA any part of unspent advance payments considered to exceed the Contractor's current requirements.

(d) Maximum payment. When the sum of all unspent advance payments, unpaid interest charges, and other payments exceed \_\_\_\_\_ (insert percentage) percent of the contract price, BPA shall withhold further payments to the Contractor. On completion or termination of the contract, BPA shall deduct from the amount due to the Contractor all unliquidated advance payments and any interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount shall be immediately repaid to BPA.

(e) Lien on property under contract.

(1) The Contractor will file a security interest in favor of BPA, paramount to all other liens, upon purchase or acquisition of property and/or materials for the performance of this contract and will immediately deliver copies of the filings to the CO.

(2) The Contractor will identify, by marking or segregation, all property that is subject to a lien in favor of BPA. If, for any reason, the supplies, materials, or other property are not identified by marking or segregating, BPA shall be considered to have a lien to the extent of BPA's interest under this contract on any mass of property with which the supplies, materials, or other property are commingled.

(f) Insurance - Supply Contracts. The Contractor shall demonstrate that it maintains with responsible insurance carriers adequate insurance on plant and equipment against fire and other hazards. Contractor agrees that, until work under this contract has been completed and all

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## **Part 22 -- Payments and Taxes**

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advance payments made under the contract have been liquidated, it will maintain this insurance. Contractor shall maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to BPA lien under paragraph (i) of this clause.

(g) Termination of advance payments. The CO may, by written notice to the contractor, withhold further advance payments on this contract at any time the CO determines the Contractor is not adequately performing.

(h) Access to records. The Contractor shall provide the authorized BPA representatives proper facilities for inspection of the Contractor's books, records, and accounts.

(i) Restrictions on Novation. While any advance payments made under this contract remain outstanding, the Contractor shall not substantially change the management, ownership, or control of the corporation without the prior written consent of the CO.

(j) Prohibition against assignment. The Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party.

(k) Interest Required. The Contractor shall pay interest to BPA on advance payments received by the Contractor in excess of the Contractor's current needs. The interest will be paid at the higher of Department of Treasury's current value of funds rate or the BPA cost of money rate. Interest charges shall be deducted from payments, other than advance payments, due the Contractor.

(l) Interest Charged to Subcontractors. The Contractor shall charge interest on advance payments to subcontractors and credit the interest to BPA. Interest need not be charged on advance payments to nonprofit educational or research subcontractors for experimental, developmental or research work.

(End of clause)

### **ALTERNATE I (Sep 98)**

(a) Requirements for payment. Advance payments will be made under this contract by electronic funds transfer within 5 working days after BPA receipt of a request. The contractor is authorized to request BPA funds for contract performance in amounts needed to cover its own disbursements of cash for periods of less than 30 calendar days. The Contractor shall report cash disbursements and balances as required by the BPA billing office. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.

(End of Alternate I)

### **ALTERNATE II: (Sep 98)**

(a) Requirements for payment. Advance payments will be made under this contract by electronic funds transfer within 5 working days after BPA receipt of a request. The contractor is authorized to request BPA funds for contract performance in amounts needed to cover its own disbursements of cash for periods of less than 30 calendar days. The Contractor shall report cash disbursements and balances as required by the BPA billing office. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.

(k) No interest shall be charged to the Contractor for advance payments except for interest charged during a period of default.

(End of Alternate II)

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### **ALTERNATE III: (Oct 93)**

(k) No interest shall be charged to the Contractor for advance payments except for interest charged during a period of default.

(End of Alternate III)

### **Clause 22-9 WITHHOLDING (Sep 98)(BPI 22.1.5.1)**

(a) The CO reserves the right to withhold an amount not to exceed \_\_\_\_ percent of the contract price if determined necessary to protect BPA's interests.

(b) Upon completion and acceptance of each severable item of work for which the price is stated separately in the contract, payment shall be made for the completed work, less liquidated damages (if any), without withholding of a percentage.

(End of clause)

### **Alternate I (Mar 95)**

(c) In the event this contract requires a specific written warranty, equipment operating instructions, owners manual, or other documentation the CO may process an interim payment for completed work, retaining a maximum of \_\_\_\_ percent of the contract amount until such documentation that is in compliance with the contract is received by the CO. If a manufacturers' inspection is required, the interim payment shall not be made until the manufacturer certifies that the work was accomplished to their satisfaction and in accordance with contract requirements. Upon determination of acceptability of all required documentation, payment of the amount withheld will be made without further invoicing from the contractor.

(End of Alternate I)

### **Clause 22-10 DISCOUNTS FOR PROMPT PAYMENT (Sep 98)(BPI 22.2.5)**

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

(End of clause)

### **Clause 22-11 PAYMENT -- CONSTRUCTION CONTRACTS (Sep 09)(BPI 22.2.5)**

(a) Prompt Payment Act. This contract is subject to the provisions of the Prompt Payment Act (31 U.S.C. 3901 et seq.) and the regulations at 5 CFR Part 1315. All payments will be made in accordance with the regulations at 5 CFR Part 13154.

(b) Payment Due Dates: For purposes of determining interest penalty only, work will be deemed accepted not later than 30 calendar days after the contractor has completed the work or services. According to the Prompt Payment Act, a proper invoice to a Federal Agency must include bank account information requisite to enable Electronic Funds Transfer (EFT) as the method of payment.

(1) Progress payments shall be due not later than fourteen (14) calendar days after receipt of the payment request by the BPA designated billing office. BPA shall make progress payments monthly as the work proceeds, or at more frequent intervals as may be agreed to

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by the CO, on estimates of work accomplished which meets the standards of quality established under the contract.

(2) Payment of any withholding shall be due not later than 30 days after approval for release to the Contractor by the CO.

(3) Partial payments and final payments shall be due not later than thirty (30) calendar days after the later of the date on which BPA actually receives a proper invoice or the date of BPA acceptance of the work or services completed by the Contractor.

(c) Billing Instructions.

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

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

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

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

(f) Subcontract Requirements.

(1) The Contractor shall include in each subcontract:

(A) A payment clause which obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment by BPA under this contract.

(B) An interest penalty clause which obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause.

(C) A clause requiring each subcontractor to include a payment clause and an interest penalty clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(2) If a Contractor, after making a request for payment to BPA, discovers that all or a portion of the payment otherwise due a subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall--

(A) Furnish a notice to the subcontractor specifying (1) the amount to be withheld; (2) the specific cause for the withholding; and (3) the remedial actions to be taken by the subcontractor in order to receive payment of the amount withheld;

(B) Give the CO a copy of the notice furnished to the subcontractor;

(C) Notify the CO of the beginning and end dates of any withholding of subcontractor payments; and

(D) Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency.

(E) Pay interest to BPA from the 8th day funds are held by the Contractor to the date the funds are either paid to the subcontractor or are returned to BPA.

(3) The Contractor may not request payment from BPA of any amount withheld or retained from a subcontractor until such time as the Contractor has determined the subcontractor is entitled to the payment of such amount.

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(End of clause)

### **Clause 22-12 PAYMENT (May 11)(BPI 22.2.5)**

(a) **Payment Due Date.** Payment (including partial payments or progress payments, if authorized, shall be due not later than thirty (30) calendar days after the later of the date on which BPA actually receives a proper invoice in the designated billing office or the date when the items delivered or completed services are accepted by BPA. According to the Prompt Payment Act, a proper invoice to a Federal Agency is to include bank account information requisite to enable Electronic Funds Transfer (EFT) as method of payment. For purposes of payment only, items will be deemed accepted not later than seven (7) calendar days after proper delivery. If delivered items or completed services are found defective, the provisions of this paragraph will be reapplied upon receipt of a corrected item or service.

(b) **Billing Instructions.**

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

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

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

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

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

(End of clause)

### **Clause 22-13 INTEREST ON AMOUNTS DUE BPA (Sep 98)(BPI 22.3.1)**

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

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

(1) The date fixed under this contract;

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

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- (3) The date BPA transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt; and
- (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification;

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

(End of clause)

#### **Clause 22-14 TAXES -- INDEFINITE DELIVERY CONTRACTS (Sep 98)(BPI 22.5.6)**

The contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and BPA agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

(End of clause)

#### **Clause 22-15 FEDERAL, STATE AND LOCAL TAXES (Sep 98)(BPI 22.5.6)**

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

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

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

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

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

(f) Notwithstanding any of the above provisions for adjustment of the contract price in the event of a change in a Federal excise tax or duty after the contract date, no increase in the contract price shall be made for any duty imposed under the Tariff Act of 1930, as amended, (19 U.S.C. 1303) or the Anti-dumping Act of 1921, as amended (19 U.S.C. 160-171).

(End of clause)

#### **Clause 22-16 TAXES AND DUTIES (Sep 98)(BPI 22.5.6)**

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

(End of clause)

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#### **Clause 22-17 WASHINGTON STATE SALES AND USE TAXES (Sep 98)(BPI 22.5.6)**

(a) The Supreme Court has ruled that the Washington State Sales and Use Taxes apply to Federal contracts. Therefore, it is the responsibility of the offerors to take Washington State Tax Statutes into account when preparing their offers.

(b) Offerors should not take into account or include a factor for the State of Washington Sales or Use Tax which may be levied on Government-furnished materials or equipment in connection with performance of this contract. Any assessment by the State of Washington against the contractor shall be reported immediately to the CO. The contractor shall be reimbursed by BPA for payment of any tax authorized to be paid by the CO by an appropriate contract modification. The reimbursement shall be limited to the actual tax amount assessed by the State of Washington. The contractor hereby authorizes BPA to enter into such negotiations and arrangements with the State of Washington as it may deem appropriate in resolving the amount of applicable tax(es).

(End of clause)

#### **Clause 22-18 STATE OF IDAHO USE TAX (Sep 98)(BPI 22.5.6)**

The State of Idaho may endeavor to impose a use tax on the value of Government-furnished materials on this contract. Offerors should not include in their offers any factor for this tax. In the event the State of Idaho purports to assess or levy such a tax, the Contractor shall immediately submit copies of any documents reflecting such assessment or levy to the CO. Any inquiries from the State of Idaho relating to the value of equipment or materials furnished by BPA shall be referred to the CO. The Contractor shall not make any payments to the State of Idaho on account of such taxes unless authorized by the CO.

(End of clause)

#### **Clause 22-19 INDIRECT COST RATES WITH CARRY-FORWARD (Nov 08)(BPI 22.1.3)**

Notwithstanding 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87), the indirect cost rate for this contract will be 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 forward and are considered in the negotiation of rates for subsequent periods. If actual indirect 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 actual indirect 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.

(End of clause)

#### **Clause 22-20 ELECTRONIC FUNDS TRANSFER PAYMENT (Oct 07)(BPI 22.6.2)**

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

(b) Contractor EFT arrangement with a financial institution or authorized payment agent. The Contractor shall designate to BPA, as per paragraph (c) of this clause, and maintain at its own

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

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

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

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

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

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

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

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

(End of clause)

**Clause 22-21 (Reserved).**

### **Clause 22-22 CONTRACTS FOR EXPERT/CONSULTANT SERVICES WITH INDEPENDENT CONTRACTORS (Dec 10)(BPI 22.5.6)**

(a) Contractor is associated with BPA only for purposes and to the extent specified in this contract, and in respect to performance of the contracted services pursuant to this contract, contractor is and shall be an independent contractor and, subject only to the terms of this contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this contract.

(b) Contractor shall be solely responsible for, and the BPA shall have no obligation with respect to (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to contractor employees; (4)

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participation or contributions to contractor retirement systems; (5) accumulation of vacation leave or sick leave provided through contractor leave programs; or (6) unemployment compensation coverage provided by contractor.

(c) Contractor acknowledges that neither contractor, its employees, agents, or representatives shall be considered employees, agents, or representatives of the BPA.

(End of clause)

### **Clause 22-23 CONTRACTS FOR SUPPLEMENTAL LABOR (Dec 10)(BPI 22.5.6)**

(a) Contractor is associated with BPA only for purposes and to the extent specified in this contract, and in respect to performance of the contracted services pursuant to this contract, contractor is and shall be subject only to the terms of this contract, and shall have the sole right and responsibility to supervise, manage, operate, control, and direct performance of the details incident to its duties under this contract.

(b) Contractor shall be solely responsible for, and the BPA shall have no obligation with respect to (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to contractor employees; (4) participation or contributions to contractor retirement systems; (5) accumulation of vacation leave or sick leave provided through contractor leave programs; or (6) unemployment compensation coverage provided by contractor.

(c) Contractor acknowledges that neither contractor, its employees, agents, or representatives shall be considered employees, agents, or representatives of the BPA.

(End of clause)