



Department of Energy

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

PUBLIC AFFAIRS

April 5, 2011

In reply refer to: DK-7

Dan Seligman, Attorney at Law
Columbia Research Corporation
PO Box 99249
Seattle, WA 98139

RE: FOIA #BPA-2011-00675-F

Dear Mr. Seligman:

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

You have requested the following:

1. A copy of all contract(s) between BPA and the law firm of Davis Wright Tremaine signed after January 1, 2007. This request includes but is not limited to contracts providing BPA with FERC regulatory intelligence and strategic advice.
2. The sole-source justification for the contract(s).

Response:

1. BPA has provided the responsive records in their entirety.
2. BPA has no responsive record.

I appreciate the opportunity to assist you. Please contact Cheri Benson, FOIA/Privacy Act Specialist at (503) 230-7305 with any questions about this letter.

Sincerely,

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

Enclosure: Responsive documents

BONNEVILLE
POWER ADMINISTRATION

CONTRACT

Mail Invoice To:

See Page 2
For Invoice Instructions

Contract : 00036191
Release :
Page : 1

Vendor:

DAVIS WRIGHT TREMAINE LLP
1919 PENNSYLVANIA AVENUE
SUITE 200
WASHINGTON DC 20006

Please Direct Inquiries to:

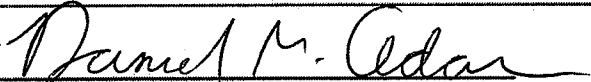
DAVID B. THATCHER
Title: CONTRACT SPECIALIST
Phone: 503-230-3457
Fax : 503-230-4508

Attn: DANIEL ADAMSON

Contract Title: FERC REGULATORY INTELLIGENCE AND STRATEGIC ADVICE

Total Value : \$450,000.00
Pricing Method: TIME & MATERIALS
Performance Period: 12/15/07 - 09/30/10

**** NOT TO EXCEED ****
Payment Terms: % Days Net 30



Contractor Signature
DANIEL M. ADAMSON

Printed Name/Title
1-3-08
Date Signed



BPA Contracting Officer
12-20-07
Date Signed



COVER SHEET CONTINUATION

Contract No. 36191
FERC Regulatory Intelligence and Strategic Advice

COTR – Carol Shauger (503) 230-4163 / cshauger@bpa.gov
CO - Dave Thatcher (503) 230-3457 / dbthatcher@bpa.gov

1. This contract incorporates the offer dated Dec 7, 2007 in response to BPA Request for Offers # 935.
2. Performance period for this contract is Dec 15, 2007-September 30, 2010. There are no additional option periods associated with this contract.
3. Please mail invoices to:

Bonneville Power Administration
Attn: Carol Shauger, GN-7
P.O. Box 3621
Portland, OR 97208-3621

TABLE OF CONTENTS

| | |
|---|-----------|
| UNIT 1 — SCHEDULE | 5 |
| CONTRACT TYPE (7-1) | 5 |
| PERFORMANCE PERIOD AND OPTIONS (7-7) | 5 |
| SCHEDULE OF PRICES (SERVICES) (22-51M) | 5 |
| KEY PERSONNEL (23-2) | 5 |
| UNIT 2 — CONTRACT CLAUSES | 6 |
| PAYMENT AND TAXES | 6 |
| ELECTRONIC FUNDS TRANSFER PAYMENT (22-20) | 6 |
| BASIS OF PAYMENT -- TIME-AND-MATERIALS CONTRACTS (22-4) | 6 |
| PAYMENT (22-12) | 8 |
| CONTRACT CEILING LIMITATION (22-7) | 8 |
| FEDERAL, STATE, AND LOCAL TAXES (22-15) | 9 |
| INTEREST ON AMOUNTS DUE BPA (22-13) | 9 |
| GENERAL CONTRACT ADMINISTRATION | 10 |
| APPLICABLE REGULATIONS (1-1) | 10 |
| SUBCONTRACTS (14-7) | 10 |
| CONTRACT ADMINISTRATION REPRESENTATIVES (14-2) | 10 |
| MODIFICATION COST PROPOSAL - PRICE BREAKDOWN (14-13) | 10 |
| PRICING OF ADJUSTMENTS (14-12) | 11 |
| EXAMINATION OF RECORDS (12-3) | 11 |
| SCREENING REQUIREMENTS FOR PERSONNEL HAVING ACCESS TO BPA FACILITIES (23-4) | 11 |
| ORDER OF PRECEDENCE (14-3) | 13 |
| HOMELAND SECURITY (14-17) | 13 |
| BANKRUPTCY (14-18) | 13 |
| STANDARDS OF CONDUCT AND BUSINESS PRACTICES | 13 |
| ORGANIZATIONAL CONFLICTS OF INTEREST (3-2) | 13 |
| CERTIFICATION, DISCLOSURE, AND LIMITATION REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (3-3) | 14 |
| DRUG-FREE WORKPLACE (3-6) | 15 |
| CONTRACTOR COMPLIANCE WITH BPA POLICIES (3-8) | 17 |
| SOCIO-ECONOMIC ISSUES | 17 |
| NONDISCRIMINATION AND AFFIRMATIVE ACTION (10-1) | 17 |
| BONDS AND INSURANCE | 18 |
| INSURANCE (16-2) | 18 |
| PATENTS, DATA, AND COPYRIGHTS | 19 |
| UNAUTHORIZED REPRODUCTION OR USE OF COMPUTER SOFTWARE (23-3) | 19 |
| INSPECTION AND WARRANTY | 19 |
| INSPECTION - SERVICES AND CONSTRUCTION (18-4) | 19 |
| WARRANTY - SERVICES (18-11) | 19 |
| TERMINATION | 19 |
| TERMINATION FOR THE CONVENIENCE OF BPA (20-2) | 19 |
| TERMINATION FOR DEFAULT (20-3) | 20 |

| | |
|---|-----------|
| DISPUTES | 20 |
| APPLICABLE LAW (21-5) | 20 |
| DISPUTES (21-2) | 20 |
| UNIT 3 — STATEMENT OF WORK | 21 |
| PART A GENERAL | 21 |
| A.1 GOAL OF THIS CONTRACT: | 21 |
| A.2 BACKGROUND: | 21 |
| A.3 LOCATION OF PROJECT: | 21 |
| A.4 GOVERNMENT FURNISHED PROPERTY OR SERVICE: | 21 |
| A.5 CONTRACTOR FURNISHED PROPERTY OR SERVICE: | 21 |
| PART B TECHNICAL APPROACH/TASKS | 21 |
| B.1 GENERAL REQUIREMENTS: | 21 |
| B.2 METHODS TO BE USED: | 22 |
| B.3 SPECIFIC REQUIREMENTS: | 22 |
| B.4 SCHEDULE | 22 |
| B.5. CONFIDENTIALITY: | 22 |
| B.6 DELIVERABLES: | 22 |

UNIT 1 — SCHEDULE

CONTRACT TYPE (7-1) (SEP 98)(BPI 7.1.9)

This is a time and materials type contract.

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

This is a three year contract with no options to extend for additional periods.

SCHEDULE OF PRICES (SERVICES) (22-51M) (SEP 98)

The contractor shall provide all supplies/services according to the attached statement of work and rate schedule below:

| <u>Classification</u> | <u>Attorney Name</u> | <u>Hourly Rate</u> |
|-----------------------|----------------------|--------------------|
| Attorney Services | Dan Adamson | \$390.00 |
| Attorney Services | Lisa Zyberman | \$240.00 |

KEY PERSONNEL (23-2) (SEP 98)(BPI 23.1.6)

The personnel listed below are considered to be essential to the work being performed hereunder. No diversion shall be made by the Contractor without the written consent of the Contracting Officer. (List key personnel below)

__Dan Adamson_____

__Lisa Zyberman_____

UNIT 2 — CONTRACT CLAUSES

PAYMENT AND TAXES

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

- (a) Payment Method. Payments under this contract, including invoice and contract financing payments, will be made by electronic funds transfer (EFT). Contractors are required to provide its taxpayer identification number (TIN) and other necessary banking information as per paragraph (c) of this clause to receive EFT payment.
- (b) Contractor EFT arrangement with a financial institution or authorized payment agent. The Contractor shall designate to BPA, as per paragraph (c) of this clause, and maintain at its own expense, a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under all BPA contracts, unless the BPA Vendor File Maintenance Team is notified of a change as per paragraph (d) of this clause. An initial designation should be submitted after award, but no later than three weeks before an invoice or contract financing request is submitted for payment.
- (c) Submission of EFT banking information to BPA. The Contractor shall submit EFT enrollment banking information directly to BPA Vendor File Maintenance Team, using Substitute IRS Form w9e, Request for Taxpayer Identification Number and Certification. This form is available either from the Contracting Officer(CO) or from the Vendor File Maintenance Team. Submit completed enrollment form to the Vendor Team. Contact and mailing information:
- Bonneville Power Administration
PO Box 491
ATTN: NSSS - MODW Vendor Maint.
Vancouver, WA 98666-0491
- E-mail Address: VendorMaintenance@BPA.gov
Phone: (360) 418-2800
Fax: (360) 418-8904
- (d) Change in EFT information. In the event that EFT information changes or the Contractor elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the Contractor shall be responsible for providing the changed information to the BPA Vendor File Maintenance Team office. The Vendor Maintenance Team must be notified 30 days prior to the date such change is to become effective.
- (e) Suspension of Payment. BPA is not required to make any payment under this contract until receipt of the correct EFT payment information from the Contractor.
- (f) EFT and prompt payment. BPA shall pay no penalty on delay of payment resulting from defective EFT information. BPA will notify the Contractor within 7 days of its receipt of EFT information which it determines to be defective.
- (g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the Assignment of Claims clause of this contract, the assignee shall provide the assignee's EFT information required by paragraph (c) of this clause.

BASIS OF PAYMENT -- TIME-AND-MATERIALS CONTRACTS (22-4) (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 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 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.

PAYMENT (22-12)
(OCT 05)(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) working 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 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.
- (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).

CONTRACT CEILING LIMITATION (22-7)
(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.
- (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.

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

- (a) The contract price shall include all applicable Federal, State, and local taxes and duties.
- (b) The contract price shall be increased by the amount of any after-imposed Federal excise tax or duty, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price.
- (c) The contract price shall be decreased by the amount of any after-relieved Federal excise tax or duty.
- (d) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the CO.
- (e) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (f) Notwithstanding any of the above provisions for adjustment of the contract price in the event of a change in a Federal excise tax or duty after the contract date, no increase in the contract price shall be made for any duty imposed under the Tariff Act of 1930, as amended, (19 U.S.C. 1303) or the Anti-dumping Act of 1921, as amended (19 U.S.C. 160-171).

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

- (a) Notwithstanding any other clause of this contract, all amounts that become payable by the Contractor to BPA under this contract (net of any applicable tax credit under the Internal Revenue Code (26°U.S.C.°1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six month period as fixed by the Secretary until the amount is paid.
- (b) Amounts shall be due at the earliest of the following dates:
- (1) The date fixed under this contract;
 - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination;
 - (3) The date BPA transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt; and

- (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification;
- (c) Payment will be due within 30 days of the date of the invoice. The collection actions available under the Debt Collection Act of 1982 (Public Law 97-365), as amended, and the revised Federal Claims Collections Standards (4 CFR 102), will be utilized. Administrative charges and penalties will be charged in accordance with 31 USC 3717, except where prohibited or explicitly provided for by statute or regulation required by statute.

GENERAL CONTRACT ADMINISTRATION

APPLICABLE REGULATIONS (1-1) (MAY 07)(BPI 1.3.1)

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

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

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

CONTRACT ADMINISTRATION REPRESENTATIVES (14-2) (SEP 98)(BPI 14.3.2)

- (a) In the administration of this contract, the Contracting Officer may be represented by one or more of the following: Contracting Officer's Representative for administrative matters, and Contracting Officer's Technical Representative, Receiving Inspector, and/or Field Inspector for technical matters.
- (b) These representatives are authorized to act on behalf of the Contracting Officer in all matters pertaining to the contract, except: (1) contract modifications that change the contract price, technical requirements or time for performance, unless delegated field modification authority (see clause 24-25); (2) suspension or termination of the Contractor's right to proceed, either for default or for convenience of BPA; and (3) final decisions on any matters subject to appeal, as provided in a disputes clause. In addition, Field Inspectors may not make final acceptance under the contract.

MODIFICATION COST PROPOSAL - PRICE BREAKDOWN (14-13) (SEP 98)(BPI 14.10.5.1.1)

- (a) The contractor, in connection with any proposal it makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. The breakdown shall be in enough detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by similar price breakdowns from those subcontractors.
- (b) In addition, if the proposal includes a time extension, a justification thereof shall also be furnished. Notwithstanding any other provisions of this contract, it is mutually understood that the time extension for changes in the work will depend upon the extent, if any, by which the changes cause delay in the completion

of the various elements of work. The contract completion dates will be extended only for those specific elements so delayed and the remaining contract completion dates for all other portions of the work will not be altered.

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

PRICING OF ADJUSTMENTS (14-12)
(SEP 98)(BPI 14.10.5.1.1)

When costs are a factor in any determination of a contract price adjustment pursuant to the Changes clause or any other modification in connection with this contract, such costs shall be in accordance with the contract cost principles and procedures in Part 13 of the Bonneville Purchasing Instructions which are in effect on the date of this contract.

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

- (a) The contractor shall keep accurate and complete accounting records in support of all cost-based billings to BPA in accordance with generally accepted accounting principles and practices. The Comptroller General of the United States, the Contracting Officer, or their representatives, shall have the right to examine, audit, and reproduce any of the Contractor's pertinent records involving transactions related to this contract or any subcontract hereunder. Records includes, but is not limited to, books, documents, and other information regardless of form (e.g., machine readable data) or type (e.g. data bases, applications software, data base management software, utilities, etc.) including computations and projections related to proposing, negotiating, pricing, subcontracting, modifying or performing the contract. The purpose of such examination shall be to determine the accuracy, completeness, and currency of costs charged under the contract and/or to verify cost or pricing information submitted to BPA.
- (b) Such documents shall be available for three (3) years after final payment or, in the case of termination, three (3) years from the date of any final termination settlement. Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims have been disposed of.
- (c) The contractor shall insert a clause containing all the terms of this clause, including this paragraph (c), in other than fixed price subcontracts over \$100,000, altering the clause as necessary to identify the contracting parties and the Contracting Officer under the prime contract.

SCREENING REQUIREMENTS FOR PERSONNEL HAVING ACCESS TO BPA FACILITIES (23-4)
(MAY 07)(BPI 23.4.1)

- (a) The following definitions shall apply to this contract:
- (1) "Access" means the ability to enter BPA facilities as a direct or indirect result of the work required under this contract.
 - (2) "Sensitive unclassified data" means information requiring a degree of protection due to the risk and magnitude of loss or harm that could result from inadvertent or deliberate disclosures, alteration, or restriction. Sensitive unclassified data may include, but are not limited to: personnel data maintained in systems or records subject to the Privacy Act of 1974, Pub. L. 93-579 (5 U.S.C. 552a); proprietary business data within the meaning of 18 U.S.C. 1905 and the Freedom of Information Act (5 U.S.C. 552); unclassified controlled nuclear information within the meaning of 42 U.S.C. 2168; critical infrastructure information, energy supply data; economic forecasts; and financial data.
- (b) BPA personnel screening activities are based on the Homeland Security Presidential Directive 12 (HSPD-12), and DOE rules and guidance as implemented at BPA. The background screening process to be conducted by the Office of Personnel Management is called a National Agency Check with Inquiries (NACI). The results of the NACI process will provide BPA with information to determine an individual's initial eligibility or continued

eligibility for access to BPA facilities including IT access. Such a determination shall not be construed as a substitute for determining whether an individual is technically suitable for employment.

- (c) The contractor is responsible for protecting BPA property during contract performance, including sensitive unclassified data. Effective October 27, 2005, all new-hire contract employees expected to work at federal facilities for six or more consecutive months must be screened according to HSPD-12. To initiate the federal screening process discussed in paragraph (b) above, the contractor shall ensure that all prospective contract employees present the required forms of personal identification and complete SF85 - Questionnaire for Non Sensitive Positions and submit it to BPA for processing. All contract employees on board prior to that date will be screened in phases according to length of service. Rescreenings of longer-term contract employees will occur at periodic intervals, generally of five years.
- (d) As part of the NACI, the government's determination of approval for an individual's access shall be at least based upon criteria listed below. However, the contractor also has a responsibility to affirm that permitting the individual access to BPA facilities and/or computer systems is an acceptable risk which will not lead to improper use, manipulation, alteration, or destruction of BPA property or data, including unauthorized disclosure. Positive findings in any of these areas shall be sufficient grounds to deny access.
 - (1) Any behavior, activities, or associations that may show the individual is not reliable or trustworthy.
 - (2) Any deliberate misrepresentations, falsifications, or omissions of material facts.
 - (3) Any criminal, dishonest or immoral conduct (as defined by local Law), or substance abuse.
 - (4) Any illness, including any mental condition, of a nature which, in the opinion of competent medical authority, may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.
- (e) If the NACI screening process described above prompts a determination to disapprove access, BPA shall notify the contractor, who will then inform the individual of the determination and the reasons therefor. The contractor shall afford the individual an opportunity to refute or rebut the information that has formed the basis for the initial determination, according to the appeal process prescribed by HSPD-12 and supplemental implementing guidance.
- (f) If the individual is granted access, the individual's employment records or personnel file shall contain a copy of the final determination as described in paragraph (e) above and the basis for the determination. The contractor shall conduct periodic reviews of the individual's employment records or personnel file to reaffirm the individual's continued suitability for access. The reviews should occur annually, or more often as appropriate or necessary. If the contractor becomes aware of any new information that could alter the individuals' continued eligibility for approved access, the contractor shall notify the COTR immediately.
- (g) If a security clearance is required, then the applicant's job qualifications and suitability must be established prior to the submission of a security clearance request to DOE. In the event that an applicant is specifically hired for a position that requires a security clearance, then the applicant shall not be placed in that position until a security clearance is granted by DOE.
- (h) In addition to the requirements described elsewhere in this clause, all contractor employees who may be accessing any of BPA's information resources must participate annually in a BPA-furnished information resources security training course.
- (i) The contractor is responsible for obtaining from its employees any BPA-issued identification and/or access cards immediately upon termination of an employee's employment with the contractor, and for returning it to the COTR, who will forward it to Security Management.
- (j) The substance of this clause shall be included in any subcontracts in which the subcontractor employees will have access to BPA facilities and/ or computer systems.

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

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

HOMELAND SECURITY (14-17)
(MAY 07)(BPI 14.18.3)

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

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

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

STANDARDS OF CONDUCT AND BUSINESS PRACTICES

ORGANIZATIONAL CONFLICTS OF INTEREST (3-2)
(SEP 98)(BPI 3.4.6)

- (a) The offeror or contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts which could give rise to organizational conflicts of interest, as defined in BPI 3.4.1, and that the offeror or contractor has disclosed all relevant information to the Contracting Officer.
- (b) The offeror or contractor agrees that, if after award, an organizational conflict of interest with respect to this contract is discovered, an immediate and full disclosure in writing shall be made to the Contracting Officer which shall include a description of the action which the contractor has taken, or proposes to take, to avoid or mitigate such conflicts.
- (c) In the event that the contractor was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict to the Contracting Officer, BPA may terminate the contract for default.

(d) The provisions of this clause shall be included in all subcontracts for work to be performed in aid of the services provided by the prime contractor, and the terms "contract," "contractor," "Contracting Officer" modified appropriately.

**CERTIFICATION, DISCLOSURE, AND LIMITATION REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (3-3)
(SEP 98)(BPI 3.5.6)**

(a) As used in this clause:

"Covered Federal action" means

- (1) The awarding of any Federal contract.
- (2) The extension, continuation, renewal, amendment, or modification of any Federal contract.

"Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and includes Alaskan Natives.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, includes a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes all contractors and subcontractors. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:

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

of any Federal contract or the extension, continuation, renewal, amendment, or modification of any Federal contract.

- (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, Standard Form-LLL, Disclosure of Lobbying Activities, to the Contracting Officer.
 - (3) He or she will include the language of this certification in all subcontract awards at any tier and that all sub-recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, U.S. Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10, 000 and not more than \$100,000 for each such failure.
- (d) A contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under this clause if paid for with appropriated funds.
- (e) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (b) of this clause. An event that materially affects the accuracy of the information reported includes--
- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (f) The contractor shall require the submittal of a certification, and if required, a disclosure form, by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
- (g) All subcontractor disclosure forms (but not certifications), shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosure forms to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.
- (h) Any person who makes an expenditure prohibited under this clause or who fails to file or amend the disclosure form to be filed or amended by this clause shall be subject to a civil penalty as provided by 31 U. S. Code 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

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

- (a) The contractor agrees that with respect to all employees to be employed under this contract it will provide a drug-free workplace as described in this clause.
- (b) Definitions. As used in this clause "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), as from time to time amended, and as further defined in regulation at 21 CFR 1308.11-1308.15, as amended.

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

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

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

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

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

- (c) The Contractor, if other than an individual, shall -- within 30 calendar days after award (unless a longer period is agreed to in writing for contracts of 30 calendar days or more performance duration); or as soon as possible for contracts of less than 30 calendar days performance duration--
- (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - (2) Establish an on-going drug-free awareness program to inform such employees about--
 - (A) The dangers of drug abuse in the workplace;
 - (B) The contractor's policy of maintaining a drug-free workplace;
 - (C) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (D) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - (3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (c)(1) of this clause;
 - (4) Notify such employees in writing in the statement required by subparagraph (c)(1) of this clause that, as a condition of continued employment on this contract, the employee will--
 - (A) Abide by the terms of the statement; and
 - (B) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction.
 - (5) Notify the Contracting Officer in writing within ten (10) days after receiving notice under subdivision (c)(4)(B) of this clause, from an employee, or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
 - (6) Within 30 days after receiving notice under subparagraph (c)(4)(B) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (A) Taking appropriate personnel action against such employee, up to and including termination; and/or

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

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

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

**CONTRACTOR COMPLIANCE WITH BPA POLICIES (3-8)
(OCT 05)(BPI 3.7.1)**

(a) The contractor shall comply with all BPA policies affecting the BPA workplace environment. Examples of specific policies are:

(1) Harassment-free workplace;

(2) Non-smoking workplace;

(3) Firearms and other weapons (BPAM 1073);

(4) Safety and health clauses in this contract;

(5) Visits to BPA substations, rights-of-way work sites, other electrical hazardous work sites, and non-electrical hazardous work sites;

(6) Standards of conduct regarding transmission information (BPI 3.2);

(7) Dissemination of Critical and Sensitive Information, Including Information Pertaining to Critical Infrastructure (BPAM 1081); and

(8) Identity verification and background screening for all contractors, and pre-approval for non-US Citizen access to BPA facilities, as prescribed by the BPA Security office procedures.

(b) The contractor shall obtain from the CO information describing the policy requirements. A contractor who fails to enforce workplace policies is subject to suspension or default termination of the contract.

SOCIO-ECONOMIC ISSUES

**NONDISCRIMINATION AND AFFIRMATIVE ACTION (10-1)
(SEP 98)(BPI 10.2.1)**

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

(1) For nondiscrimination based on race, color, religion, sex or national origin this includes, but is not limited to, the U.S. Constitution, and Parts II and IV of Executive Order 11246, September 24, 1965 (30 FR 12319). Contractor disputes related to compliance with its obligations shall be handled according to the rules, regulations, and relevant orders of the Secretary of Labor (See 41 CFR 60-1.1).

(2) For nondiscrimination based on Disabled or Vietnam Veterans this includes, but is not limited to, the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended (38 U.S.C. 4012)(the Act);

Executive Order 11701, January 24, 1973 (38 CFR 2675, January 29, 1973); and the regulations of the Secretary of Labor (41 CFR Part 60-250).

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

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

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

BONDS AND INSURANCE

INSURANCE (16-2) (SEP 03)(BPI 16.3.3)

(a) The following minimum kinds and amounts of insurance are applicable in the performance of the work under this contract. All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(1) **Workers' compensation and employer's liability.** Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. Employer's liability coverage of at least \$100,000 shall be required. BPA may require Contractors who are individuals (whether incorporated or not) to carry workers' compensation to protect agency interests. The Contracting Officer shall advise the Contractor regarding specific requirements.

(2) **General liability.** The contractor shall provide general liability insurance of at least \$1,000,000 per occurrence. Any policy aggregate limits which apply, shall be modified to apply to each location and project. The policy shall name BPA, its officials, officers, employees and agents, as insureds with respect to the contractor's performance of services. The contractor's policy shall be primary to any insurance or self-insurance programs of BPA.

(3) **Automobile liability.** The contractor shall provide automobile liability insurance covering the operation of all automobiles used in performing the contract. Policies shall provide limits of at least \$1,000,000 per accident and include coverage for all owned, non-owned and hired automobiles.

(4) **Professional liability.** The contractor shall provide professional liability insurance. Coverage shall be at least \$1,000,000 per occurrence for claims arising out of negligent acts, errors or omissions.

(b) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program; provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(c) Before commencing work under this contract, the Contractor shall provide to the Contracting Officer certificates of insurance from the insurance company stating the insurance required has been obtained and is in force. The certificate(s) shall identify the contractor and the contract(s) for which coverage is provided, and shall contain a statement that the insurer will give notice of cancellation or any material change to the CO at least 30 days before the effective date. In addition, the contractor shall provide certificates as the policies are renewed throughout the period of the contract. If the contractor's insurance does not cover the subcontractors involved in the work, the contractor shall provide certificates stating that the required insurance has been obtained by the subcontractors.

PATENTS, DATA, AND COPYRIGHTS

UNAUTHORIZED REPRODUCTION OR USE OF COMPUTER SOFTWARE (23-3) (SEP 98)(BPI 23.3.1)

The contractor shall hold BPA harmless for unauthorized reproduction or use of copyrighted or proprietary computer software and/or manuals or other documentation by the contractor's employees or subcontractors in the performance of the contract.

INSPECTION AND WARRANTY

INSPECTION - SERVICES AND CONSTRUCTION (18-4) (SEP 98)(BPI 18.3.1)

- (a) BPA may inspect the work called for by the contract at any time and place. BPA will perform inspections in a manner that will not unduly delay the work.
- (b) If any of the services do not conform with contract requirements (including services performed on a cost-reimbursement or time-and-materials basis), BPA may require the Contractor to perform the services again in conformity with the contract at no cost to BPA. When the defects in services cannot be corrected by re-performance, BPA may deduct from the contract payments an amount which reflects the reduced value of the services performed.
- (c) Neither inspection, lack of inspection, acceptance, nor payment shall relieve the Contractor of any of its obligations under this contract.

WARRANTY - SERVICES (18-11) (SEP 98)(BPI 18.5.1)

- (a) The Contractor warrants that all services performed under this contract will be performed in a professional manner, be free from defects in workmanship and conform to the requirements of this contract. The Contractor further warrants that any materials provided will be free from defects. This warranty is valid for 1 year from date of acceptance by BPA. The Contracting Officer will give written notice of any defect or nonconformance to the Contractor within a reasonable period of time after discovery.
- (b) Corrections shall be at no cost to BPA, and any services or materials corrected or reperfomed by the Contractor shall be subject to this clause to the same extent as work initially performed.

TERMINATION

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

- (a) BPA may terminate all or any part of this contract, at any time, upon written notice to the contractor. Upon receipt of the termination notice, the contractor shall stop work on the terminated portion of the contract.
- (b) The contract amount shall be revised as a result of termination under this clause. On fixed-price contracts the revised amount shall not exceed the pre-termination contract price, excluding payments already received, plus reasonable termination expenses. On cost-reimbursement contracts it will not exceed the total of allowable and allocable costs of performance prior to termination, excluding payments already received, plus reasonable termination expenses, plus an adjustment of the fee on the terminated portion of the contract. No payment will be made for anticipated profits on the terminated portion, or consequential damages, of the contract. The contractor shall submit a settlement proposal within 30 days of the notice of termination.
- (c) The Contracting Officer may direct the disposition of material produced or acquired for the work terminated, or any completed or partially completed items.

**TERMINATION FOR DEFAULT (20-3)
(SEP 98)(BPI 20.5.1)**

- (a) BPA reserves the right to terminate any or all of any undelivered or unexecuted portion of this contract for cause if the contractor fails to make any delivery, fails to prosecute the work, or to perform as scheduled, or if any of the contract terms are breached. However, the contractor shall not be terminated for default if the failure to perform arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of those causes are: (1) acts of God or of the public enemy, (2) acts of the Government in its sovereign or BPA in its contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather.
- (b) The Contracting Officer may direct the disposition of material produced or acquired for the work terminated, and the disposition of any completed or partially completed items.

DISPUTES

**APPLICABLE LAW (21-5)
(SEP 98)(BPI 21.3.12)**

Irrespective of the place of performance, this contract will be construed and interpreted according to the federal common law of government contracts, as enunciated and applied by federal judicial bodies, boards of contract appeals, and quasi-judicial agencies of the Federal Government. To the extent that the federal common law of government contracts is not dispositive, the laws of the State of Oregon shall apply.

**DISPUTES (21-2)
(SEP 98)(BPI 21.3.12)**

Disputes arising under or related to this contract will be settled in accordance with Bonneville Purchasing Instructions, Subpart 21.3. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any pending decision of the Contracting Officer regarding matters in dispute.

UNIT 3 — STATEMENT OF WORK

PART A GENERAL

A.1 GOAL OF THIS CONTRACT:

Bonneville Power Administration (BPA) is seeking consulting services and products to obtain strategic advice and electric utility regulatory intelligence for Federal Energy Regulatory Commission (FERC) matters relating to the operations of BPA. Regulatory intelligence related to BPA will include research, analysis, briefings, and/or reports as requested. The work is in support of the BPA Regulatory Affairs and General Counsel offices. Contractor will not provide legal representation under this contract.

A.2 BACKGROUND:

Bonneville Power Administration (BPA) is a federal power marketing administration headquartered in Portland, Oregon. BPA is a legislatively separate and distinct organization within the U.S. Department of Energy. BPA markets wholesale electric power at cost-based rates from 31 Pacific Northwest Federal hydroelectric facilities and one nonfederal nuclear plant. It also operates a large and complex bulk power transmission system that provides services within the Pacific Northwest and links the region with neighboring regions to the north, east, and south. BPA is governed by its own organic statutes and is a self-financed entity, depending upon its power and transmission revenues to cover its costs. BPA files its power and transmission rates with the Federal Energy Regulatory Commission (FERC) for approval under standards set out in the Pacific Northwest Electric Power Planning and Conservation Act. In addition, BPA has voluntarily implemented FERC's open access policies, including functionally separating its power and transmission components as well as filing and obtaining FERC approval of an Open Access Transmission Tariff (OATT) and employee Standards of Conduct (SOC).

A.3 LOCATION OF PROJECT:

Meetings: The contractor shall attend meetings at the FERC building, as required by BPA and may be asked to attend meetings via conference call or in various locations in the United States. Travel expenses will be paid by BPA, consistent with Federal Travel Regulations.

A.4 GOVERNMENT FURNISHED PROPERTY OR SERVICE:

BPA will furnish available pertinent data and documentation as needed for the contractor to utilize during performance of work assigned under this contract.

A.5 CONTRACTOR FURNISHED PROPERTY OR SERVICE:

The contractor shall provide all labor, materials, and services, except those provided as Government-furnished in meeting the requirements of this Statement of Work (SOW).

The Contractor will not be located at BPA headquarters, but will work from the offices of the contractor. There may be occasional visits to BPA headquarters, as determined to be necessary by BPA Regulatory Affairs or General Counsel.

PART B TECHNICAL APPROACH/TASKS

B.1 GENERAL REQUIREMENTS:

BPA is seeking strategic advice, and electric utility regulatory intelligence for Federal Energy Regulatory Commission (FERC) matters relating to the operations of BPA. The variety and permutations of BPA and FERC interactions are numerous and extremely complex and require expertise of regulatory experts who are in close contact with FERC, have an in-depth understanding of current FERC requirements and initiatives, and can anticipate and provide strategic advice concerning FERC initiatives. The nature of the work to be performed by the contractor shall primarily involve providing regulatory intelligence and strategic advice to BPA regarding current and future FERC initiatives and will include:

- Frequent briefings and/or reports on FERC matters
- Advice and impact analysis regarding compliance with FERC Standards of Conduct and reliability standards
- Relationship building between BPA and key FERC staff

To avoid conflicts of interest, the following process will be used

1. Firm provides BPA with a Letter of Engagement barring Key Personnel listed under paragraph 23-2 from engaging in regulatory/strategic advice work for any other clients on the same matters/issues for which they were providing regulatory/strategic advice to BPA.
2. BPA would provide a broad waiver to firm that would enable firm to continue to be adverse to BPA in the future on regulatory/strategic advice and litigation work performed by other firm staff.
3. Firm will create an ethical screen within firm barring communications on BPA matters between all firm attorneys other than key personnel, including those adverse to BPA, and those key personnel providing regulatory/strategic advice services to BPA. This screen would need to be established to assure confidentiality and ease of attorney/ client discussions.
4. Firm will provide services through the Key Personnel listed under paragraph 23-2 of the terms and conditions of this contract. Should any one of these Key Persons no longer be available to BPA, the Firm will notify BPA of such non-availability and BPA may terminate the contract.

B.2 METHODS TO BE USED:

The contractor shall develop an understanding of BPA statutes, business plans, long-term objectives, programs, OATT, and SOC compliance filings to the extent necessary to perform the duties described in the basic statement of work below. The contractor shall provide regulatory services primarily consisting of regulatory research, advice, and analysis. In that regard, the contractor shall, upon the direction of Regulatory Affairs or General Counsel, contact, monitor, analyze, and report on relevant FERC filings, orders, policy developments, and trends in regulatory areas related to BPA programs. The contractor shall also attend meetings (via conference call, at BPA headquarters, or in various locations in the United States) with BPA or others as requested by BPA Regulatory Affairs or General Counsel.

B.3 SPECIFIC REQUIREMENTS:

Reports: The contractor shall provide individual written reports to BPA as requested by Regulatory Affairs and/or Chief Compliance Office and/or General Counsel. The reports will summarize current activities, recommendations, and studies.

Written legal analysis, documentation, and filings: The contractor shall provide written work products as requested by designated BPA point(s) of contact and such products may include regulatory analysis and strategic advice.

B.4 SCHEDULE

Due dates for specific assignments will be negotiated at time of assignment.

B.5. CONFIDENTIALITY:

BPA has an expectation of nondisclosure of documents or other information provided to contractors during the term of their contracts. As a contractor, the Regulatory Consultant understands that a confidential relationship exists with respect to materials provided by BPA. The consultant agrees not to release such materials to anyone outside of BPA unless it is first determined that such materials must be released under applicable rules.

B.6 DELIVERABLES:

Deliverables may include, but are not limited to the following list:

- Various reports related to FERC matters
- Analysis of regulatory requirements
- Briefings as requested
- Advice/analysis concerning FERC compliance matters