

## **UNIT 1 – TERMS & CONDITIONS**

### **REGULATIONS APPLICABLE TO BPA FINANCIAL ASSISTANCE (4-1) (BFAI 4.10) (JUL 13)**

The Bonneville Power Administration's financial assistance function is managed and executed solely in accordance with the Bonneville Financial Assistance Instructions (BFAI). The BFAI is available without charge on the Internet at <http://www/bpa.gov>. Copies are available from the Head of the Contracting Activity - DGP, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208. Subscriptions are not available.

### **NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS (4-2) (BFAI 4.10) (SEP 04)**

The recipient shall comply with 10 CFR Chapter II, Section 600.39 which provides that "...no person shall on the ground of race, color, national origin, sex, handicap, or age be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment, where the main purpose of the program or activity is to provide employment or when the delivery of program services is affected by the recipient's employment practices, in connection with any program or activity receiving Federal assistance from ..." BPA.

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

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

### **REQUIREMENT FOR AUDIT (4-21)M (BFAI 4.10)(NOV 14)**

The recipient is required to obtain an audit in accordance with audit requirements found in 2 CFR 200. Copies of the report, including the management letter ("Letter to the Board of Directors"), shall be provided to the Board of Directors and funders by August 1 of each year.

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

(a) As used in this clause:

"Covered Federal action" means:

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

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

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

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

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

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

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

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

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

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

- (b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:
- (1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract or the extension, continuation, renewal, amendment, or modification of any Federal contract.
  - (2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, Standard Form-LLL, Disclosure of Lobbying Activities, to the Contracting Officer.
  - (3) He or she will include the language of this certification in all subcontract awards at any tier and that all sub-recipients of subcontract awards in excess of \$150,000 shall certify and disclose accordingly.
- (c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, U.S. Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10, 000 and not more than \$100,000 for each such failure.
- (d) A contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under this clause if paid for with appropriated funds.
- (e) The contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph (b) of this clause. An event that materially affects the accuracy of the information reported includes--
- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
  - (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
  - (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
- (f) The contractor shall require the submittal of a certification, and if required, a disclosure form, by any person who requests or receives any subcontract exceeding \$150,000 under the Federal contract.
- (g) All subcontractor disclosure forms (but not certifications), shall be forwarded from tier to tier until received by the prime contractor. The prime contractor shall submit all disclosure forms to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding contractor.
- (h) Any person who makes an expenditure prohibited under this clause or who fails to file or amend the disclosure form to be filed or amended by this clause shall be subject to a civil penalty as provided by 31 U. S. Code 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

**DRUG-FREE WORKPLACE (3-6)**  
**(JUL 13)(BPI 3.6.4)**

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

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

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

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

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

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

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

- (6) Within 30 days after receiving notice under subparagraph (c)(4)(B) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
  - (A) Taking appropriate personnel action against such employee, up to and including termination; and/or
  - (B) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
- (7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (c)(1) through (c)(6) of this clause.
- (d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraph (c) of this clause may, pursuant to BPI 3.6.3 render the contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.
- (e) The requirements of this clause shall not apply to
  - (1) Solicitations and contracts for the acquisition of commercial items and services.
  - (2) Subcontracts at any tier for the acquisition of commercial items or commercial components at any tier.

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

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

complete in technical detail to convey a clear understanding of the subject invention. The disclosure shall also identify any publication, on sale (i.e., sale or offer for sale), or public use of the subject invention, or whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, the Contractor shall promptly notify the CO of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.

- (2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer within 2 years of disclosure to the agency. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.
- (3) The Contractor shall file either a provisional or a non-provisional patent application on an elected subject invention within 1 year after election. However, in any case where a publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Contractor shall file the application prior to the end of that statutory period. If the Contractor files a provisional application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The Contractor shall file patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or non-provisional) or 6 months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- (4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (b)(1), (b)(2), and (b)(3) of this clause.

(c) Government's rights—

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

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

- (1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—
  - (A) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(B) Assign title to the agency when requested under paragraph (c) of this clause and to enable the Government to obtain patent protection for that subject invention in any country.

- (2) The Contractor shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Contractor's format, each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (b) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by paragraph (b)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- (3) The Contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.
- (4) The Contractor shall include, within the specification of any United States nonprovisional patent and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under **Grant No. 67451** awarded by Bonneville Power Administration. The Government has certain rights in the invention."
- (e) Reporting on utilization of subject inventions. The Contractor shall submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information as the agency may reasonably specify. The Contractor also shall provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (f) of this clause. The Contractor also shall mark any utilization report as confidential/proprietary to help prevent inadvertent release outside the Government. As required by 35 U.S.C. 202(c)(5), the agency will not disclose that information to persons outside the Government without the Contractor's permission.
- (f) March-in rights. The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency in effect on the date of contract award.
- (g) Subcontracts. The Contractor shall include the substance of this clause in all subcontracts.

**RIGHTS IN DATA-- CREATION OF NEW WORK (17-5.1)  
(JUL 13)(BPI 17.5.4.1.1)**

- (a) Except as otherwise provided herein, the Contractor grants to BPA a fully paid-up, non-exclusive, irrevocable, worldwide, perpetual license to copy, prepare derivative works and perform or display publicly, by or on behalf of BPA, for all the material or subject matter produced under this contract, hereinafter referred to as Work Product. Work Product means recorded information, regardless of form or the media on which it is stored, including any other copyrightable products or materials arising from performance under this contract.
- (b) Contractor shall defend, at its expense, and hold BPA harmless from any claim or suit brought against BPA alleging that the Work Product furnished hereunder infringes a U.S. patent or copyright, violates trade secrets, rights of privacy, or any libelous or other unlawful matter contained in such Work Product, and shall pay all costs and damages finally awarded, provided Contractor is given prompt written notice of such claim and is given information, reasonable assistance, and sole authority to defend or settle the claim. In the defense of the claim, Contractor shall obtain for BPA the right to continue using the Work Product, replace or modify the Work Product to be noninfringing, or if such remedies are not reasonably available, grant BPA a refund for the

work Product and accept its return. The provisions of this clause do not apply to material furnished to the Contractor by BPA and incorporated in the Work Product to which this clause applies.





