



# Nez Perce Tribe

## Department of Fisheries Resource Management

Administration • Enforcement • Habitat/Watershed • Harvest • Production • Research • Resident Fish

### WATERSHED DIVISION

PO Box 365 • Lapwai, Idaho 83540

Phone: (208) 983-1290 • Fax: (208) 983-0675

### Musselshell Creek AOP Design

**Bid Process Overview:** The Nez Perce TRIBE is accepting bids for the project titled Musselshell Bridge Replacement and Aquatic Organism Passage (AOP) Designs, which is described below. Bids must be emailed to [justinp@nezperce.org](mailto:justinp@nezperce.org) or sent to the locations found in Section A. The bidding process is from April 20th to May 25th; any bids received after 12:30 P.M. on the closing date will not be considered. A bid opening will take place May 25th at 1:00 P.M. at the Sweetwater Fisheries office at 28764 Salmon Lane, Lapwai, Idaho. This contract shall be subject to Title 9 of the Nez Perce Tribal Code, Tribal Employment Rights Act (TERO).

**General:** The intent of this project is to survey and design a replacement structure for an existing road crossing on Musselshell Creek, near Weippe, Idaho (See Exhibit 3) (Potlatch Deltic Rd 73-5 just off USFS Rd 100). The existing structure does not meet load requirements and is undersized at high flows. The purpose of the request for proposals (RFP) is to design a structure which allows highway road limits, conveys 100 year flow events including large wood, and provides fish passage for all life histories of steelhead and resident fish at all flow stages.

## SECTION A—OFFER FORM

<b>OFFER FORM</b>	1. SOLICITATION NO. Culvert/Bridge Designs and BDR	2. TYPE OF SOLICITATION Request For Proposals	3. DATE DUE 5/25/2023	PAGE OF PAGES 1 of 38 pages
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**IMPORTANT - The “offer” section on the reverse must be fully completed by offeror.**

4. MAIL OFFER TO			5. ADDRESS OFFER TO
Nez Perce TRIBE DFRM Watershed Division Office Attn: Justin Peterson P.O. Box 365 Lapwai, Idaho 83540			Delivered to:  DFRM Watershed Division Office 28764 Salmon Lane Lapwai, Idaho 83540
6. FOR INFORMATION CALL:	A. NAME Justin Peterson		B. TELEPHONE NO. (Include area code) 208-621-3545

### SOLICITATION

NOTE: In RFP solicitations “offer” and “offeror” mean “bid” and “bidder.”

7. THE NEZ PERCE TRIBE REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title., date):

## Musselshell Creek AOP Design Nez Perce TRIBE, DFRM Watershed Clearwater County, IDAHO

**FAXED OFFERS ARE NOT ACCEPTABLE.** OFFERS MUST BE RECEIVED BY May 25th, 2023 AT 12:30 PM LOCAL TIME.

**BID OPENING:** Bid Opening will be at 28764 Salmon Lane, Lapwai, Idaho at 1:00 P.M. Local Time May 25<sup>th</sup>, 2023.

8. The Contract time shall begin on receipt of notice to proceed and the work shall be completed no later than December 15, 2023. This performance period is mandatory.

9. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Proposals to perform the work required are due at the place specified in Item 4 by **12:30 PM local time**. Envelopes containing offers shall be marked to show the offeror's name and address. If hand delivering RFP, please deliver to the physical address listed above. If sending by mail, please address to the PO Box listed above.

# REQUEST FOR PROPOSALS (“RFP”) FOR CONTRACTOR SERVICES FOR THE NEZ PERCE TRIBE FISHERIES WATERSHED DIVISION

## 1. SERVICES AND PRICES

Item	Description	Quantity	Unit	Total Price
1	Site Review and Investigation	1	Lump Sum	\$
2	Meetings, Coordination, and Project Management	1	Lump Sum	\$
3	15 % design Review and Draft Basis of Design Report	1	Lump Sum	\$
4	30% Design Review and Draft Basis of Design Report	1	Lump Sum	\$
5	80% Design Review and Draft Basis of Design Report	1	Lump Sum	\$
6	Final Designs and Basis of Design Report	1	Lump Sum	\$

BASIS OF AWARD- Technical proposals are required to be submitted with your offer. See Section 8 for instructions and evaluation/award information.

CRITICAL DATES- See Section 6.1.10 for project schedule.

## 2. PURPOSE OF RFP

The Nez Perce Tribe Fisheries Watershed Division (NPT), is soliciting proposals from selected qualified engineering firms ("Offerors") to provide contract services ("Services") for the Musselshell Creek Aquatic Organism Passage Project. Services include design, specifications, Basis of Design Report, and bid documents to fund a project seeking to replacement of an undersized bridge.

The project sponsor seeks to produce designs for an undersized bridge on Musselshell Creek that will pass all life stages of ESA listed steelhead and other native aquatic species while passing 100 year flows.

## 3. BACKGROUND

This proposed project is located at on private property near the intersection of USFS road 100 and PotlatchDeltic road 73-5, East of Weippe, Idaho on Musselshell Creek in Clearwater County, Idaho. Project partners share a long-term vision involving the restoration of fisheries habitat where it can be beneficial to ESA listed steelhead and other native resident species. Agriculture (including grazing), logging, and the transportation system have increased sediment and water temperatures, decreased riparian condition, and caused major changes in channel form and function within the Lolo Creek watershed. Project designs would seek to improve water/large wood conveyance and passage at the road crossing.

## 4. SCOPE OF SERVICES

4.1 The following Scope of Services shall be the basis for Qualification response by Offeror under

this RFP. At the discretion of the NPT certain additional services may be assigned to Contractor during the course of the Services.

Musselshell Creek AOP, (Private Road off Potlatch/Deltic road 73-5), (T 35 N, R 5 E Section 25)

- Stream simulation required.
- Minimal hardened materials for natural stream simulation required.
- Potential stream reroute and stabilization depending on hydrologic analysis.
- Summer work window will apply.
- A Stream Diversion/Erosion Control plan will be required.
- Must meet or exceed U80 loading.

### **Specifications:**

**Road Design:** The existing roadway alignment shall be maintained with only minor adjustments to accommodate the new stream crossing structures. BMP improvements shall be incorporated to reduce the risk that sediment from road will reach the stream. The projects are not intended to improve speeds or promote additional traffic capacity and thus roadway design shall concentrate on preserving and protecting the facility and improving BMP's. This philosophy is the basis for the "Guidelines for Geometric Design of Very Low-Volume Local Roads" (VLVLR) shall be the design specification for this project. Other design references and specifications are:

- AASHTO's, A Policy on Geometric Design of Highways and Street.
- AASHTO's, Roadside Design Guide.
- Water Quality Best Management Practices.

**Bridge and Other Drainage Structures Design:** Bridges and other drainage structures shall be designed in accordance with AASHTO's LRFD Bridge Design Specifications, latest edition.

**Construction Specifications:** Construction specifications shall be Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects, FP-14. Drawings and specifications shall be in English units.

### **Design Criteria:**

#### **Road Design**

- Roadway width: Match existing conditions.
- Generally maintain existing vertical and horizontal alignment.
- Roadway Crown/Inslope: match existing.

#### **Drainage Structures Design**

- Design Loadings: Per AASHTO.
- Aquatic Organism Passage and Hydraulics: All structures, bridges, bottomless arches and culverts, shall be designed to pass the 100-year flood event with adequate freeboard for debris passage. Hydraulic analysis shall be completed using a one dimensional, steady flow, water surface profile analysis and as a minimum shall model the  $Q_2$ ,  $Q_{10}$ , and  $Q_{100}$  flow volumes. The analysis shall include a comparison of the natural stream without any impacts of the existing crossing and proposed alternatives for the various

flood events. Aquatic organism passage is also required. Stream velocities, depths, bedload transport and hydraulic energy grade lines at the various flow volumes are of significant importance to maintaining natural stream features necessary for aquatic organism passage. The hydraulic analysis of all proposed alternatives must be comparable/compatible to the natural stream models.

- Structure Economics: Economical cost to the TRIBE shall be considered for all proposed alternatives but must meet the other criteria stated above. Low initial cost plus long-term maintenance shall be considered.
- Designs must be in accordance with HIP 4 guidelines and standards, the Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response: Fish and Wildlife Habitat Improvement Program (HIP 4) in Oregon, Washington and Idaho. The HIP 4 can be found at [https://repository.library.noaa.gov/view/noaa/24206/noaa\\_24206\\_DS1.pdf?](https://repository.library.noaa.gov/view/noaa/24206/noaa_24206_DS1.pdf?) or made available upon request.

### **Surveys and Preliminary Design Shall Include:**

1. The survey and design shall include hydraulic analysis and development of alternatives and preliminary construction quantities and cost estimates for the site.
2. The Contractor shall prepare to meet with TRIBE, landowner, and potential project partners representatives to discuss the alternatives, merits, risks, estimated construction costs and issues. Preliminary design alternative drawings shall be presented illustrating roadway, stream and structure geometry and horizontal and vertical alignment, and summary of hydraulic analysis. The ultimate objective of the review meeting is to answer all questions and for the TRIBE and landowner to provide direction to the Contractor for final design.
3. After the review meeting, the TRIBE shall prepare a memo documenting the meeting discussion and any decisions and direction given to the Contractor for final design.

### **Final Design Shall Include:**

Final design shall include calculations, final drawings, and special project specifications. Final design drawings shall be prepared in AutoCAD Release 2007 or later and utilize the Nez Perce Tribe Logo. Contractor shall prepare all special project specifications. The specifications shall be prepared in electronic format using Microsoft Word word processing software. A 15%, 30% and 80% submittal will be required. The 30% and 80% submittal shall require in person meeting. The 30% meeting will be an onsite meeting with plans in hand.

**Conceptual Project Review (typically 15%):** The Project Sponsor will notify BPA at 15% or project concept stage and help the BPA EC Lead coordinate a site visit to review project concepts, goals, and objectives and confirm the direction and planning for subsequent phases of project design. Staff biologists from the NMFS and USFWS shall be invited to the site visit. A typical site visit will include the review of limiting factors and any pertinent studies or reports that document restoration targets for implementation and draft project concepts. Additional data that may be presented and reviewed include other data sources (e.g., high resolution aerial photography, topographic maps, soil maps,

GIS/CAD data layers, or other resource data). After the site visit, BPA EC Lead will collate and provide comments from BPA Technical Lead and interagency partners. Once comments are resolved, the BPA EC Lead will notify the Sponsor to proceed with the next design iteration.

The 15% submittal shall include:

1. A set of drawings for each alternative with layout of anticipated details.
2. Prepare a preliminary design report (Basis of Design Report (BDR)) 15%
3. Preliminary hydrologic analysis
4. Preliminary cost estimate for each alternative.
5. Design assumptions.

**Initial Review of Plans and BDR (typically 30%):** Preliminary drawings, specifications, a draft Basis of Design Report, and other supporting documentation (profiles, details, cross sections, quantities, technical analyses/appendixes, etc.) for the preferred project alternative will be submitted for review. The 30% design should demonstrate incorporation of technical comments and recommendations from the previous review and shall address the design requirements outlined in Section 2.5 of the HIP 4. A BDR template addressing the HIP requirements is attached as Exhibit 2. In addition to BPA technical and functional reviews, a NMFS Engineering review may be required (see Section 2.6 of the HIP 4). The BPA EC Lead will collate comments from reviewers and interagency partners, and submit them to the Sponsor. The BPA EC Lead will notify the Sponsor to proceed to the 80% design plans once 30% comments are resolved.

The 30% submittal shall include:

6. A set of drawings with layout of anticipated details.
7. Prepare a preliminary design report (BDR) 30%
8. Listing of anticipated supplemental specifications.
9. Listing of anticipated bid items.
10. 30% design cost estimate
11. Design assumptions.

**Final Project Review (typically 80%):** The 80% project drawings will be submitted to the BPA EC Lead. Technical, functional, and interagency reviews will take place. The 80% design should demonstrate complete incorporation of technical comments and recommendations developed at the previous design review. The 80% design submittals should include near-final drawings and specifications, including specific site locations, site plans, profiles, cross sections, details, construction quantities, implementation resource plans, and design technical analyses as summarized in a Basis of Design Report. If HIP IV requirements are not met, additional review iterations may be necessary. Once the BPA EC Lead and BPA Technical Lead have approved the final design, the BPA EC Lead will proceed with final agency approval and notifications.

The 80% submittal shall include a complete set of plans and special project specifications and cost estimate. The 80% submittal should include a 80% BDR report for review by the Tribe and BPA. All Contractor quality control and checking shall be completed prior to the 80% submittal.

The TRIBE and Landowner review of the design work at the various submittals shall be for overall conformance with the project scope of work, design criteria, and generally accepted practices of design and drawing preparation. Contractor is responsible for the quality and accuracy of their work.

The Contractor shall provide the following deliverables during this Contract:

- 2 sets of 15% and 30% design package.
- 2 hardcopy sets of the 80% review submittal of the construction documents.
- 2 hardcopy and 1 electronic sets of design calculations and hydrologic analysis including BDR Report.
- 3 hardcopy and 2 electronic sets of final construction documents.
- 1 electronic copy of the (georeferenced/projected) stakeout points adequate for construction staking (.DWG or .GDB)

## **AWARD STATEMENT**

Award will be made to that offeror (1) whose proposal is technically acceptable and (2) whose technical/cost relationship is the most advantageous to the Nez Perce TRIBE. The Nez Perce TRIBE reserves the right to make cost/technical trade-offs that are in the best interest and to the advantage of the Nez Perce TRIBE. Award of contract is contingent upon funding.

Award may be made without further negotiations. Proposals should be submitted initially on the most favorable terms, from a price and technical standpoint, which the offeror can submit to the Nez Perce TRIBE. However, the Nez Perce TRIBE may, after evaluation of proposals, conduct further oral or written discussions as appropriate, with all offerors whose proposals are within a competitive range.

## **5. INFORMATION CONCERNING RFP AND PROJECT**

5.1 All correspondence pertaining to this RFP, including submittal of proposals, should be directed to:

Justin Peterson  
(208) 621-3545  
Justinp@nezperce.org  
Nez Perce Tribe  
P.O box 365  
Department of Fisheries Resources Management – Watershed Division  
Lapwai, Idaho 83540

5.2 Offerors are cautioned not to make any assumptions as to the implied meaning or intent of any part of the RFP. Offerors should request clarification or additional information concerning the RFP in writing as soon as possible. **ANY CORRECTIONS OR CLARIFICATIONS MADE IN ANY MANNER OTHER THAN BY A WRITTEN ADDENDUM WILL NOT BE BINDING ON NPT, AND OFFERORS SHALL NOT RELY THEREON.**

5.3 Any prospective Offeror who contends that the terms and conditions of this RFP, the Contract or any aspect of the selection process (1) will encourage favoritism in the award of the Contract for Services; (2) will substantially diminish competition; (3) will violate any other statute, regulation, or law of any kind; or (4) is ambiguous, insufficient, or unfair for any reason, must file a written protest to this RFP. Failure to deliver a written protest to the address provided in “Address Offer To” box in the cover page of this RFP by the time specified in Section 6.1.2 of this RFP will be deemed a waiver of any claim by an Offeror that the selection process violates any of the items (1)-(4) of the foregoing sentence.

5.4 NPT reserves the right to (1) reject any or all proposals or (2) cancel the RFP if doing either would be in the public interest as determined by NPT.

## **6. SCHEDULE OF EVENTS**

6.1 The following schedule of events shall be followed for this RFP unless otherwise modified By NPT:



6.1.1 Inquiries for clarification or additional information as described in Section 5.2, any, must be received by NPT no later than 12:30 P.M. on the date specified in the table in Section 6.1.10.

6.1.2 Protests of the RFP, the Contract or any aspect of the selection process as set forth in Section 5.3 must be received by NPT no later than 12:30 P.M. on the date that is three (3) calendar days before the due date for proposals.

6.1.3 A site visit by potential Contractors is scheduled for the date specified in the table in Section 6.1.10 and is required. Contractors will be notified of the time prior to the meeting date.

6.1.4 Proposals must be received by NPT no later than 12:30 P.M. on the date specified in the table in Section 6.1.10. Proposals submitted after this time will be rejected.

6.1.5 The Qualification Based Selection (QBS) process defined in Section 10.6 will be used to select the Contractor, if any.

6.1.6 A Contractor will be selected, if at all, no later than the date specified in the table in Section 6.1.10. However, Contractors will not be notified until the Nez Perce Tribal Executive Committee approves the decision. This could take up to three weeks from the time of selection. The unsuccessful Offerors will be notified once the final selection has been approved.

6.1.7 Any protests of the selection decision must be received no later than 12:30 P.M. on the date that is seven (7) calendar days after the NPT issues the selection notice.

6.1.8 Any hearing on a protest will be held no later than seven (7) calendar days after NPT receives a protest.

6.1.9 The NPT intends to enter into a Contract with the selected Contractor within 30 calendar days after the due date for proposals, unless NPT, in its sole discretion, elects to extend the deadline.

6.1.10 Table of Timelines

The project schedule is as follows:

- RFP announcement - April 20, 2023
- Prebid tour - May 4, 2023
- Clarification requests due - May 11, 2023
- Bids due - May 25, 2023 at 12:30 P.M.
- Anticipated Notice to Proceed – July 17, 2023
- Prewrite meeting - TBD
- 15% submittal - September 7, 2023

- 30% submittal - October 19, 2023
- 80% submittal - November 16, 2023
- Final submittal - December 14, 2023

## **7. NO REIMBURSEMENT FOR PROPOSAL**

Offerors responding to this RFP do so solely at their own expense. Under no circumstances whatsoever will NPT be responsible or reimburse Offerors for any costs incurred in the preparation and presentation of their proposals, negotiation of the Contract and cost proposal by the Offeror, or for any related expenses or consequential damages of any kind.

## **8. CONTENT OF PROPOSALS**

8.1 Identify any confidential information that the Offeror contends is exempt from disclosure. NPT will endeavor in good faith to honor appropriate requests for exemption from disclosure, but NPT reserves exclusive discretion to determine whether information qualifies for a statutory exemption. NPT's obligation under this Section 8 shall survive selection of the Contractor.

8.2 Identify the Offeror's experience, capabilities, and technical competence.

8.3 Describe the Offeror's proposed approach (work plan and methodology) for providing the Services, including a description of tasks that will be performed by each member of the project team. The proposal should address how the Offeror would implement the Services.

8.4 Identify the Offeror's resources committed to perform the work and the proportion of the time that the Offeror's staff would spend on the project, including time for specialized services, within the applicable time limits.

8.5 Provide the Offeror's record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration.

8.6 Provide the Offeror's ownership status and employment practices regarding minority, women, and emerging small businesses or historically underutilized businesses.

8.7 Provide the Offeror's availability to the project locale.

8.8 Provide the Offeror's familiarity with the project locale.

8.9 Provide the Offeror's proposed project management techniques.

8.10 Include a proposed schedule for performing the Services and identify any constraints that could affect the Offeror's ability to perform the Services promptly and

efficiently. The initial schedule expectation is receipt of 15% drawings and final drawings by the dates specified in the table in Section 6.1.10.

8.11 If the Offeror believes there are additional services not identified in this RFP that are necessary for successful completion of the Project, include a description of the additional services recommended by the Offeror, describe how the additional services would benefit NPT and Company, and describe the Offeror's ability to provide the additional services.

## **9. CONTRACT**

9.1 The Offeror, if any, selected by NPT will be required to enter into a written contract in the form attached as Exhibit 1 to this RFP.

9.2 The proposal should indicate acceptance of the Contract provisions but may – in addition to and not in lieu of NPT's Contract – suggest reasonable alternatives that do not substantially impair NPT's rights under the Contract. Silence shall be deemed acceptance of the standard form of Contract.

9.3 If inclusion of any of NPT's proposed contract provisions will result in higher costs for the services, such costs must be specifically identified in the proposal by the Offeror during cost negotiations and prior to selection of the Offeror as the Contractor.

## **10. EVALUATION OF PROPOSALS**

10.1 Certified Indian Owned Business (CIB): Certified Indian Owned businesses registered with the Nez Perce Tribe will be given preference.  
Please note if you are a registered CIB with the Nez Perce Tribe.

10.2 Proposals that do not adhere to all terms and conditions of this RFP or that are otherwise non-responsive may, in the sole discretion of NPT, be rejected or given a lower rating in the evaluation process.

10.3 NPT reserves the right to reject any and all proposals or to waive irregularities or deficiencies in a proposal if NPT determines that such waiver is in the best interests of NPT.

10.4 If two or more Offerors are equally qualified, and one of the offerors is a Certified Indian Owned Business (CIB), NPT will give preference to a CIB.

10.5 If NPT and the highest ranked Offeror are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to NPT, NPT shall, either orally or in writing, formally terminate negotiations with the highest ranked Offeror. NPT may then negotiate with the next most qualified Offeror. The negotiation process may continue in this manner through successive Offerors until an agreement is reached or NPT terminates the Contractor contracting process.

10.6 Proposal selection will be completed by a review team. The following selection criteria, listed in a descending order of importance, will be used to evaluate the content of the written proposals:

## **EVALUATION FACTORS**

Technical Evaluation Factors: The technical proposals will be evaluated on the basis of the following factors, which are approximately equal in importance:

- Licensed Engineer in State of Idaho.
- Past Performance.
- Proposed Schedule.
- Experience in Similar Work.
- Cost of Project.

10.7 NPT retains exclusive discretion and reserves the right to determine:

10.7.1 Whether a proposal is complete and complies with the provisions of this RFP.

10.7.2 Whether an Offeror should be allowed to submit supplemental information.

10.7.3 Whether an Offeror will be interviewed by NPT. Occasionally the top three candidates will be interviewed.

10.7.4 Whether irregularities or deficiencies in a proposal should be waived.

10.7.5 Whether to seek clarifications of each proposal or request additional information necessary to permit NPT to evaluate, rank, and select the most qualified Offeror.

## **11. SELECTION BY NPT**

11.1 The Contract will be awarded to the Offeror who, in NPT's judgment, has submitted a proposal that best meets NPT's requirements and successfully completes scoping and fee negotiations with NPT.

11.2 If there are disagreements with the outcome or questions about the selection process, Offerors must submit protests in writing to NPT within seven (7) calendar days after the selection has been made. NPT will either uphold or deny the protest, and a written response will be issued for all properly

submitted protests within seven (7) business days. If the protest is denied, NPT will proceed to award the Contract.

- 11.3 Final award will be subject to execution of the Contract. Negotiation of the Contract will include the scope of services and fees for services. NPT reserves the right to negotiate a final Contract that is in the best interest of NPT. If permitted by NPT, in its sole discretion, negotiation of the Contract may include one or more of the proposed alternate terms and conditions, if any, in the selected Contractor's proposal. Award of the Contract may be withdrawn if the Contract negotiations are not timely concluded, as determined by NPT in its sole discretion.
- 11.4 If NPT and the Offeror initially selected by NPT are unable to negotiate a Contract, NPT reserves the right to select another Offeror and negotiate a Contract with that Offeror in accordance with this Section 11.

## **12 EXHIBITS**

Exhibits to this RFP include:

- 1. Contract Form
- 2. Example of BDR
- 3. Photographs and Locator Map
- 4. Wage Determination
- 5. BPA Contract Clauses

## **EXHIBIT 1 CONTRACT FORM**

### **Agreement for Contractor Services**

This Contract (“Contract”) is entered into between the Nez Perce Tribe, P.O. Box 365, Lapwai, ID, 83540 (“Tribe”), by and through the Department of Fisheries Resource Management, and **Insert Company Name Here**. (“Contractor”), individually “party” and collectively “parties.”

#### **RECITALS**

- A. The Tribe is a federally-recognized Indian tribe with its own government, unique culture, and history.
- B. The Tribe wishes to retain Contractor to provide the following services for the Tribe.
- C. Contractor is qualified to perform the services that are the subject of this Contract.
- D. The foregoing recitals are hereby incorporated into, and made an integral part of, this Contract.

#### **TERMS**

##### **SECTION 1: General**

Contractor agrees to perform such professional services as are set forth in this Contract, and the Tribe agrees to pay such amounts as are specified in this Contract, all upon the following terms and conditions.

##### **SECTION 2: Scope of Work/Deliverables**

2.1 Contractor agrees to: Provide contract services for the Musselshell Creek Bridge Replacement Project. Due to condition of the current structure, lack of flow capacity, and potential to impact passage, potential habitat for salmonid rearing and spawning is severely limited. Services contemplated are to include a design to restore passage for all life stages of ESA-listed species in the project area. This project would produce implementation-ready, engineer-approved, regulatory-agency reviewed plans and specification for the Musselshell Creek Bridge Replacement Project.

2.2 Contractor agrees to provide the following deliverables (as described in Solicitation, Section 4):

Item	Description	Quantity	Unit	Total Price
1	Site Review and Investigation	1	Lump Sum	\$
2	Meetings, Coordination, and Project Management	1	Lump Sum	\$
3	15 % design Review and Draft Basis of Design Report	1	Lump Sum	\$
4	30% Design Review and Draft Basis of Design Report	1	Lump Sum	\$
5	80% Design Review and Draft Basis of Design Report	1	Lump Sum	\$
6	Final Designs and Basis of Design Report	1	Lump Sum	\$

2.3 Contractor shall not vary from the description of work described herein, unless Contractor receives specific, prior written authorization from the Tribe.

### SECTION 3: Timetable Term/Termination

3.1 As described in Section 4, the term of this Contract shall begin when both parties sign this Contract and shall end on **December 31, 2023**. This Contract may be terminated by the Tribe without cause upon thirty (30) days written notice to Contractor, or sooner if both parties agree.

3.2 Either party may terminate this Contract at any time upon a breach by the other. If required, the costs incurred by the Tribe in hiring a replacement contractor shall be deducted from the Contract amount.

3.3 The Tribe may terminate this Contract without penalty or cost at any time if the work performed by Contractor is determined by the Tribe, in its sole discretion, to not be reasonably satisfactory. If required, the costs incurred by the Tribe in hiring a replacement contractor shall be deducted from the Contract amount.

3.4 This Contract shall terminate at any time if Tribal funds cease to be available.

3.5 If this Contract is terminated pursuant to this Section, the terminating party shall send written notice to the other party. Contractor shall receive payment for the reasonable value of any work completed prior to termination.

### SECTION 4: Payment

At the date of signature of this agreement and attached appendices, the total amount to be paid under this Contract, contingent upon the Tribe's acceptance of Contractor's work as reasonably satisfactory, shall not exceed **\_\_\_\_\_**. Invoices shall be paid as follows: Upon completion of work the

contractor will provide invoices to Justin Peterson, Lolo/Selway Project Leader, for approval and submission to NPT Finance for payment.

## **SECTION 5: Personnel**

5.1 Independent Contractor. Contractor shall act as an independent contractor in the performance of its duties under this Contract. Contractor shall be responsible for payment of all applicable taxes including federal, state, and local taxes arising from its activities under this Contract. Contractor shall also be responsible for obtaining all necessary federal, state, or local permits in order to perform work under this Contract. The Tribe assumes no responsibility for damage to property of Contractor or for any injuries to Contractor's employees. Contractor and the Tribe are not engaged in a joint venture or partnership. Neither party can represent or bind the other.

## **SECTION 6: Indemnification**

Contractor agrees to indemnify and hold the Tribe and Tribal staff harmless from and against any and all liability and expense from suits and costs to the extent arising from the negligent acts, errors or omissions or willful misconduct of contractor in the performance of this Agreement. For claims arising from the Contractor's professional services, Contractor's defense obligation under this indemnity paragraph shall include only the reimbursement of reasonable defense costs to the extent of Contractor's actual, proportional indemnity obligation hereunder.

## **SECTION 7: Officials, Agents, and Employees of the Tribe Not Personally Liable**

In no event shall any official, officer, employee, or agent of the Tribe be personally liable or responsible for: any covenant, whether expressed or implied; any statement, representation, or warranty made in connection with this Contract, or any provision thereof; or the performance of this Contract.

## **SECTION 8: Assignment and Delegation/Subcontracting**

Contractor may not assign the rights or delegate the duties described under this Contract, or subcontract any part of the work to be performed pursuant to this Contract, without the Tribe's prior written authorization. The Tribe may attach any reasonable conditions or limitations to the employment of any subcontractor.

## **SECTION 9: TERO Compliance**

This contract shall be subject to Title 9 of the Nez Perce Tribal Code, Tribal Employment Rights Act (TERO).

Native American preference related to contracting and subcontracting for this project is required in accordance with the Nez Perce Tribal Code (NPTC) Title 9, §§ 9-1-1 through 9-4-5. Bidders shall comply with Title 9 and applicable federal and state laws and guidelines, to give preference to Indians in hiring, promotions, training and all other aspects of employment. For more information, please see



the attached document, Frequently Asked Questions about the Nez Perce Tribe's Tribal Employment Rights Office (TERO), or contact the TERO at (208) 843-7363.

## **SECTION 10: Binding Effect**

This Contract is for the benefit only of the parties hereto and shall inure to and bind the parties hereto and their respective heirs, legal representatives, successors, and assigns.

## **SECTION 11: Notice**

Any notice under this Contract shall be in writing and delivered in person or by public or private courier service including: the U.S. Postal Service Express Mail or certified mail, with return receipt requested, or by email. Any notice shall be addressed to the parties at the following addresses or at such other addresses as the parties may, from time-to-time, direct in writing.

### **NEZ PERCE TRIBE:**

*Both Departmental and Tribal Notification are required.*

#### **Departmental Notification to:**

Name: Justin Peterson  
Title: Lolo/Selway Project Leader  
P.O Box 365  
Lapwai, Idaho 83540  
Phone: 208-621-3545  
Email: [Justinp@nezperce.org](mailto:Justinp@nezperce.org)

#### **Tribal Notification to:**

Samuel N. Penney  
Nez Perce Tribal Executive Committee  
P.O. Box 305 Lapwai, ID 83540  
Lapwai, Idaho 83540  
Phone: (208) 843-2253  
Email: [NPTEC@nezperce.org](mailto:NPTEC@nezperce.org)

## **CONTRACTOR:**

Name:                       
Title:                       
Address:                     

Phone:                       
Email:                     

Any notice shall be deemed to have been given on the earlier of (a) actual delivery or refusal to accept delivery, (b) the date of mailing by certified mail, or (c) the day email delivery is verified. Actual notice, however and from whoever received, shall always be effective.

## **SECTION 11: Forum**

The forum for any dispute concerning this Contract shall be the Nez Perce Tribal Court. This Contract shall be construed in accordance with the contract laws of the Tribe, as applicable. In the absence of such laws, the laws of the state of Idaho may be used as guidelines by the trier of fact.

## **SECTION 12: Sovereign Immunity**

Nothing in this Contract shall be construed as a waiver or diminishment of the Tribe's inherent sovereign immunity.

## **SECTION 13: Severability**

If any terms of this Contract are deemed to be illegal, void, or unenforceable, the remainder of the provisions herein shall remain valid and enforceable.

## **SECTION 14: Non-Waiver of Breach**

The delay or failure of the Tribe to exercise any of its rights under this Contract for a breach by Contractor shall not be deemed to be a waiver of such rights and shall not be deemed to be a waiver of any subsequent breach by Contractor, either of the same provision or otherwise.

## **SECTION 15: Force Majeure**

If Contractor is unable to perform its duties as described herein, in whole or in part, due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes thereof, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Contractor, the parties shall negotiate in good faith to reach an amicable settlement.

## **SECTION 16: Representations**

Contractor represents and warrants that it has the full right and legal authority to enter into and fully perform its duties under this Contract, in accordance with this Contract's terms, without violating the rights of any third party and that it has all governmental licenses, permits, or other authorizations necessary to perform the duties herein described.

The individuals executing this Contract on behalf of the Tribe represent and warrant that they are duly authorized to execute and deliver this Contract on behalf of the Tribe in accordance with the Tribe's Revised Constitution and By-Laws adopted by the General Council of the Nez Perce Tribe on May 6, 1961 and approved by the Acting Commissioner of Indian Affairs on June 27, 1961.

## **SECTION 17: Insurance**

17.1 Contractor warrants that workers' compensation insurance is purchased for all agents or employees of Contractor engaged in the performance of work under this Contract and shall provide the Tribe with a certificate of insurance to verify the same prior to the execution of this Contract. Any changes in the status of such workers' compensation insurance shall be immediately reported to the Tribe.

17.2 Contractor shall obtain and maintain comprehensive general liability insurance in an aggregate amount equal to or exceeding \$1,000,000, which includes the type of work being performed by

Contractor and Contractor's employees and agents under this Contract. This requirement may be satisfied by obtaining appropriate endorsement from an umbrella policy provider for the work being performed by Contractor under this Contract. Contractor shall provide the Tribe with proof of such coverage prior to the execution of this Contract. Any changes in the status of such comprehensive general liability insurance shall be immediately reported to the Tribe.

## **SECTION 18: Warranties**

18.1 Contractor shall perform work in a professional, thorough, and skillful manner consistent with its profession's standards in the Pacific Northwest region. Contractor warrants that all of Contractor's employees or agents are properly certified to perform the work described herein and that Contractor and its employees or agents shall comply with all applicable laws, licenses, and other requirements without cost to the Tribe. The Tribe shall notify Contractor of any violation of this warranty within one (1) year of completion of work under this Contract. Otherwise, such warranty expires. All representations and warranties are to be interpreted expansively to afford the broadest protection available to the Tribe.

## **SECTION 19: Proprietary Rights and Confidentiality**

19.1 All material produced as a result of this Contract is the property of the Tribe for the sole beneficial use of the Tribe and shall not be reproduced without written permission from the Tribe.

19.2 Contractor shall not disclose to any third party, or use for any purposes other than the performance of its duties under this Contract, any document or information designated by the Tribe, orally or in writing, as "confidential" or "proprietary," without express, prior written authorization from the Tribe. The receiving party shall treat the Tribe's confidential or proprietary documents and information as it would treat its own confidential or proprietary documents or information, and, in no event, shall it use less than a reasonable degree of care.

## **SECTION 20: Entire Agreement/Amendment**

This Contract (**including: Exhibits 1, and 2.**) constitutes the entire understanding between the parties with respect to the subject matter herein and shall not be amended except by agreement signed by the parties' authorized representatives. If an amendment results in an increase or decrease in the cost of, or the time required for, the performance of any part of the work under the Contract, a mutually satisfactory adjustment shall be made, in writing, in the payment or delivery schedule.

IN WITNESS WHEREOF, the parties agree to the provisions set forth herein as evidenced by the signatures of their authorized representatives below:

**NEZ PERCE TRIBE:**

\_\_\_\_\_  
Samuel N. Penney, Chairman  
Nez Perce Tribal Executive Committee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Shirley J. Allman, Secretary  
Nez Perce Tribal Executive Committee

\_\_\_\_\_  
Date

**CONTRACTOR:**

\_\_\_\_\_  
**Company:**  
Insert Company Name

\_\_\_\_\_  
**Date**

### EXHIBIT 3. PHOTOS OF EXISTING Bridge

Musselshell Creek Bridge Replacement, Weippe, Idaho



Aerial image of Musselshell Creek Bridge just upstream of Jim Brown Creek confluence.





Musselshell Bridge looking Northwest at log girders and wood decking.



Musselshell bridge looking North at log abutments, supports, and girders.





Musselshell Bridge looking Northeast at girders and decking and proximity to existing gate.



## **EXHIBIT 4. WAGE DETERMINATION, CLEARWATER COUNTY**

"General Decision Number: ID20210065 01/01/2021

Superseded General Decision Number: ID20200065

State: Idaho

Construction Type: Heavy

HEAVY CONSTRUCTION, Including water and sewer line construction and heavy construction projects on treatment plants and industrial (power plants, manufacturing plants, processing plants, etc.) sites

Counties: Benewah, Clearwater and Latah Counties in Idaho.

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.95 for calendar year 2021 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.95 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2021. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number    Publication Date

4/20/2023

0 01/01/2021

CARP0001-045 06/01/2020

	Rates	Fringes
CARPENTER (Form Work Only).....	\$ 37.12	17.36

\* ELEC0073-011 07/01/2020

	Rates	Fringes
ELECTRICIAN.....	\$ 37.65	19.68

ENGI0370-035 06/01/2018

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
Backhoe (45,000 gw & under), Cranes (25 tons & under), Drill (8 in bit and over)		
GROUP 5.....	\$ 28.76	15.95
Backhoe (45,000-110,000 gw), Crane (25-45 tons), Bulldozer (D-6 and over), Grader/Blade, Front-End Loader(4-8 yds), Paver, Scrapers (all)		
GROUP 6.....	\$ 29.04	15.95
Backhoe (over 110,000 gw), Cranes (45-85 tons), Heavy Duty Mechanic, Front End Loader (8-10 yds)		
GROUP 7.....	\$ 29.31	15.95
Bulldozer (up to D-6)		
GROUP 3.....	\$ 28.44	15.95
Cranes (85 tons & over), Front End Loader (10 yds & over)		
GROUP 8.....	\$ 30.41	15.95
Front End Loader (under 4 yds)		
GROUP 4.....	\$ 28.60	15.95
Rollers (all)		

4/20/2023

GROUP 1.....\$ 27.51      15.95

ZONE PAY:

ZONE CENTERS: SPOKANE, PASCO, LEWISTON

ZONE 1: 0-45 Miles: Free

ZONE 2: 45 Miles & Over: \$2.00

BOOM PAY (ALL CRANES):

(A): 180'-250': \$.50 over scale

(B): over 250': \$.80 over scale

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IRON0014-006 07/01/2020

	Rates	Fringes
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IRONWORKER, REINFORCING AND STRUCTURAL.....	\$ 30.10	34.59
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LABO0238-028 06/01/2017

	Rates	Fringes
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LABORER (PIPELINE ONLY) COMMON.....	\$ 26.28	12.15
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LABO0238-031 07/01/2019

	Rates	Fringes
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LABORER

Asphalt Includes Raker,  
Shoveler, Spreader, and  
Distributor

Group 4.....	\$ 28.48	13.00
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Flagger

Group 1A.....	\$ 25.84	13.00
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Zone Differential (Add to Zone 1 rates): Zone 2 - \$2.00

BASE POINTS: Spokane

Zone 1: 0-45 radius miles from the main post office.

Zone 2: 45 radius miles and over from the main post office

4/20/2023

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PLAS0072-003 06/01/2018

BENEWAH, BONNER, BOUNDARY, CLEARWATER, IDAHO (NORTH OF THE 46TH  
PARALLEL), KOOTENAI, LATAH, LEWIS AND NEZ PERCE AND SHOSHONE  
COUNTIES

ZONE 1:

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER...	\$ 29.07	14.13

Zone Differential (Add to Zone 1 rate): Zone 2 - \$2.00

BASE POINTS: Spokane, Pasco, Lewiston, Wenatchee

Zone 1: 0-45 radius miles from the main post office

Zone 2: Over 45 radius miles from the main post office

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PLUM0044-015 06/01/2019

	Rates	Fringes
PLUMBER		
Zone 1.....	\$ 37.71	23.44

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TEAM0690-002 06/01/2020

	Rates	Fringes
TRUCK DRIVER (DUMP)		
6 yds and under.....	\$ 28.79	18.15
over 6 yds.....	\$ 29.23	18.15

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SUID2010-058 08/08/2012

	Rates	Fringes
CARPENTER, Excludes Form Work....	\$ 29.92	5.20
LABORER: Common or General.....	\$ 23.75	8.98

4/20/2023

LABORER: Landscape.....	\$ 22.13	11.13
LABORER: Pipelayer.....	\$ 17.67	7.26
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 20.97	0.00
OPERATOR: Concrete Batch Plant.....	\$ 24.94	11.96
OPERATOR: Forklift.....	\$ 21.20	0.00
TRUCK DRIVER: Lowboy Truck.....	\$ 21.00	12.10
TRUCK DRIVER: Water Truck.....	\$ 24.48	11.67

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION



## **EXHIBIT 5. Bonneville Power Administration Clauses**

### **Bonneville Power Administration Applicable Contract Clauses**

This project is being funded partially through BPA funds secured by the Nez Perce Tribe. The Tribe is required by the BPA to apply the following contract clauses to all Tribal contracts / subcontracts. The word Government and Tribe shall be used interchangeably. The “Contractor” in these clauses refers to the Nez Perce Tribe. These clauses are incorporated into this solicitation/contract and must be complied with by the awarded construction firm.

#### **EMPLOYMENT ELIGIBILITY VERIFICATION (10-18) (OCT 14) (BPI 10.1.8.3)**

(a) “Employee assigned to the contract,” as used in this clause, means an employee who was hired after November 6, 1986, who is directly performing work, in the United States, under a contract that is required to include the clause as prescribed by 10.7.3. An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract. (b) E-Verify enrollment and verification requirements.

(1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at the time of the contract award, the Contractor shall:

(A) Enroll. Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(B) Verify all new employees. Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (a) (3) of this section); and

(C) Verify employees assigned to the contract. For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee’s assignment to the contract, whichever date is later (but see paragraph (a)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(A) All new employees.

(i) Enrolled 90 calendar days or more. The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract within 3 business days after the date of hire (but see paragraph (a)(3) of this section); or

(ii) Enrolled less than 90 calendar days. Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph)(3) of this section); or

(B) Employees assigned to the contract. For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (4) of this section).

(3) If the Contractor is an institution of higher education; a state or local government, or the government of a federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a federal agency pursuant to a performance bond, the Contractor may choose to verify only employees

assigned to the contract. The Contractor shall follow the applicable verification requirements at (a)(1) or (a)(2), respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) Option to verify employment eligibility of all employees. The Contractor may elect to verify all existing employees hired after November 6, 1986, rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986, within 180 calendar days of—

(A) Enrollment in the E-Verify program; or

(B) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirement of the E-Verify program MOU.

(A) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a Department of Energy suspension or debarment official.

(B) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) Web site. Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) Individuals previously verified. The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD) -12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) Subcontracts. The contractor shall include the requirements of this clause, including this paragraph (d) (appropriately modified for identification of the parties), in each subcontract that—

(1) Is for:

(A) Services other than commercial services that are part of the purchase of a commercial-off-the-shelf (COTS) item, performed by the COTS provider and are normally provided for that COTS item; (B) Construction.

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.

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

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

(1) A commercial item (as defined in BPI 1.8);

(2) Sold in substantial quantities in the commercial marketplace; and

(3) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace.

(b) The Government suspends or debar Contractors to protect the Government’s interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor that is debarred, suspended, by any executive agency unless there is a compelling reason to do so.

(c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended by the Federal Government.

(d) The Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended (see [www.sam.gov](http://www.sam.gov)).

(e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that exceed \$30,000 in value and is not a subcontract for commercially available off-the-shelf items

#### CONTRACTOR SAFETY AND HEALTH (15-12) (APR 14) (BPI 15.2.4.1)

a) The Contractor shall furnish a place of employment that is free from recognized hazards that cause or have the potential to cause death or serious physical harm to employees; and shall comply with occupational safety and health standards promulgated under the Occupational Safety and Health Act of 1970 (Public Law 91-598). Contractor employees shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to their own actions and conduct.

(1) All construction contractors working on contracts in excess of \$100,000 shall comply with Department of Labor Contract Work Hours and Safety Standards (40 U.S.C. § 3701 et seq.). (2) The Contractor shall comply with

(i) National Fire Protection Association (NFPA) National Fire Codes for fire prevention and protection applicable to the work or facility being occupied or constructed;

(ii) NFPA 70E, Standard for Electrical Safety in the Workplace;

(iii) American Conference of Governmental Industrial Hygiene Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices; and,

(iv) Any additional safety and health measures identified by the Contracting Officer.

This clause does not relieve the Contractor from complying with any additional specific or corporate safety and health requirements that it determines to be necessary to protect the safety and health of employees.

(b) The Contractor bears sole responsibility for ensuring that all contractor's workers performing contract work possess the necessary knowledge and skills to perform the work correctly and safely. The Contractor shall make any training and certification records necessary to demonstrate compliance with this requirement available for review upon request by BPA.

(c) The Contractor shall hold BPA and any other owners of the site of work harmless from any and all suits, actions, and claims for injuries to or death of persons arising from any act or omission of the Contractor, its subcontractors, or any employee of the Contractor or subcontractors, in any way related to the work under this contract.

(d) The Contractor shall immediately notify the Contracting Officer (CO), the Contracting Officer's Technical Representative (COTR), and the Safety Office by telephone at (360) 418-2397 of any death, injury, occupational disease or near miss arising from or incident to performance of work under this contract.

(1) The BPA Safety Office business hours are 7:00 AM to 4:00 PM Pacific Time. If the Safety Office Officials are not available to take the phone call the contractor shall leave a voicemail that includes the details of the event, and the Contractor's contact information. The Contractor shall periodically repeat the phone call to the Safety Office until the Contractor is able to speak directly with a BPA Safety Official.

(2) The Contractor shall follow up each phone call notification with an email to [SafetyNotification@BPA.gov](mailto:SafetyNotification@BPA.gov) immediately for any fatality or within 24 hours for non-fatal events.

(3) The Contractor shall complete BPA form 6410.15e Contractor's Report of Personal Injury, Illness, or Property Damage Accident and submit the form to the CO, COTR, and Safety Office within five (5) working days of such an occurrence. The Contractor shall include photographs and witness statements with the report.

(4) In the case of a Near Miss Incident that does not involve injury, illness, or property damage, the Contractor

shall complete BPA Form 6410.18e Contractor's Report of Incident/Near Miss and submit the form to the CO, COTR, and Safety Office within five (5) working days of such an occurrence. The Contractor shall include photographs and witness statements with the report.

#### (e) Notification of Imminent Danger and Workers Right to Decline Work

(1) All workers, including contractors and BPA employees, are responsible for identifying and notifying other workers in the affected area of imminent danger at the site of work. Imminent danger is any condition or practice that poses a danger that could reasonably be expected to cause death or severe physical hardship before the imminence of such danger could be eliminated through normal procedures.

(2) A contract worker has the right to ask, without reprisal, their onsite management and other workers to review safe work procedures and consider other alternatives before proceeding with a work procedure. Reprisal means any action taken against an employee in response to, or in revenge for, the employee having raised, in good faith, reasonable concerns about a safety and health aspect of the work required by the contract.

(3) A contract worker has the right to decline to perform tasks, without reprisal, that will endanger the safety and health of themselves or of other workers.

(4) The Contractor shall establish procedures that allow workers to cease or decline work that may threaten the safety and health of the worker or other workers.

(f) BPA encourages all contractor workers to raise safety and health concerns as a way to identify and control safety hazards. The Contractor shall develop and communicate a formal procedure for submittal, resolution, and communication of resolution and corrective action to the worker submitting the concern. The procedure shall 1.) encourage workers to identify safety and health concerns directly to their supervisor and employer using the employer's reporting process; and 2.) inform workers that they may raise safety concerns to BPA or the State OSHA. Workers may notify the Safety Office at (360) 418-2397 if the employer's work process does not resolve the worker's safety and health concern. BPA

may coordinate the response to a contractor worker's health and safety concerns with the State OSHA when necessary to facilitate resolution.

(g) BPA employees may direct the contractor to stop a work activity due to safety and health concerns. The BPA employee shall notify the Contractor orally with written confirmation, and request immediate initiation of corrective action. After receipt of the notice the Contractor shall immediately take corrective action to eliminate or mitigate the safety and health concern. When a BPA employee stops a work activity due to a safety and health concern the Contractor shall immediately notify the CO, provide a description of the event, and identify the BPA employee that halted the work activity. The Contractor shall not resume the stopped work activity until authorization to resume work is issued by a BPA Safety Official. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule when BPA stops a work activity due to safety and health concerns that occurred under the Contractor's control.

(h) The Contractor shall keep a record of total monthly labor hours worked at the site of work. The Contractor shall include a separate calculation of the monthly total labor hours for each subcontractor in the contractor's monthly data. Upon request by the CO, COTR or BPA Safety Office, the Contractor shall provide the total labor hours for a completed month to BPA no later than the 15th calendar day of the following month. The requestor shall identify the required reporting format and procedures.

(i) The Contractor shall include this clause, including paragraph (i) in subcontracts. The Contractor may make appropriate changes in the designation of the parties to reflect the prime contractor--subcontractor arrangement. The Contractor is responsible for enforcing subcontractor compliance with this clause.