

PACIFIC STATES MARINE FISHERIES COMMISSION
GENERAL PROVISIONS - JULY 2008

1. TERMINATION

- a) Either party may terminate all or any part of this Agreement for its convenience by serving two (2) weeks' notice in writing to the other party. Under such circumstances, Contractor shall be entitled to compensation for all allowable costs, including all uncancellable obligations. Contractor shall not be entitled to any payment for or profit on work not performed.
- b) No Limitation on Other Rights of PSMFC. The termination of this Agreement as provided hereunder shall not affect or limit any other rights or remedies available to PSMFC.

2. FEDERAL ACCESS TO RECORDS

The Contractor will provide the Commission, the Comptroller General of the United States, the Inspector General, the federal funding agency, or any of their duly authorized representatives, access to any books, documents, papers, and records of the Contractor involving transactions relating to this contract for a period of three years after final payment.

3. PROTESTS, CONTRACT DISPUTES, AND APPEALS

- a) Authority of the Executive Director. The Executive Director is authorized to settle, compromise, pay, or otherwise adjust any claim by or against, or any controversy with, a contractor or bidder relating to a contract entered into by the Commission, including a claim or controversy initiated after award of a contract, based on breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. In the event a settlement or compromise involves or could involve adjustments and/or payments aggregating \$10,000 or more, then the Executive Director shall prepare written justification and obtain approval in advance, from the full Commission and its legal advisor. When a claim cannot be resolved by mutual agreement, the Executive Director shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the Contractor and shall state the reason for the action taken on the claim, and shall inform the Contractor of his right to administrative relief as provided in this section. The decision of the Executive Director is final and shall be conclusive unless fraudulent, or the Contractor appeals to the Commission. If the Executive Director does not issue a written decision within one hundred and twenty (120) days after receipt of a claim, or within such longer period as might be established by the parties in the contract in writing, then the Contractor may proceed as if an adverse decision has been received.
- b) Appeal to the Commission. The Commission has jurisdiction over each controversy arising under, or in connection with, the interpretation, performance, or payment of a contract of the Commission provided that:
 - 1) The Contractor has not instituted action over such controversy in court; and
 - 2) The Contractor has mailed notice to the Commission of his election to appeal within 90 days of his receipt of the decision from the Executive Director, or at the

Contractor's election, within a reasonable time after the Executive Director fails or refuses to issue a decision.

4. CONTRACT MODIFICATIONS

A contract modification is considered to be any written alteration of a contract provisions, i.e., work statement, specification, period of performance, time and rate of delivery, quantity, price, cost, fee, or other provisions of an existing contract whether accomplished in accordance with a contract provision or approved by both parties to the contract in writing.

- a) Approval Authority. Only the Executive Director or Fiscal Manager has authority to approve a contract modification for PSMFC.
- b) Processing Contract Modifications. The Contract Monitor is responsible for monitoring the contract and recommending changes in existing contracts. In such capacity, the Contract Monitor will generally be responsible for initiating the necessary documents involving technical changes. In preparing the documents, the Contract Monitor shall review the statement of work and the applicable specifications and then delineate the proposed changes thereto. The Contract Monitor shall also evaluate these proposed changes are within the general scope of the contract or are considered new procurement and set forth the rationale supporting his position. If the Contract Monitor believes the changes to be in the general scope, the proposed changes, recommendations, and rationale are forwarded to the Contracts Office for concurrence.

5. SUBCONTRACTING

Except as provided in the Schedule or in the Contractor's proposal incorporated in this contract, the Contractor shall not subcontract any part of the work under this contract without the specific written approval of the Contract Monitor. This clause does not apply to the purchase of supplies, materials, equipment, or incidental support services.

6. RIGHTS IN DATA

- a) The term "Subject Data" as used herein includes writings, electronic data, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are furnished by the Contractor under this contract. The term does not include information incidental to contract administration.
- b) All Subject Data first produced in performance of this contract shall be the property of the PSMFC. The Contractor agrees not to assert any rights at common law or equity and to preclude the use of such property by PSMFC. The Contractor shall not release such Data to the public in whole or in part, or in any manner or form, nor authorize others to do so, without the written consent of PSMFC or until such time as PSMFC may have released such Data to the public.
- c) The Contractor agrees to grant and does hereby grant to the Commission and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world (1) to publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all Subject Data (with the exception of that covered under other legal protections and any data

marked proprietary by the Contractor) not first produced or composed in the performance of this contract, but which is incorporated in the work furnished under this contract; and (2) to authorize others to do so. The Commission shall credit Contractor for data not produced or composed in the performance of this contract, but which is incorporated in the work furnished under this contract, provided that such data is identified by the Contractor at the time of furnishing such data.

- d) Contractor shall indemnify and save and hold harmless the Commission, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, (1) for violation by Contractor of proprietary rights, copyrights or right of privacy, arising out of publication, translation, reproduction, delivery, performance, use, or disposition of any Subject Data furnished under this contract; or (2) based upon any libelous or other unlawful matter contained in such data.
- e) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Commission and incorporated in the Subject Data furnished under the contract; however, such incorporated material shall be identified by the Contractor at the time of furnishing such data.
- f) The Contractor shall not affix any restrictive markings upon any Subject Data.

7. KEY PERSONNEL

- a) It has been determined that the individual(s) named in the schedule of this contract are necessary for the successful performance of this contract. No diversion or replacement of these individual(s) shall be made by the Contractor without the written consent of the Contract Monitor; provided that the Contract Monitor may ratify in writing such diversion or replacement and such ratification shall constitute the consent of the Contract Monitor required by this clause.
- b) The Contractor agrees that for any reason, one or more of these individual(s) are unavailable for the performance under this contract, the Contractor agrees to replace such individual(s) with individual(s) of substantially equal abilities and qualifications.

8. RIGHTS TO INVENTION

Rights to inventions generated under this contract are subject to the regulations issued by the funding agency (Department of Commerce). For more information regarding inventions, please refer to <http://www.iedison.gov/>

9. ORGANIZATIONAL CONFLICT OF INTEREST

- a) The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts which could give rise to organizational conflicts of interest, or that the offeror or Contractor has disclosed all relevant information to PSMFC.
- b) The Contractor agrees that, if after an award, an organizational conflict of interest with respect to this contract is discovered, an immediate and full disclosure in writing shall be made to the PSMFC Contracting Officer which shall include a description of the action which the Contractor has taken or proposes to take to avoid or mitigate such conflicts.

- c) In the event that the Contractor was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict to the Contracting Officer, PSMFC may terminate the contract for default.
- d) The provisions of this clause shall be included in all subcontracts for work to be performed similar to the services provided by the prime Contractor, and the terms "contract," "Contractor," "Contracting Officer" modified appropriately.

10. PSMFC CONFLICT OF INTEREST

- a) It shall be improper for any Commission employee or Commission member to participate directly or indirectly and realize financial gain in any manner pertaining to this contract.
- b) The Contractor represents to the best of its knowledge that no employee or agent of the Contractor presently has any interest that would or might conflict in any manner or degree with the Contractor's performance under this contract. Contractor shall disclose to the Commission when it becomes aware that such interest, direct or indirect, could be acquired.

11. DISCLOSURE OF BENEFITS RECEIVED FROM CONTRACTS

Contractor shall insure that any Commission employee or Commission member who has or obtains any benefits from this contract, shall report such benefit to the full Commission.

12. GRATUITIES AND KICKBACKS ILLEGAL

- a) Gratuities. It is improper for any person to offer, give, or agree to give to any employee or Commission member or for any employee or Commission member to solicit, demand, accept, or agree to accept from another person, anything of an pecuniary value for or because of:
 - 1) an official action taken or to be taken, or which could be taken;
 - 2) a legal duty violated or to be violated, or which could be violated by such employee or former employee.
- b) Kickbacks. It is improper for any payment, gratuity, or benefit to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

13. COVENANT RELATING TO CONTINGENT FEES

- a) Representation of Contractor. Every person, before being awarded a contract with this Commission, shall represent that he has not retained a person to solicit or secure the contract with this Commission upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting for bona fide employees or bona fide established commercial, selling agencies maintained by the person so representing for the purpose of securing business or an attorney rendering professional legal services, employed, consistent with applicable canons of ethics.

- b) Intentional Violation Unlawful. The intentional violation of the representation specified in Subsection (a) above is cause for termination of a contract.

14. RESTRICTION ON EMPLOYMENT OF PRESENT COMMISSION EMPLOYEES

No Commission employee may be employed by the Contractor to perform work under this contract.

15. FEDERAL ADMINISTRATIVE REQUIREMENTS FOR STATE AND LOCAL GOVERNMENTS

The Contractor shall comply with the current requirements of federal Office of Management and Budget Circulars A-87 and A-133 covering cost and uniform administrative requirements applicable to grants and contracts with state and local governments.

16. CONTRACTOR'S RESPONSIBILITY FOR THE WORK

The Contractor shall be responsible and accountable for the accuracy, completeness, clarity, and adequacy of the work, and shall perform the work in a professional manner. The Contractor shall be solely responsible for all actions and/or omissions of its agents, employees, representatives and subcontractors.

17. INDEPENDENT CONTRACTOR

This contract shall not be construed or interpreted as making the Contractor an agent or employee of the Commission for any purpose whatsoever. Contractor shall not represent or obligate the Commission in any public or private matter. Contractor shall be considered an independent contractor with the authority to control and direct the performance of the work, subject, however, to the right of the Commission to generally inspect the work and to determine whether it is being performed by the Contractor in accordance with the contract.

18. INSURANCE

Throughout the term of this Agreement, the Contractor shall maintain in effect:

- a) Worker's Compensation Insurance as required by State law, including Employers' Liability Insurance for all employees of the Contractor with the below listed minimum limit per accident (Not required for sole proprietors). If there is an exposure for injury to the Contractor's employees under the United States Longshoremen and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, or any similar laws, regulations or statutes, coverage shall be included for such injuries or claims.
- b) Commercial General Liability Insurance covering all operations by or on behalf of the Contractor, on an occurrence basis, against claims for personal injury (including bodily injury and death) and property damage (including loss of use) with the below listed minimum limit per occurrence for bodily injury, personal injury and property damage.
- c) Automobile Liability Insurance against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, non-owned and hired vehicles

necessary for the performance of the work covered by this agreement; with the minimum limit per accident for bodily injury and property damage listed below.

- d) Before beginning work for PSMFC, the Contractor shall provide to PSMFC written proof of compliance with the requirements of this Section. Upon written request, the Contractor shall supply to PSMFC a copy of each insurance policy currently in effect, and shall obtain any insurance, additional to that specified above, which PSMFC may request. The cost of any insurance, additional to that specified above, which PSMFC requests, shall be reimbursed by PSMFC.
- e) On the policies listed above insurance shall be primary and not excess to or contributing with any insurance or self insurance maintained by PSMFC. The minimum limits mentioned in Sections above shall be One Million Dollars and No/100 (\$1,000,000.00) for any one person, One Million Dollars and No/100 (\$1,000,000.00) for bodily injury or death of any number of persons in any one occurrence, and One Million Dollars and No/100 (\$1,000,000.00) for property damage in any one occurrence.

If Contractor is subject to a statutory or elective system of self-insurance for tort liability, auto, personal injury, and/or property damage, the maximum recoverable amount under this agreement is the fair market value of what Contractor would have paid for commercial insurance premiums only for such activities and/or events covered under this agreement during the period of this agreement.

Contributions to a reserve for certain self-insurance programs including workers compensation, unemployment compensation, and severance pay are allowable up to the retail cost of purchased rates and premiums for the same type and extent of coverage. Contributions to reserves must be based on sound actuarial principals using historical experience and reasonable assumptions and shall credit earnings or investment income on such reserves.

19. INDEMNIFICATION BY CONTRACTOR

The Contractor will accept full responsibility for, and indemnify, release, discharge, and save harmless the Commission, its officers, employees, and consultants from and against any and all manner of actions and claims, either directly or indirectly, for personal injury and/or property damage occurring during or in connection with the performance of the Contractor's services under this contract and any and all claims, damages, losses, or suits arising directly out of Contractor's negligence or omissions in the performance of the Contractor's service except when caused by the negligence of the Commission, its officers, employees, or consultants, and then only to the extent that the Commission is not compensated therefore by insurance. The obligations of the Contractor under this section shall survive the termination of this contract.

20. MISCELLANEOUS

- a) Applicable Law. This contract shall be construed and governed, in the following order, by the laws of the United States of America, the State of Oregon, and the state(s) in which work is performed under this contract.
- b) Entire Agreement. This contract contains all of the terms, conditions, and understandings between the parties. None of the provisions herein may be changed, modified, or waived except by a writing signed by a duly authorized representative of each party.

- c) Notices. Any notices by either party as provided for in this contract shall be in writing to the other party's last known address sent via first class mail, postage prepaid, or by confirmed facsimile or electronic commerce. A notice shall be deemed to have been received by the recipient 3 days after mailing or at the time of actual receipt, whichever is earlier.
- d) Record Keeping. Financial records, supporting documents, statistical records, and all other records pertinent to this contract shall be retained for a period of three years from the date of submission of the final expenditure report. The only exceptions are the following:
 - 1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audits involving the records have been resolved and final action taken.
 - 2) Records for real property and equipment acquired with federal funds shall be retained for 3 years after final disposition.
- e) Taxes. The Contractor shall be responsible for payment of all applicable federal, state, and local taxes and fees which may become due and owing by the Contractor by reason of this agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The Contractor is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this contract.
- f) Severability. In the event that any provision of this contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of the contract.
- g) Waiver. The failure of the Commission to insist upon strict compliance with any term, provision, or condition of this contract shall not constitute or be deemed to constitute a waiver or relinquishment of the Commission's right to enforce the same in accordance with this agreement.

21. RESOURCE CONSERVATION AND RECOVERY ACT

Section 6002 under the Act requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247-254). Accordingly, the Contractor shall give preference in its procurement programs funded with federal funds to the purchase of recycled products pursuant to the EPA guidelines.

22. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

Contracts and subgrants in excess of \$100,000 shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 740 et. seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency.

23. BYRD ANTI-LOBBYING AMENDMENT

Contractor shall comply with the provisions of Section 319 of Public Law 101-121, which added Section 1352 to Chapter 13 of Title 31 of the United States Code. These provisions generally prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal government in connection of the award, and require the disclosure of the use of non-Federal funds for lobbying. Contracts in excess of \$100,000 shall file the required certification pursuant to 31 U.S.C. 1352. The certification shall be filed within 15 days following the end of the calendar quarter in which there occurs any event that requires a disclosure or that materially affects the accuracy of information contained in any disclosure form previously filed.

24. DEBARMENT AND SUSPENSION

No subcontract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with Executive Orders 12549 and 12689. Contracts in excess of \$100,000 shall provide the required certification regarding the Contractor's exclusion status and that of its principal employees.

25. NON-DISCRIMINATION REQUIREMENTS

No person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Contractor agrees to comply with the non-discrimination requirements below:

- a) Title VI of the Civil Rights Act of 1964 which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
- b) Title IX of the Education Amendments of 1972 prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
- c) Section 504 of the Rehabilitation Act of 1973, as amended prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance;
- d) The Age Discrimination Act of 1975, as amended prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
- e) The Americans with Disabilities Act of 1990 prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
- f) Any other non-discrimination provisions of statutory law.

26. OTHER PROVISIONS

Parts II and III of Executive Order 11246 (30F.R. 12319, 1965) as amended by Executive Orders 11375 (32 F.R. 14303, 1967) and 12086 (43 F.R. 46501, 1978) requiring Federally assisted contracts to include the non-discrimination provisions of §§ 202 and 203 of that Executive Order and Department of Labor regulations implementing Executive Order 11246.

27. DRUG-FREE WORKPLACE

The Contractor shall comply with the provisions of Public Law 100-690, Title V, Subtitle D, "Drug-Free Workplace Act of 1988," which require that the Contractor take steps to provide a drug-free workplace.

28. RESEARCH MISCONDUCT

Scientific or research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. It does not include honest errors or differences of opinion. Funds expended on an activity that is determined to be invalid or unreliable because of scientific misconduct may result in a disallowance of costs for which the institution may be liable for repayment to the awarding agency.

29. PUBLICATIONS

Contractor has the right to publish any of the results of the Research. Contractor must furnish Sponsor with a copy of any proposed publication or public disclosure, at least 60 days in advance of the proposed publication date to allow for the protection of Sponsor's proprietary, confidential, or patentable information. Publication of the results of a research project in appropriate professional journals is encouraged as an important method of recording and reporting scientific information. The Contractor is required to submit a copy to PSMFC and when releasing information related to a funded project include a statement that the project or effort undertaken was or is sponsored by the Federal Government. The Contractor is also responsible for assuring that every publication material (including Internet sites) based on or developed under this contract, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer: "This [report/video/operating unit] was prepared by [Contractor] under award number [federal award number] from [name of federal agency]. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of federal agency] or the US Government." This also applies to videos produced under this contract

30. VIDEOS PRODUCED UNDER FEDERAL FINANCIAL ASSISTANCE AWARDS

Before production of a video for public viewing has begun, the Grants Officer must review and approve the production plans and the final video to ensure that it will be of acceptable quality and appropriately represents the Government.

31. INTEGRATED SUSTAINABILITY

In accordance with Executive Order 13101 "Greening the Government through Waste Prevention, Recycling and Federal Acquisition," recipients of grants/cooperative agreements and/or sub-awards are encouraged to actively and systematically protect the natural processes

that sustain life by whenever possible, incorporating environmentally preferable products in their activities. These measures include, but are not limited to, re-refined oil for all vehicles and heavy equipment, diverting solid waste from disposal in landfills through recycling and use of materials that reduce greenhouse gas emissions.