

**ATTACHMENT B**  
**PACIFIC FISHERY MANAGEMENT COUNCIL GENERAL PROVISIONS**  
**JANUARY 2021**

1. CONTRACT MODIFICATIONS

A contract modification is considered to be any written alteration of 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 Deputy has the authority to approve a contract modification.
- b) Processing Contract Modifications - The contract monitor is responsible for monitoring the contract and recommending changes in existing contracts. In such capacity, he/she will generally be responsible for initiating the necessary documents involving technical changes. In preparing the documents, he/she shall review the statement of work and the applicable specifications and then delineate the proposed changes thereto. The contract monitor should also evaluate whether these proposed changes are within the general scope of the contract or are considered new procurement and set forth the rationale supporting such a position. If the contract monitor believes the changes to be in the general scope, the proposed changes, recommendations, and rationale are forwarded to the Executive Director for concurrence.

2. TERMINATION

- a) Either party may terminate this agreement upon 30 days notice, in writing, and delivered by mail or fax. Under such circumstances, the Contractor shall be entitled to compensation for authorized work satisfactorily completed up to the date of termination.
- b) The Council by written notice of default (including breach of agreement) to the Contractor may terminate in whole or any part of this agreement:
  - 1) If the Contractor fails to provide service called for by this agreement within the time specified herein or any extension thereof;
  - 2) If the Contractor fails to perform any of the other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from the Council fails to correct such failure within 10 days or such longer period as Council may authorize.

The rights and remedies of the Council provided in the above clause related to defaults (including breach of agreement) by the Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

3. FEDERAL ACCESS TO RECORDS

The Contractor shall provide the Council, the National Marine Fisheries Service (NMFS), the Inspector General of the U.S. Department of Commerce, or any of their duly authorized representative's 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.

#### 4. FEDERAL ADMINISTRATIVE REQUIREMENTS FOR STATE AND LOCAL GOVERNMENTS

The Contractor shall comply with the current requirements of the Federal Office of Management and Budget (OMB), covering cost and uniform administrative requirements applicable to grants and contracts with state and local governments. An independent audit that includes an audit of Council furnished funds will be an acceptable part of this contract. The independent audit must be performed in accordance with the General Accounting Office Standards for Audit of Governmental Organizations, Programs, Activities and Functions, the Guidelines for Financial and Compliance Audits of Federally Assisted Programs, any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

#### 5. 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 Council. This includes a claim or controversy initiated after award of a contract based on breach of contract, mistake, misrepresentation, or other cause for contract modification or revision. In the event a settlement or compromise involves or could involve adjustments and/or payments aggregating \$10,000 or more, the Executive Director shall prepare written justification and obtain approval in advance, from the full Council 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 reasons for the action taken on the claim, and shall inform the Contractor of the 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 Council. If the Executive Director does not issue a written decision within the 120 days after receipt of a claim, or within such longer period as might be established by the parties to the contract in writing, then the Contractor may proceed as if an adverse decision has been received.
- b) Appeal to the Council - The Council has jurisdiction over each controversy arising under, or in connection with, the interpretation, performance, or payment of a contract of the Council provided that:
  - 1) The Contractor has not instituted action over such controversy in court.
  - 2) The Contractor has mailed notice to the Council 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.

#### 6. 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.

## 7. RIGHTS IN DATA

This clause shall not apply to any contracts between the Council and either Council member states or the Pacific States Marine Fisheries Commission.

- a) The term "Subject Data" as used herein includes writings, 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 the performance of this contract shall be the sole property of the Council. The Contractor agrees not to assert any rights under common law or equity and agrees not to establish any claim to statutory copyright in such data. The Contractor shall not publish or reproduce such data in whole or in part, or in any manner or form, nor authorize others to do so, without the written consent of the contract monitor until such time as the Council may have released such data to the public.
- c) The Contractor agrees to grant and does hereby grant to the Council 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 to (1) publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all Subject Data not first produced or composed in the performance of this contract, but which is incorporated in the work furnished under this contract; and (2) authorize others to do so.
- d) The Contractor shall indemnify, save, and hold harmless the Council, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses (1) for violation of propriety rights, copyrights, or right of privacy arising out of the 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.

The Contractor's liability shall at all times be limited by and subject to the limitations and conditions of ORS 30.260 through ORS 30.300.

- e) Paragraphs C and D above are not applicable to material furnished to the Contractor by the Council 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.

The Contractor shall not violate or infringe any rights of any third party, including without limitation, copyrights (Copyright Revision Act of 1976, 17 USC 101, et seq.), trademarks (Lanham Act, 15 USC 1051, et seq.), rights against unfair competition (Lanham Act, supra, at 1125), rights in confidential information (Freedom of Information Act, 5 USC 552a, et seq.), and any other state and/or federal rights which may be violated by the publication, translation, reproduction, delivery, performance, use or disposition of any Subject Data (as defined in Section 7A of these provisions) furnished under the contract. Further, the Contractor agrees not to include any libelous or other unlawful matter in such Subject Data.

- f) The Contractor shall not affix any restrictive markings upon any Subject Data.

- g) Confidential data provided to the contractor, or produced in the performance of this contract, shall not be published or reproduced in whole or in part, or in any manner or form, without written consent of the Council, NMFS, and any pertinent state agency. The contractor, contractor's employees, or any subcontractor will, prior to receiving any confidential information, sign a statement of nondisclosure provided by the Council and all confidential data provided by the Council will be returned after completion of the analysis.

## 8. RIGHTS TO INVENTION

Rights to inventions generated under this contract are subject to the regulations issued by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, and NMFS.

## 9. GRATUITIES AND KICKBACKS ILLEGAL

- a) Gratuities - It is improper for any person to offer, give, or agree to give to any employee or Council member or for any employee or Council member to solicit, demand, or agree to accept from another person anything of a 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 sub-contractor 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.

## 10. COVENANT RELATING TO CONTINGENT FEES

Every person, before being awarded a contract with this Council, shall represent that he/she has not retained a person to solicit or secure the contract with this Council upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. Exceptions are granted for bonafide employees or bonafide established commercial, selling agencies maintained by the person so representing for the purpose of securing business or any attorney rendering professional legal services, employed, consistent with applicable canons of ethics. Intentional violations of this clause are cause for termination of a contract.

## 11. RESTRICTION ON EMPLOYMENT OF PRESENT COUNCIL EMPLOYEES

No Council employee may be employed by the Contractor while the work under this contract is being performed.

## 12. INSURANCE

The Council and Contractor shall, at their own expense, procure and maintain adequate workers' compensation, comprehensive general liability and property damage, and motor vehicle liability insurance for their respective employees.

### 13. INDEMNIFICATION

To the extent authorized by law, each party assumes responsibility for, and releases the other party from, all claims, actions, costs, and damages resulting from the party's own negligent acts or omissions in the exercise of the rights granted herein. If the claims or damages are caused by or result from the concurrent negligence of the parties, this provision shall be valid and enforceable only to the extent of the negligent acts or omissions of the party against whom this provision is enforced.

### 14. NON-DISCRIMINATION CLAUSE

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 the 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 (42 USC §§ 2000d et seq.) and Department of Commerce implementing regulations published at 15 CFR Part 8 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 (20 USC §§ 1681 et seq.) 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 (29 USC §794) and Department of Commerce implementing regulations published at 15 CFR Part 8b, 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 (42 USC §§ 6101 et seq.) and Department of Commerce implementing regulations published at 15 CFR Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
- e) The Americans with Disabilities Act of 1990 (42 USC §§ 12101 et seq.) 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(s).

### 15. DRUG-FREE WORKPLACE

The Contractor shall comply with the provisions of the Drug-Free Workplace Act of 1988 ( Public Law 100-690, Title V, Section 5153, as amended by Public Law 105-95, Div. A, Title VII, Sec. 809, as codified at 41 USC § 702, which require that the Contractor take steps to provide a drug-free workplace.

### 16. ENFORCEMENT OF CONTRACT PROVISIONS

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. The failure of either party to exercise any of its rights with any term, provision, or condition of this contract shall not constitute or be deemed to constitute a waiver or relinquishment of the party's right to enforce the same in accordance with this agreement.

## 17. DEBARMENT, SUSPENSION, AND LOBBYING

- a) The Contractor is subject to Subpart C of 2 CFR Part 1326, “Governmentwide Debarment and Suspension (Nonprocurement).”
- b) Contracts exceeding \$100,000 in Federal funds are subject to 31 USC § 1352, as implemented at 15 CFR Part 28, “New Restrictions on Lobbying.” For such contracts, the contractor shall submit a completed “Disclosure of Lobbying Activities” (Form SF-LLL) regarding the use of Non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed.

## 18. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) And the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).

## 19. CONFLICT OF INTEREST AND CODE OF CONDUCT

The Contractor must disclose in writing any potential conflict of interest to the Council. The Contractor must comply with the Regional Fishery Management Councils Rules of Conduct for Employees and Advisors; the current edition can be found at:

[https://ogc.commerce.gov/sites/default/files/fmc\\_employees-summary\\_of\\_ethics\\_rules-2020.pdf](https://ogc.commerce.gov/sites/default/files/fmc_employees-summary_of_ethics_rules-2020.pdf).

## 20. INCREASING SEAT BELT USE IN THE UNITED STATES

Pursuant to E.O. 13043 (62 FR 19217), non-Federal entities should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, renting, or personally owned vehicles.