

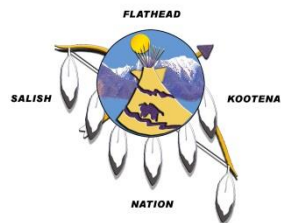
**Volume
1
of 5**

**FALLS CREEK DIVERSION REHABILITATION PROJECT
SOLICITATION/SPECIFICATIONS
CSKT 23-018**

BIDDING & CONTRACT DOCUMENTS



BY
The Confederated Salish and Kootenai Tribes
Flathead Indian Reservation – Montana



This solicitation/specifications issued by the:

Confederated Salish and Kootenai Tribes

Natural Resources Department

P.O. Box 278

Pablo, Montana 59855

PHONE INQUIRIES

**Regarding this solicitation/specifications should be made to the office listed below.
See also provision B.3 of the Instructions and Conditions to Bidders.**

Confederated Salish and Kootenai Tribes

Natural Resources Department/Division of Engineering and Water Resources

P.O. Box 278

Pablo, MT 59855

406-676-2600

CORRESPONDENCE

**Regarding this solicitation/specifications should reference the
solicitation/specifications number.**



11/14/2023

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VOLUME 3 OF 5 – CONSTRUCTION DRAWINGS

Construction drawings are in VOLUME 3 of 4 – CONSTRUCTION DRAWINGS (Separate documents)

VOLUME 4 OF 5 – GEOTECHNICAL INFORMATION

Geotechnical information is in VOLUME 4 of 4 – GEOTECHNICAL INFORMATION (Separate document)

VOLUME 5 OF 5 – TABOR FEEDER CANAL FLOWS INTO FALLS CREEK DIVERSION

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FALLS CREEK DIVERSION REHABILITATION PROJECT

SOLICITATION/SPECIFICATIONS CSKT 23-018

FOREWORD

GENERAL PROJECT INFORMATION

The Confederated Salish and Kootenai Tribes desire to enter into a Construction Agreement with a general construction contractor to demolish, remove, and replace the existing Falls Creek reinforced concrete structure, install new control gates, and a concrete measurement flume downstream on the Tabor Feeder Canal; remove the existing bridge over Falls Creek and replace with a concrete box culvert; and make improvements to the access road to the project site to facilitate the mobilization of construction equipment and materials. The Falls Creek Diversion Rehabilitation Project – is located at the intersection of Falls Creek and the Tabor Feeder Canal in the Mission Mountains approximately 13 miles southeast of St. Ignatius, MT on the Flathead Indian Reservation, MT.

PROGRAM HISTORY

The Falls Creek Diversion and Bridge structures are owned by the Department of Interior, Bureau of Indian Affairs (BIA) and operated by the BIA, Flathead Indian Irrigation Project (FIIP). The Falls Creek bridge and diversion structure were initially constructed in 1925 as part of the FIIP.

OWNERSHIP AND RESPONSIBILITIES

The construction project will be contracted by the Confederated Salish and Kootenai Tribes, hereinafter referred to as the “Tribes”. The Tribes will enter into a Contractor Agreement with a general construction contractor hereinafter referred to as the “Contractor”, to have the Contractor perform the construction work described in these project documents. The Tribes will make payment for the work to the Contractor from available Bureau of Indian Affairs (BIA) funds. The Contractor will not be required to enter into any separate form of agreement with any Federal agency.

These solicitation/specifications include paragraphs typically used in the Federal solicitation/specifications and incorporates various Federal Acquisition Regulations (FAR) provisions and clauses. Although this solicitation/ specification resembles a typical Federal Government document; this project, contract, and solicitation/specification are the product of the Confederated Salish and Kootenai Tribes for the purpose of performing a Federal program for the United States of America.

BIDDING SCHEDULE AND BIDDING INFORMATION

A project pre-bid meeting is scheduled for **Wednesday December 13, 2023, from 10 AM to noon (local time)** at the Salish Kootenai Kicking Horse Complex, 33019 Quequesah Drive, Ronan, MT 59864. The pre-bid meeting is NOT mandatory, but all prospective bidders are encouraged to visit the project site at Falls Creek Diversion approximately 13 miles southeast of St. Ignatius, Montana. Travel to the site in the winter months may require a tracked UTV or similar equipment and may not be accessible via a 4x4 vehicle. Photographs and aerial UAV footage will be shared during the pre-bid meeting. Failure by bidders to inspect the site or the review the photographs and UAV footage will not relieve bidders from the responsibility of properly estimating the difficulty or cost of successfully performing the work in accordance with the contract documents.

Bidders may submit a bid as an Indian-Owned business and receive contract award Indian Preference per the Confederated Salish and Kootenai Tribes Indian Preference Ordinance 101 A and Regulations.

Sealed bids submitted by bidders for the Project are due and will be opened and read publicly at **2:00 p.m. (local time) on Wednesday, January 10, 2024**, at the Salish Kootenai Kicking Horse Complex, 33019 Quequesah Drive, Ronan, MT 59864.

Digital copies of the Plans and Specifications (Contract Documents) are available at www.questcdn.com. Bidding documents may be downloaded for \$50.00 by entering the Quest project eBid# 8817434 on the project search page. There will be no refund for this deposit. Please contact QuestCDN.com at (952) 233-1632 or info@questcdn.com for assistance with membership registration or questions regarding downloading of the bid package.

Specifications, drawings, ordinances, regulations, standards, FAR contract clauses that are applicable to this Project, bidding documents and instructions, and contract clauses for this Project, may be found at the following Internet web sites: <https://csktwatercompact.com>. Go to Projects → Irrigation Projects → Falls Creek Diversion Replacement

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PART I – BID SOLICITATION DOCUMENTS

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SECTION A - SOLICITATION

SOLICITATION (Construction Contract)	1. Solicitation/Specifications: CSKT 23-018	2. Type of Solicitation <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	3. Date Issued November 15, 2023
4. ISSUED BY: THE CONFEDERATED SALISH & KOOTENAI TRIBES DIVISION OF ENGINEERING AND WATER RESOURCES 33019 QUEQUESAH DRIVE, RONAN, MT 59864		5. ADDRESS BID TO: THE CONFEDERATED SALISH & KOOTENAI TRIBES DIVISION OF ENGINEERING AND WATER RESOURCES 33019 QUEQUESAH DRIVE, RONAN, MT 59864	
NOTE: In this solicitation, "bid" and "bidder" mean "offer" and "offeror".			
6. PROJECT TITLE AND LOCATION: FALLS CREEK DIVERSION REHABILITATION PROJECT THE CONFEDERATED SALISH & KOOTENAI TRIBES DIVISION OF ENGINEERING AND WATER RESOURCES FLATHEAD RESERVATION, MONTANA			
7. BID INFORMATION: Hand-carried bids will be received at <u>Salish Kootenai Kicking Horse Complex, 33019 Quequesah Drive, Ronan, MT 59864 by the bid opening official</u> until the time of bid opening. Mailed bids must be received at the address shown in item 5 prior to the bid opening. Sealed bids will be publicly opened at <u>the Salish Kootenai Kicking Horse Complex, 33019 Quequesah Drive, Ronan, MT 59864 at 2:00 p.m. (local time) on January 10, 2024.</u> Estimated cost range of project: From <u>\$2,000,000</u> to <u>\$2,500,000</u> . Administrative Notice to Proceed (ANTP) anticipated to be issued approximately <u>March 1, 2024</u> . Construction Notice to Proceed (NTP) anticipated to be issued approximately <u>May 6, 2024</u> . All work will be completed from approximately <u>May 6, 2024</u> to <u>November 1, 2024</u> .			
8. Bids Restricted to Small Business? NO		9. Subcontracting Plan Required? YES	
10. INSTRUCTIONS: All bids shall be sealed and marked to show the bidder's name and address, the Solicitation/Specifications number, and the date and time bids are due. b. All bids are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference. c. The Issuing Office, at its discretion, may make the Solicitation/Specifications available to plan rooms of the Associated General Contractors, Montana Plans Exchange, Dodge Reports, and other similar contractor's commercial service facilities. d. A bid guarantee is required with any bid in excess of \$25,000. The bid guarantee shall be in the amount of 20 percent of the total amount of the bid or \$3,000,000, whichever is less. e. A program for the purpose of assisting qualified small business concerns in obtaining certain bid payment, or performance bonds that are otherwise not obtainable is available through the Small Business Administration (SBA). For information concerning SBA's surety bond guarantee assistance, contact your SBA District Office.			
11. The Contractor shall begin performance within <u>7</u> calendar days after receiving <input type="checkbox"/> AWARD <input checked="" type="checkbox"/> NOTICE TO PROCEED. This performance period is: <input checked="" type="checkbox"/> MANDATORY <input type="checkbox"/> NEGOTIABLE (SEE SECTION H)			
12. BID REQUIREMENTS: A. Bids providing less than <u>60</u> calendar days for Tribal acceptance after the date offers are due will not be considered and will be rejected. B. A bid guarantee is required. BID BOND MUST BE PROVIDED ON <u>CSKT FORM G</u>. C. Performance and Payment <u>ARE</u> required within <u>10</u> calendar days after receiving Award.			

CSKT Form A

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SECTION B - INSTRUCTION AND CONDITIONS TO BIDDERS

B.1 SOLICITATION DEFINITIONS - SEALED BIDDING

"Offer" means "bid" in sealed bidding.

"Solicitation" means an invitation for bids in sealed bidding.

"Tribes" means Confederated Salish and Kootenai Tribes (CSKT).

B.2 AMENDMENTS TO INVITATION FOR BIDS

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation by:

(1) by signing and returning the amendment;

(2) by identifying the amendment number and date in the space provided for this purpose on CSKT Form D;

(3) by letter.

The Tribes must receive the acknowledgment by the time and at the place specified for receipt of bids.

(c) See CSKT Form D entitled "Solicitation, Bid, and Award" included in section D, "Solicitation, Bid, and Award" and in the "Bid Submittal Documents" volume.

B.3 EXPLANATION TO PROSPECTIVE BIDDERS

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing from the Contracting Officer's Representative at the address listed in subsection I.2 entitled "Definitions," soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

B.4 PREPARATION OF BIDS - CONSTRUCTION

(a) Bids shall be (1) submitted on the forms furnished by the Tribes or on copies of these forms, and (2) manually signed. The person signing a bid shall initial each erasure or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including -

(1) Lump-sum amounts;

(2) Prices for units of construction;

(3) Alternate prices; or

(4) Any combination of (1) through (3) above.

(c) This solicitation requires bidding on all items, failure to do so will disqualify the bid.

(d) Required bid documents are printed separately in the "Bid Submittal Documents" volume. Offerors shall submit all forms required by the sections, provisions, and clauses of this solicitation/specifications regardless of whether or not these forms are contained in that volume.

Additional copies of these documents or the "Bid Submittal Documents" volume may be obtained by contacting The Confederated Salish and Kootenai Tribes, Natural Resource Department Irrigation Infrastructure Program Manager, (406) 675-2700.

(e) Bids shall be submitted in accordance with section B, "INSTRUCTIONS AND CONDITIONS TO BIDDERS," section C, "NOTICES TO BIDDERS," and section F, "SCHEDULE." Bids shall contain the following forms and the Schedule completed in accordance with the referenced sections, provisions, and clauses using the entire solicitation/specifications as a resource:

(1) SOLICITATION, BID, AND AWARD (CSKT Form D) - in accordance with section D, "SOLICITATION, BID, AND AWARD." *(Signature required)*

(2) SCHEDULE - in accordance with section F, "SCHEDULE" *(Extensions and total required)*.

(3) BID BOND (CSKT Form G) - in accordance with the provision in section C entitled "BID GUARANTEE." *(Signatures required)*

USE OF ANY BID BOND OTHER THAN CSKT FORM G, OR A COPY THEREOF, MAY DISQUALIFY THE BID.

(4) CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (CSKT Form J; Bid Submittal Documents) - in accordance with the provision in section E entitled "CERTIFICATE OF INDEPENDENT PRICE DETERMINATION." *(Names and titles required)*

(5) CERTIFICATE OF PROCUREMENT INTEGRITY (CSKT Form I; Bid Submittal Documents) - in accordance with the provision in section E entitled "REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY." *(Signature required)*

(6) TAXPAYER IDENTIFICATION (CSKT Form T-DB) - in accordance with the provisions entitled "TAXPAYER IDENTIFICATION" in section E *(Number required)*.

(7) UNIQUE ENTITY IDENTIFIER (UEI) NUMBER – in accordance with the provision in section E entitled "UNIQUE ENTITY IDENTIFIER (UEI) NUMBER" *(Number required)*.

(8) TABLE OF CERTIFICATIONS - (CSKT Form E1 and E2) – in accordance with the applicable provisions in section E as noted in the table *(all certifications shall be marked)*.

(9) INDIAN-OWNED BUSINESS CERTIFICATION – Attach the Certification of Indian Owned Business obtained from the CSKT Indian Preference Office if submitting the bid for Indian Preference of this award per the CSKT Indian Preference Ordinance 101A and Regulations. *(Certification shall be marked and Certificate attached to bid)*.

THESE FORMS MAY BE REPRODUCED PROVIDED THE RESULT CONTAINS ALL ASPECTS, CONDITIONS, AND FEATURES OF THE ORIGINAL FORMS.

B.5 FALSE STATEMENTS IN BIDS

Bidders shall provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

B.6 SUBMISSION OF BIDS

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages

(1) addressed to the office specified in this solicitation; and

(2) showing the time specified for receipt, the solicitation number, and the name and address of the bidder.

(b) Facsimile, emailed and/or telegraphic bids, modification, or withdrawals will **not** be considered.

B.7 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it -

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail and it is determined by the Tribes that the late receipt was due solely to mishandling by the Tribes after receipt at the Tribal Complex; or

(3) Was sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of bids. The term "working days" excludes weekends and U.S. Federal holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper or on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerks to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the Tribal Complex is the time/date stamp of that Tribal Office placed on the bid wrapper, or other documentary evidence of receipt maintained by the Tribal Office.

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service - Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service - Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the Tribes will be considered at any time it is received and may be accepted.

(g) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. A bid may be withdrawn in person or by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

B.8 BID PREPARATION WORKSHEETS.

Prior to award of the contract the successful offeror shall submit to the Contracting Officer a copy of all bid preparation worksheets used for each item of the Bid Schedule as referenced by **BID PREPARATION WORKSHEETS [RSN-1]**. These worksheets should reflect the estimated amount of labor, equipment and materials the contractor proposed for the performance of each item of the contract, as well as all quotes for subcontracted work. This information is for internal use only and will not be released to the public.

B.9 QUALIFICATIONS & EXPERIENCE

Bidders must demonstrate capability and experience to conduct this Project by listing at least:

Four (4) previous projects with similar scope and magnitude successfully completed in the past 6 years. This includes heavy civil projects with significant quantities of precast and cast in-place reinforced concrete, large volumes of earthwork excavation and embankment, pre-cast concrete construction, and work in remote locations. Bidder may present their experience of these projects tasks by identifying projects that their prospective sub-contractors were a part of.

Capability and experience will be demonstrated by the bidder listing the successfully completed heavy civil projects with reinforced concrete, earthwork, and a valid professional reference to vouch for each of the successful projects on the BID

SCHEDULE. The bidder who demonstrates capability and experience to conduct this Project will be deemed Responsive. Failure to list projects or provide a valid professional reference that can be contacted by the Tribes may be cause for rejection of the bid, and the bidder will be deemed Non-Responsive.

B.10 BASIS OF BID

Bidders are advised to closely familiarize themselves with the project documents as they prepare their respective bids. Items of note during preparation of bid include:

- See Sheets 5 and 6 of the Construction Plans show there are two alternative routes to access the project site. Note that the roads are very narrow and will not support two-way traffic for large construction equipment. The Contractor should plan on having a mobilization plan to limit two-way traffic to the project site when planning to move large equipment or supplies to the project site and staging areas.
- There are three proposed staging areas that may be utilized during construction that are shown on Sheet 7 of the Construction Plans.
- Contractor shall coordinate access to water with CSKT for dust suppression, mixing concrete, cleaning equipment, etc.
- Contractor shall perform access road upgrades and remove and replace the existing bridge with the new box culvert as the initial work for the project. The existing bridge is aging and is not structurally sound to support the required construction traffic necessary for replacement of the diversion structure. Additionally, heavy loads over the Tabor Feeder Tunnel, immediately upstream of the Falls Creek Diversion, should be avoided as the aging tunnel traverses under the access road.
- Irrigation water in the Tabor Feeder Canal is conveyed until approximately July 15th of each year. Construction work on the diversion structure would commence after the irrigation water is shutoff. Construction of the access road improvements and bridge replacement would be completed first. Construction of the diversion structure would be completed after the access road improvements and box culvert are installed.
- Ground surface elevations are as indicated in the Construction Plans found in Volume 3 of 4.
- Soil material characteristics are likely to be similar as those indicated on the test pits contained in Volume 4 of 4 Geotechnical Report.
- Groundwater elevations indicated by the test pits were those existing at the time of the subsurface investigations. These groundwater elevations do not necessarily represent ground water at the time of construction.
- During construction of the diversion structure replacement, all upstream flows from Falls Creek will need to be routed to the Tabor Feeder Canal to the west as shown on Sheets 16 and 17 of the Construction Plans. No upstream runoff shall be conveyed downstream along Falls Creek during construction that could degrade the water quality.
- During construction of the diversion structure replacement, all upstream flows from the Tabor Feeder Canal (upstream of the tunnel) will need to be routed to the Tabor Feeder Canal to west as shown on Sheet 33 of the Construction Plans. Refer to memo in Volume 5 for documentation of the measured flows in the Tabor Feeder Canal above the Falls Creek Diversion structure, made in 2023.
- Due to the known presence of Grizzly Bears and Canada Lynx in the project area the following conservation, avoidance, and minimization measures shall be implemented throughout the duration of construction:
 - Promptly clean up any project-related spills, litter, garbage, debris, etc.
 - Store all food, food-related items, petroleum products, antifreeze, garbage, and personal hygiene items inside a closed, hard-sided vehicle or commercially manufactured bear-resistant container.
 - Remove garbage from the project site daily and dispose of it in accordance with all applicable regulations.
 - Notify the CSKT Wildlife Management Program of any animal carcasses found in the area.
 - Notify the CSKT Wildlife Management Program of any grizzly bears or lynx observed in the vicinity of the project area.
- CSKT has obtained the following permits: USACE 401 Certification/Section 404 Permit, CSTK 401 Water Quality Certification, and Cultural Clearance Permit. The Environmental Assessment (EA), along with the Biological Assessment (BA) and its USFWS Biological Opinion, will be in review with the BIA until early 2024. Upon completion of the BIA review, it is anticipated that a Finding of No Significant Impact (FONSI) will be issued. The ALCO Permit is still in process but is anticipated to be completed in early 2024. Award of the contract will be contingent upon full permit approvals.
- CSKT will finalize a CSKT Lands Use Permit upon Award of Contract with Contractor being the permittee.
- The Contractor will obtain and abide by the requirements set forth within the EPA issued Construction General Permit. The Contractor shall submit a Notice of Intent (NOI) to the EPA in compliance with EPA requirements.
- No trees may be removed/cut for the access road improvements. Any trees salvaged for construction of the diversion structure or measurement flume must be transported to the location shown on Sheet 6 of the Construction Plans.

SECTION C - NOTICES TO BIDDERS

C.1 CONTRACT AWARD - SEALED BIDDING - CONSTRUCTION

(a) The Tribes will evaluate bids in response to this solicitation and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Tribes.

Non-Indian contractors are encouraged to bid on all contracts advertised; however, determination of award will be made in accordance with the provision in this section entitled "Notice to Bidders Regarding Indian Preference."

(b) The Tribes may reject any or all bids and waive informalities or minor irregularities in bids received.

(c) The Tribes may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(d) Immediately after bid opening, the apparent low bidder and those in contest shall complete CSKT Form Q entitled "Bidder Survey (Questionnaire)," which is included in section G, "Forms."

C.2 SERVICE OF PROTEST

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, shall be filed with the Contracting Officer at the address and official designated in block 5 of the "Solicitation," CSKT Form A.

(b) Protests shall be resolved pursuant to the provisions of the clause in section I.2 of this contract entitled "Disputes."

C.3 BID GUARANTEE

(a) Bid guarantee. For bids that exceed \$25,000, the bidder shall furnish a guarantee, ensuring that the bidder (1) will not withdraw a bid within the period specified for acceptance and (2) will execute a written contract and furnish required bonds and insurance agreements within the period specified therefore, in an amount of not less than 20 percent of the bid; not to exceed \$3,000,000.

NOTE!! The bidder shall use CSKT Form G entitled "Bid Bond," or a copy thereof, included in the "Bid Submittal Documents" volume. Do not use GSA Standard Form 24 or any other Bid Guarantee forms.

(1) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(2) The bidder shall furnish a bid guarantee in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States.

(3) Unless otherwise specified in the bid, the bidder will allow 60 days for acceptance of its bid.

(4) Bid Guarantees from individual sureties will not be accepted.

C.4 NOTICE OF OTHER CONTRACTS

During the progress of the work under this contract, additional work may be performed concurrently by other contractors, by the Tribes, and by local, State, and Federal Governments in the vicinity of the work.

The Tribes assume no liability for failure to list all current or potential other contracts.

C.5 CAUTION TO BIDDERS - BID ERRORS

(a) Bidders are cautioned to exercise extreme care in the preparation of their bids. Errors in bids could result in rejection of a bid as nonresponsive or delay in making a contract award (See "Allegations of Mistakes in Bids" clause).

(b) Actions that should be taken to avoid errors include:

- (1) Ensure that the bid submittal package contains an acknowledgment of and takes into consideration all amendments to the solicitation.
- (2) Ensure all quantities and prices (especially quotations from subcontractors) have been verified and taken into consideration; no line items have been overlooked; and the bid has been reviewed by someone other than the preparer.
- (3) Retain all original notes, estimates, worksheets, subcontractor quotations, and other data used in preparing the bid. These documents must be furnished to support the nature and amount of any error when alleging a mistake in bid.

C.6 ALLEGATIONS OF MISTAKES IN BIDS

- (a) This provision applies to all allegations of mistakes in bids made by bidders, pursuant to interpretation guidance contained in 48 CFR 14.407.
- (b) Allegations of mistakes in bids often result in delays to the Tribes in processing and making timely award of contract, thus delaying the ultimate completion of work under the contract. For the purpose of these bidding conditions, 60 calendar days (or such lesser time as the solicitation may establish for acceptance of offers) after the date of opening of bids shall be considered as the Tribes' normal processing time for making award of a contract. Therefore, if a bidder alleges a mistake or mistakes in its bid, and requests an administrative determination regarding such a mistake or mistakes, the bidder agrees, by submission of its bid, that the time period allowed for completion of the work under the contract, or any part thereof for which a separate completion period is stated, shall be reduced by 1 calendar day for each calendar day that award is made in excess of the normal processing time for making award of a contract, as established above; however, in no case shall such reduction for delayed award exceed 10 percent of the completion period stated for the work, or any part thereof for which a separate completion period is stated.

C.7 ARITHMETIC DISCREPANCIES

- (a) For the purpose of initial evaluation of bids, the following shall be utilized by the Tribes in resolving arithmetic discrepancies found on the face of the bidding schedule as submitted by bidders:
 - (1) Obviously misplaced decimal points shall be corrected;
 - (2) Except as may be otherwise set forth in the solicitation, where there is a discrepancy between unit price and extended price, the unit price shall govern;
 - (3) Apparent errors in extension of unit prices shall be corrected; and
 - (4) Apparent errors in addition of lump-sum and extended prices shall be corrected.
- (b) For the purposes of bid evaluation, the Tribes shall proceed on the assumption that the bidder intends its bid to be evaluated on the basis of the unit prices, extensions, and totals arrived at by resolution of arithmetic discrepancies as provided above and the bid shall be so reflected on the abstract of bids.
- (c) It shall be the responsibility of each bidder to promptly check its own figures and advise the Contracting Officer of any instance where its bid as thus corrected does not represent its intentions. Such allegations shall be processed in accordance with the procedures cited in the Allegations of Mistakes in Bids provision above.

C.8 NOTICE TO BIDDERS REGARDING INDIAN PREFERENCE CONTRACT AWARD

All contracts let under this Solicitation, including the prime contract and subcontracts, are subject to the Confederated Salish and Kootenai Tribes' Indian Preference Ordinance, Tribal Ordinance 101A. A copy of Tribal Ordinance 101A is available on the Internet at <http://www.csktribes.org/employment/indian-preference-office> Bidders are advised to review CSKT Ordinance 101A.

C.9 NOTICE TO BIDDERS REGARDING INDIAN PREFERENCE ORDINANCE REGULATIONS CONTRACTING FEE

Bidders are advised that the CSKT Indian Preference Ordinance No. 101A Regulations contains requirements for payment of an Indian Preference contracting fee to be paid by the Contractor. However, the Indian Preference contracting fee for this contract will be paid administratively by the CSKT to the Indian Preference Office, and the prime Contractor will not be required to pay this fee as typically required by CSKT Indian Preference Ordinance No. 101A. The Contractor should not include the cost of this fee in their bid.

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PART IIa - BID SUBMITTAL DOCUMENTS

NOTE: A COMPLETE BID SUBMITTAL PACKAGE, CONTAINING ALL REQUIRED BID DOCUMENTS, IS PRINTED SEPARATELY IN THE "BID SUBMITTAL DOCUMENTS" VOLUME.

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SECTION D - SOLICITATION, BID, AND AWARD

SOLICITATION (Construction Contract)	1. Solicitation/Specifications: CSKT 23-018	2. Type of Solicitation <input checked="" type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	3. Date Issued November 15, 2023
4. ISSUED BY: THE CONFEDERATED SALISH & KOOTENAI TRIBES DIVISION OF ENGINEERING AND WATER RESOURCES 33019 QUEQUESAH DRIVE, RONAN, MT 59864		5. ADDRESS BID TO: THE CONFEDERATED SALISH & KOOTENAI TRIBES DIVISION OF ENGINEERING AND WATER RESOURCES 33019 QUEQUESAH DRIVE, RONAN, MT 59864	
NOTE: In this solicitation, “bid” and “bidder” mean “offer” and “offeror”.			
6. PROJECT TITLE AND LOCATION: FALLS CREEK DIVERSION REHABILITATION PROJECT THE CONFEDERATED SALISH & KOOTENAI TRIBES DIVISION OF ENGINEERING AND WATER RESOURCES FLATHEAD RESERVATION, MONTANA			
7. BID INFORMATION: Hand-carried bids will be received at <u>Salish Kootenai Kicking Horse Complex at 33019 Quequesah Drive, Ronan, MT 59864 by the bid opening official by the bid opening official</u> until the time of bid opening. Mailed bids must be received at the address shown in item 5 prior to the bid opening. Sealed bids will be publicly opened at <u>the Salish Kootenai Kicking Horse Complex at 33019 Quequesah Drive, Ronan, MT 59864 at 2:00 p.m. (local time) on January 10, 2024.</u> Estimated cost range of project: From <u>\$2,000,000</u> to <u>\$2,500,000</u> . Administrative Notice to Proceed (ANTP) anticipated to be issued approximately <u>March 1, 2024</u> . Construction Notice to Proceed (NTP) anticipated to be issued approximately <u>May 6, 2024</u> . All work will be completed from approximately <u>May 6, 2024</u> to <u>November 1, 2024</u> .			
8. Bids Restricted to Small Business? NO		9. Subcontracting Plan Required? YES	
10. INSTRUCTIONS: All bids shall be sealed and marked to show the bidder's name and address, the Solicitation/Specifications number, and the date and time bids are due. b. All bids are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference. c. The Issuing Office, at its discretion, may make the Solicitation/Specifications available to plan rooms of the Associated General Contractors, Montana Plans Exchange, Dodge Reports, and other similar contractor's commercial service facilities. d. A bid guarantee is required with any bid in excess of \$25,000. The bid guarantee shall be in the amount of 20 percent of the total amount of the bid or \$3,000,000, whichever is less. e. A program for the purpose of assisting qualified small business concerns in obtaining certain bid payment, or performance bonds that are otherwise not obtainable is available through the Small Business Administration (SBA). For information concerning SBA's surety bond guarantee assistance, contact your SBA District Office.			
11. The Contractor shall begin performance within <u>7</u> calendar days after receiving <input type="checkbox"/> AWARD <input checked="" type="checkbox"/> NOTICE TO PROCEED. This performance period is: <input checked="" type="checkbox"/> MANDATORY <input type="checkbox"/> NEGOTIABLE (SEE SECTION H)			
12. BID REQUIREMENTS: A. Bids providing less than <u>60</u> calendar days for Tribal acceptance after the date offers are due will not be considered and will be rejected. B. A bid guarantee is required. BID BOND MUST BE PROVIDED ON <u>CSKT FORM G</u>. C. Performance and Payment <u>ARE</u> required within <u>10</u> calendar days after receiving Award.			
CSKT FORM D			
BID (Must be fully completed by bidder)			

13. ____ bidder agrees to perform the work required at the prices specified below in strict accordance with the terms of this Solicitation/Specifications, if this bid is accepted by the Tribes in writing within ____ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement in item 12A. Failure to insert any number means the bidder accepts the minimum requirement.)									
AMOUNTS: →				See attached SCHEDULE (Section F)					
14. ____ The bidder includes the bid guarantee as shown in 12B									
15. ____ The bidder agrees to furnish any required performance and payment bonds as shown in 12C.									
AMENDMENT:									
DATE:									
16. Name, Address, Phone Number and Email Address of Firm:									
17. NAME & TITLE OF FIRM REPRESENTATIVE:				18. SIGNATURE OF REPRESENTATIVE:			19. DATE SIGNED:		
AWARD (To be completed by Tribes)									
20. ITEMS ACCEPTED:									
21. AMOUNT:					22. CONTRACT: CSKT 2023-018				
23. SUBMIT ____ COPIES OF INVOICES TO THE ADDRESS SHOWN IN ITEM ____.									
24. ADMINISTERED BY:					25. PAYMENT WILL BE MADE BY:				
CONTRACTING OFFICER WILL COMPLETE ITEM 26 OR 27 AS APPLICABLE									
26. ____ NEGOTIATED AGREEMENT (Contractor is required to sign this document and return ____ copies to issuing office.) Contractor agrees to furnish and deliver all work requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications and specifications incorporated by reference in or attached to this contract.					27. ____ AWARD (Contractor is not required to sign this document) Your bid is hereby accepted for the amount shown in item 21 for the items listed in item 20. This award consummates the contract, which consists of (a) the Solicitation/Specifications and your bid, and (b) this contract award. No further contractual document is necessary.				
28. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type of Print)					31. NAME OF CONTRACTING OFFICER (Type or Print)				
29. CONTRACTOR SIGNATURE:			30. DATE SIGNED:		32. CONTRACTING OFFICER SIGNATURE:			33. AWARD DATE:	

CSKT Form D (back)

SECTION E - REPRESENTATIONS, CERTIFICATIONS, AND OTHER OFFEROR STATEMENTS**E.1 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION**

(a) The offeror certifies that -

- (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;
- (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory -

- (1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
- (2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above

[insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal- and the title of his or her position in the offeror's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) above have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror shall furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(d) See CSKT Form J entitled "Certificate of Independent Price Determination" included in the "Bid Submittal Documents" volume.

E.2 REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY (CSKT)

(a) Definitions. The definitions at FAR 3.104-4 are hereby incorporated in this provision.

(b) Certifications. As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification:

CERTIFICATE OF PROCUREMENT INTEGRITY

(1) I, _____ [Name of certifier], am the officer or employee responsible for the preparation of this offer or bid and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended* (41 U.S.C. 423) (hereinafter referred to as "the Act"), as implemented in the FAR, occurring during the conduct of this procurement **(CSKT)**.

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [Name of offeror] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet), ENTER NONE IF NONE EXISTS)

(4) I agree that, if awarded a contract under this solicitation, the certifications required by subsection 27(e)(1)(B) of the Act shall be maintained in accordance with paragraph (f) of this provision.

[Signature of the Officer or Employee Responsible for the Offer and date]

[Typed Name of the Officer or Employee Responsible for the Offer]

* Subsections 27(a), (b), and (d) are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

- (c)(1) For procurements using sealed bidding procedures, the signed certifications shall be submitted by each bidder with the bid submission.
- (2) For contracts and contract modifications which include options, a certificate is required when the aggregate value of the contract and contract modification and all options (see FAR 3.104-4(e)) exceeds \$100,000.
- (3) Failure of a bidder to submit the signed certificate with its bid shall render the bid nonresponsive.
- (d) Pursuant to guidance contained in FAR 3.104-9(d), the offeror may be requested to execute additional certifications at the request of the Tribes. Failure of an Offeror to submit the additional certifications shall cause its offer to be rejected.
- (e) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of award under this solicitation. However, the Tribes, after evaluation of the disclosure, may cancel this procurement or take any other appropriate actions in the interest of the Tribes, such as disqualification of the offeror.
- (f) Certifications under paragraphs (b) and (d) of this provision are material representations of fact upon which reliance will be placed in awarding a contract.
- (g) See CSKT Form I entitled "Certificate of Procurement Integrity," included in the "Bid Submittal Documents" volume.**

E.3 TAXPAYER IDENTIFICATION

- (a) *Definitions.* "Common parent," as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

"Corporate status," as used in this solicitation provision, means a designation as to whether the offeror is a corporate entity, an unincorporated entity (e.g., sole proprietorship or partnership), or a corporation providing medical and health care services.

"Taxpayer Identification Number (TIN)," as used in this solicitation provision, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

(b) All offerors are required to submit the information required in paragraphs (c) through (e) of this solicitation provision in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the Internal Revenue Service (IRS). If the resulting contract is subject to reporting requirements described in FAR 4.903, the failure or refusal by the offeror to furnish the information may result in a 20 percent reduction of payments otherwise due under the contract.

(c) *Taxpayer Identification Number (TIN).*

☐ TIN: _____.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a Federal, State, or local government;

☐ Other. State basis. _____.

(d) *Corporate Status.*

☐ Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

☐ Other corporate entity;

☐ Not a corporate entity;

☐ Sole proprietorship

☐ Partnership

☐ Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(e) *Common Parent.*

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this clause.

☐ Name and TIN of common parent:

Name _____

TIN _____

(f) See CSKT Form T-DB entitled "Taxpayer Identification and DUNS Number," included in the "Bid Submittal Documents" volume.

E.4 DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER

(a) The offeror shall enter, on the line provided below, the annotation "DUNS" or "DUNS+4" followed by the DUNS number or "DUNS+4" that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet, Inc. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11) for the same parent concern.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number-

(i) If located within the United States, by calling Dun and Bradstreet at 1-866-705-5711 or via the Internet at <http://www.dnb.com>; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business name.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company physical street address, city, state and Zip Code.

(iv) Company mailing address, city, state and Zip Code (if separate from physical).

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

DUNS NUMBER: _____

(c) See CSKT Form T-DB entitled "Taxpayer Identification and DUNS Number," included in the "Bid Submittal Documents" volume.

E.5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that -

(i) The Offeror and/or any of its Principals -

(A) Are () are not () presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have () have not (), within a 3-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

and

(C) Are () are not () presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has () has not (), within a 3-year period preceding this offer, had one or more contracts terminated for default by the Tribes or any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under section 1001, title 18, United States Code

(b) See item Nos. 3 through 6 in CSKT Form E1 entitled "Table of Certifications," included in the "Bid Submittal Documents" volume.

(c) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(d) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(e) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(f) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Tribes, the Contracting Officer may terminate the contract resulting from this solicitation for default.

E.6 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS

The offeror represents that -

(a) It ☐ has, ☐ has not participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114;

(b) It ☐ has, ☐ has not, filed all required compliance reports; and

(c) See item Nos. 7 and 8 in CSKT Form E1 entitled "Table of Certifications," included in the "Bid Submittal Documents" volume.

(d) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

E.7 CLEAN AIR AND WATER CERTIFICATION

(a) The Offeror certifies that any facility to be used in the performance of this proposed contract ☐ is ☐ is not , listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

(b) See item No. 9 in CSKT Form E1 entitled "Table of Certifications," included in the "Bid Submittal Documents" volume.

(c) The Offeror shall immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the EPA, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(d) The Contractor shall include a certification substantially the same as this certification, including this paragraph in every nonexempt subcontract.

E.8 CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(a) The definitions and prohibitions contained in the clause in subsection I.7 entitled "Limitation on Payments to Influence Certain Federal Transactions," included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that -

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, as requested by the Contracting Officer, CSKT Form U entitled "Disclosure of Lobbying Activities," to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(d) See item No. 10 in CSKT Form E1 entitled "Table of Certifications," included in the "Bid Submittal Documents" volume.

E.9 CERTIFICATION AS SUBMITTING A BID AS AN INDIAN-OWNED BUSINESS

(a) The Offeror may submit a bid as an Indian-Owned business, and receive contract award Indian Preference per the Confederated Salish and Kootenai Tribes Indian Preference Ordinance 101 A and Regulations.

(b) The Offeror certifies that it ☐ is ☐ is not submitting the bid as an Indian-Owned business per CSKT Indian Preference Ordinance 101 A and Regulations. Offeror **must attach** a copy of the valid and current Indian Preference Certificate to the bid submittal documents to receive Indian Preference in award of this contract.

SECTION F - SCHEDULE

FALLS CREEK DIVERSION REHABILITATION PROJECT SOLICITATION/SPECIFICATIONS CSKT 2023-018

THE CONFEDERATED SALISH AND KOOTENAI TRIBES DIVISION OF ENGINEERING AND WATER RESOURCES FLATHEAD INDIAN RESERVATION, MONTANA

F.1 SCHEDULE

- (a) Offers will be considered for award on the following Schedule, but no offer will be considered for award on only a part of the Schedule.
- (b) All offers are subject to the terms and conditions of this Solicitation.
- (c) The quantities in the Schedule are estimated quantities for comparison of offers only, and except as provided in the contract clause entitled "Variation in Estimated Quantity," no claim shall be made against the Tribes for overruns or underruns.
- (d) See the contract clause entitled "Mobilization" which applies to CLIN 1 (Contract Line Item Number) in the Schedule below.
- (e) Payment for the various priced items set forth in the Schedule shall constitute full compensation to the Contractor for providing all plant, equipment, machinery, materials, tools, supplies, transportation, labor and all other property, services, and expenditures for performing all operations required to complete the work in conformity with the Specifications and all other requirements of this Contract.
 - (1) All costs for work required by this Contract not specifically mentioned in the following Schedule; or not specifically mentioned in measurement, payment, and cost statements shall be deemed to be included in the prices for the most applicable Schedule items.
 - (2) When a separate item which includes furnishing of a material is provided in the Schedule, include the cost of furnishing, hauling, storing, and handling in the price offered in the Schedule for the item.
 - (3) When a separate item is not provided in the Schedule for furnishing a material, include the cost of furnishing, hauling, storing, and handling in the price offered in the Schedule for work for which the material is required.
- (f) Payment for an item of work will be made only once. Work measured and paid for under a CLIN will not be measured and paid for under any other item of work.

FALLS CREEK DIVERSION REHABILITATION PROJECT SOLICITATION/SPECIFICATIONS CSKT 2023-018

BID SCHEDULE

COMPANY INFORMATION:

COMPANY NAME	
MAILING ADDRESS	
CITY/STATE/ZIP	
TELEPHONE	
CONTACT EMAIL ADDRESS	

BID SCHEDULE:

CLIN	Supplies or Services	Estimated Quantity	Unit	Unit Price	Amount
1.1	Mobilization	For the lump sum of		\$	\$
1.2	Project Startup and Ongoing Activities	For the lump sum of		\$	\$
1.3	Road Closure and Traffic Control Systems	For the lump sum of		\$	\$
1.4	Construction Surveying & Staking	For the lump sum of		\$	\$
1.5	Stormwater and Erosion Control	For the lump sum of		\$	\$
1.6	Site Work	For the lump sum of		\$	\$
1.7	Demobilization	For the lump sum of		\$	\$
2.1	Access Road - Clearing and Grubbing	1	AC	\$	\$
2.2	Access Road - Compacted Fill	10	CY	\$	\$
2.3	Access Road – Road Surfacing	10	CY	\$	\$
2.4	Access Road – Revegetation	1	AC	\$	\$
2.5	Dust Abatement	For the lump sum of		\$	\$
3.1	Existing Bridge Demolition	For the lump sum of		\$	\$
3.2	Existing Diversion Structure Demolition	For the lump sum of		\$	\$
3.3	Clearing and Grubbing	For the lump sum of		\$	\$
3.4	Box Culvert	For the lump sum of		\$	\$
3.5	Riprap	300	CY	\$	\$
3.6	Riprap Grouted	140	CY	\$	\$

3.7	Grizzly Bar Screens	For the lump sum of		\$	\$
3.8	36-inch Gate	For the lump sum of		\$	\$
3.9	8-foot Slide Gates	For the lump sum of		\$	\$
3.10	Walkway	For the lump sum of		\$	\$
3.11	Pre-Cast Box Sections	For the lump sum of		\$	\$
3.12	Cast-in-Place Concrete Tunnel Connection	4	CY	\$	\$
3.13	Pre-Cast Ramp Flume	For the lump sum of		\$	\$
3.14	Cast-in-Place Concrete on Ramp Flume Floor	15	CY	\$	\$
3.15	Excess Excavated Material	406	CY	\$	\$
3.16	Revegetation	0.5	AC	\$	\$
TOTAL FOR BID SCHEDULE (NUMERIC) \$					
TOTAL FOR BID SCHEDULE (WORDS):					

FALLS CREEK DIVERSION REHABILITATION PROJECT SOLICITATION/SPECIFICATIONS CSKT 2023-018

BID SCHEDULE (cont'd)

COMPANY'S STATEMENT OF QUALIFICATIONS: (Complete the right side of the table below)

<p>List FOUR similar heavy civil construction projects with either large amounts of reinforced concrete, large amounts of excavation/embankment, pre-cast concrete construction, and work in remote locations completed within the past SIX years.</p>	
<p>Include the Owner or Representative of the Project and their valid and current contact information including telephone number and email address.</p>	
<p>Is the Offeror submitting the bid as an Indian Business or Tribal Member? (YES or NO) If YES, must also attach Indian Business Certificate to this BID SCHEDULE</p>	
SUBMITTAL SIGNATURE:	
Submitted By (Print Name):	
Title:	
Signature:	
Date:	

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PART IIb – FORMS

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SECTION G - FORMS

G.1 FORMS

(a) Forms required for execution of this contract are included in this section, including forms required to be submitted by offerors for evaluation. The Contractor shall submit all forms required by the sections, provisions, and clauses of this solicitation/specifications regardless of whether or not these forms are contained in section G and the "Bid Submittal Documents" volume of this solicitation/specifications.

(b) **BID SUBMITTAL DOCUMENTS** - A complete bid submittal package is contained in the "Bid Submittal Documents" volume of this solicitation/specifications. Bids shall be submitted in accordance with the provision in section B entitled "Instructions and Conditions to Bidders."

(c) These forms may be reproduced photographically or electronically: Provided that the resultant form contains all aspects, conditions, and features of the original forms. Computer generated forms may be used in accordance with the clause in subsection I.3 entitled "Computer Generated Forms."

Additional copies of these forms or the "Bid Submittal Documents" volume may be obtained by contacting The Confederated Salish and Kootenai Tribes Division of Engineering and Water Resources Office, (406) 675-2700 ext. 1283.

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BID BOND FOR CS&KT CONTRACTS						
PRINCIPAL (Legal name and business address)				DATE BOND EXECUTED (Must not be later than bid opening date)		
				TYPE OF ORGANIZATION ("X" one) <div style="display: flex; justify-content: space-between;"> <input type="checkbox"/> Individual <input type="checkbox"/> Partnership </div> <div style="display: flex; justify-content: space-between;"> <input type="checkbox"/> Joint Venture <input type="checkbox"/> Corporation </div>		
				STATE OF INCORPORATION		
SURETY(IES) (Name and business address)						
PENAL SUM OF BOND				BID IDENTIFICATION		
PERCENT OF BID PRICE *	AMOUNT NOT TO EXCEED				BID DATE	SOLICITATION/SPECIFICATIONS
	MILLIONS	THOUSANDS	HUNDREDS	CENTS	FOR <input checked="" type="checkbox"/> Construction <input type="checkbox"/> Supplies <input type="checkbox"/> Services	
<p>OBLIGATION: We, the Principal and Surety(ies), are firmly bound to THE CONFEDERATED SALISH AND KOOTENAI TRIBES (hereinafter called the Tribes) in the above penal sum. For payment of the penal sum, we bind ourselves, our hires, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.</p> <p>CONDITIONS: The Principal has submitted the bid identified above.</p> <p>THEREFORE: The above obligation is void if the Principal - (a) upon acceptance by the Tribes of the bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), executed the further contractual documents and gives the bond(s) required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by the Principal, or (b) in the event of failure to execute such further contractual documents and give such bonds, pays the Tribes for any costs of procuring the work which exceeds the amount of the bid.</p> <p>Each Surety executing this instrument agrees that its obligation is not impaired by any extension(s) of time for acceptance of the bid that the Principal may grant to the Tribes. Notice to surety(ies) of extension(s) are waived. However, waiver of the notice applies only to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.</p> <p>WITNESS: The Principal and Surety(ies) executed this bid bond and affixed their seals on the above date.</p>						
PRINCIPAL						
SIGNATURE(S)	1.	2.	3.	CORPORATE SEAL		
	(Seal)	(Seal)	(Seal)			
NAME(S) & TITLE(S) (typed)	1.	2.	3.			
* Not less than 20 percent of the bid price. (A bid guarantee is required with any bid in excess of \$25,000. The bid guarantee shall be in the amount of 20 percent of the total amount of the bid or \$3,000,000, whichever is less.)						

CSKT Form G

CORPORATE SURETY(IES)					
	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	CORPORATE
A	SIGNATURE(S)				SEAL
	NAME(S) & TITLE(S) (Typed)				
CORPORATE SURETY(IES)					
	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	CORPORATE
B	SIGNATURE(S)				SEAL
	NAME(S) & TITLE(S) (Typed)				
CORPORATE SURETY(IES)					
	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	CORPORATE
C	SIGNATURE(S)				SEAL
	NAME(S) & TITLE(S) (Typed)				

INSTRUCTIONS

1. This form is authorized for use when a bid guarantee is required. Any deviation from this form will require the written approval of the Tribes.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. The bond may express penal sum as a percentage of the bid price. In these cases, the bond may state a maximum dollar limitation (e.g., 20% of the bid price but the amount not to exceed _____ dollars).
4. (a) Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (A, B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.
(b) The use of individual Sureties will not be acceptable to the Tribes.
5. Corporations executing the bond shall affix their corporate seals.
6. Type the name and title of each person signing this bond in the space provided.
7. In its application to negotiated contracts, the terms "bid" and "bidder" shall include "proposal" and "offeror."

PERFORMANCE BOND (See Instructions on reverse)				DATE BOND EXECUTED (Must not be later than contract date)	
PRINCIPAL (Legal name and business address)				TYPE OF ORGANIZATION ("X" one) [] Individual [] Partnership [] Joint Venture [] Corporation	
				STATE OF INCORPORATION	
SURETY(IES) (Name and business address)					
PENAL SUM OF BOND				CONTRACT IDENTIFICATION	
AMOUNT NOT TO EXCEED				CONTRACT DATE	CONTRACT/SPECIFICATIONS
MILLIONS	THOUSANDS	HUNDREDS	CENT S	FOR [X] Construction [] Supplies [] Services	
<p>OBLIGATION: We, the Principal and Surety(ies), are firmly bound to THE CONFEDERATED SALISH AND KOOTENAI TRIBES (hereinafter called the Tribes) in the above penal sum. For payment of the penal sum, we bind ourselves, our hires, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.</p> <p>CONDITIONS: The Principal has submitted the bid identified above.</p> <p>THEREFORE: The above obligation is void if the Principal - (a) (1) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Tribes, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the "SURETY(IES)" are waived. (b) Pays to the Tribes the full amount of the taxes imposed, if the said contract is subject to the Miller Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principle in carrying out the contract with respect to which this bond is furnished.</p> <p>WITNESS: The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.</p>					
PRINCIPAL					

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	CORPORATE
NAME(S) & TITLE(S) (typed)	1.	2.	3.	SEAL

CSKT Form B

Bond Premium		Rate per Thousand	Total		
CORPORATE SURETY(IES)					
	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	CORPORATE
A	SIGNATURE(S)				SEAL
	NAME(S) & TITLE(S) (Typed)				
CORPORATE SURETY(IES)					
	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	CORPORATE
B	SIGNATURE(S)				SEAL
	NAME(S) & TITLE(S) (Typed)				
CORPORATE SURETY(IES)					
	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	CORPORATE
C	SIGNATURE(S)				SEAL
	NAME(S) & TITLE(S) (Typed)				

INSTRUCTIONS

1. This form is authorized for use when a Performance Bond is required. Any deviation from this form will require the written approval of the Tribes.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. (a) Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (A, B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.
(b) Pledges of individual sureties will not be acceptable to the Tribes.
4. Corporations executing the bond shall affix their corporate seals.
5. Type the name and title of each person signing this bond in the space provided.

CSKT Form B (back)

PAYMENT BOND (See Instructions on reverse)				DATE BOND EXECUTED (Must not be later than contract date)	
PRINCIPAL (Legal name and business address)				TYPE OF ORGANIZATION ("X" one) [] Individual [] Partnership [] Joint Venture [] Corporation	
				STATE OF INCORPORATION	
SURETY(IES) (Name and business address)					
PENAL SUM OF BOND				CONTRACT IDENTIFICATION	
AMOUNT NOT TO EXCEED				CONTRACT DATE	CONTRACT/SPECIFICATIONS
MILLIONS	THOUSANDS	HUNDREDS	CENT S	FOR [X] Construction [] Supplies [] Services	
<p>OBLIGATION: We, the Principal and Surety(ies), are firmly bound to THE CONFEDERATED SALISH AND KOOTENAI TRIBES (hereinafter called the Tribes) in the above penal sum. For payment of the penal sum, we bind ourselves, our hires, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.</p> <p>CONDITIONS: The Principal has submitted the bid identified above.</p> <p>THEREFORE: The above obligation is void if the Principal - (a) (1) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Tribes, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the "SURETY(IES)" are waived. (b) Pays to the Tribes the full amount of the taxes imposed, if the said contract is subject to the Miller Act, (40 U.S.C. 270a-270e), which are collected, deducted, or withheld from wages paid by the Principle in carrying out the contract with respect to which this bond is furnished.</p> <p>WITNESS: The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.</p>					
PRINCIPAL					

SIGNATURE(S)	1. (Seal)	2. (Seal)	3. (Seal)	CORPORATE
NAME(S) & TITLE(S) (typed)	1.	2.	3.	SEAL

Bond Premium		Rate per Thousand	Total		
CORPORATE SURETY(IES)					
	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	CORPORATE
A	SIGNATURE(S)				SEAL
	NAME(S) & TITLE(S) (Typed)				
CORPORATE SURETY(IES)					
	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	CORPORATE
B	SIGNATURE(S)				SEAL
	NAME(S) & TITLE(S) (Typed)				
CORPORATE SURETY(IES)					
	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT	CORPORATE
C	SIGNATURE(S)				SEAL
	NAME(S) & TITLE(S) (Typed)				

INSTRUCTIONS

1. This form is authorized for use when a Performance Bond is required. Any deviation from this form will require the written approval of the Tribes.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. (a) Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (A, B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.
(b) Pledges of individual sureties will not be acceptable to the Tribes.
4. Corporations executing the bond shall affix their corporate seals.
5. Type the name and title of each person signing this bond in the space provided.

CSKT Form C (back)

INVOICE, CERTIFICATION, AND REQUEST FOR PAYMENT	1. Contract Number: CSKT 2023-018
	2. Contract Date:

3. PROJECT TITLE AND LOCATION:
**THE CONFEDERATED SALISH AND KOOTENAI TRIBES
DIVISION OF ENGINEERING AND WATER RESOURCES
FALLS CREEK DIVERSION REHABILITATION PROJECT – CSKT 2023-018
FLATHEAD INDIAN RESERVATION, MONTANA**

4. NAME AND ADDRESS OF CONTRACTOR:

5. INVOICE NO.:	6. INVOICE PERIOD:
-----------------	--------------------

7. INVOICE AMOUNT:
_____ dollars and _____ cents

(\$ _____)(attach quantity/pay estimate breakdown)

I hereby certify, to the best of my knowledge and belief, that -

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract; and

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of title 31, United States Code; and

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor’s performance, and

(5) An approvable schedule update and approved quantity/pay estimate breakdown which support this request have been submitted.

8. IN WITNESS WHEREOF, the contractor has executed this certification and request on:

Day: _____ Month: _____ Year: _____

9. NAME AND TITLE OF CONTRACTOR REPRESENTATIVE:
(Type or print)

10. CONTRACTOR SIGNATURE:

Certified Correct	
_____	_____
RESIDENT ENGINEER	DATE
Approved by:	
_____	_____
Mark Simpson	DATE
Contracting Officers Representative	

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BIDDER SURVEY

Complete all applicable sections. Enter "NONE" if not applicable.

Name of Firm:

Address of Firm:

Phone Number:

Fax Number:

Officers of Firm: (name and title, person to contact)

Address of Branch Office:

Similar Work References: (list Tribal and Federal experience first)

Financial Institution: (name, address, phone, and person to contact)

BIDDER SURVEY

Complete all applicable sections. Enter "NONE" if not applicable.

Subcontracts Intended: (Firm name, phone, work summary, and person to contact)

Owned Equipment: (for use on this job)

Expected Rental Equipment:

Please attach a copy of the following:

Company Brochure

Financial Statement

Signed business arrangement showing distribution of profits
(for Indian Preference partnerships and joint ventures)

Tribal Enrollment certification (if applicable)

FINAL PAYMENT AND RELEASE OF CLAIMS	1. Contract Number: CSKT 2023-018
	2. Contract Date:

3. PROJECT TITLE AND LOCATION:
**THE CONFEDERATED SALISH AND KOOTENAI TRIBES
DIVISION OF ENGINEERING AND WATER RESOURCES
FALLS CREEK DIVERSION REHABILITATION PROJECT – CSKT 2023-018
FLATHEAD INDIAN RESERVATION, MONTANA**

4. NAME AND ADDRESS OF CONTRACTOR:

5. FINAL PAYMENT SUM:

_____ dollars and _____ cents

(\$ _____)

WHEREAS, by the terms of the above-identified contract entered into by THE CONFEDERATED SALISH AND KOOTENAI TRIBES, hereunder also referred to as the Tribes, and the contractor named above, hereunder also referred to as the contractor, it is provided that after completion of all work, and prior to final payment, the contractor will furnish the Tribes with a release of all claims;

NOW, THEREFORE, in consideration of the above premises and the payment by the Tribes to the contractor of the amount now due under the contract, to wit, the sum shown above, the contractor hereby remises, and forever discharges the Tribes, its officers, agents, and employees, of and from all manner of debts, dues, liabilities, obligations, accounts, claims, and demands whatsoever, in law and equity, under or by virtue of the said contract except as noted below:

6. EXCEPTIONS: (insert NONE if none)

8. IN WITNESS WHEREOF, the contractor has executed this release on:

Day: _____ Month: _____ Year: _____

9. NAME AND TITLE OF CONTRACTOR REPRESENTATIVE:
(Type or print)

10. SIGNATURE:

FOR TRIBAL USE	P.O. NUMBER:	OAB CONTRACT NUMBER:
Certified Correct		
RESIDENT ENGINEER	DATE	_____
Approved by:		
Mark Simpson	DATE	_____
Contracting Officers Representative		

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SUBMITTAL COVER SHEET

(reserved for receipt and routing stamp)

<u>To:</u> Confederated Salish & Kootenai Tribes Division of Engineering and Water Resources (VIA Email) mark.simpson@cstk.org	<u>Date:</u>
<u>From:</u>	
<u>Contract/Specifications:</u> Falls Creek Diversion Rehabilitation Project CSKT 2023-018	

Submittal Description:

RSN	Resp. Code	Spec Parag No.

* An asterisk (*) next to RSN indicates that this is a re-submittal.

<u>Notes:</u>

<u>Submitted by (signature):</u>
<u>Title:</u>

<u>COR RSN Review:</u> <div><input type="checkbox"/> APPROVED <input type="checkbox"/> APPROVED AS NOTED <input type="checkbox"/> REVISE & RESUBMIT</div> <p>This review does not relieve the CONTRACTOR of their responsibility for correctness of details nor does it waive any requirements for complying with specification requirements which may have been omitted or overlooked in the submittal preparation and/or review process; accordingly, should any material provided or work undertaken by the CONTRACTOR under this submittal be in conflict with specification requirements, the specification requirements shall prevail unless specifically changed by the Contracting Officer under a contract modification.</p> <p>BY _____ DATE _____</p> <p>THE CONFEDERATED SALISH & KOOTENAI TRIBES DIVISION OF ENGIENERING AND WATER RESOURCES</p>

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SUBCONTRACT STATEMENT AND ACKNOWLEDGEMENT

PART I - STATEMENT OF PRIME CONTRACTOR

1. PRIME CONTRACT NUMBER: CSKT 2023-018	2. DATE OF SUBCONTRACT:	3. SUBCONTRACT NUMBER:
4. PRIME CONTRACTOR:	5. SUBCONTRACTOR:	
6. The prime contractor shown in item 4 states that under the contract shown in item 1, a subcontract was awarded on the dated shown in item 2 to the subcontractor identified in item 5, for the following work:		
7. PROJECT TITLE AND LOCATION: FALLS CREEK DIVERSION REHABILITATION PROJECT – CSKT 2023-018 LOCATED APPROXIMATELY 13 MILES SOUTHEAST OF ST. IGNATIUS, MT		
8. NAME AND TITLE OF PERSON AUTHORIZED IN ITEM 4 TO SIGN FOR PRIME CONTRACTOR (PRINTED):	9. SIGNATURE:	10. DATE SIGNED:

PART II - ACKNOWLEDGEMENT OF SUBCONTRACTOR

11. The subcontractor in item 5 acknowledges that the following clauses of the contract shown in item 1 are included in this subcontract and shall also be included in all lower tier subcontracts:		
Accident Prevention Safety and Health Hazardous Material Identification and Material Safety Data Clean Air and Water Drug Free Workplace Insurance Variations in Estimated Quantity Prompt Payment Indian Employment Audit and Records Liquidated Damages - Indian Employment Subcontracts (CSKT)	Contract Work Hours and Safety Standards Act Overtime Compensation - Construction Payrolls and Basic Records Withholding of Funds Disputes Concerning Labor Standards Compliance with Davis-Bacon and Related Acts Regulations Davis-Bacon Act Apprentices and Trainees Compliance with Copeland Act Requirements Contract Termination - Debarment Certification of Eligibility Warranty of Construction	
13. NAME AND TITLE OF PERSON AUTHORIZED IN ITEM 5 TO SIGN (PRINTED):	14. SIGNATURE:	15. DATE SIGNED:

CSKT Form X (SMC)

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RECORD OF AUTHORIZATION TO PROCEED WITH CONTRACT CHANGE	1. Contract Number: CSKT 2023-018
2. Contract Date:	
3. PROJECT TITLE AND LOCATION: THE CONFEDERATED SALISH AND KOOTENAI TRIBES DIVISION OF ENGINEERING AND WATER RESOURCES FALLS CREEK DIVERSION REHABILITATION PROJECT – CSKT 2023-018 FLATHEAD INDIAN RESERVATION, MONTANA	
4. NAME AND ADDRESS OF CONTRACTOR:	
5. NATURE OF AND REASON FOR PROPOSED CONTRACT CHANGE:	
6. METHOD OF PAYMENT OR COMPENSATION <input type="checkbox"/> TIME & MATERIALS <input type="checkbox"/> NEGOTIATED PRICE <input type="checkbox"/> LUMP SUM <input type="checkbox"/> UNIT PRICE <input type="checkbox"/> OTHER:	
7. NAME AND TITLE OF CONTRACTOR REPRESENTATIVE: (Type or print)	
8. CONTRACTOR SIGNATURE: _____ DATE: _____	
Recommended by: <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> _____ Field Inspector </div> <div style="width: 45%;"> _____ DATE </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> Approved by: _____ Contracting Officers Representative </div> <div style="width: 45%;"> _____ DATE </div> </div>	

CSKT Form FDCC

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PART III - CONTRACT DOCUMENTS

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SECTION H - CONTRACT REQUIREMENTS

H.1 COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK as it pertains to this contract:

Administrative Notice to Proceed allows off-site contract work activities to be conducted by the Contractor prior to receiving the Construction Notice to Proceed. These activities include but are not limited to preparation of submittals. Administrative Notice to Proceed and Contract Award is contingent upon receiving full approvals for all environmental permitting.

Construction Notice to Proceed allows the Contractor to begin working on all on-site aspects of the jobsite. The Construction Notice to Proceed is anticipated to be released on or before May 6, 2024.

Upon receipt of the respective Notice to Proceed, the Contractor shall be required to

- (a) Commence preparation and transmittal of specific pre-construction submittals under this contract within 7 calendar days after the date the Contractor receives the Administrative Notice to Proceed, which will list the required pre-construction submittals, in accordance with the specification subsection in Section 01 33 00 entitled "Submittals". A Construction Notice to Proceed;
- (b) Commence work under this contract within 7 calendar days after the date the Contractor receives the Construction Notice to Proceed, including specific submittals required to be submitted soon after the issuance of the Construction Notice to Proceed, in accordance with the specification subsection in Section 01 33 00 entitled "Submittals";
- (c) Prosecute the work diligently;
- (d) Fully complete the entire work ready for use not later than **November 1, 2024**.

H.2 CONTRACT MILESTONES

Contractor shall achieve the following milestone dates:

Falls Creek Diversion Rehabilitation Project - The project shall be Substantially Complete by November 1, 2024.

H.3 LIQUIDATED DAMAGES - CONSTRUCTION

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay to the Tribes, as liquidated damages, and without necessity of proof of actual damages, the following amounts:

(1) Construction management and contract administration costs. - Liquidated damages for additional construction management and contract administration costs will be assessed at \$1,000 for each calendar day after the contract specified completion date for the initial 5 days and increasing to \$10,000 for each calendar day after the 6th day of exceeding the specified completion date.

(b) If the onsite work is not completed by November 1, 2024, the Tribes will take one of the following actions:

- (1) time as may be required for final completion of the work together with any increased costs occasioned the Tribes in completing the work.
- (2) Allow the Contractor to complete the work if, in the opinion of the Contracting Officer, it is in the best interest of the Tribes. The resulting damage will consist of liquidated damages until the work is completed or accepted.

H.4 LIQUIDATED DAMAGES – INDIAN EMPLOYMENT

(a) In the event the Contractor fails to comply with the Indian Employment provisions for employment as contained in the contract clause in subsection I.7, entitled "Indian Employment" the Contractor shall pay to the Tribes, as liquidated damages, the following amounts:

(1) Employment. For each instance where the Contractor fails to comply with the employment provisions subsection I.7 entitled "Indian Employment", the amount of damages shall be an amount equal to 100 percent of

the gross wages and earnings paid to non-Indian employees who were working in a position where qualified Indian Employment employees were available at the time of hire of the non-Indian employee.

(b) This clause shall also apply to and be incorporated into all subcontracts at any tier.

H.5 PERFORMANCE OF WORK BY THE CONTRACTOR

The Contractor shall perform on the site, and with its own organization, work equivalent to at least 40 percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Tribes.

H.6 SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

(a) The Contractor acknowledges that it has taken steps necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) the wide range of uncertainties of weather, reservoir water surface elevations, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground and existing structures of all types; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered at the site. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Tribes.

(b) The Tribes assume no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Tribes. Nor do the Tribes assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

H.7 TECHNICAL DATA SUBMITTAL REQUIREMENTS

(a) Technical data required to be provided to the Tribes are described in specification Section 01 33 00, entitled "Submittals".

(b) If the Contractor fails to provide required technical data within the time(s) specified in this contract, or any authorized extension, such failure shall be considered to demonstrate unsatisfactory progress. The following rights and remedies are available to the Tribes:

(1) Retention from progress or other payments under this contract such amount(s) considered adequate protection to the Tribes therefore.

(2) Assessment, by the Tribes of all damages caused by such failure against the Contractor and its sureties.

(3) Termination of the Contractor's right to proceed with the work that has been delayed by reason of such failure.

(c) The rights and remedies of the Tribes stated in this clause are in addition to any other rights and remedies provided by law or under this contract.

H.8 SCHEDULES FOR CONSTRUCTION CONTRACTS

(a) The Contractor shall develop, maintain, and use the following construction schedules to plan and monitor the accomplishment of the overall scope of work under this contract. The construction schedule requirements under this contract are also supplemented with the provisions of specification Section 01 32 10 entitled "Construction Program".

(1) Construction schedule - The Contractor shall submit for approval a practicable schedule showing the order in which the Contractor proposes to perform the work and the date on which the Contractor contemplates starting and completing the salient features of the work (including acquiring materials, plant, and equipment). The Contractor shall consider seasonal weather conditions in the planning and scheduling of all work to ensure the completion in

compliance with the contract milestones. The schedule shall also include activity lines for each submittal required under specification Section 01 33 00, entitled "Submittals," with allowances for all review time indicated in these specifications. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. Failure to include any element of the work in the construction schedule shall not excuse the Contractor from completing all required work under the contract.

(2) Updated Construction schedule – The Contractor shall submit, for approval, an updated schedule, any time the Contractor revises the projected start and/or finish dates or activity duration.

(3) Construction Progress schedule – The Contractor shall submit a construction progress schedule, comparing actual construction progress with the approved construction schedule and/or any approved updated or supplementary schedule. The actual progress for each schedule activity shall be shown adjacent to the original approved construction schedule activity line. This updated progress schedule shall be submitted with each monthly progress payment request and shall include all actual start and completion dates incurred up to the end of the reporting period. This progress schedule shall also show any revised start dates in comparison to the original approved schedule.

(4) Supplementary schedule – A supplementary schedule shall be submitted whenever the contractor changes the planned work sequence.

(b) The Contractor and Tribal representatives shall meet monthly at the project office at a time mutually agreed upon by both parties for the express purpose of reviewing the actual progress made to date on the contract work in preparation for updating the current construction schedule. The review shall establish the dates activities were actually started and completed and the remaining duration for each activity started but not completed during the period. Milestone dates of key or major construction items, for work not yet performed, shall not be adjusted without the approval of the Contracting Officer. Adjustment of milestone dates without the Contracting Officer's approval may warrant the construction schedule invalid and unacceptable for submitting with progress payment requests. If, upon completion of the progress review meeting, the construction schedule requires updating, the Contractor shall update the schedule using the mutually agreed upon data and submitting an updated construction schedule to the Contracting Officer.

(c) If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Tribes. In this circumstance, the Contracting Officer may require the contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant; and, to submit for approval an updated schedule as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained so as to meet key construction activity milestone dates. An update of the schedule shall be submitted whenever the contractor changes the planned work sequence while its actual progress is behind the approved schedule.

(d) If the Contractor fails to submit an approved construction schedule, annotated schedule, or supplementary schedule as required by this paragraph, and within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule(s).

(e) Failure of the Contractor to comply with the requirements of this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

H.9 CONTRACTOR'S ADMINISTRATION PERSONNEL

The Contractor shall designate a person who will be in charge of overall administration of this contract. The following information shall be submitted **[RSN-H.8]**:

Name: _____
 Title: _____
 Address: _____
 City and State: _____
 Telephone No: _____

H.10 CONTRACTOR'S PAYMENT PERSONNEL

The Contractor shall designate the person who may be contacted for bank account and/or payment information. The following information shall be submitted **[RSN-H.9]**:

Name: _____
Title: _____
Address: _____
City and State: _____
Telephone No.: _____

H.11 PHYSICAL DATA

Data and information furnished or referred to herein is for the Contractor's information. The Tribes shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

SECTION I - CONTRACT CLAUSES

SUBSECTION I.1 - CLAUSES INCORPORATED BY REFERENCE

This contract incorporates one or more Federal Acquisition Regulation (FAR) clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es): <https://www.acquisition.gov/sites/default/files/current/far/pdf/FAR.pdf>

Throughout the referenced FAR clauses, wherever words or terms relating to the Government, Federal Government, or Federal Contracts are used, they may also mean the "Confederated Salish and Kootenai Tribes," "Tribal Government," and "Tribal Contracts" when properly interpreted in accordance with the clause in this solicitation entitled "Ownership and Responsibilities."

SUBSECTION I.2 - AUTHORITY

I.2.1 DEFINITIONS

"Contracting Officer" means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The Contracting Officer is the authorized representative for the Confederated Salish and Kootenai Tribes for all matters under this contract. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

For the purposes of these specifications, the following definitions shall apply:

- (a) Contracting Officer. – Tribal Council Chairman, Confederated Salish and Kootenai Tribes. The Contracting Officer is responsible for overall administration of this contract and can be contacted at the address provided below:

Mailing:

Confederated Salish and Kootenai Tribes
Tribal Council Chairman
Attn: Mark Simpson – DEWR
33019 Quequesah Drive
Ronan, MT 59864

Physical:

33019 Quequesah Drive
Ronan, MT, 59864
Phone: (406) 675-2700 ext. 1283

If the Tribal Council Chairman is unavailable at any time, the acting Tribal Council Chairman is authorized to function as the Contracting Officer.

- (b) Tribes. - Confederated Salish and Kootenai Tribes (CSKT).

- (c) Contracting Officer's Representative (COR). – Confederated Salish and Kootenai Tribes Division of Engineering and Water Resources Irrigation Infrastructure Program Manager, in accordance with the clause in subsection I.2 entitled "Technical Direction."

The address for the Contracting Officers Representative (COR) is:

Mailing:

Confederated Salish & Kootenai Tribes
Division of Engineering and Water Resources 33019 Quequesah Drive
Attn: COR – Mr. Mark Simpson
33019 Quequesah Drive
Ronan, MT 59864

Physical:

Ronan, MT, 59864
Phone: (406) 675-2700 ext. 1283

I.2.2 AUTHORITIES AND LIMITATIONS

- (a) Authority to modify this contract on behalf of the Tribes is expressly limited to authorized persons who are properly designated as Contracting Officers.

(b) Authority of the Contracting Officer's Representative, properly appointed as such is limited to the duties outlined in the clause in subsection I.2 entitled "Technical Direction."

(c) Except as otherwise may be expressly provided in this contract, the Contractor assumes all risks, liabilities, and consequences of performing this contract in accordance with any written or oral order (including but not limited to direction, instruction, interpretation, or determination) of a person not authorized in writing to issue such an order.

I.2.3 COMPLIANCE WITH TRIBAL ORDERS

(a) Except as provided in (b) below, the Contractor shall, without unnecessary delay, comply with any written or oral order of the Contracting Officer or his or her authorized representative. For the purpose of this clause, written or oral order includes any direction, instruction, interpretation, or determination, including those related to drawings, other technical data, samples, and literature.

(b) If the Contractor considers that the order was issued without proper authority, it may and if it also considers such order to be a change pursuant to paragraph (b) of the clause in subsection I.5 entitled "Changes," it shall immediately request written confirmation from the Contracting Officer, and any performance pending receipt of such confirmation shall be subject to the provisions of paragraph (c) of the clause in subsection I.2 entitled "Authorities and Limitations."

I.2.4 ORDER OF PRECEDENCE - CONSTRUCTION

Any inconsistency in this solicitation shall be resolved by giving precedence in the following order:

- (a) The solicitation, bid, and award form (CSKT Form D), bidding schedule, and contract requirements;
- (b) The bid solicitation documents;
- (c) The other bid submittal documents;
- (d) Contract clauses;
- (e) Other documents, exhibits, and attachments, excluding the specifications and drawings;
- (f) The specifications and;
- (g) The drawings.

I.2.5 AUDIT AND RECORDS

(a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in another form.

(b) *Cost or pricing data.* If the Contractor has submitted cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer or a designated representative shall have the right to examine and audit all books, records, documents, and other data of the Contractor (including computations and projections) related to negotiating, pricing, or performing the modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. In the case of pricing any modification, the Contracting Officer shall have the same rights.

(c) *Indian Employment Compliance Audits.* The Contracting Officer or a designated representative shall have the right to examine and audit all books, records, documents, and other data of the Contractor related to negotiating, pricing and procuring subcontracts, service contracts, materials, supplies and equipment used in performing work under this contract, in order to evaluate the contractor's compliance with the provisions of the contract clause in Subsection I.7 entitled "Indian Preference."

(d) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in paragraphs (a),(b)and (c) above, for examination, audit, or reproduction, until 3 years after final payment under this

contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the clause in subsection I.2 entitled "Disputes" or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) This clause shall be inserted into all subcontracts at any tier, altering the clause only as necessary to identify properly the contracting parties and the contracting officer under the Tribes' prime contract.

I.2.6 DISPUTES

(a)(1) This Project consisting of improvements to the Falls Creek Diversion will be constructed by the Confederated Salish and Kootenai Tribes, utilizing funds appropriated to the Tribes, and will be administered by the Natural Resources Department.

(2) This construction contract will be let by the Confederated Salish and Kootenai Tribes. The Tribes will enter into a contract with a construction contractor ("Contractor") to have the Contractor perform the construction work described in this project document. The Tribes will make payment for the work to the Contractor from federal funds transferred to the Tribes for the purpose of operating the Bureau of Indian Affairs (BIA) Flathead Indian Irrigation Project (FIIP) on the Flathead Indian Reservation.

(b) By signing this contract the Tribes and Contractor acknowledge their acceptance of the terms of this section and each party expressly waives any defenses or objections, including sovereign immunity, it may have to the exercise of personal and subject matter jurisdiction by the Court of the Confederated Salish and Kootenai Tribes for claims arising under or relating to this contract.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the contract until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the contract. The submission may be converted to a claim under the contract, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon within ten days.

(d)(1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. Notice of a claim by the Tribes against the Contractor will be made in writing by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and

(iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Tribes are liable.

(3) (i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by -

(A) A senior company official in charge at the Contractor's plant or location involved; or

(B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be in writing and shall be final unless the Contractor appeals or files a suit as provided in this section.

(g) The Tribes shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

1.2.7 SUPERINTENDENCE BY THE CONTRACTOR

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

1.2.8 TECHNICAL DIRECTION

(a) The performance of work hereunder will be subject to the technical direction of a COR (Contracting Officer's Representative), who will be appointed, in writing, by the Contracting Officer. The term "technical direction" is defined to include, without limitation, the following:

- (1) Provision of information to the Contractor pertaining to the interpretation of drawings, specifications, or technical portions of the work description.
- (2) Review and, where required by the contract, approval of technical reports, drawings, specifications, and technical information to be delivered by the Contractor under the contract.

(b) Technical direction must be within the general scope of work stated in the contract. The COR does not have the authority to issue any technical direction which (1) constitutes an assignment of additional work outside the scope of the contract; (2) constitutes a change as defined in the clause in subsection I.5 entitled "Changes;" or (3) changes any of the expressed terms, conditions, or specifications of the contract. The COR shall notify the Contracting Officer well in advance of the anticipated issuance of any technical directions which the COR feels may fall within categories (1) through (3) above to receive guidance on how to proceed with issuance of such direction. All technical direction of a significant nature shall be issued, in writing, by the COR or shall be confirmed, in writing, within 5 working days after issuance.

(c) The Contractor shall proceed promptly with the performance of technical directions duly issued by the COR. If, in the opinion of the Contractor, an instruction or direction issued by the COR is within one of the categories listed in (b)(1) through (3) above, the Contractor shall proceed, and shall notify the Contracting Officer in writing within 2 working days after the receipt of any such instruction or direction. Upon receiving such notification from the Contractor, the Contracting Officer shall issue an appropriate contract modification or advise the Contractor, in writing, that, in his or her opinion, the technical direction is within the scope of this clause and does not constitute a change under the clause in subsection I.5 entitled "Changes." The Contractor shall thereupon proceed immediately with the directions given. A failure of the parties to agree upon the nature of the instruction or direction, or upon the contract action to be taken with respect thereto shall be subject to the provisions of the clause in subsection I.2 entitled "Disputes."

I.2.9 PRIVACY ACT NOTIFICATION

FAR Clause 52.224-01 (April 1984) is incorporated in accordance with the provisions of Section I.1, entitled “Clauses Incorporated By Reference.”

I.2.10 PRIVACY ACT

FAR Clause 52.224-2 (April 1984) is incorporated in accordance with the provisions of Section I.1, entitled “Clauses Incorporated By Reference.”

SUBSECTION I.3 - PERFORMANCE

I.3.1 INCORPORATED CLAUSES

The following FAR Clauses are incorporated in accordance with the provisions of Section I.1, entitled “Clauses Incorporated by Reference.”

FAR Clause	Title	Date
52.209-06	Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment	Oct 2015
52.228-05	Insurance-Work on a Government Installation	January 1997
52.246-19	Warranty of Systems and Equipment under Performance Specifications or Design Criteria	May 2001
52.246-20	Warranty of Services	May 2001
52.246-21	Warranty of Construction	March 1994
52.236-08	Other Contracts	April 1984
52.236-09	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements	April 1984
52.236-10	Operations and Storage Areas	April 1984
52.236-11	Use and Possession Prior to Completion	April 1984
52.236-12	Cleaning Up	April 1984
52.236-13	Accident Prevention	November 1991
52.236-21 Alt I	Specifications and Drawings for Construction Alternate I	April 1984
52.242-13	Bankruptcy	July 1995
52.249-02 Alt I	Termination for Convenience of the Government (Fixed Price) Alternate I	September 1996
52.253-01	Computer Generated Forms	January 1991

I.3.2 PERFORMANCE AND PAYMENT BONDS

(a) Performance and Payment bonds. - Submittals shall be in accordance with this paragraph and specification Section 01 33 00 entitled “Submittals”. For contracts that exceed \$25,000, the Contractor shall furnish performance and payment bonds to the Tribes as follows:

(1) Performance bond [RSN-2]. Performance bond with a surety or sureties approved by the Contracting Officer, securing performance and fulfillment of the Contractor's obligations under this contract, with a penal amount of not less than 100 percent of the price of the contract at the time of award.

(2) Payment bond [RSN-3]. Payment bond with a surety or sureties approved by the Contracting Officer, assuring payment as required by law to all persons supplying labor or material in the prosecution of the work provided for in this contract, with a penal amount of not less than -

(i) 50 percent of the contract price if the contract price is not more than \$1,000,000.

(ii) 40 percent of the contract price if the contract price is more than \$1,000,000 but not more than \$5,000,000.

(iii) \$2,500,000 if the contract price is more than \$5,000,000.

(3) Individual sureties. Bonds which are pledges of assets from individual sureties will not be accepted.

(4) Costs. The cost of furnishing performance and payment bonds shall be included in the lump-sum price bid in the schedule for mobilization and preparatory work.

(b) Requirements for execution of surety bonds. Each surety company bond (bid, performance, or payment), that purports to have been executed by an agent or attorney-in-fact for the corporate surety, is required to have submitted with it a power of attorney to the signatory agent or attorney-in-fact, and (1) be executed by the corporate surety upon a date reasonably proximate to the date of the bond, or (2) the power of attorney shall be accompanied by a certification of the surety to the effect that the power of attorney was in full force and effect upon a date reasonably proximate to the date of the bond.

See CSKT Form B entitled "Performance Bond" and CSKT Form C entitled "Payment Bond" included in section G, "Forms."

I.3.3 ADDITIONAL BOND SECURITY

The Contractor shall promptly furnish additional security required to protect the Tribes and persons supplying labor or materials under this contract if -

(a) Any surety upon any bond furnished with this contract becomes unacceptable to the Tribes;

(b) Any surety fails to furnish reports on its financial condition as required by the Tribes; or

(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer.

I.3.4 LIABILITY INSURANCE

(a) The Contractor shall procure and maintain during the term of this contract and any extension thereof, liability insurance in form satisfactory to the Contracting Officer by an insurance company which is acceptable to the Contracting Officer. The named insured parties under the policy shall be the Contractor, the Confederated Salish & Kootenai Tribes, Stantec, and the United States of America. The amounts of the insurance shall not be less than as follows:

\$500,000	each person
\$500,000	each occurrence
\$500,000	property damage
\$2,000,000	aggregate

(b) Each policy or certificate evidencing the insurance shall contain an endorsement which provides that the insurance company will notify the Contracting Officer 30 days prior to the effective date of any cancellation or

termination of the policy or certificate or any modification of the policy or certificate which adversely affects the interest of the Tribes in such insurance. The notice shall be sent by registered mail and shall identify this contract, the name and address of the contracting office, the policy, and the insured.

(c) Submittals **[RSN-4]**. The Contractor shall submit acceptable evidence showing that the insurance coverage described in this clause has been obtained for all Contractor and subcontractor activities.

I.3.5 PERMITS AND RESPONSIBILITIES

The Contractor shall, without additional expense to the Tribes, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, Tribal, or other applicable laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that arise out of or result from the Contractor's acts, errors or omissions, and shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

I.3.6 ADMINISTRATION OF OTHER CONTRACTS

(a) The Contractor shall permit the Tribes and other contractors engaged by the Tribes to use the street installations and other facilities provided to, constructed by, or acquired by the Contractor for use in the performance of work on the site, to the extent that such facilities are available. Such use shall be without charge to the extent that it (i) does not entail significant additional costs to the Contractor for maintenance or operation and/or (ii) is already so required under this contract.

(b) The Tribes shall not be liable for any such additional costs to the Contractor that are caused by the Contractor or such other contractors engaged by the Tribes.

I.3.7 SAFETY AND HEALTH

(a) The Contractor shall not require any person employed in the performance of this contract (including subcontracts) to work under conditions which are unsanitary, hazardous, or dangerous to the employee's health or safety.

(b) In addition to the requirements of the clause in subsection I.3 entitled "Accident Prevention," the Contractor shall also comply with the Occupational Safety and Health Administration (OSHA) standards.

(c) Submittals. - Submittals shall be in accordance with this paragraph and Section 01 33 00 entitled "Submittals".

(1) **[RSN-5]**. - The Contractor shall submit a written proposed safety program.

(2) The Contractor shall maintain an accurate record of and shall report to the Contracting Officer's Representative in the manner prescribed by the Contracting Officer's Representative all cases of death, occupational diseases, or injury to employees or the public involved, and property damage in excess of \$2,500 occurring during performance of work under this contract.

(d) Whenever the Contracting Officer or Contracting Officer's Representative becomes aware of any noncompliance with these requirements, the requirements of the clause in I.3 entitled "Accident Prevention," or any condition which poses a serious or imminent danger to the health or safety of onsite personnel, the public, or Tribal personnel, the Contracting Officer or Contracting Officer's Representative shall notify the Contractor and request immediate initiation of corrective action. This notice, whether oral or written, when delivered to the Contractor or the Contractor's representative at the worksite by the Contracting Officer, the Contracting Officer's Representative and/or Tribal inspection staff, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop

work order issued under this clause.

(e) The rights and remedies of the Tribes provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(f) In the event there is a conflict between the requirements contained in any of the safety documents referenced herein, the more stringent requirement shall prevail.

(g) The Contractor or subcontractor shall insert in any subcontracts the provisions of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions of this clause.

I.3.8 DEFAULT (FIXED-PRICE CONSTRUCTION)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Tribes may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Tribes may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the worksite necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Tribes resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Tribes in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if -

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Such causes include (i) acts of God or of the public enemy, (ii) acts of the Tribes in either its sovereign or contractual capacity, (iii) acts of another Contractor in the performance of a contract with the Tribes, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to review under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Tribes (see incorporated FAR clause 52.249-02 Alt I).

(d) The rights and remedies of the Tribes in this clause are in addition to any other rights and remedies provided by law or under this contract.

I.3.9 ADMINISTRATION OF DEFAULT (FIXED-PRICE CONSTRUCTION)

The term "unusually severe weather," as used in paragraph (b)(1) of the clause in subsection I.3 entitled "Default (Fixed-Price Construction)" means weather which at the time of the year in which it occurred, and for the place in which it occurred, exceeded all prior recorded occurrences for the seasonal period in which it occurred. No matter how severe or destructive, if the weather did not exceed all prior recorded occurrences for the particular seasonal period and place, or if a Contractor could have reasonably foreseen it, the Contractor is not entitled to an extension in contract time.

I.3.10 MANDATORY PRECONSTRUCTION CONFERENCE

The Contracting Officer will hold a mandatory preconstruction conference after award of the Contract. The following

Contractor's personnel shall attend the mandatory preconstruction conference. Project Manager, Superintendent, Safety and Health Officer, Scheduler, Quality Control Manager, field supervisors, and any major subcontractors, major vendors, and other key personnel. In addition the Contractor or the Contracting Officer may designate other personnel to attend the mandatory preconstruction conference. The Tribes shall not be liable for any increased cost or extension of the required delivery schedule as a result of the requirements of this clause.

I.3.11 RIGHTS-OF-WAY

Unless otherwise specified in this contract, the Tribes shall provide the site for permanent works or installations, and right-of-way only on land owned by the Tribes for access thereto. The Contractor shall be permitted to use such land for construction work under this contract, but any additional right-of-way, land, or land use desired by the Contractor for construction work under this contract shall be provided by the Contractor without expense to the Tribes.

SUBSECTION I.4 - QUALITY ASSURANCE

I.4.1 MATERIAL AND WORKMANSHIP

FAR Clause 52.236-05 (April 1984) is incorporated in accordance with the provisions of Section I.1, entitled "Clauses Incorporated By Reference."

I.4.2 INSPECTION AND ACCEPTANCE

- (a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.
- (b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. Before the start of the work, submit a Quality Control Plan for approval [RSN-6]. The Contractor shall maintain complete inspection records and make them available to the Contracting Officer or the COR. All work shall be conducted under the general direction of the Contracting Officer or the COR, and is subject to Tribal inspection and test at all places and at all reasonable times before acceptance.
- (c) Tribal inspection and tests are for the sole benefit of the Tribes and do not -
 - (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
 - (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
 - (3) Constitute or imply acceptance; or
 - (4) Affect the continuing rights of the Tribes after acceptance of the completed work under paragraph (i) below.
- (d) The presence or absence of a Tribal inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.
- (e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The Tribes may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes re-inspection or retest necessary. The Tribes shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
- (f) The Contractor shall, without charge, replace or correct work found by the Tribes not to conform to contract requirements, unless in the public interest the Tribes consent to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Tribes may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor or (2) terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the Tribes decide to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall be responsible for the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Tribes shall accept, as promptly as practicable after completion and inspection, all satisfactorily completed work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Tribes rights under any warranty or guarantee.

I.4.3 WARRANTY OF CONSTRUCTION

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph

(i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Tribes takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Tribes takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Tribes-owned or controlled real or personal property, when that damage is the result of—

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Tribes shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Tribes; and

(3) Enforce all warranties for the benefit of the Tribes, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Tribes may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Tribes nor for the repair of any damage that results from any defect in Tribal-furnished material or design.

(j) This warranty shall not limit the Tribes' rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(k) The Contractor shall furnish original documents of all Warranties Certifications to the Tribes prior to acceptance of products or work by the Tribes. **[RSN- 7]**

(l) The Contractor will attend a warranty walk-thru inspection at the Project site that is scheduled by the Contracting Officer 11 months after substantial completion of the Project. The walk-thru inspection will be for the purpose of determining if products or work covered by warranties are in compliance with the warranties coverage.

SUBSECTION I.5 - ADJUSTMENTS

I.5.1 INCORPORATED CLAUSES

The following FAR Clauses are incorporated in accordance with the provisions of Section I.1, entitled “Clauses Incorporated By Reference.”

FAR Clause	Title	Date
52.214-27	Price Reduction for Defective Cost or Pricing Data - Modifications - Sealed Bidding	August 2011
52.214-28	Subcontractor Cost or Pricing Date - Modifications - Sealed Bidding	October 2010
52.229-03	Federal, State and Local Taxes	February 2013
52.233-03	Protest After Award	August 1996
52.244-2	Subcontracts (Fixed Price Contracts)	October 2010
52.248-03	Value Engineering - Construction	October 2015

I.5.2 VARIATION IN ESTIMATED QUANTITY

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party.

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above the estimated quantity, an equitable adjustment in the contract price shall be made as follows.

- (a) The Contractor shall notify the Contracting Officer within 5 days of discovery, that a unit-priced item has reached 90 percent of the estimated quantity listed in the bidding schedule.
- (b) An assessment will be made by the Contracting Officer as to whether the actual quantity will exceed 100 percent of the estimated quantity, and by how much.
- (c) The Contracting Officer and the Contractor will negotiate to determine a unit price for any additional quantity of work above 115 percent of the estimated quantity and the contract shall be modified accordingly.
- (d) Under no circumstance shall the Contractor perform any work in excess of 100 percent of an estimated quantity, unless so directed by the Contracting Officer, or issued in a modification to this contract.

The equitable adjustment for bid item quantities which exceed 115 percent of the estimated quantity shall be based upon the cost of performing the work, in a reasonable and prudent manner, plus reasonable mark-ups for overhead and profit. The equitable adjustment for bid item quantities which are below 85 percent of the estimated quantity shall be based upon the difference between the Contractor’s actual unit costs and the unit price bid; and adjustments shall only be made on the difference between the actual quantity performed and 85 percent of the estimated quantity contained in the bid schedule.

This clause shall also apply to all subcontracts under the contract.

I.5.3 SUSPENSION OF WORK

- (a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Tribes.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 10 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

I.5.4 DIFFERING SITE CONDITIONS

(a) The Contractor shall promptly, and in no case longer than 48 hours following discovery and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown and unknowable physical conditions at the site, of an extraordinary nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required: Provided, that the time prescribed in (a) above for giving written notice may be extended in writing by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

I.5.5 CHANGES

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes

(1) In the specifications (including drawings and designs);

(2) In the method or manner of performance of the work;

(3) In the Tribal- or Government-furnished facilities, equipment, materials, services, or site; or

(4) Directing acceleration in the performance of the work, **except that**, this clause shall not apply in instances when the Contracting Officer directs increased Contractor activities to meet milestone dates in the approved construction schedule, under the Clause in Section H.7 entitled, "Schedule for Construction Contracts," and/or under Section H.1 entitled "Commencement, Prosecution and Progress of Work."

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretations, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause: Provided, That within the time frame established in paragraph (e) below, the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances, and source of the order and (2)

that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 10 days before the Contractor gives written notice as required.

(e) The Contractor must assert its right to an adjustment under this clause within 10 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of proposal, unless this period is extended by the Tribes. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.

(f) When costs are or will be a factor in any Contractor proposal or claim for a contract price adjustment pursuant to this clause, or any other clause of this contract, the Contractor (including its applicable subcontractors) shall maintain sufficient records and data to establish the cost of the work in accordance with the applicable contract cost principles and procedures, as defined in 48 CFR 31.

(g) Whenever the estimated cost of a proposal or claim, or series of related proposals or claims, will exceed \$100,000, the Contractor, for each such proposal or claim, or series of related proposals or claims, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allowable credits) of work, both changed and not changed, allocable to the proposal(s) or claim(s). The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the proposal(s) or claim(s); or the matter is conclusively disposed of in accordance with the clause in subsection I.2 entitled "Disputes."

(h) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

I.5.6 CHANGE ORDER/CLAIM ACCOUNTING - MODIFICATION

(a) When costs are or will be a factor in any Contractor proposal or claim for a contract price adjustment pursuant to the clause in subsection I.5 entitled "Changes" or any other clause of this contract, the Contractor (including its applicable subcontractors) shall maintain sufficient records and data to establish the cost of the work in accordance with the applicable 48 CFR 31 (FAR) contract cost principles and procedures.

(b) Whenever the estimated cost of a proposal or claim, or series of related proposals or claims, will exceed \$50,000, the Contractor, for each such change or claim, or series of related changes or claims, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allowable credits) of work, both changed and not changed, allocable to the change(s) or claim(s). The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the change(s) or claim(s); or the matter is conclusively disposed of in accordance with the clause in subsection I.2 entitled "Disputes."

I.5.7 CONTRACTOR MODIFICATION PROPOSALS

The Contractor shall, in connection with any proposal it makes for a contract modification, furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as any profit, and shall cover all work involved in the modification, whether such work was deleted, added, or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown, together with an evaluation by the prime contractor of its reasonableness. If the modification proposal includes a time extension, the Contractor shall furnish a justification for such time extension. The modification proposal, together with the price breakdown and time extension justification, where applicable, shall be furnished within the time specified by the contract or as specified by the Contracting Officer.

I.5.8 EQUIPMENT OWNERSHIP AND OPERATING EXPENSE

(a) General. Adjustments allowed under the clauses in subsection I.5 entitled "Changes," "Differing Site Conditions," or "Suspension of Work" include allowance for ownership of equipment owned by the Contractor or any subcontractor and available in good operating condition at the worksite. Allowances for equipment ownership and operating expense shall be based on the Contractor's actual cost records complying with the FAR Part 31 when such data can be determined for ownership and operating expense, for each piece of equipment, or group of similar equipment, from the Contractor's accounting records, pursuant to paragraph (b) below. For fully depreciated equipment, however, see paragraph (c). Except for fully depreciated equipment when costs cannot be so determined, the use of the schedule prescribed in paragraph (d) below shall govern.

(b) Actual costs. The Contractor shall furnish a complete description of each item of equipment involved in any request for adjustment, listing the date of manufacture, date of acquisition, make, model, size, capacity, mounting, type of power, and any and all accessory equipment which is attached thereto for use under the particular work to be performed. The Contractor shall furnish acceptable evidence of his acquisition cost of new or used equipment. Acquisition cost is defined as the Contractor's original purchase price, including sales tax less salvage value, if any. The acquisition cost of the unit of equipment shall include all accessories and expendable components required for a specific equipment utilization. If used equipment is reconditioned and recapitalized, its acquisition cost shall be adjusted to the recapitalized value shown in the Contractor's accounting records. If acceptable evidence to determine acquisition cost is not supplied, the Contracting Officer shall determine the same by any means he may deem appropriate.

(c) Fully depreciated equipment.

(1) No depreciation or rental shall be allowed on equipment fully depreciated by the Contractor or by any division, subsidiary, or affiliate under common control.

(2) Notwithstanding paragraph (c)(1) above, a reasonable charge for using fully depreciated property may be agreed upon and allowed. Such use charge shall not exceed 50 percent of the depreciation that would have otherwise been determined in accordance with paragraph (d).

(3) Facilities capital cost of money shall not apply to fully depreciated equipment.

(d) Predetermined schedule. Allowance for depreciation, taxes, insurance, and incidental costs not covered in (b) or (c) above shall be calculated using the Tables in the Contractor's Equipment Manual, 1974 Edition, published by the Associated General Contractors of America (AGC) as prescribed herein, without regard for the provisions and examples included in the manual, and shall constitute the hourly cost of equipment ownership. Allowance for items not included in the AGC tables shall be based on the most similar equipment listed as determined by mutual agreement or by the Contracting Officer, upon failure to reach agreement.

(1) Depreciation. The expense per working hour for depreciation shall be determined by multiplying the acquisition cost as defined in paragraph (b) above, by the percentage given in the "Depreciation" column of the manual and by dividing by the number shown in the "Average Use Hours Per Year" column.

(2) Taxes, insurance, and incidentals. The expense per working hour for taxes, insurance, and incidentals will be determined by multiplying the acquisition cost by 3 percent and dividing by the average number of hours use per year determined as in (1) above. The amount allowed hereunder shall not be duplicated in any general allowance for overhead.

(e) Idle or standby time. Equipment ownership expense for idle or standby time for adjustments under the clauses in subsection I.5 entitled "Changes," "Differing Site Conditions," or "Suspension of Work" is allowable as provided in FAR 31.205-17 and shall be determined as follows:

(1) Allowance shall be made at 50 percent of the hourly rate for ownership costs in paragraph (b) or (d) above.

(2) No costs shall be allowed for time when the equipment would have been otherwise idle or not in good

operating condition.

(3) A maximum of 40 hours per week will be allowed. No allowance will be made for Saturdays, Sundays, or holidays, when work is not actually performed.

(4) Periods of time less than 2 hours on which equipment is down for normal and regular servicing and for minor field repair or field maintenance shall be considered as operating rather than idle time and such periods will not be deducted from use or operating time.

(5) No costs are allowable for fully depreciated equipment.

(f) Small tools. Small tools shall mean all items having a replacement value of less than \$500. For modifications in excess of \$100,000, small tool allowances shall be based on information furnished by the Contractor. For contract modifications amounting to \$100,000 or less, at the option of the Contracting Officer, an allowance for small tools not to exceed 5 percent of direct labor may be made.

(g) Equipment operating expense. Allowances for the cost of operating equipment such as operating crew labor, servicing labor and equipment, labor and parts for all repairs, fuel, oil, grease, and supplies will be in addition to the amounts allowed for equipment ownership expense. Equipment operating expense allowances shall be based on the Contractor's cost records or other sources complying with FAR Part 31 as approved by the Contracting Officer. For forward-priced adjustments, operating expense figures developed for use by the Contractor in estimating or bidding, generally from historical accounting records or actual cost experience under this contract, will be accepted if evidence thereof, satisfactory to the Contracting Officer, is furnished.

(h) In lieu of the foregoing, if mutually agreed to by the Contractor and the Contracting Officer, equipment ownership and operating costs per hour may be taken from the most recent edition of the "Cost Reference Guide for Construction Equipment," published by Equipment Watch, Primedia Magazines & Media Inc., or the from the U.S. Army Corps of Engineers "Construction Equipment Ownership and Operating Expense Schedule" for the State in which the construction site is located.

SUBSECTION I.6 - PAYMENTS

I.6.1 PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS

FAR Clause 52.232-5 (May 2014) is incorporated in accordance with the provisions of Section I.1, entitled "Clauses Incorporated By Reference."

I.6.2 ADMINISTRATION OF PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS

(a) All invoices for payment shall be submitted with a completed form CSKT Form H entitled "Invoice Certification and Request for Payment," included in section G, "Forms." [RSN-8]

(b) Material delivered on the site may be included in a request for payment only if the Contractor furnishes satisfactory evidence (1) that the Contractor has acquired title to such material, (2) that the material shall be used to perform the contract, and (3) the material meets the requirements contained in this solicitation/specifications.

(c) Material delivered to the Contractor at locations other than the worksite may be included in a request for payment only if (1) the three conditions in paragraph (a) above are met and (2) the Contracting Officer elects to authorize such inclusion.

(d) Except as otherwise provided in the clause in subsection I.6 entitled "Mobilization," no preparatory work shall be included in the estimates.

(e) To constitute a proper invoice, an updated construction schedule as required under Clause H.7, entitled "Schedules for Construction Contracts," shall be included with the invoice.

(f) No payment will be authorized for work performed out of sequence of the approved construction schedule logic diagram. If work is performed in violation of the logic diagram sequence shown on the approved schedule,

but is performed in a logical sequence and in compliance with the contract requirements, the current approved logic diagram(s) shall be updated to correct the out of sequence condition, thereby, allowing approval of payment. Progress payments for incomplete activities will be approved only if the activity's original duration exceeds 15 workdays or 20 shifts and the activity is in process at the end of the billing period.

I.6.3 OTHER INVOICE REQUIREMENTS

(a) The Contractor shall submit a completed CSKT Form H with each invoice.

See CSKT Form H entitled "Invoice Certification and Request for Payment," included in section G, "Forms."

(b) To constitute a proper invoice, the Contractor shall submit an updated construction schedule as required by Clause H.7 entitled "Schedule for Construction Contracts," with all requests for payments under the contract. Changing milestone dates or activities on the required supplementary detailed logic diagrams or construction schedule progress updates without the concurrence of the Contracting Officer will not be acceptable; and therefore would constitute an improper invoice.

I.6.4 MOBILIZATION AND PREPARATORY WORK

(a) General. - For the purposes of providing for expenses incident to the initiation of construction and discouraging unbalanced bidding, an item has been included in the bidding schedule to provide for payment for mobilization and preparatory work. The item for payment for mobilization and preparatory work is intended to compensate the Contractor for operations including, but not limited to, those necessary for the movement of personnel, equipment, supplies, and incidentals to the project site; for the payment of premiums for bonds and insurance; for any necessary costs of acquisition of equipment, including purchase and mobilization expense; and for any other work and operations that must be performed or costs that must be incurred incident to the initiation of meaningful work at the site and for which payment is not otherwise provided for under the contract.

(1) All facilities, plant, and equipment that are established at or brought to the work site shall be deemed to be subject to the provisions of this clause unless the Contracting Officer specifically provides otherwise, in writing, for a particular item or items. The Contractor shall be solely responsible for the adequacy, efficiency, use, protection, maintenance, repair, and preservation of all facilities, plant, and equipment. The facilities, plant, and equipment covered by this clause shall not be dismantled or removed from the work site prior to completion of the work under the contract without the written permission of the Contracting Officer.

(2) All facilities, plant, and equipment on the work site also shall be subject to the Tribes' right to take possession of and utilize the same for the purposes of completion of the work as provided by the clause in subsection I.3 entitled "Default (Fixed-Price Construction)," should the Contractor's right to proceed be terminated thereunder. In addition, any encumbrance, lien, or other security interest on any such facilities, plant, or equipment shall be subordinated to the Tribes' rights under said default clause to utilize all facilities, plant, and equipment to complete the work under the contract, and the Contractor agrees to provide evidence of this, acceptable to the Contracting Officer.

(b) Payment. - Payment for mobilization and preparatory work shall be made at the lump-sum price bid therefore in the schedule which lump-sum price shall include the cost of all items and work in this section and the cost of developing the detailed logic diagram(s) and baseline schedule; furnishing the environmental bond; and furnishing performance and payment bonds. Progress payments for mobilization and preparatory work shall be made as follows:

(1) The total amount of premiums paid by the Contractor to obtain performance, payment, and environmental bonds, and premiums paid for specified insurance shall be paid at one time together with the first progress payment otherwise due, as provided in paragraph (e) of the clause in subsection I.6 entitled "Payments Under Fixed-Price Construction Contracts."

(2) When 5 percent of the total original contract amount is earned from other schedule items, \$100,000 or 50 percent of the amount bid for mobilization and preparatory work (whichever is the lower) shall be paid, exclusive of any amount already paid the Contractor for bond premiums and specified insurance premiums.

- (3) When 10 percent of the total original contract amount is earned from other schedule items, \$100,000 or the balance of the amount bid for mobilization and preparatory work (whichever is the lower) shall be paid.
- (4) If the amount bid for mobilization and preparatory work exceeds the total of the payments allowed under (2) and (3) above, the balance shall be paid when the contract work is substantially complete as determined by the Contracting Officer.
- (5) Progress payments for mobilization and preparatory work shall be subject to retainage as provided by the payments clause cited in (1) above. In addition, for the purposes of said clause, the item for mobilization and preparatory work shall not be considered to be a separate division of work, completion of which would permit the payment of the complete item price without retention.

I.6.5 INTEREST

FAR Clause 52.232-17 (May 2014) is incorporated in accordance with the provisions of Section I.1, entitled “Clauses Incorporated By Reference.”

I.6.6 AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR

Funds have been made available in Fiscal Years 2024 for the performance of this contract. These funds, if not expended in Fiscal Year 2024, may be "carried-over" to future years for expenditure in this contract. If the contract amount exceeds the amount of funds available for this contract in Fiscal Year 2024, the Tribes will pursue additional funding for Fiscal Year 2025.

The Tribes' obligation for performance of this contract beyond the amount of current available funds is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Tribes for any payment may arise for performance under this contract beyond the current available funds, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

I.6.7 ADMINISTRATION OF FUNDS

- (a) As used in this clause, the term "earnings" is defined as any amounts due the Contractor for performance of Schedule pay items, including contract adjustments and retained percentages, adjusted by offsets for any amounts due the Tribes.
- (b) Future availability of appropriated funds for this contract is anticipated at the following rate, which is provided for information purposes only. The Tribes do not warrant that all or any of the anticipated funds will be made available to the Contracting Officer for payment of earnings.

Fiscal year (October 1 through September 30)	Schedule (percent of bid)
2024	100%
2025	Balance

- (c) The Contracting Officer shall provide notice to the Contractor of any changes in funds available for earnings (including amount provided, period covered, and any other limitations applicable) by contract modification under the following circumstances:
 - (1) When funds are made available to the Contracting Officer for payment of earnings for each fiscal year or lesser period;
 - (2) When the amount of funds is reduced because the Contracting Officer determines that the amount available is in excess of that required to meet all anticipated earnings prior to the next fiscal year; or

(3) When existing funds are exhausted and no additional funds will be made available.

(d) The Contractor shall notify the Contracting Officer if it appears that the funds available for earnings will be exhausted within 30 days. The Contracting Officer may, if funds can be made available, advise the Contractor of the availability of additional funds in accordance with paragraph (c) above.

(e) Payment of earnings shall be made only from such appropriated funds as are available for this contract, whether from an annual or an interim appropriations act, after such funds are received by the Contracting Officer. No payment will be made for work done after funds have been exhausted, unless and until sufficient additional funds are made available to the Contracting Officer.

(f) Prosecution of the work at a rate that will exhaust the funds available for payment of earnings before the end of the fiscal year will be at the Contractor's sole risk; however, should the Contractor so elect, it may continue the work in accordance with the terms and conditions of the contract: Provided, That funds are available for inspection and supervision, of which the Contracting Officer will so notify the Contractor. No payment will be made for interest resulting from a Contractor's election to proceed with the work after funds have been exhausted.

(g) An equitable adjustment, in performance time only, shall be made for any increase in the time required for performance of any part of the work caused by an exhaustion of funds. However, any suspension, delay, interruption, or extension of time granted as a result of an exhaustion of funds shall not entitle the Contractor to any price adjustment under the clause in subsection I.5 entitled "Suspension of Work."

(h) Payment for equitable adjustments or for the settlement of claims to the Contractor, as determined in accordance with the clause in subsection I.2 entitled "Disputes," and the clause in subsection I.5 entitled "Changes," will not be made until funds are appropriated to the Tribes from the United States. The Contractor will be entitled to simple interest, from the date of the execution of the equitable adjustment or resolution of a dispute, as provided for under Clause in subsection I.6 entitled "Interest."

(i) If the Tribes fail to reserve additional funds for payment of earnings within 60 days after the beginning of a fiscal year following exhaustion of funds, the Contractor may, if it so elects, terminate this contract by written notice to the Contracting Officer. Such termination shall be at no cost to either party for the termination or as a result of the termination and shall not be subject to the terms of the clause in subsection I.3 entitled "Termination for Convenience of the Government."

I.6.8 ASSIGNMENT OF CLAIMS

FAR Clause 52.232-23 (May 2014) is incorporated in accordance with the provisions of Section I.1, entitled "Clauses Incorporated By Reference."

I.6.9 PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS

(a) FAR Clause 52.232-27 (January 2017) is incorporated in accordance with the provisions of Section I.1, entitled "Clauses Incorporated By Reference."

(b) With respect to this clause, to constitute a proper invoice the Contractor shall provide any other information or documentation required by the contract, including but not limited to construction schedule updates and revised estimates of monthly earnings.

I.6.10 CONTRACT PRICES - SCHEDULE

Payment for the various priced items set forth in the Schedule (Section F) shall constitute full compensation to the Contractor for providing all plant, equipment, machinery, materials, tools, supplies, transportation, labor and all other property, services, and expenditures for performing all operations required to complete the work in conformity with these specifications and all other requirements of this contract. All costs for work required by this contract not specifically mentioned in the Schedule; or not specifically mentioned in the measurement, payment, and cost statements shall be deemed to be included in the prices for the most applicable Schedule items.

When a separate item which includes furnishing of a material is provided in the Schedule, include the cost of furnishing, hauling, storing, and handling in the price bid in the Schedule for the item.

When a separate item is not provided in the Schedule for furnishing a material, include the cost of furnishing, hauling, storing, and handling in the price bid in the Schedule for work for which the material is required.

I.6.11 TRIBAL REQUESTS FOR PAYMENT

When requests (or demands) for payment are made to the Contractor for costs incurred by the Tribes, such requests shall include all allocable direct and indirect costs.

I.6.12 RELEASE OF CLAIMS

After completion of work and prior to final payment, the Contractor shall furnish to the Contracting Officer a release of claims against the Tribes and the United States relating to this contract, other than claims excepted from the operation of the release [RSN-9].

See CSKT Form R entitled "Final Payment and Release of Claims," included in section G, "Forms."

SUBSECTION I.7 - SOCIOECONOMIC

I.7.1 INCORPORATED CLAUSES

The following FAR Clauses are incorporated in accordance with the provisions of Section I.1, entitled "Clauses Incorporated By Reference."

FAR Clause	Title	Date
52.203-03	Gratuities	April 1984
52.203-05	Covenant Against Contingent Fees	May 2014
52.203-06	Restrictions On Subcontractor Sales To The Government	September 2006
52.203-07	Anti-Kickback Procedures	May 2014
52.203-08	Cancellation, Rescission, And Recovery Of Funds For Illegal Or Improper Activity	May 2014
52.203-10	Price Or Fee Adjustment For Illegal Or Improper Activity	May 2014
52.203-12	Limitation On Payments To Influence Certain Federal Transactions	October 2010
52.222-01	Notice to The Government of Labor Disputes	February 1997
52.222-03	Convict Labor	June 2003
52.222-21	Prohibition of Segregated Facilities	April 2015
52.222-26 Alt 1	Equal Opportunity	February 1999
52.223-02	Affirmative Procurement of Biobased Products Under Service and Construction Contracts	September 2013
52.223-03	Hazardous Material Identification and Material Safety Data	January 1997
52.223-05	Pollution Prevention and Right-to-Know Information	May 2011
52.223-06	Drug Free Workplace	May 2001

52.225-13	Restrictions on Certain Foreign Purchases	June 2008
52.227-01	Authorization and Consent	December 2007
52.227-02	Notice and Assistance Regarding Patent and Copyright Infringement	December 2007
52.227-04	Patent Indemnity - Construction Contracts	December 2007

I.7.2 OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, Tribal Council member, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

I.7.3 INDIAN PREFERENCE

(a) General. - The intent of this clause is that the Contractor and their subcontractors provide opportunities for "Indians" and "Indian businesses" to receive preference in employment, subcontracts, and the procurement of equipment and supplies, in connection with the work to be performed under this contract. **Along with this clause, the Contractor shall also comply with all provisions of the Confederated Salish and Kootenai Tribes' Indian Preference Ordinance, Tribal Ordinance No. 101A and Regulations.**

This clause shall apply to the Contractor, and subcontractors at any tier, regardless of their status as a non-Indian business, an Indian business, or a CSKT business. In applying the Indian Preference requirements of this clause, the Contractor shall first give preference to CSKT members and CSKT businesses.

The requirements of this clause shall take precedence over all other clauses contained in this subsection.

(b) Definitions. - As used in this clause:

(1) "Indian Tribe" is defined as an Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 668; 43 U.S.C. 1601), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) "Indian" is defined as any person who is recognized, in accordance with the constitution or laws of an Indian tribe, as defined in (1) above, as a member of that tribe. Proof of membership in an Indian tribe, if required, shall be provided to the Contracting Officer.

(3) "Confederated Salish and Kootenai Tribal Member" (CSKT Member) is defined as any person who is recognized, in accordance with the Tribal constitution, as a member of the Confederated Salish and Kootenai Tribes (CSKT). Proof of membership in the CSKT, if required, shall be provided to the Contracting Officer.

(4) "Subcontract" is defined as any agreement (other than one involving an employer-employee relationship) entered into by a prime contractor or subcontractor for the Tribes calling for the performance of work required for performance of the contract.

(5) "Service contract" is defined as any contract with a business to furnish labor and materials, at the jobsite, for the purposes of maintaining equipment and facilities necessary for the completion of the work.

(6) "Procurement of supplies and equipment" is defined as the purchasing of any materials required to complete the work, and shall include, but not be limited to, fabrication, production, or transport of permanently installed materials, rental of construction equipment, or purchasing fuels, equipment maintenance items, office supplies, and labor crew supplies.

(7) "Labor force" is defined as the group of employees hired by the prime contractor or their subcontractors, to perform the work, who are either performing work duties that are classified under the Davis-Bacon Act (sections I.8 and J), or who are performing non-managerial office work at the jobsite. Salaried employees are not considered as

part of the labor force.

(c) Employment. - The provisions of CSKT Indian Preference Ordinance 101A - Section 3.1 Indian Preference in Employment apply to this Contract. The contractor and all subcontractors at any tier shall give preference to Indians who can perform the work required regardless of age (subject to existing laws and regulations), sex, or religion for labor force employment opportunities under this contract. The Contractor shall give preference to all Indians over non-Indians for their labor force. All employees claiming Indian Employment shall provide proof of tribal membership to the Contractor.

The Contracting Officer, through the Tribe's Indian Preference Coordinator, will furnish a list of potential employees following receipt of the Contractor's Indian Employment Compliance Plan. The labor force hired by the Contractor and all subcontractors shall be coordinated with, and subject to review by the Indian Preference Coordinator. This practice shall allow the contractor to maintain a "core crew" of employees who are exempt from the Indian preference employment requirements. For purposes of this contract:

- (1) "core crew" is defined to include a regular permanent employee that is either in a supervisory position or another key position such that the employer would risk likely financial damage or loss if the position was filled by a person who had not previously worked for the employer and to include a person who has an ownership interest in the firm;
- (2) "regular permanent employee" means a person who has a continuing employment relationship with the contractor as evidenced by, at a minimum, having been on the contractor's payroll for the prior construction season, in contrast with a person who is hired on a project by project basis.

The contractor may not use job qualification criteria or personnel requirements which bar Indians from employment. However, where specialized craftsmen or key personnel are required to perform parts of the work under this contract, the Contractor may request a waiver from the requirements of this paragraph. The request for waiver shall be submitted to the Contracting Officer at least 10 days prior to the specialized work commencing. The Contractor shall give the job classification and describe why the specialized work cannot be performed using personnel from the potential employees list. The Contracting Officer will respond to the waiver request within 10 days of receipt.

Indian preference employees shall be given the same schedule opportunities and number of work hours as similarly situated non-Indian employees. In all lay-offs and reductions in workforce, no Indian preference employee shall be terminated when a non-Indian employee in the same job classification is still employed.

If the Contractor is unable to fill their labor force employment needs after giving full consideration to Indians as required by this clause, those needs shall be satisfied by selection of persons other than Indians in accordance with FAR Clause 52.222-26 entitled "Equal Opportunity."

On a monthly basis, the Contractor shall submit an employment status update to the Contracting Officer (see RSN-I.7.3b).

(c) Submittals. - Submittals shall be in accordance with this clause and specification Section 01 33 00 entitled "Submittals". The Contractor shall submit the following:

(1) Indian Employment Compliance Plan [RSN-10]:

(i) Within 10 days after receipt of award the Contractor shall submit an Indian Employment Compliance Plan, on **CSKT Form IPCP**, to the Contracting Officer, with copies to the Indian Preference Coordinator and Contracting Officer's Representative. CSKT Form IPCP can be obtained from the Tribe's Indian Preference Coordinator at the Tribal Complex, Highway 93, PO Box 278, Pablo MT 59855, telephone (406) 675-2700. Information submitted on CSKT Form IPCP shall identify:

(a) All anticipated employment needs. Any non-Indian key personnel planned for this project shall be identified, with supporting reasons and evidence of prior employment with contractor in same position.

(ii) The Contractor shall designate, in writing, a liaison officer who shall work with the Tribe's Indian Preference Coordinator in implementing the Indian Employment requirements under this contract. The Tribe's Indian Preference Coordinator may be contacted at the Tribal Complex, Highway 93, PO Box 278, Pablo MT 59855, telephone (406) 675-2700.

The Contracting Officer will provide a list of potential Indian employees to the Contractor for use in soliciting subcontracts, service contracts, and purchase orders for supplies. This list will be furnished to the Contractor within 10 days after approval of the Indian Employment Compliance Plan.

The Contractor shall **NOT** begin onsite work until the Indian Employment Compliance Plan has been approved by the Contracting Officer. Subcontractors shall **NOT** begin onsite work until the Indian Employment Compliance Plan for their portion of work has been approved by the Contracting Officer.

(2) Indian Employment Compliance Plan Monthly Status Report [RSN-11] The Contractor shall submit a monthly status report to the Contracting Officer, with copies to the Indian Preference Coordinator and Contracting Officer's Representative, demonstrating their compliance with the Indian Employment requirements. The report shall include:

(i) A list of the Contractor's total labor force, indicating which employees are Indian; a monthly summary of hours worked by each employee in each job classification; and personnel actions taken during the month which affected the tribal members, and causations for rejections or firings.

(ii) A revised Indian Employment Compliance Plan, if the Contractor's anticipated employment needs change.

(d) Compliance. - The Contractor shall coordinate Indian Employment matters with the CSKT Indian Preference Coordinator throughout the term of this contract and shall maintain records as required by this clause to document compliance with the Indian Employment requirements.

The Tribes may, at any time during this contract, audit the Contractor's records in accordance with contract clause in subsection I.2, entitled "Audit and Records," for the purpose of verifying the Contractor's compliance with the provisions of this clause. The Indian Preference Coordinator shall be provided the authority to access the jobsite for purposes of performing on-site inspections as necessary to determine compliance.

In the event of noncompliance with this clause, the Tribes may assess liquidated damages from the Contractor in accordance with the provisions in contract clause H.3, entitled "Liquidated Damages – Indian Employment." Furthermore, the Contractor's right to proceed may be terminated in accordance with the clause in subsection I.3 entitled "Default."

The Contractor or subcontractor shall insert in all subcontracts the provisions of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions of this clause.

(e) Other Provisions of CSKT Indian Preference Ordinance 101A – Other provisions and requirements of CSKT Indian Preference Ordinance 101A - Section 3.2 Indian Preference and Priority in Contracting and Subcontracting which include preference in the selection of a prime contractor and selection of sub-contractors **does apply** to this Contract.

SUBSECTION I.8 - LABOR STANDARDS

I.8.1 INCORPORATED CLAUSES

The following FAR Clauses are incorporated in accordance with the provisions of Section I.1, entitled "Clauses Incorporated By Reference."

FAR Clause	Title	Date
52.222-04	Contract Work Hours and Safety Standards Act - Overtime Compensation	March 2018
52.222-06	Construction Wage Rate Requirements	August 2018
52.222-07	Withholding of Funds	May 2014
52.222-08	Payrolls and Basic Records	August 2018

52.222-09	Apprentices and Trainees	July 2005
52.222-10	Compliance with Copeland Act Requirements	February 1988
52.222-12	Contract Termination - Debarment	May 2014
52.222-13	Compliance with Construction Wage Rate Requirements and Related Regulations	May 2014
52.222-14	Disputes Concerning Labor Standards	February 1988
52.222-15	Certification of Eligibility	May 2014

I.8.2 SUBCONTRACTS

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled *Davis-Bacon Act, Contract Work Hours and Safety Standards Act - Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance With Copeland Act Requirements, Withholding of Funds, Subcontracts (CSKT), Contract Termination - Debarment, Disputes Concerning Labor Standards, Compliance With Davis-Bacon and Related Act Regulations, Certification of Eligibility, Audit and Records, Insurance, Prompt Payment, Clean Air and Water, Drug Free Workplace, Safety and Health, Indian Employment, Hazardous Material Identification and Material Safety Data, Variations in Estimated Quantity, Warranty of Construction*, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b) Submittals. - Submittals shall be in accordance with this clause and specification Section 01 33 00 entitled "Submittals".

(1) [RSN-12] Within 14 days after award of any subcontract, the Contractor shall deliver to the Contracting Officer a completed CSKT Form X, "Subcontract Statement and Acknowledgment Form," for said subcontract, which shall contain the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

See CSKT Form X, "Subcontract Statement and Acknowledgement," included in Section G - "Forms."

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SECTION J - DEPARTMENT OF LABOR WAGE DETERMINATIONS

J.1 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The classifications, wage rates, and fringe benefits are included herein. The project located approximately 50 miles from the Missoula County Courthouse in Missoula, MT. This is the shortest practical maintained route (via US-93/Jock Road from the nearest County Courthouse to the center of the job and shall be used to determine Department of Labor Wage Determinations Zone Pay Rates.

"General Decision Number: MT20230067 08/25/2023

Superseded General Decision Number: MT20220067

State: Montana

Construction Type: Heavy

County: Missoula County in Montana.

HEAVY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$16.20 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 2023.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number Publication Date

0	01/06/2023
1	01/20/2023
2	04/28/2023
3	06/16/2023
4	08/25/2023

BOIL0011-003 01/01/2021

	Rates	Fringes
BOILERMAKER.....	\$ 34.12	30.94

CARP0028-011 06/01/2023

	Rates	Fringes
CARPENTER (Including Formwork)...	\$ 34.50	14.07

Zone Definition:

The hourly rate applicable to each project is determined by measuring the road miles over the shortest practical route from the County Courthouse of the following towns to the center of the job: Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, Lewiston, Miles City, and Missoula

Zone 1: 0 to 30 miles - Base Rate
 Zone 2: 31 to 60 miles - \$4.00
 Zone 3: over 60 miles - \$6.00

ELEC0768-009 06/01/2023

	Rates	Fringes
ELECTRICIAN.....	\$ 35.26	15.54

ENGI0400-006 05/01/2013

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
(Zone 1)		
(1) A-frame truck Crane, Forklift, oiler (except crane).....	\$ 23.47	10.40
(2) Excavator, Crane Oiler..	\$ 23.94	10.40
(3) Mechanic, Scraper.....	\$ 24.34	10.40
(4) Cranes 25-44 tons.....	\$ 27.00	11.40
(5) Cranes 45-74 tons.....	\$ 28.00	11.40
(6) Cranes 75 to 144 tons, whirley cranes.....	\$ 29.00	11.40
(7) Cranes, 150 tons to including 250 tons (add \$1.00		
for every 100 tons over 250 tons); Crane, Stiff- Leg or		
Derrick; Helicopter		

Hoist; Crane, Tower (all)...\$ 30.00 11.40

ZONE DEFINITIONS FOR POWER EQUIPMENT OPERATORS:

The zone hourly rates applicable to each project shall be determined by measuring the road miles over the shortest practical maintained route from the nearest County Court House of the following listed towns to the center of the job:

BILLINGS, BOZEMAN, BUTTE, GREAT FALLS, HELENA, KALISPELL, MISSOULA

Zone 1: 0 to 30 miles - Base Pay
 Zone 2: 30 to 60 miles - Base Pay + \$3.50
 Zone 3: Over 60 miles - Base Pay + \$5.50

 * IRON0014-015 07/03/2023

	Rates	Fringes
IRONWORKER: Reinforcing and Structural.....	\$ 31.68	28.07

 PLUM0459-010 05/01/2022

	Rates	Fringes
PLUMBER.....	\$ 36.13	15.98

 * TEAM0190-001 10/04/2020

	Rates	Fringes
TRUCK DRIVER		
(2) Water Truck		
ZONE A.....	\$ 31.28	9.37
(3) Water Truck		
ZONE A.....	\$ 31.28	9.37

ZONE B (30-60 miles from County Courthouse of listed cities*): Add \$3.05 per hour to ZONE A rates
 ZONE C (over 60 miles from County Courthouse of listed cities*): Add \$4.85 per hour to ZONE A rates.

*Zone pay will be calculated from the city center of the following listed cities:

BILLINGS
 BOZEMAN
 BUTTE
 GREAT FALLS
 HELENA
 KALISPELL
 MISSOULA

 SUMT2011-043 02/07/2011

	Rates	Fringes
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LABORER: Common or General.....	\$ 16.91	9.08
OPERATOR: Asphalt Roller.....	\$ 22.39	3.96
OPERATOR: Backhoe.....	\$ 22.12	8.37
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 25.67	8.05
OPERATOR: Loader (Front End)....	\$ 22.67	6.54
PAINTER: Brush and Spray.....	\$ 25.00	0.00
TRUCK DRIVER: Dump Truck.....	\$ 19.38	4.74

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 <https://www.dol.gov/agencies/whd/government-contracts>.

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)).

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.

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 National Office because National Office has 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.

=====
END OF GENERAL DECISION"

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SECTION K – CONFEDERATED SALISH & KOOTENAI TRIBES INDIAN PREFERENCE ORDINANCE

TRIBAL ORDINANCE NO. 101A AND REGULATIONS

**THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD INDIAN RESERVATION**

**INDIAN PREFERENCE ORDINANCE
TRIBAL ORDINANCE NO. 101A**

**PART I
TITLE, AUTHORITY, AND SCOPE OF APPLICATION**

Section 1.1 Title. The following Ordinance shall be known and cited as the Confederated Salish and Kootenai Tribes' Indian Preference Policy Ordinance.

Section 1.2 Authority. This Ordinance is enacted pursuant to the Constitution and Bylaws of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, as approved by the Secretary of Interior on October 28, 1935, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended. CS&KT Const., Art VI, Sec. 1, §§ (a), (n), and (u); CS&KT Bylaws, Art. II, Sections 4 and 6.

Section 1.3 Purpose. The Tribal Council, entrusted with protecting the political integrity, economic security, and the health and welfare of the Tribes, seeks to counter the effects of discrimination against Indians and to promote Tribal and individual economic self-sufficiency. Therefore, the Council enacts this Ordinance so that preference granted to qualified Indian employees and qualified Indian-owned entities within the boundaries of the Flathead Indian Reservation whenever permitted by Federal law.

Section 1.4 Applicability. This Ordinance applies to entities that provide goods and/or services to CSKT, CSKT agencies, and CSKT owned entities; and to entities awarded contracts for construction projects within the exterior boundaries of the Reservation which are funded wholly or in part by Federal funds. This Ordinance shall not apply to grants or contracts negotiated between the Tribes and other governmental entities, unless such application is a provision of the grant or contract. Entities to which this Ordinance applies shall comply with its terms and implementing regulations unless specifically excepted under the terms of the Ordinance or otherwise prohibited by Federal Law.

**PART II
GENERAL PROVISIONS**

Section 2.1 Definitions. The following definitions apply to this Ordinance and implementing regulations:

A. "CERTIFIED CSKT MEMBER-OWNED BUSINESS" means any business, entity, corporation, partnership, joint stock company, joint venture, or individual or sole proprietorship which the Indian Preference Commission certifies to be at least 51% CSKT member-owned.

B. "CERTIFIED INDIAN-OWNED BUSINESS" means any business, entity, corporation, partnership, joint stock company, joint venture, or individual or sole proprietorship which the Indian Preference Commission certifies to be at least 51% Indian owned.

- C. "CONTRACT" means any and all written agreements that consist of an offer, consideration, and acceptance for procurement or disposal of goods or services including but not limited to, contracts for construction, supplies, services, and equipment.
- D. "COORDINATOR" means the Indian Preference Coordinator.
- E. "COUNCIL" means the duly elected governing body of the Confederated Salish and Kootenai Tribes of the Flathead Nation.
- F. "CSKT" means the Confederated Salish and Kootenai Tribes.
- G. "CSKT member" means any person who is recognized in accordance with the Constitution of the CSKT as a member of CSKT.
- H. "EMPLOYER" means any entity that employs person(s) for wages or other remuneration.
- I. "ENTITY" means any contractor or subcontractor to which this Ordinance and its implementing regulations apply.
- J. "INDIAN" means any person who is an enrolled member of any Indian tribe, band, group, pueblo, or community, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "native" as defined in the Alaska Native Claims Settlement Act.
- K. "INDIAN PREFERENCE EMPLOYEE" means any eligible individual who is reasonably qualified to work.
- L. "JOINT VENTURE" means a one-time grouping of two or more persons in a business undertaking.
- M. "RESERVATION" means the Flathead Indian Reservation of the Confederated Salish and Kootenai Tribes.
- N. "RESPONSIBLE BIDDER" means a bidder that the CSKT determine has the skill, ability, and integrity to perform the project.
- O. "RESPONSIVE BID" means a bid that meets all requirements of the Proposal and Instructions to Bidders portion of the solicitation for bid.
- P. "TAPO" means the CSKT Tribal Administrative Procedures Ordinance, Tribal Ordinance 86B.

Section 2.2 Repealer. This Ordinance repeals all previous Indian Preference resolutions.

Section 2.3 Severability. If any provision of this Ordinance is found by the Tribal or Federal Court to be unconstitutional or unlawful, said provision(s) shall be struck and the remainder of the Ordinance shall remain in full force and effect.

Section 2.4 Effective Date. The effective date of this revised Ordinance is February 5, 2009.

PART III INDIAN PREFERENCE

Section 3.1 Indian Preference in Employment. Unless otherwise prohibited by federal law, all employers and entities to which this Ordinance applies shall give hiring preference first to enrolled CSKT members and second to other Indians.

Section 3.2 Indian Preference and Priority in Contracting and Subcontracting. Preference for the award of contracts and subcontracts and for the procurement of services, materials, supplies, and equipment required for the work to be performed, shall be given to Certified Indian-owned businesses which are responsible bidders and make responsive bids in the award of any contract or subcontract to which this Ordinance applies. Preference for contracting and subcontracting shall be granted according to the following priority:

- A. First preference is a CSKT member-owned business. If a CSKT member-owned business comes within 10% of the low bid or price quote, the CSKT business shall have the opportunity to meet that figure.
- B. Second Preference is any other Indian-owned business. If no CSKT member-owned business makes or meets the low bid or price quote, any other Indian-owned business which comes within 10% of the low bid or price quote shall have the opportunity to meet that figure.

PART IV INDIAN PREFERENCE COORDINATOR

Section 4.1 Establishment. This Ordinance establishes the position of Indian Preference Coordinator. The Coordinator's duties shall include but are not limited to the following topics:

- A. Regulations. The Coordinator shall formulate and propose for the Council's adoption or amendment regulations reasonably necessary to carry out the provisions of this Ordinance in accordance with and subject to the Tribal Administrative Procedures Ordinance (TAPO), Ordinance No. 86B.
- B. Applications. Applicants for preference shall apply to the Coordinator, who has authority to evaluate and approve or reject all applications.
- C. List of Preference Employees and Businesses. The Coordinator shall be responsible for keeping a current list of Indian preference employees, Certified CSKT Member-Owned Businesses and Certified Indian-owned businesses.
- D. Monitoring. The Coordinator shall monitor for compliance all work to which this Ordinance applies. As part of the monitoring function, this Ordinance authorizes the Coordinator to audit records of employers to whom the Ordinance applies.

E. Enforcement. The Coordinator shall issue notices of noncompliance and opportunity for cure to alleged violators. This Ordinance authorizes the Coordinator to recommend sanctions when monitoring reveals that an entity is in violation of the Ordinance or implementing regulations.

Section 4.2 The Coordinator shall not delegate rule making authority, monitoring, or enforcement powers.

PART V INDIAN BUSINESS CERTIFICATION

Section 5.1 Application Process for Certification as an Indian-Owned Business. A firm seeking certification as an Indian-owned business must present its application and the required documentation to the Indian Preference Coordinator whose decision on the application shall constitute a final decision for the purpose of satisfying administrative process.

Section 5.2 Documentation Required. A complete application for certification as an Indian-Owned Business shall include:

- A. Proof of applicant business owner(s) membership in an Indian tribe;
- B. Documentation of business ownership and management by one or more Indian(s); and
- C. Documentation of the business's profit arrangement.

Section 5.3 Joint Ventures. All Joint ventures seeking preference priority as CSKT member-owned or Indian-owned businesses shall submit documentation of the business arrangements of the joint venture in addition to the required documentation for certification.

Section 5.4 CSKT Member-Owned Business. To qualify for certification as a CSKT member-owned business when ownership consists of both CSKT member(s) and other Indians, CSKT member(s) shall document that they own 51% of the business.

Section 5.5 Criteria for Certification as an Indian-Owned business. To become a Certified Indian-owned business, an applicant shall meet the following criteria:

- A. Ownership. The business is 51% or more Indian-owned, as established by:
 - 1. Financial Ownership. At least 51% ownership is vested in one or more Indians.
 - 2. Value provided. The Indian owner(s) provide real value commensurate with the value of their ownership share by providing capital, equipment, real property or similar assets, or engineering or professional services.
 - a) When Indian participants demonstrate that they were unable to borrow from normal capital sources because they are Indians, and therefore were unable to pay real value for their 51% or more Indian ownership, they may satisfy the ownership requirement by demonstrating further that they extended their capital-raising

capability as far as possible, such that the Indian participants are clearly at risk in the business.

b) It will not be considered real value if the Indian(s) purchased the ownership share, directly or indirectly, when the ultimate creditor is the non-Indian owner of the firm or an immediate relation thereof.

3. Profit distribution. In any profit distribution, the Indian owner(s) receive profits proportional to their ownership interest. If any provision in the organizational agreement of the business gives the non-Indian owner(s) a greater share of the profits, in whatever form and under whatever name, such as through management fees, equipment rental fees, or bonuses tied to profits, certification will be denied. The Indian Preference Coordinator shall review salary scales to ensure that salaries are not being used to circumvent the requirement that owners receive salaries proportional to ownership interest.

B. Management Control. The business must be able to demonstrate to the Indian Preference Coordinator's satisfaction that:

1. The Indians upon whose Tribal membership the preference is based control daily operations and have the majority of voting rights and other decisional authority;
2. All significant decisions of the business are made by a majority vote except where otherwise required by law;
3. The Indian owner(s) through prior experience or training have substantial ties to the area of business in which the firm is engaged such that they are competent to serve in the senior position;
4. The Indian owner(s) are sufficiently knowledgeable about the firm's activities to be accountable to the Tribes for those activities; and
5. The main purpose of establishing the business was not to become eligible for the priority which this Ordinance provides to Certified CSKT member-owned and Indian owned businesses. The Indian Preference Coordinator shall not consider the management of the business to be Indian if the business subcontracts 65% or more of its work to non-Indians. An entity operating thus shall be considered a front which does not qualify for certification as an Indian owned business and is ineligible for preference.

C. Exceptions to Management Control Criteria. The requirements listed above regarding experience, training, occupation requirements, and knowledge of the firm's activities may be waived when:

1. The firm is 100% Indian-owned, or
2. The firm is modeled on a publicly held corporation such that it is owned by 10 or more persons, of whom at least 70% are Indians, the Chief Executive Officer and the highest-salaried employee in the firm is/are Indian, and a majority of the employees are Indians.

D. **Integrity of Structure.** The Indian Preference Coordinator shall consider the following criteria to determine whether the applicant qualifies for preference:

1. **History of the Firm.** Whether the firm, a portion of the firm, or key actors in the firm originally were associated with a non-Indian owned business that gained little except eligibility for preference priority in terms of equipment capital or expertise, by adding Indian ownership or by merging with an Indian firm.
2. **Employees.**
 - a) Whether key non-Indian employees of the applicant are former employees of the non-Indian firm with which the Indian firm is or has been affiliated through a joint venture or other arrangement such that there is reason to believe the non-Indian firm controls the applicant.
 - b) Whether Indians are employed in all of the positions for which qualified Indians are available. A high percentage of non-Indian employees in such positions will provide reason to believe that the firm was established primarily to benefit non-Indians.
3. **Relative Experience and Resources.** Whether the non-Indian owner's experience, expertise and resources are so much greater than those of the Indian(s) that there is little reason for the non-Indian to accept a junior role in the firm or venture other than to be able to take advantage of the Indian preference program.

Section 5.6 Renewal of certification. Certified CSKT member-owned businesses and Certified Indian-owned businesses must renew their certification annually in order to remain eligible for the Indian-owned business preference.

PART VI MONITORING

Section 6.1 Compliance in Employment and Procurement of Goods and Materials.

- A. **Notice.** Requests for Bids shall include notice if the Ordinance applies to the contracted work, and entities who are awarded a contract will be notified in the award letter that the Ordinance must be followed when applicable. Such entities shall provide their compliance plan to the Coordinator within seven days following award of contract.
- B. **Reports.** Employers to whom this ordinance applies must submit wage and hour reports to the Coordinator within one week after payroll disbursement. Employers must report terminations, disciplinary action, and promotions to the Coordinator within two working days and in writing within one week thereafter.
- C. **On-site Inspections.** This Ordinance authorizes the Coordinator to make on-site inspections during regular working hours, speak with workers, review and copy all relevant records of an

entity/employer, and conduct any other investigatory action necessary to enforce the provisions of this Ordinance and implementing regulations.

PART VII ENFORCEMENT

Section 7.1 Contractor Responsibility. The contractor shall be responsible for ensuring that subcontractors comply with all preference requirements described in this Ordinance. Every contractor and subcontractor at every tier may be subject to sanctions provided herein for failure to comply with the Ordinance and implementing regulations.

Section 7.2 Violations. The following actions shall constitute acts of noncompliance with this Ordinance and implementing regulations:

- A. Failure to obtain advance approval for subcontracting, which varies from the preference requirements of this Ordinance.
- B. Conviction of a criminal offense involving the attainment or performance of a public or private contract, or a subcontract thereunder.
- C. Failure of a business to submit reports to the Coordinator documenting continued compliance with terms of its contract and this Ordinance.
- D. Failure of a business which has been granted preference priority to continue to meet the criteria required for maintaining its status.

Section 7.3 Notice of Noncompliance. When the Coordinator has reason to believe that an entity is out of compliance with the Ordinance or implementing regulations, the Coordinator shall issue a notice of noncompliance to the alleged violator. Such notice shall be served either personally or by registered or certified mail, and shall constitute a summons and complaint for purposes of the violation. The notice shall state the nature of the alleged violations, the type of sanction that may be assessed for each alleged violation, the right to answer, and the consequences of failing to answer. The notice may provide an opportunity to cure the alleged acts of noncompliance, and if so, the method and time for cure. The notice shall specify the date and place at which a hearing on each alleged violation will be held if the alleged violation is not cured. Such hearing shall be held not be less than 30 days or more than 60 days after the date of service of a notice.

Section 7.4 Answer. A person to whom a notice of noncompliance has been issued shall answer within 15 days of the date of receipt of the notice. The answer shall be personally served or mailed to the Coordinator by registered or certified mail. An answer shall either admit or deny the violation(s), raise all affirmative defenses, and state whether the entity will undertake curative measures, if any, specified in the notice of noncompliance. If an answer states that a person will undertake all curative measures specified in the notice, the hearing scheduled in the notice may be held in abeyance for a reasonable amount of time to enable completion of the curative measures. If curative measures are completed within a reasonable time and to the satisfaction of the Coordinator, the hearing may be canceled at the Coordinator's discretion. Satisfactory completion of curative measures does not obviate imposition of fines or penalties.

Section 7.5 Sanctions. The Coordinator is authorized to recommend imposition of sanctions from the following list against any person or entity who is found to be in violation of this Ordinance and its implementing regulation:

- A. Make changes in procedures and policies necessary to eliminate the violations;
- B. Suspend all operations subject to this Ordinance, and/or prohibit engagement in future operations to which this Ordinance applies until the identified violation is corrected;
- C. Withhold payment of contract earnings to the Contractor, as follows:
 - 1. Employment: For each instance where the Contractor fails to comply with the employment provisions, the penalty amount shall be an amount equal to 100% of the gross wages and earnings paid to non-Indian employees who were working in a position where qualified Indian preference employees were available at the time of hire of the non-Indian employee.
 - 2. Subcontracting: For each instance where the Contractor fails to comply with the subcontracting provisions, the penalty amount shall be an amount equal to 20% of the gross earnings paid to the non-Indian contractor.
 - 3. Procurement of services, materials, supplies, and equipment: For each instance where the Contractor fails to comply with the procurement of services, materials, supplies, and equipment provisions, the penalty amount shall be an amount equal to 20% of the procurement amount paid to the non-Indian preference vendor.;
- D. Deny the right to commence or continue business to which this Ordinance applies;
- E. Order any other provision the Commission deems necessary to eliminate the violation.

PART VIII ADMINISTRATIVE AND JUDICIAL REVIEW

Section 8.1 Grievance Procedure. TAPO shall provide the procedures for administrative and judicial review of all final orders arising under this Ordinance.

Section 8.2 Chief Executive Officer. As applied in this Ordinance, the "Chief Executive Officer" reference in Part VI, Section 25 of TAPO shall be the Indian Preference Coordinator.

CONFEDERATED SALISH AND KOOTENAI TRIBES

INDIAN PREFERENCE ORDINANCE REGULATIONS

Statutory Authority

These rules are issued pursuant to the authority granted to the Indian Preference Office by the Tribal Council pursuant to Ordinance 101A.

Statement of Purpose

The intent of Tribal Ordinance 101A is to facilitate full employment of Indian people on the Flathead Reservation by promoting Indian economic self-sufficiency through the granting of preference to qualified Indian employees and qualified Indian-owned entities whenever consistent with Federal Law.

Implementation of Specific Indian Preference Requirements

Partners, owners, and managerial employees of contracting firms shall be employed only in management or supervisory positions. The employment preference provisions of Tribal Ordinance 101A and these regulations apply to all other employees.

Indian Preference Employment

Tribal Ordinance 101A and its implementing rules apply to all contracts subject to the Indian Self- Determination Act. (See *Dawavendewa v. Salt River Project* 1998 WL 605282 (9th Cir.)). The following order of preference applies to the hiring of employees unless prohibited by federal law:

- A. First preference shall be given to enrolled members of the Confederated Salish and Kootenai Tribes.
- B. Second preference shall be given to enrolled members of any other federally recognized tribe.
- C. All others.

Indian Preference Business Certification

A contractor or subcontractor seeking certification as an Indian Preference Business must make application on a form available from the Indian Preference Office and is subject to the following rules:

- A. The entity must submit the application and required documentation to the Indian Preference Coordinator, whose decision on the application shall constitute a final decision for the purpose of satisfying administrative process.
- B. The entity must renew certification on an annual basis to remain eligible for Indian Preference.

Indian Preference in Contracting and Subcontracting

Preference in the awarding of contracts and subcontracts and in the procurement of services, materials, supplies, and equipment required for work to be performed shall be given to certified Indian-owned businesses as follows unless prohibited by Federal Law:

- A. First Preference shall be given to a CSKT member-owned business which is a responsible bidder with a responsive bid. Such CSKT member-owned business coming within 10% of the low bid or price quote shall have the opportunity to meet the low figure.
- B. Second preference shall be given to any other Indian-owned business which is a responsible bidder and which submits a responsive bid. Any such other Indian- owned business coming within 10% of the low bid or price quote shall have the opportunity to meet the bid or price if no CSKT member-owned business does so.

Hiring Hall

The Indian Preference Office provides a referral service for applicants seeking work and contractors looking for eligible Indian employees on the Reservation.

A. The following rules apply to workers:

1. Workers seeking employment must send in a postcard on a monthly basis to insure their name is referred to contractors.
2. Workers no longer seeking employment must notify the Indian Preference Office.
3. Workers must renew the application they have on file in the Indian Preference Office annually, in order to remain in the active referral file.
4. Non-Indian employees may not start work without approval of the Indian Preference Office.

The following rules apply to employers:

5. The Indian Preferences Office shall be given a twenty (24) hour time period to furnish a qualified referral. However, the twenty four (24) time period may be waived in cases of emergency as determined by the Indian Preference Coordinator.
6. If the Indian Preference Office is unable to locate a qualified Indian and the Indian Preference Coordinator has certified to this fact in writing, a contractor may be granted an employment waiver.
7. Employers may not use job qualification criteria or personnel requirements which bar Indians from employment, unless such criteria or requirements are justified by business necessity. Such criteria must be justified in writing to then Indian Preference Office prior to implementation. The Indian Preference Coordinator and individual employers shall have the responsibility to determine whether an employee is qualified for a job craft or skill. The burden of proof shall be on the employer in all disputes of minimum qualifications standards and on termination of Indian preference employees when as employer determines the individual is not qualified.

Contracting Fee

A prime contractor shall be assessed a one time fee of 3% of the bid for any contract over \$25,000.00. The contractor shall pay one half of the fee prior to starting work on the Flathead Indian Reservation, and the remaining half upon completion of the contract.

Employment Compliance Plan

Every contractor and subcontractor must submit a written compliance plan to the Indian Preference Coordinator prior to commencing work.

- A. The plan shall be submitted on a form provided by the Indian Preference Office.
- B. The plan must be submitted and approved ten days before work begins.
- C. The prime contractor will be responsible for monitoring all relevant subcontractors for compliance.
- D. The Indian Preference Coordinator is authorized to make on-site inspections as necessary.

Reports

The following reporting requirements apply to every contractor and subcontractor having a contract over \$25,000.00:

- A. Project Payroll Reports (wage and hour reports) must be submitted to the Indian Preference Office within one week after payroll disbursement.
- B. Disciplinary action taken must be reported to the Indian Preference Office within two (2) working days.
- C. Promotions must be reported to the Indian Preference Office within two (2) working days.
- D. Terminations must be reported to the Indian Preference Office within 24 hours, followed within one week by a written explanation of the termination.
- E. Lay-offs must be reported to the Indian Preference Office 24 hours in advance. In all lay-offs and reductions in workforce, no Indian worker shall be terminated if a non- Indian worker in same job classification is still employed.

Payroll Hours

All Indian preferences employees will be given the same number of work hours and overtime hours as non-Indian co-workers.

Fringe Benefits

Any Indian employee shall have the right to receive any health insurance or pension benefits (fringe benefits) paid to them directly at the time they receive their regular paycheck. Any employer who refuses to comply with this provision shall be guilty of a violation of the Indian Preference Ordinance.

Collective Bargaining Agreements

Entities having collective bargaining agreements with a union shall comply with Tribal Ordinance 101A and these rules.

Formal Training

The Tribes encourage training programs developed and administered by an employer with the assistance of the Indian Preference Office. Under Davis-Bacon projects, this program shall be U.S. Department of Labor, Bureau of Apprenticeship and Training certified.

Notice of Non-Compliance

When the Indian Preference Coordinator has reason to believe that entity is out of compliance with Ordinance 101A or these rules, the Indian Preference Coordinator shall issue notice of noncompliance to the alleged violator.

Such notice shall be served either personally or by registered or certified mail, and shall constitute a summons and complaint for purposes of the violation.

The notice shall state the nature of the alleged violations, the type of sanction that may be assessed for each alleged violation, the right to answer, and the consequences of failing to answer. The notice may provide an opportunity to cure the alleged acts of non-compliance, and if so, the method and time for cure. The notice shall specify the date and place at which a hearing on each alleged violation will be held if the alleged violation is not cured. Such hearing shall be held no less than 30 days or more than 60 days after the date of service of a notice.

Answer

A person who receives a notice of noncompliance shall answer within 15 days of the date of receipt of the notice. The

answer shall be personally served or mailed to the Indian Preference Coordinator by registered or certified mail. An answer shall either admit or deny the violation(s), raise all affirmative defenses, and state whether the entity will undertake curative measures, if any, specified in the notice of noncompliance.

If an answer states that a person will undertake all curative measures specified in the notice, the hearing scheduled in the notice may be held in abeyance for a reasonable amount of time to enable completion of the curative measures.

If curative measures are completed within a reasonable time and to the satisfaction of the Indian Preference Coordinator, the hearing may be canceled at the Indian Preferences Coordinator's discretion. Satisfactory completion of curative measures shall not prevent the imposition of fines or penalties.

Sanctions

The Indian Preference Coordinator is authorized to recommended imposition of sanctions from the following list against any person or entity who is found to be in violation of Ordinance 101A and its implementing regulations:

- A. Make changes in procedures and policies necessary to eliminate the violations;
- B. Suspend all operation subject to ordinance 101A, and/or prohibit engagement in future operations to which Ordinance 101A applies until the identified violation is corrected;
- C. Withhold from final payment to the general contractor 20% of the total amount of the relevant contract under which a violation occurs;
- D. Deny the rights to commence or business to which Ordinance 101A applies;
- E. Order any other provision the Coordinator deems necessary to eliminate the violations.

Grievance Procedure

The Tribal Administrative Procedures Ordinance (TAPO) shall provide the procedures for administrative and judicial review of all final orders arising under Ordinance 101A.

Chief Executive Officer

As applied in Ordinance 101A, the "Chief Executive Officer" referenced in part VI, Section 25 of TAPO shall be the Indian Preference Coordinator.

Revised: February 5, 2009

END OF

SOLICITATION/SPECIFICATIONS – VOLUME 1 of 5