



Klamath River Renewal Corporation

# **Klamath River Renewal Project Request for Qualifications**

September 18, 2018; [Revised October 10, 2018](#)



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# Acronyms and Abbreviations

BOC	Board of Consultants
CA	California
CBI	Critical Business Information
CEII	Critical Energy Infrastructure Information
CEQA	California Environmental Quality Act
CDFW	California Department of Fish and Wildlife
CGL	Commercial General Liability
CNRA	California Natural Resources Agency
CPL	Contractor’s Pollution Liability
CPUC	California Public Utilities Commission
DSOD	Division of Safety of Dams
EHS	Environmental Health and Safety
EMR	Experience Modification Rate
ESA	Endangered Species Act
FERC	Federal Energy Regulatory Commission
GMP	Guaranteed Maximum Price
IEV	Invasive Exotic Vegetation
KHP	Klamath Hydroelectric Project (FERC No. 2082)
KHSA	Klamath Hydroelectric Settlement Agreement
KRRC	Klamath River Renewal Corporation
LLC	Limited Liability Company

LKP	Lower Klamath Project (FERC No. 14803)
NEPA	National Environmental Policy Act
OCIP	Owner-Controlled Insurance Program
ODEQ	Oregon Department of Environmental Quality
ODFW	Oregon Department of Fish and Wildlife
ODOT	Oregon Department of Transportation
ODSL	Oregon Department of State Lands
OPUC	Oregon Public Utilities Commission
OR	Oregon
OSHA	Occupational Safety and Health Administration
PC	Project Company
PDF	Portable Document Format
RFP	Request for Proposals
RFQ	Request for Qualifications
SOQ	Statement of Qualifications
SWRCB	State Water Resource Control Board
USACE	United States Army Corps of Engineers

# 1. BACKGROUND

## 1.1 Introduction

This request for qualifications (RFQ) for the Klamath River Renewal Project (Project) invites statements of qualifications (SOQs) according to the requirements set forth in this RFQ, including the format and content guidelines in Section 5. The SOQs will be reviewed and evaluated to generate a shortlist of Respondents, as described in Section 6. The Klamath River Renewal Corporation (KRRC) is expected to select up to four shortlisted Respondents, although it reserves the right to select more or fewer at its sole discretion. At completion of the SOQ evaluation process, the KRRC intends to issue a request for proposals (RFP) only to the shortlisted Respondents for award of the Project Agreement.

This RFQ is specific to the Project, as defined in Section 1.4 and described in Section 2.3, Project Scope Generally. In general, this Project includes design and construction of road and bridge access improvements to accommodate construction vehicles/traffic, bridge and culvert improvements to accommodate new river/creek geometry, dam modifications required to drawdown the reservoirs, reservoir drawdown, dam and hydropower development removal, recreation facilities removal and new improvements, and restoration of former reservoirs and other disturbed areas, as well as risk mitigation and liability protection obligations consistent with the Klamath Hydroelectric Settlement Agreement (KHSA). In addition, this Project includes construction of improvements to the City of Yreka's water system, downstream flood control improvements, hatchery improvements at the Iron Gate and Fall Creek hatchery facilities, and groundwater well installation for domestic water supply.

The Project is to be designed and constructed in three phases using the Progressive Design-Build (PDB) delivery method:

- **Preconstruction phase (Phase 1):** The design, planning, permitting and other pre-construction services to be performed by the Project Company pursuant to the Project Agreement prior to the execution and delivery of the Guaranteed Maximum Price (GMP) Contract Amendment. Key Phase 1 submittals include the 60% design and GMP Submittal Package.
- **Construction phase (Phase 2):** All work, besides the Phase 1 Work, necessary to complete the Project, including design, construction, demolition and removal, and physical restoration of former reservoir and other disturbed areas. A condition precedent to the commencement of the construction phase will be the agreement between the KRRC and Project Company of a GMP Contract Amendment for Phase 2 services, as further discussed in Section 3.2 of this RFQ.
- **Post-construction phase (Phase 3):** Work to be performed by the Project Company following Phase 2 Substantial Completion, including monitoring, habitat restoration, adaptive management maintenance, and correction of deficiencies.

This RFQ is not a tender or an offer or an RFP, and there is no intention by the KRRC to make an offer by issuing this RFQ.

Respondents must be thoroughly familiar with the scope of work and performance requirements discussed in this RFQ. The KRRC may disqualify any Respondents that fail to demonstrate such familiarity in its SOQ.

## 1.2 KRRC Objectives

The KRRC's objectives for delivery of the Project scope are as follows:

- Safety - Implement an effective safety program incorporating industry best practices.
- Public - Provide a safe and effective project that minimizes nuisance impacts to the public.
- Quality - Provide the highest quality design and construction submittals, and complete the Project in a manner that is consistent with the KHSA, and meets all tribal, federal, state and other agency expectations.
- Cost - Obtain the most cost effective design and construction approach to accomplish the defined Project for a Guaranteed Maximum Price and while meeting the other stipulated cost constraints, including constraints embodied in the KHSA.
- Schedule - Achieve the scheduled completion dates for design, construction, and post-construction monitoring of the Project, including planning to accommodate foreseen and unforeseen change.
- Local and Tribal Participation – Obtain the highest level of local and tribal involvement in Project implementation as is practicable and feasible, including direct hires of local workers by the Project Company, as well as subcontracting with local firms and tribes.
- Women, Minority, Disabled Veteran, Lesbian, Gay, Bisexual, and Transgender Participation – Obtain the highest level of women, minority, disabled veteran, lesbian, gay, bisexual, and transgender involvement in Project implementation as is practicable and feasible.
- Accountability - Obtain in the Project Company a single point of accountability for performance of all services under the Project Agreement.
- Aesthetics – Achieve full native habitat restoration that blends seamlessly with the adjacent habitat communities.
- Sustainability – Meet all other design and habitat goals in the short and long-term while requiring minimal long-term maintenance and monitoring outside of regulatory requirements.

- Collaboration - Provide for coordinated design development, with the Project Company eliciting the KRRC input in a manner that preserves Project Company's sole responsibility for the achievement of Project performance objectives while meeting the KRRC objectives associated with safety, public, quality, cost, schedule, risk, local and tribal participation, women, minority, disabled veteran, lesbian, gay bisexual, and transgender participation, accountability, aesthetics, compliance, and sustainability.

## 1.3 Project Reference Documents

Numerous Project-related information and background documents, including the KHSA and funding agreements, are on the KRRC's Project Website (<http://www.klamathrenewal.org>). The KRRC provides the information and documents on the website for general information purposes only and without any warranty as to accuracy, completeness or fitness of such documents for any particular purpose.

The Definite Plan filed by the KRRC with the Federal Energy Registry Commission (FERC) in June 2018 is the latest technical document associated with the Project, and is also available on the KRRC's Project Website. The Definite Plan should be reviewed in detail by Respondents to gain familiarity with the Project and preliminary concepts associated with the Project.

For purposes of this RFQ, the KRRC makes no representation as to the accuracy or completeness of any of the information included in the Definite Plan. Respondents should recognize that the KRRC, in choosing to implement the Project through the PDB delivery method, is seeking outside expertise in the development of the final design elements. To the extent that the Definite Plan or any other reference documents include design solutions or related information, such information does not necessarily represent the optimal or specific Project features that will be included in the RFP design criteria package or that the Project Company will be required to develop in response to the RFP or under the Project Agreement.

Additional detail concerning reliable technical appendices and reference documents will be set forth in the RFP and associated Project Agreement (attachment to RFP). In general, the RFP will include technical appendices (e.g., data, field surveys, geotechnical data, hazardous waste assessments, etc.) that the Respondent can rely on, and reference documents (e.g., Definite Plan and other interpretations/analyses) that cannot be relied upon.

Shortlisted Respondents will be required to sign a non-disclosure agreement with PacifiCorp and with KRRC in order to have full access to existing background information that involves Critical Energy and Infrastructure Information (CEII) and Confidential Business Information (CBI), as described more fully in Section 2.10 of this RFQ.

## 1.4 Defined Terms

The capitalized terms in this RFQ have the meanings as first used in the text of this RFQ and as defined below:

**Agency Approval and Permitting Plan** – Project Company’s plan to adhere to all anticipated agency approval and permit requirements and conditions necessary to complete the Project.

**Base Guaranteed Maximum Phase 2 Price** – The limit of the total of all amounts payable to the Project Company by the KRRC for allowable costs incurred in the performance of the Phase 2 Work, as established by the GMP Contract Amendment. The Base Guaranteed Maximum Phase 2 Price is a stated dollar maximum amount for the Phase 2 work (including risk management) that will be negotiated at the GMP Amendment stage.

**Base Guaranteed Maximum Phase 2 Price Adjustments** – Adjustments made to the Base Guaranteed Maximum Phase 2 Price for Uncontrollable Circumstance costs incurred following the GMP Contract Amendment Date.

**Base Guaranteed Maximum Phase 3 Price** – The limit of the total of all amounts payable to the Project Company by the KRRC for allowable costs incurred in the performance of the Phase 3 Work, as established by the GMP Contract Amendment. The Base Guaranteed Maximum Phase 3 Price is a stated dollar maximum amount for the Phase 3 work (including risk management) that will be negotiated at the GMP Amendment stage.

**Base Guaranteed Maximum Phase 3 Price Adjustments** – Adjustments made to the Base Guaranteed Maximum Phase 3 Price for Uncontrollable Circumstance costs incurred following the GMP Contract Amendment Date.

**Builder** – The Project Company or other firm (such as a subcontractor or joint venture partner) that will provide construction services and be responsible for construction of the Project.

**Change in Law** – Includes (1) the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any applicable law on or after the Contract Date with respect to the Phase 1 Work, and after the GMP Contract Amendment Date with respect to the Phase 2 Work and Phase 3 Work, and (2) the order or judgment of any governmental body issued after the Contract Date with respect to the Phase 1 Work, and after the GMP Contract Amendment Date with respect to the Phase 2 Work and Phase 3 Work, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Project Company.

**Contract Date** – The date on which the Project Company and the KRRC execute and deliver the Project Agreement.

**Critical Energy Infrastructure Information** – As defined by FERC, specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure (physical or virtual) that:

- Relates details about the production, generation, transmission, or distribution of energy;
- Could be useful to a person planning an attack on critical infrastructure;
- Is exempt from mandatory disclosure under the Freedom of Information Act; and
- Gives strategic information beyond the location of the critical infrastructure.

**Definite Plan** – The Facilities Removal plan the KRRC filed with FERC on June 28, 2018.

**Design Documents** – Documents developed by the Project Company. These will build upon technical attachments provided as part of the RFP documents.

**Designer** – The Project Company or other firm (such as a subconsultant or joint venture partner) that will provide professional design services and have responsible charge of the design, including preparation of the construction documents.

**Early Work Package Amendment** – A contract amendment, to be entered into during completion of the Phase 1 Work and submittal by the Project Company to accommodate work or procurement required prior to execution of the GMP Contract Amendment.

**Engineer of Record** – A California and Oregon professional engineer who is responsible for the preparation, signing, dating, sealing and issuing of any engineering document(s) for any engineering services completed by the Project Company.

**Facilities or Facility** – The following specific hydropower facilities currently within the jurisdictional boundary of FERC Project No. 2082: Iron Gate Dam, Copco No. 1 Dam, Copco No. 2 Dam, J.C. Boyle Dam, and appurtenant works currently licensed to PacifiCorp.

**Facilities Removal** – Physical removal of all of the Facilities to achieve at a minimum a free-flowing condition and volitional fish passage, site remediation and restoration, including previously inundated lands, measures to avoid or minimize adverse downstream impacts, and all associated permitting for such actions.

**Final Completion** – Completion of all Phase 1 Work, Phase 2 Work, and Phase 3 Work.

**Force Majeure Events** – Force Majeure Events will be specifically listed in the Project Agreement and will constitute Uncontrollable Circumstances. Time extensions and compensation will be provided for Force Majeure Events. It is anticipated that only the following will constitute “Force Majeure Events” for the purposes of the Project Agreement and only to the extent they are not caused by the Project Company in the performance of the Facilities Removal work:

- Unusually severe and abnormal climactic conditions, landslides, underground movement, earthquakes, tidal waves, fires, tornadoes, hurricanes, floods, lightning and other acts of God;
- Certified acts of terrorism as defined by the Terrorism Risk Insurance Act;

- Terrorism arising from nuclear, biological or chemical materials;
- War, civil war, armed conflict, riot, insurrection, civil commotion or disturbance, sabotage and related causes;
- Nuclear explosion or nuclear, radioactive, chemical or biological contamination; or
- Epidemics, pandemics or quarantines.

**GMP Contract Amendment** – A contract amendment, to be entered into following completion and acceptance by the KRRC of the Phase 1 Work and submittal by the Project Company of the GMP Submittal Package, establishing (1) the Phase 2 GMP and Scheduled Phase 2 Substantial Completion Date for the completion of the Phase 2 Work and (2) the Phase 3 GMP and Scheduled Phase 3 Substantial Completion Date for the completion of the Phase 3 Work.

**GMP Contract Amendment Date** – The date on which the Project Company and the KRRC execute and deliver the GMP Contract Amendment.

**GMP Submittal Package** – A Project Company deliverable, part of the Phase 1 Work, that will include the following: (1) the proposed Base Guaranteed Maximum Phase 2 Price (or proposed fixed price if requested by the KRRC); (2) the proposed Base Guaranteed Maximum Phase 3 Price (or proposed fixed price if requested by the KRRC); and (3) other elements necessary to definitively complete the Project Agreement, including a proposed schedule of values, a proposed Project work execution schedule and proposed technical specifications. The “GMP Submittal Package” will serve as the basis for negotiating the GMP Contract Amendment.

**Key Personnel** – The individuals, employed by Project Company or other firm included on the Project Company Team, who would fill certain key roles in delivery of the Project and related services by the Project Company, including the following positions: project executive, project manager, construction design coordinator, Engineer of Record, civil design lead, river restoration design lead, habitat restoration design lead, construction manager, environmental compliance lead, QA/QC manager, risk allocation and liability transfer expertise lead, and safety manager.

**KHSA** – The Klamath Hydroelectric Settlement Agreement, dated February 18, 2010, as amended April 6, 2016 and November 30, 2016.

**KRRC** – Klamath River Renewal Corporation

**KRRC Indemnitees** – The KRRC, PacifiCorp, the States, OPUC and their respective elected officials, trustees, members, appointed officers, directors, commissioners, employees, representatives, agents and contractors.

**KRRC Indemnity** – The indemnification of the KRRC Indemnitees required under sections 7.1.3 and 7.1.4(E) and Appendix L of the KHSA, as described in Section 2.5 of this RFQ and the “Indemnification” section of the Project Agreement Term Sheet attached as Exhibit D to this RFQ.

**LTC** – The Liability Transfer Corporation.

**Named Subcontractors** – Subcontractors named in the Project Company’s SOQ.

**Parent Company Guarantee** – The absolute and unconditional guarantee by the Project Company’s parent company of the Project Company’s obligations under the Project Agreement.

**Phase 1 Work** – The design, planning, permitting and other pre-construction services to be performed by the Project Company pursuant to the Project Agreement prior to the execution and delivery of the GMP Contract Amendment.

**Phase 2 GMP** – The sum of (1) the Base Guaranteed Maximum Phase 2 Price, and (2) the Base Guaranteed Maximum Phase 2 Price Adjustments.

**Phase 2 Substantial Completion** – The submittal by the Project Company, and approval by the KRRC of a certification that the removal of the Facilities is physically complete and all other Phase 2 Work pertaining to the Project is complete, except for the items on the punch list (to be agreed upon in writing by both the KRRC and the Project Company).

**Phase 2 Work** – All work, besides the Phase 1 Work, and the Phase 3 Work, necessary to complete the Project scope, including design, construction, demolition and removal, and physical restoration or former reservoir and other disturbed areas work.

**Phase 3 GMP** – The sum of (1) the Base Guaranteed Maximum Phase 3 Price, and (2) the Base Guaranteed Maximum Phase 3 Price Adjustments.

**Phase 3 Substantial Completion** – The submittal by the Project Company, and approval by the KRRC of a certification that the habitat establishment around the Facilities is complete and all other Phase 3 Work pertaining to the Project is complete, except for the items on the punch list (to be agreed upon in writing by both the KRRC and the Project Company).

**Phase 3 Work** – Work to be performed by the Project Company following Phase 2 Substantial Completion, including monitoring, habitat establishment, correction of deficiencies, other mitigation and anti-looting measures work.

**Progressive Design-Build (PDB)** – Project delivery method in which design and construction of a project are procured from a single entity, with project delivery occurring in three (3) distinct phases with (1) Phase 1 involving preconstruction and design services to a 60% design completion package, including development of a firm contract price for Phase 2 and Phase 3, and (2) Phase 2 including final design and construction and (3) Phase 3 including post-construction services.

**Project** – Facilities Removal consistent with the terms of the KHSR, including KHSR Section 7.1.3 and Appendix L contractor obligations, insurance, bonding, and risk mitigation requirements, all necessary agency approval and permit requirements and conditions, and any additional scope components included in this RFQ. In the Definite Plan, this is called the “Klamath River Renewal Project.”

**Project Agreement** – The agreement to be entered into between the Project Company and the KRRC, including the appendices and the transaction forms, to perform the contract services. The initial Project Agreement covers only Phase 1 services and will be a time and materials, not to exceed contract. Subsequent to completion of Phase 1 services by the Project Company and acceptance by the KRRC of such services, the Project Agreement will be amended to include Phase 2 and 3 Work by executing a the GMP Contract Amendment.

**Project Agreement Parties** – The KRRC and the Project Company

**Project Company** – The entity selected pursuant to the RFQ and RFP process to enter into the Project Agreement with the KRRC.

**Project Company Team (PC Team)** – The Project Company, Key Personnel and any additional firms (such as subcontractors and subconsultants) included in the SOQ.

**Project Site** – The property on which the Facilities are located.

**Proposal** – The documents submitted by a Proposer in response to the RFP for the Project.

**Proposal Manager** - The single point of contact for questions, inquiries, clarifications, and correspondence during the RFQ and RFP process.

**Proposer** – The entity submitting a Proposal in response to the RFP for the Project.

**Reference Documents** – Documents not drafted by the Project Company that are not to be relied upon, including the Definite Plan and preliminary arrangement drawings and documents to be provided with the RFP.

**Respondent** – Partnership, corporation or other legal entity that is able to provide appropriately licensed design, engineering, construction and monitoring and maintenance services as needed to complete the Project, who is a respondent to this RFQ.

**Scheduled Phase 2 Substantial Completion Date** – The date by which Phase 2 Substantial Completion is required to be achieved (as established in the GMP Contract Amendment) following the GMP Contract Amendment Date, as such date may be adjusted for Uncontrollable Circumstances.

**Scheduled Phase 3 Substantial Completion Date** – The date by which Phase 3 Substantial Completion is required to be achieved (as established in the GMP Contract Amendment) following the GMP Contract Amendment Date, as such date may be adjusted for Uncontrollable Circumstances.

**States** – The States of California and Oregon

**Technical Attachments** – Documents not prepared by the Project Company. These are to be relied on by the Project Company and will include topographic surveys, bathymetric surveys, geotechnical data, hazardous material investigations, biological resource surveys, and cultural resource surveys.

**Uncontrollable Circumstances** – Changes in Law, Force Majeure Events, certain site conditions and other acts, events or circumstances beyond the reasonable control of the Project Company as specified in the Project Agreement that will entitle the Project Company to appropriate price, schedule and performance relief, as applicable, in the event of their occurrence.

## 2. PROJECT AND SCOPE OVERVIEW

### 2.1 Project Background

The Klamath Hydroelectric Project (FERC No. 20982) (KHP) was constructed between 1911 and 1962 and includes eight developments: East Side, West Side, Keno (non-generating), J.C. Boyle, Copco No. 1, Copco No. 2, Fall Creek, and Iron Gate. PacifiCorp operated the KHP under a 50-year license issued by the Federal Energy Regulatory Commission (FERC), until the license expired in 2006. PacifiCorp continues to operate the developments under annual licenses.

The KHSA resolved disputes among numerous parties regarding the relicensing of the KHP. The parties include: U.S. Departments of Interior and Commerce; States of California and Oregon; Humboldt County, California; Yurok and Karuk Tribes; Upper Klamath Water Users Association; conservation and fishing groups; and PacifiCorp, as the licensee for the KHP.

The KHSA sets out a process by which PacifiCorp's J.C. Boyle, Copco No. 1, Copco No. 2, and Iron Gate developments and appurtenant works currently licensed to PacifiCorp (Facilities) will be transferred to an independent dam removal entity (the KRRC) for ultimate removal under FERC's license transfer and surrender procedures. The KHSA caps the signatories' financial contribution to the Facilities Removal and obligates the KRRC to indemnify, defend, and hold harmless PacifiCorp and the States from damages arising from Facilities Removal. The KRRC was created in 2016 to serve as the dam removal entity under the KHSA. Consistent with the KHSA, PacifiCorp and the KRRC submitted an application to FERC to amend the existing license for the KHP, establish an original license for the Lower Klamath Project (FERC No. 14803) (LKP), consisting of the Facilities, and transfer the original license for the LKP to the KRRC. On March 15, 2018, FERC granted the request to amend the KHP license. KRRC also filed any application with FERC to surrender the license for the LKP, including removal of the Facilities. Those applications remain pending before FERC. The KRRC is now moving forward with procurement and implementation in anticipation of FERC approval of the license transfer and surrender applications consistent with the KHSA.

On October 5, 2017, FERC issued a directive to convene an Independent Board of Consultants (BOC) to review and assess various aspects of the proposed Facilities Removal process. The BOC, as proposed by the KRRC, was approved on May 22, 2018. The BOC is a six-member fully independent body that includes three members with experience in civil engineering (with specialized experience in dam construction and removal of both concrete and embankment dams, hydrology, hydraulics, and stream diversion) and geotechnical engineering. In addition, the BOC includes members with experience in aquatic and terrestrial biology, insurance and risk mitigation, a heavy civil construction cost estimator with experience in dam removal and restoration activities, and two members with experience in insurance and bonding for large and complex civil construction projects.

The KRRC anticipates that the BOC will commence its review of existing Project technical documents by September 2018. Initial BOC review recommendations will be incorporated into the RFP, and the BOC will review future Project Company generated design and constructability submittals.

## 2.2 Project Overview

The Project is defined herein as Facilities Removal consistent with the terms of the KSHA and includes the physical removal of the four Facilities (Iron Gate, Copco No. 1 and No. 2, and J.C. Boyle) to achieve at a minimum a free-flowing condition and volitional fish passage, site remediation and restoration, including previously inundated lands, measures to avoid or minimize adverse downstream impacts, and all associated permitting for such actions. The Project also includes achieving risk mitigation and liability protection consistent with the KSHA's terms. The Project is located on the Klamath River approximately 200 miles from the Pacific Ocean in the states of Oregon and California (see Figure 2-1).

Prior to removal of the Facilities, the water surface elevation in each reservoir will be drawn down as low as possible to facilitate accumulated sediment evacuation and to create a dry work area for development removal activities. In general, drawdown will begin on January 1 of the drawdown year, and will extend through March 15 of the same year. After drawdown is accomplished, remaining reservoir sediments will be stabilized to the extent feasible, and dam and hydropower development removal will begin.

Full reservoir area restoration will also be accomplished and will begin after drawdown, and extend until vegetation is established. Preparation for habitat restoration of the reservoirs will begin in 2019 with seed collection and propagation intended to multiply native plant seed from project vicinity to use for re-seeding and restoration during and after drawdown. Invasive Exotic Vegetation (IEV) Control will begin early in Phase 1. Vegetation establishment will extend several years.

Additional Project components include onsite waste disposal, offsite materials recycling and waste disposal, measures to reduce Project related effects to aquatic, terrestrial, tribal, cultural and historic resources, road and bridge improvements, relocation of the City of Yreka's pipeline across Iron Gate Reservoir and associated diversion facility improvements, demolition of various recreation facilities adjacent to the reservoirs, recreation improvements, downstream flood control improvements, groundwater system improvements adjacent to the reservoirs, as well as fish hatchery modifications and improvements. The KRRC retains the right to identify certain permit conditions to be self-performed (or performed by others), to be negotiated in the Project Agreement.

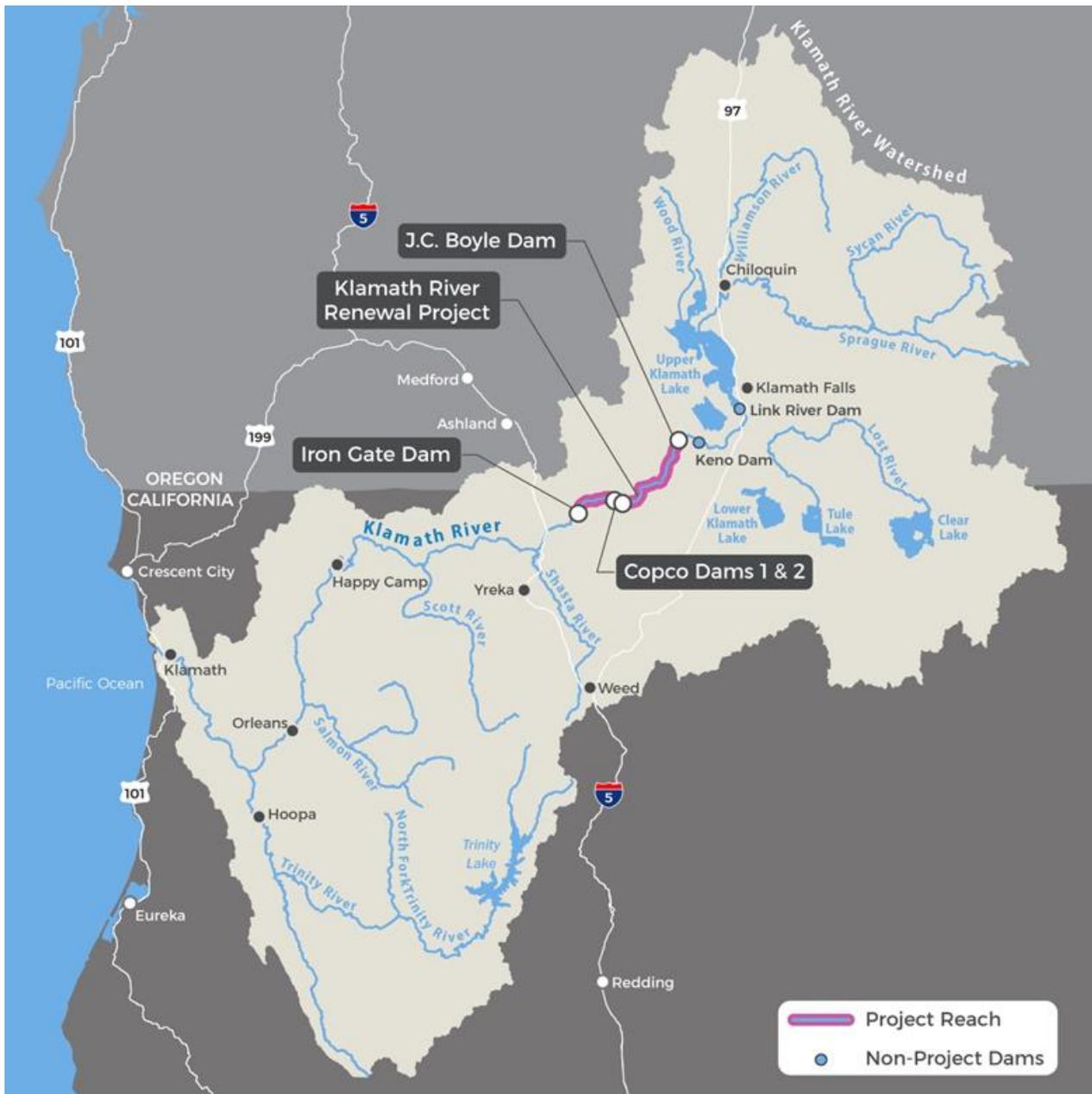


Figure 2-1 Klamath River Watershed and Facilities Locations

## 2.3 Project Scope Generally

As stated in Section 1, the Project scope generally includes design and construction of road and bridge access improvements to accommodate construction vehicles/traffic, bridge and culvert improvements to accommodate new river/creek geometry, dam modifications required to drawdown the reservoirs, reservoir drawdown, dam and hydropower facilities removal, recreation facilities removal and new improvements, and

physical restoration of former reservoirs and other disturbed areas. Further detail for each of these Project components is provided below. The Project Company will be responsible for designing and implementing the Project as that term is defined herein and may be modified in the RFP, Project Agreement, any Early Work Package Amendments and the GMP Contract Amendment.

1. **Construction access improvements:** Includes temporary or permanent improvements to roads, bridges and culverts as necessary to accommodate construction vehicles, equipment and traffic while maintaining current levels of service. Initial assessments and improvement concepts were developed in the Definite Plan to address construction access for regulatory review, but may not be the most cost-effective or appropriate solution given the Project Company's specific plan for construction. The KRRC expects the Project Company to develop a design for construction access improvements that is specific to its construction plan and associated vehicles, equipment and traffic. The design should strive for consistency with the current regulatory Project description, which in many cases allows for either temporary or permanent solutions. In addition, some roads may require ongoing maintenance to maintain the existing or better road surface condition due to construction traffic-related road degradation. In addition, portions of roads adjacent to the reservoirs will require monitoring during drawdown and repairs or improvements on an as-needed basis to maintain the current level of service.
2. **Bridge and culvert improvements:** In order to accommodate post-drawdown river and creek geometry, improvements to existing facilities will be required. Preliminary assessments suggest that some level of improvements will be required at Spencer Bridge, Topsy Grade Road culvert, Unnamed culvert off Keno Access Road, Copco Road Bridge, Patricia Avenue culverts, Jenny Creek Bridge, and numerous Copco Road culverts (Raymond Gulch, Beaver Creek, Camp Creek, Scotch Creek, near Brush Creek). Additional culverts adjacent to the reservoirs will require monitoring during drawdown and repairs or improvements on an as-needed basis. Improvements and/or modifications at these crossings will require compliance with current fish passage criteria and regulations.
3. **Downstream flood control:** Design and construction of flood improvement or protection actions at up to 36 habitable structures downstream of Iron Gate Dam. The construction of these facilities would need to be completed prior to reservoir drawdown.
4. **Groundwater wells:** Design and construction of replacement groundwater wells for parcels adjacent to the reservoirs that are anticipated to be impacted by reservoir drawdown.
5. **City of Yreka Water System:** Construction of the City of Yreka waterline relocation and intake improvements. The construction of these facilities would need to be completed prior to reservoir drawdown.
6. **Dam modification:** Tunnel improvements, existing gate demolition and new gate installation will be required to facilitate drawdown at Copco No. 1 and Iron Gate reservoirs. It will likely be necessary to fast-track the gate design and procurement in order to receive the materials for drawdown in the

summer of 2020. This likely will be an Early Work Package Amendment to the Project Agreement (prior to GMP negotiation).

7. Hatchery improvements: Construction of improvements at both Iron Gate and Fall Creek Hatcheries. The construction of these facilities would need to be completed several months prior to reservoir drawdown.
8. Reservoir drawdown: The Project Company will be responsible for implementing drawdown at each reservoir to meet FERC and other regulatory approvals. In general, the reservoirs must be drawn down between January and mid-March of the drawdown year to minimize the impact to downstream biological resources.
9. Dam and hydropower developments removal: Includes full dam and hydropower facility removal at each of the four Facilities, in addition to onsite waste disposal and offsite materials recycling and waste disposal.
10. Recreation facilities removal and new improvements: Includes full removal and habitat restoration of existing recreation sites and associated access at Pioneer Park, Mallard Cove, Copco Cove, Fall Creek, Jenny Creek, Wanaka Springs, Camp Creek, Juniper Point, Mirror Cove, Overlook Point, and Long Gulch. Also includes removal and habitat restoration of the boat launch, floating dock and fishing pier at Topsy Campground. Includes design and construction of proposed river access facilities for boat put-in/take-out and fishing at several locations along the Klamath River.
11. Restoration of former reservoir and other disturbed areas: Includes full restoration of previously inundated and other disturbed areas with native vegetation to meet regulatory expectations for habitat acreage, coverage and sustainability. This will also involve near-river floodplain and tributary earthwork in key high value locations to provide floodplain connectivity and facilitate fish passage into tributaries.
12. Invasive exotic vegetation (IEV) control: The Project Company will be responsible for removal of invasive exotic vegetation before and after drawdown. The Project Company will prioritize Integrated Pest Management and will strive to implement IEV control techniques with minimal effects on humans, beneficial and non-target organisms, and natural habitats. This work will include ongoing IEV monitoring and adaptive management of IEV within the Project Site before and after restoration work begins.
13. Seed collection and propagation: In order to produce the large quantity of native ecotypic seed needed for the habitat restoration, the Project Company will complete required native seed collection in the Project vicinity and the Upper Klamath River Watershed within the 1,800'-4,300' elevation range. Subsequent large-scale seed propagation will be contracted by the Project Company to specialty farms with expertise in native plant seed propagation. These processes will begin in Phase 1 and will extend into Phase 2.

A limited seed collection scope will be performed in 2018 by a separate KRRC contractor. Project Company shall be responsible for all other seed collection work required for the project, commencing in Phase 1.

A limited seed propagation contract will be complete in approximately April 2019 by a separate KRRC contractor. As part of the proposals for that limited seed propagation contract the respondents will provide competitive pricing for additional optional periods of performance which span the entirety of the project. Selection of the limited seed propagation contractor is expected to be made in early December 2018 at which time this information including the competitive pricing for additional optional periods of performance will be shared with the Design-Build proposers. Project Company shall be responsible for all other seed propagation work required for the project, commencing in Phase 1. Project Company may propose any seed propagation contractor of their choosing, and will be requested to inspect and accept the work performed by KRRC's seed propagation contractor.

## 2.4 Additional Elements of the Project and Related Work

The RFQ includes several additional Project elements that may be procured through the Project Agreement or separately, in either event subject to the indemnification requirements described in Section 2.5. These elements described below:

- Implementation of aquatic resource measures and reporting.
- Implementation of terrestrial resource measures and reporting.
- Completion of water quality monitoring and reporting.
- Cultural resources support.

The Project Company will be required to implement the Agency Approval and Permitting Plan. The KRRC retains the right to identify certain permit conditions to be self-performed (or performed by others), to be negotiated in the Project Agreement.

In addition to design and construction of the above Project scope components, some level of post-construction monitoring and adaptive management maintenance will be the responsibility of the Project Company. Specific requirements will be provided in the RFP.

## 2.5 Special Indemnification and Liability Transfer Corporation

As required under the KHSA and described in the "Indemnification" section of the Project Agreement Term Sheet attached as Exhibit D to this RFQ, the Project Agreement will contain a broad KRRC Indemnity, to be fully guaranteed by the Project Company's parent company under the Parent Company Guarantee and fully supported by the performance bond. The KHSA is the source of the indemnification requirements. Under

section 7.1.4(E) and Appendix L of the KHSA, PacifiCorp, the states, and the KRRC must agree that these requirements are satisfied, as a pre-condition for license transfer, license surrender, and Project implementation.

The KRRC Indemnity will include (1) the various indemnities that the KRRC is obligated to provide to the KRRC Indemnitees under the KHSA, and (2) the various indemnities that the KRRC is obligated to obtain from a Liability Transfer Corporation for the benefit of the KRRC Indemnitees under the KHSA, the OPUC Funding Agreement, the CPUC Funding Agreement, and the California Prop. 1 Grant Agreement. The Project Company, however, will bear any indemnity obligation not covered by insurance or the performance bonds.

## 2.6 Project Budget and Funding

The budget associated with a Project Agreement incorporating all design, construction, monitoring and maintenance work arising from this RFQ is estimated to be within a range of \$225M to \$275M.

The KHSA provides that the States of California and Oregon will make funds up to the cost cap available to the KRRC for implementation of the KHSA. These funds are derived from customer surcharges imposed by orders of the CPUC and the OPUC, and the proceeds of a California state bond issue. These funds are now committed to the KRRC pursuant to funding agreements that provide the KRRC with certainty as to the amount and availability of these financial resources.

## 2.7 Regulatory Overview

### 2.7.1 CEQA/NEPA and Permitting

The KRRC has been providing, and will continue to provide, support to both state and federal leads to implement the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). The State Water Resource Control Board (SWRCB) is the California state lead for CEQA. FERC is the federal lead for NEPA, as well as for the FERC license transfer and surrender applications. The Project Company will be expected to become familiar with anticipated CEQA, NEPA, and FERC license transfer and surrender requirements, and may be asked to provide review and recommendations to finalize those processes. If the Project Company's final design includes significant modifications to the CEQA, NEPA or FERC license transfer and surrender applications or approvals requiring an application or approval modification, the Project Company will be required to obtain, or support the KRRC in obtaining, that modification. The Project Company will be required to implement all final agency approvals and permit conditions per the Agency Approval and Permitting Plan, unless otherwise negotiated with the KRRC, that pertain to the Project to the satisfaction of the agency that issued the approval or permit.

The KRRC will obtain federal, state and local resource agency permits if required, including those listed below:

1. FERC Approval Establishing Effectiveness of LKP License Transfer

2. FERC Approval Establishing Effectiveness of LKP License Surrender
3. California Department of Fish and Wildlife (CDFW) Section 1602, as necessary
4. California Division of Safety of Dams (DSOD) Dam Removal Permit, as necessary
5. CDFW Endangered Species Act (ESA) Incidental Take Permit, as necessary
6. California State Lands Commission Lease Agreement
7. California SWRCB Section 401 Water Quality Certification
8. California SWRCB Solid Waste Disposal
9. Klamath County Land Use Permit, as necessary
10. Klamath County Site Development Permit, as necessary
11. Oregon Department of Environmental Quality (ODEQ) Section 401 Water Quality Certification
12. ODEQ Solid Waste Disposal Exemption
13. Oregon Department of Fish and Wildlife (ODFW) ESA Incidental Take Permit, as necessary
14. ODFW Fish Passage Approval, as necessary
15. Oregon Department of State Lands (ODSL) Removal/Fill Permit, as necessary
16. Siskiyou County Use Permit, as necessary
17. Siskiyou County Development and Demolition Permit, as necessary
18. United States Army Corps of Engineers (USACE) Section 404 Permit
19. United States Fish and Wildlife Service Biological Opinion
20. National Marine Fisheries Service Biological Opinion

The Project Company will be expected to become familiar with anticipated resource agency permit conditions, and may be asked to provide review and recommendations to finalize those processes. If implementing the Project Company's final design requires a modification to a resource agency permit, the Project Company will be required to obtain that permit modification. For all final resource agency permits, the Project Company will be required to implement the Agency Approval and Permitting Plan, including all

permit requirements and conditions, unless otherwise negotiated with the KRRC, that pertain to the Project to the satisfaction of the permitting agencies.

## 2.7.2 Construction Permitting

The Project Company will also be required to obtain all construction permits (e.g., building permits, public right-of-way encroachment permits, transportation permits, storm water permits, etc.), as needed to complete the work. Project Company obtained permits include, but are not limited to, the following:

1. California SWRCB Section 402 National Pollutant Discharge Elimination System Permit (General Construction Permit)
2. ODEQ Section 402 National Pollutant Discharge Elimination System Permit (General Construction Permit)
3. Oregon Department of Transportation (ODOT) Encroachment Permit
4. Siskiyou County Transportation Permit
5. County Road Encroachment Permits

## 2.8 Project Site

The Project site and associated dam and hydropower facilities are currently owned and operated by PacifiCorp. Access agreements between the Project Company and PacifiCorp will be required to access the Facilities to complete, explorations and related Project components. A PacifiCorp access agreement will include specific requirements associated with insurance coverages and certificates, contractor orientation, inadvertent discovery, health and safety, and other matters. Draft PacifiCorp access agreements and additional information will be provided as part of the RFP.

Primary access to the Iron Gate and Copco Facilities are from Interstate 5 to Copco Road, and primary access to the J.C. Boyle development is from US 97 to Oregon State Route 66.

## 2.9 Property Ownership and FERC Approvals

The KRRC does not own the property on which the Facilities are located. Such property is currently owned by PacifiCorp. PacifiCorp does not intend to transfer any property to the KRRC until the FERC applications for license transfer to the KRRC and license surrender by the KRRC are approved. PacifiCorp will transfer to KRRC the property on which the Facilities are located, after FERC approves license transfer and before KRRC accepts the license transfer order. KRRC expects a license transfer order after the execution of the GMP Contract Amendment. As summarized in Section 2.1, and associated with the FERC review and approval process, an independent BOC has been convened and will be involved in reviews during all phases of design

and construction. As summarized in Section 2.1, and associated with the FERC review and approval process, an independent BOC has been convened and will be involved in reviews during all phases of design and construction.

## 2.10 Critical Energy Infrastructure Information and Confidential Business Information

Certain data, drawings, and information related to the Facilities are considered Critical Energy Infrastructure Information (CEII). Certain other information may be considered Confidential Business Information (CBI). The Project Company will be required to enter into non-disclosure agreements with PacifiCorp and with the KRRC that restrict the use, storage, and sharing of CEII or CBI and other information before CEII or CBI can be shared with the Project Company.

## 2.11 Project Schedule

Anticipated Project schedule milestones are outlined below:

**Table 2-1 Anticipated Schedule Milestones**

Outline Schedule - Bidding Process (specific activities and dates for procurement are provided in Table 4-1)		
2018 Q3	RFQ (see Table 4-1 for details)	
2018 Q4	RFP (see Table 4-1 for details)	
Outline Schedule - Design*		
2019 Q1	Project Company field explorations and surveys start, as required	Phase 1 scope
2019 Q1	60% Design start	Phase 1 scope
2019 Q3	60% Design complete & GMP Submittal Package	Phase 1 scope
2019 Q3	GMP Contract Amendment	Phase 1 scope
2019 Q4	90% Design start	Phase 1 scope
2020 Q1	100% Design start	Phase 1 scope
Outline Schedule - Construction		
2019 Q2	Gates procurement & fabrication start	Phase 1 scope
2020 Q1	Copco 1 Dam modifications start	Phase 2 scope
2020 Q1	Iron Gate Dam modifications start	Phase 2 scope
2020 Q1	Bridge, road, culvert work start	Phase 2 scope
2020 Q1	Yreka water system improvement start	Phase 2 scope
2020 Q1	Fish hatcheries improvement start	Phase 2 scope
2020 Q1	Flood proofing mitigations start	Phase 2 scope
2020 Q4	Reservoir drawdown start	Phase 2 scope

Outline Schedule – Design*		
2021 Q1	Facilities Removal start	Phase 2 scope
2021 Q1	Habitat restoration start	Phase 2 scope
2021 Q2	Recreation facilities removal start	Phase 2 scope
2021 Q4	Phase 2 Substantial Completion	Phase 2 scope
2021 Q4	Begin implementation of Phase 3 scope	Phase 3 scope
2027 Q4	Final Completion	Phase 3 scope

\*Assumes one package for all design elements. It may make sense to break the design up into multiple packages, which would be phased to meet construction start milestone dates

## 3. PROJECT SCOPE OF SERVICES

As noted in Section 1 of this RFQ, the Project Company will provide services in three distinct phases. The RFP process will conclude with the award of a Project Agreement to perform the Phase 1 scope (generally consulting services, but also native seed collection and propagation, as well as IEV control). The successful award of the Phase 2 (construction) and 3 (post-construction) GMP Contract Amendment will be pursuant to the negotiation and agreement of the Project Company's GMP Submittal Package. The KRRC reserves the right to pursue alternative contracting opportunities with other parties at any time, including in the event that the negotiation of the GMP Contract Amendment is ultimately unsuccessful.

### 3.1 Phase 1 Services

Beginning on the Contract Date and following a notice-to-proceed from the KRRC, for a time and materials not to exceed fee to be proposed at the RFP stage, the Project Company shall provide to the KRRC the following Phase 1 services:

- Performance of necessary engineering and resource studies (such as geotechnical investigations, underground and aboveground utilities investigations, hydraulic studies, groundwater investigations, etc.) to support design development.
- Collection of native plant seed in the Project Site and vicinity.
- Propagation of native seed previously collected.
- IEV control in the Project Site.
- 60% design documents (drawings, technical specifications, design report).
- 90% design documents (negotiated in Project Agreement, but occurs in Phase 2).
- 100% design documents (negotiated in Project Agreement, but occurs in Phase 2).
- Solicit competitive bids for the subcontracted construction work in preparation of a GMP.
- Develop Local Jobs and Tribal Subcontracting Commitment Utilization and Reporting Plan.
- Project GMP Submittal Package (based on 60% design documents) which will set forth the open-book pricing submittal for Phase 2 construction and Phase 3 post-construction activities). Will include (1) the proposed Base Guaranteed Maximum Phase 2 Price (or fixed price if requested by the KRRC); (2) the proposed Base Guaranteed Maximum Phase 3 Price (or fixed price if requested by the

KRRC) and (3) other elements necessary to complete the Project Agreement, including a proposed schedule of values, a proposed Project schedule and proposed technical specifications.

- Agency Approval and Permitting Plan: Project Company will develop an understanding of all anticipated resource agency approval and permit requirements and conditions, develop a plan to adhere to requirements, track progress and provide reporting to the KRRC, and implement the plan.

It may be appropriate to break the design up into multiple packages, in order to meet construction start milestone dates. Respondents should consider this possibility and be prepared to discuss in detail during the RFP phase of procurement.

Design Documents developed by the Project Company would build upon Technical Attachments provided by others as part of the RFP documents. Technical Attachments by others to be relied on by the Project Company will include topographic surveys, bathymetric surveys, geotechnical data, hazardous material investigations, biological resource surveys, and cultural resource surveys. Reference Documents, which are not to be relied upon, will include the Definite Plan and preliminary arrangement drawings and documents to be provided with the RFP.

The KRRC shall have the right to make changes to the scope of the Phase 1 Work at any time, in its sole discretion, by written notice to the Project Company and with performance, schedule and price relief, as appropriate.

While it is expected that the parties will agree on a GMP Contract Amendment, the KRRC shall not be obligated to enter into the GMP Contract Amendment and may elect to terminate the Project Agreement for its convenience at any time. If requested by the KRRC, the Designer shall complete the design to 100% for purposes of conducting a design-bid-build procurement.

## 3.2 Early Work Packages

It is expected that some portions of the construction preparation work will need to commence prior to the GMP Contract Amendment Date, in order to meet any expected critical path milestones. The Project Company shall recommend such work to the KRRC. The KRRC shall have the discretion to authorize the commencement of any necessary early work package through an Early Work Package Amendment. Any early work package must be appropriately bonded on the date of the execution of the Early Work Package Amendment. In particular, it is expected that the long lead time anticipated for gate procurement and fabrication at the Iron Gate and Copco No. 1 developments will result in an early work amendment.

## 3.3 Phase 2 Services

The Project Company shall begin the Phase 2 Work upon the receipt of a notice-to-proceed following either the execution of the GMP Contract Amendment or the execution of an Early Work Package Amendment, as applicable. Following the GMP Contract Amendment Date, the Project Company shall be solely responsible

for completing the design and implementation of the demolition of the Facilities in accordance with the technical specifications and the Project Agreement, and shall provide such services on an “open-book” basis subject to a GMP.

Phase 2 services are expected to include the following:

- Provide 90% design documents (negotiated in Phase 1 Project Agreement, but occurs in Phase 2)
- Provide 100% design documents (negotiated in Phase 1 Project Agreement, but occurs in Phase 2)
- Perform ongoing work associated with habitat restoration, including but not limited to, seed collection, seed propagation and invasive weed removal.
- Procure equipment and subcontractors
- Procure all permits and licenses required for the construction processes such as building permits, public right-of-way encroachment permits, transportation permits, storm water permits, etc.
- Continue implementation of Agency Approval and Permitting Plan
- Develop Base Guaranteed Maximum Price Phase 2 Adjustments (based on 100% design documents)
- Conduct drawdown of reservoirs
- Construct the Project and meet specified construction milestones
- Achieve Phase 2 Substantial Completion
- Complete all habitat restoration services
- Provide record drawings and specifications
- Provide warranty coverage for completed components

Additional Project Company responsibilities during Phase 2 include, but are not limited to, the following:

- Supervise subcontractors and Project Company personnel
- Conduct all required testing during construction
- Establish and implement quality-management procedures
- Implement Project Company developed health and safety plan and practices

- Provide project management services
- Support the KRRC public outreach efforts during design and construction

The Project Company shall achieve Phase 2 Substantial Completion by the Scheduled Phase 2 Substantial Completion Date (the Scheduled Phase 2 Substantial Completion Date will be negotiated as part of the GMP Contract Amendment). If Phase 2 Substantial Completion has not been achieved by the Scheduled Phase 2 Substantial Completion Date, the Project Company shall have the right to achieve Phase 2 Substantial Completion during an extension period (in which liquidated damages will apply), the length of which will be identified in the Project Agreement. If the Project Company fails to achieve Phase 2 Substantial Completion by the end of such extension period, an event of default by the Project Company shall be deemed to have occurred.

Following Phase 2 Substantial Completion, the Project Company will complete punch list items and deliverable requirements in order to achieve Final Completion.

### **3.4 Phase 3 Services**

The Project Company shall begin the Phase 3 Work upon the achievement of Phase 2 Substantial Completion and may begin earlier, with the KRRC's consent, at specific Facility sites upon successful Facility removal.

The Project Company shall perform all Phase 3 Work on an "open-book" basis subject to a GMP, which is expected to include monitoring, habitat establishment, adaptive management, development of Base Guaranteed Maximum Price Phase 3 Adjustments (based on Phase 2 Substantial Completion), correction of latent deficiencies, achieving Phase 3 Substantial Completion and achieving Final Completion.

In addition to the Phase 3 Work above, if at any time during the five year period following Phase 2 Substantial Completion, any of the Phase 2 Work is found to not be in accordance with the requirements of the Project, the Project Company shall, as part of Phase 3 Work, correct the deficiencies promptly after written notice from the KRRC.

Phase 3 Substantial Completion Date will be negotiated as part of the GMP Contract Amendment). If Phase 3 Substantial Completion has not been achieved by the Scheduled Phase 3 Substantial Completion Date, the Project Company shall have the right to achieve Phase 3 Substantial Completion during an extension period (in which liquidated damages will apply), the length of which will be identified in the Project Agreement. If the Project Company fails to achieve Phase 3 Substantial Completion by the end of such extension period, an event of default by the Project Company shall be deemed to have occurred.

Following Phase 3 Substantial Completion, the Project Company will complete punch list items and deliverable requirements in order to achieve Final Completion.

## 4. PROCUREMENT PROCESS

### 4.1 Acknowledgement of RFQ

The KRRC requests any potential Respondent to submit an acknowledgement that it has received the RFQ and is a potential Respondent. Such acknowledgement shall identify and provide full contact information for the Proposal Manager, who shall be the Respondent's single point of contact for the receipt of any future documents, notices and addenda associated with this RFQ. Along with the acknowledgment, the Respondent shall complete RFQ Exhibit C and email the form in accordance with the below information. Any substitution of Respondent's Proposal Manager shall also be made in writing to the KRRC at the following email address.

Email address: krrp@aecom.com  
Email subject: KRRP RFQ Acknowledgment - [Respondent's name]

### 4.2 Respondent's Project Company Team

Beginning with the RFQ stage, the Respondent's PC Team shall include the Project Company, Key Personnel, and any additional firms (such as subcontractors and subconsultants) capable of completing the entire Project, which shall be under the management and coordination of the Project Company. The PC Team must include designers and engineers capable of analyzing and designing all aspects of the Project. The PC Team will also be required to include and will be scored upon a solution to the KRRC Indemnity in its RFP submittal.

The Respondent's SOQ shall include the PC Team's organization chart, which shall include all currently identified potential contracting parties and Key Personnel, and shall identify the Engineer of Record.

The Respondent's Exhibit A shall include, at a minimum, the PC Team's lead construction entity, lead design entity, lead river restoration design entity, lead habitat restoration design entity, and may include a liability transfer corporation and specialty construction contractors.

The PC Team shall remain involved in the work from execution of the Project Agreement through construction and construction administration, and stay involved in advisory function throughout the monitoring and maintenance period. The Project Company may request a change of identified firms or Key Personnel in writing to the KRRC. Replacement firms or Key Personnel must have equal or better qualification and experience, as determined by the KRRC, or replacement will not be approved by the KRRC.

Consultant firms, as listed in Section 7.1, and/or individuals who are or have been involved in the preparation of documents used as part of this RFQ and/or the RFP for the Project and/or have been involved in the Project CEQA, NEPA, and agency approval and permitting processes will not be allowed to participate as part of a proposing team in any capacity.

### 4.3 Communications with the KRRC

Except as outlined in this RFQ, Respondents, or anyone receiving the RFQ, shall not contact, discuss with, or inquire of any KRRC employee or consultant, PacifiCorp employee or consultant, FERC employee or contractor, or elected official on any matter relating to this procurement process. This requirement is to ensure that the same information and no inconsistent, incomplete or inaccurate information are communicated. Information obtained outside this qualification process cannot be relied upon as accurate.

The KRRC reserves the right to notify the Respondents to schedule one-on-one meetings with each team during the SOQ evaluation, as necessary.

### 4.4 Procurement Schedule

The following schedule is a forecast of events in the RFQ, RFP and contract execution processes. All of the following are subject to change at the sole discretion of the KRRC.

**Table 4-1 Procurement Schedule**

RFQ Process	Due Date
Published date	September 18, 2018
Submit Acknowledgment of RFP and Proposal Manager	September 21, 2018
Email questions received no later than	October 2, 2018
Distribute answers to questions	October 10, 2018
Submit SOQ	October 19, 2018
Shortlist notification	November 13, 2018

RFP Process	Approximate Date
Published date	November 16, 2018
Email questions received no later than	November 28, 2018
One-on-one meetings	December 6-7, 2018
Distribute answers to questions	December 12, 2018
Submit Proposals	December 24, 2018
Interviews	Week of January 21, 2019

Contract Award	Approximate Date
Selection	February 2019
Project Agreement execution	March 2019

Contract Award	Approximate Date
Gate procurement Early Work Package Amendment execution	July 2019
GMP Submittal Package submittal	September 2019
GMP Contract Amendment execution for Phases 2 and 3 Work	October 2019

## 4.5 RFQ Briefing Conference

Respondents had an opportunity to attend a RFQ Informational Meeting on August 29, 2018. This conference was intended to review the RFQ process and submittal requirements, general scope of the Project, and the RFQ and RFP process. Question cards were distributed at the Briefing Conference so that Respondents could submit questions to the KRRC's Project team at the conference. Only questions submitted in writing will be responded to by the KRRC.

## 4.6 RFQ Written Questions

Respondent's questions should be directed through their designated Proposal Manager and submitted in writing no later than by the date of the written questions deadline. Notwithstanding the deadline, the Respondent's Proposal Manager is requested to submit questions as early as possible to secure the most timely response. The KRRC's responses shall be communicated to all registered Respondents. The KRRC requests no telephone calls be made from the Respondent during the RFQ period. All questions shall be delivered as follows:

Email address: krrp@aecom.com  
 Email subject: KRRP RFQ Written Questions - [Respondent's name]  
 Deadline: 5:00pm Pacific Time on deadline date

## 5. SOQ SUBMITTAL REQUIREMENTS

### 5.1 Submittal Date and Method

The SOQ must be submitted to the KRRC via email and received at the following email address by the deadline stated below.

Email address: krrp@aecom.com  
Email subject: KRRP SOQ Submittal - [Respondent's name]  
Deadline: 5:00pm Pacific Time on October ~~18~~19, 2018

Each Respondent assumes full responsibility for timely delivery of its SOQ as required above. Any SOQ received after the submittal deadline will be deemed nonresponsive. Oral, telephone, facsimile, or hard-copy SOQs are invalid and will not receive consideration. No Respondent may submit more than one SOQ.

### 5.2 Submittal Format

The SOQ must be prepared in the listed order set out in the section 5.3.10 Submittal Checklist, and combined into a single portable document format (PDF) electronic file.

If the combined PDF file exceeds 10MB in size, then the Respondent may separate the SOQ into multiple PDF files provided that (a) no PDF exceeds 10MB in size, (b) each PDF is sequentially numbered in the file name "(x of y files\*)", and (c) the SOQ comprises no more than three (3) PDF files. Those files may be submitted in up to three separate emails, provided that the email subject line states "KRRP SOQ Submittal - [Respondent's name] (x of y files\*)"

\* Where "x" is the number of the file and "y" is the total number of files.

Eleven-point Arial font and ~~1-51.15~~ line spacing must be used in all text except for headings and financial documents that cannot be easily altered. Line spacing restrictions do not apply to tables, graphics and captions. Exhibits A, B, and C must be printed to PDF from the provided Excel spreadsheet, with supporting materials provided in the SOQ appendices or attachments.

### 5.3 Submittal Content

The content requirements set forth in this RFQ represent the minimum content requirements for the SOQ. It is the Respondent's responsibility to include specific information in its SOQ to demonstrate its qualifications for the Project.

The SOQ must include the following information in the order listed:

- Cover Letter
- Part 1 – Organization Chart
- Part 2 – Company Profiles
- Part 3 – Project Profiles
- Part 4 – Project References
- Part 5 – Key Personnel Resumes
- Part 6 – Project Approach
- Part 7 – Liability Transfer
- Exhibit A – Questionnaire (including required attachments)
- Exhibit B – General Statement of Bank Credit
- Exhibit C – Respondent’s Proposal Manager

### **5.3.1 Cover Letter**

Each Respondent shall include a cover letter in front of the SOQ. The cover letter must be signed by an authorized representative of the Respondent who is empowered to sign such material and to commit the Respondent to the obligations contained in the SOQ. If Respondent is a corporation or an LLC, an authorized officer shall sign his/her name and indicate his/her title beneath the full corporate name. If Respondent is a consortium, partnership or any other form of joint venture, an authorized representative for each member of the joint venture shall sign his/her name and indicate his/her title and organization beneath the joint venture name. The cover letter must also (i) contain a statement that the Respondent is not aware of any potential conflicts of interest relating to this project, the KRRC, PacifiCorp, the States, any advisor to the KRRC listed in this RFQ, or any other potential conflict of interest; or (ii) disclose any potential conflict of interest the Respondent is aware of at the time of submittal.

### **5.3.2 Part 1 - Organization**

#### **Legal Structure**

Respondent shall describe how it is organized as a legal entity, including confirmation of how the Respondent is or will be legally structured (i.e., as a corporation, limited liability company (LLC), joint venture

or other form of organization). If the Respondent will not be the Project Company, the proposed Project Company shall also be described in a similar manner.

If the Respondent is a consortium, partnership or any other form of joint venture, The Respondent must provide a copy of the executed agreement, or proposed agreement, including percentages of ownership, roles of various parties, and execution date. Identify when the Respondent and each member was organized and, if a corporation, where incorporated. The legal structure description shall be limited to 1 page.

### **Organization Chart(s)**

Provide an organization chart demonstrating the proposed make-up of the participants on the Respondent's team. The organization chart should also clearly show the team organization/structure and lines of communication and responsibility. If the Respondent proposes a different organizational structure for Phase 1 relative to future construction phases, they shall submit two (2) separate organization charts. The organization chart(s) assist the evaluators in understanding how the team envisions working together. The RFP phase will include the development of a detailed management plan.

The organization chart(s) will be scored based upon clarity in identifying the key teams and Key Personnel, and in describing the relationships between the team members. Each chart shall be one (1) side of 8½ x 11” paper size or easily fold into an 8½ x 11 paper size and be one (1)-sided.

### **5.3.3 Part 2 - Company Profiles**

For each company/organization listed in by the Respondent in Exhibit A - Questionnaire, provide a company profile providing information supplementary to the project profile information provided under the next section. Each company profile shall be limited to two (2) pages, and the entirety of Part 2 shall be limited to no more than 15 pages.

Company Profiles shall provide the following information, but should avoid duplication of information provided in the Respondent's project profiles and project approach submittals, however, cross references to the project profiles and work package approach submittals is allowed.

Company Profiles shall include but not be limited to:

- Company Introduction – describe company history, significant accomplishments, professional philosophy.
- Technical Expertise – describe past experience in key technical areas required for Project completion.
- Delivery Methods – describe past experience with PDB, design-build and GMP projects.
- Environmental Health and Safety (EHS) – describe company's commitment to EHS, and how their approach leads to successful results.

- Quality Control – describe company’s commitment to quality and how the company will ensure the highest level of design and construction when working as part of a large project team.
- History/Experience with PC Team partners - provide previous history and experience working with Respondent’s other team members.
- Awards/Recognition – provide information regarding any national, regional, or local awards or recognitions received for exceptional design in channel restoration, habitat restoration and/or environmental achievements.
- Project Success – provide any additional evidence that establishes ability to successfully complete projects of similar size, scope and complexity to the proposed Project. This additional evidence must not duplicate information provided in response to the Project Profiles section.
- Any other information pertinent to the success of your company’s projects.

### **5.3.4 Part 3 - Project Profiles**

Provide project profiles to demonstrate that the company has completed or demonstrates that the company has the capability to complete projects of similar size, scope and complexity to the Project. Project profile constraints:

- Projects must have been completed or reached applicable milestones on or after January 1, 2007.
- Project profiles shall include the project name, project location, client name, project manager name, project description (including identifying relevance to this Project), delivery method (e.g., PDB), services provided, baseline & actual completion date, baseline & actual contract amounts, and reasons for baseline variations.
- Project profiles must identify key personnel from the profiled project, who are proposed for this Project, and a description of the scope of services and length of involvement provided by each key personnel.
- Photographs or other graphic materials may be included.
- Project profiles should not exceed two (2) pages in length for each project.
- Each Project profile that meets multiple submission requirements counts toward that submittal requirement and does not need to be repeated in different categories.

## Construction Lead

Submit profiles for a maximum of five (5) construction projects that are representative of the construction lead. List at least two (2) projects with a construction cost each in excess of \$100 million dollars. List at least two (2) projects using the PDB or design-build delivery method.

Provide examples of projects completed of similar scope and complexity to this Project and describe the construction approach. Include information that addresses the construction lead's ability to construct a project demonstrating:

1. Commitment to complete the work in good faith to meet the KRRC's and stakeholders' visions for the Project, consistent with the natural wildland setting, as articulated in the Project goals, objectives and design criteria, and in a collaborative approach with the KRRC.
2. Commitment to complete the work in good faith to meet the KRRC's budgetary constraints through transparency and collaboration, working toward an implementable project with reasonable allowances and contingencies.
3. Demonstrated experience and expertise in the following areas:
  - a) Construction implementation of large-scale civil earthwork projects to include conforming and adapting the design to unknowable/ unknown subsurface and field conditions, and/or field conditions which may change during the course of the construction phase, in a manner that does not compromise prevailing design criteria.
  - b) Successful sustained collaboration with other contractors to optimize designs with respect to field conditions during construction, including development and implementation of design adjustments within short time periods.
  - c) Proactive management, anticipation of long-lead items, and identification and resolution of construction and design bottlenecks to limit delays in construction progress.
  - d) Handling of water including diversion on rivers and streams, installation and operation of dewatering systems and treatment of water to water quality objectives.
  - e) Tunnel construction/modification and underwater construction of hydraulic structures.
  - f) Operation and maintenance of hydraulic gates and structures.
  - g) Demolition of dams or other similarly complex concrete and embankment structures.
  - h) Demolition of hydropower developments and associated transmission infrastructure and substations.
  - i) Ability to adjust operations to changing field conditions in order to expeditiously complete the work.
  - j) Construction and post-construction monitoring and maintenance.
4. Staff resources, including prolonged staffing at remote site with limited telecommunications, access, and other resources.
5. Pro-active and clear communications to the public on progress and changing conditions of interest to the public (e.g., road closures, blasting schedules).
6. Ability to discuss and review project issues with stakeholder groups having diverse technical backgrounds, organizational mandates and interest levels relative to the project.
7. Coordination with permitting and regulatory agencies, and successful negotiation and completion of permit modifications while minimizing schedule effects.

## Design Lead

Submit profiles for a maximum of three (3) projects that are representative of the design lead. List at least one (1) project with a construction cost each in excess of \$100 million dollars. List at least one (1) project using the PDB or design-build delivery method.

Provide examples of projects completed of similar scope and complexity to this Project and describe the design approach. Include information that addresses the design lead's ability to create a project demonstrating:

1. Commitment to complete the work in good faith to meet the KRRC's and stakeholders' visions for the Project, consistent with the natural wildland setting as articulated in the Project goals, objectives and design criteria, and in a collaborative approach with the KRRC.
2. Demonstrated experience and expertise in the following areas:
  - a) Registration
    - i) Design team must include a registered Civil Engineer in California and Oregon.
  - a) Analysis and Design
    - i) Knowledge of handling of surface and subsurface water (diversion of river flows, dewatering of sediment, etc.).
    - ii) Design of large gate structures and tunnel improvements.
    - iii) Design of earthen embankments (permanent stockpiles).
    - iv) Ability to creatively integrate natural features and materials into the design of engineered earthfill structures.
    - v) Demolition of dams.
    - vi) Demolition of hydropower developments and associated transmission infrastructure and substations.
    - vii) Knowledge of treatment of water for the purpose of meeting water quality standards.
    - viii) Development of detailed Design Documents (drawings, specifications, design report, etc.).
  - b) Construction and Field Engineering
    - i) Field engineering and construction implementation of large-scale civil earthwork projects. To include conforming and adapting the design to unknowable/ unknown subsurface and field conditions, and/or field conditions which may change during the course of the construction phase, in a manner that does not compromise prevailing design criteria.
    - ii) Successful sustained design collaboration with construction contractor to optimize designs with respect to field conditions during the construction period, including development and implementation of design adjustments within short time frames.
    - iii) Proactive management, anticipation of long-lead items, and identification and resolution of construction and design bottlenecks to limit delays in construction progress.
3. Staff resources, including prolonged staffing of professional design staff at remote site with limited telecommunications, access, and other resources.
4. Ability to discuss and review project issues with stakeholder groups having diverse technical backgrounds, organizational mandates and interest levels relative to the Project.

5. Coordination with permitting and regulatory agencies, and successful negotiation and completion of permit modifications while minimizing schedule effects.

### **River Restoration Design Lead**

Submit profiles for a maximum of three (3) projects completed on or after January 1, 2007. List at least two (2) projects with a construction cost each in excess of \$5 million dollars. Provide examples of projects completed and describe the design approach. Include information that addresses the consultant's ability to create a project demonstrating:

1. Commitment to complete the work in good faith to meet the KRRC's and stakeholders' visions for the Project, consistent with the natural wildland setting as articulated in the Project goals, objectives and design criteria, and in a collaborative approach with the KRRC.
2. Commitment to work with the KRRC and assist in essential permitting and environmental issues.
3. Commitment to work in good faith to optimize the restoration of the site to provide the maximum possible ecological benefit, while respecting cultural resources and all applicable stability and other design criteria.
4. Demonstrated experience and expertise in the following areas:
  - a) Registration
    - i) Design team must include a registered Civil Engineer in California and Oregon.
  - b) Analysis and Design
    - i) Knowledge of Northern California and Southern Oregon fluvial systems including native biological resources with emphasis on coho and Chinook salmon.
    - ii) Interdisciplinary, process-based analysis and restoration design of fluvial systems.
    - iii) Design of biotechnical and aquatic habitat features.
    - iv) Salmonid passage analysis and design.
    - v) Restoration design of riparian and upland vegetation.
  - c) Construction and Field Engineering
    - i) Field engineering and construction implementation of large-scale channel and floodplain restoration projects to include conforming and adapting the design to unknowable/unknown subsurface and field conditions, and/or field conditions which may change during the course of the construction phase, in a manner that does not compromise prevailing design criteria.
    - ii) Successful sustained design collaboration with construction contractor to optimize restoration designs with respect to field conditions during the construction period, including development and implementation of design adjustments within short time frames.
    - iii) Proactive management, anticipation of long-lead items, and identification and resolution of construction and design bottlenecks to limit delays in construction progress.
5. Knowledge of California and Oregon regulatory requirements, including necessary environmental and other permits, as relates to implementation of restoration and fish passage projects.
6. Staff resources, including prolonged staffing of professional design staff at remote site with limited telecommunications, access, and other resources.

7. Ability to discuss and review project issues with stakeholders having diverse technical backgrounds, organizational mandates and interest levels relative to the project.
8. Coordination with permitting and regulatory agencies, and successful negotiation and completion of permit modifications while minimizing schedule effects.

### Habitat Restoration Design Lead

Submit project profiles for a maximum of three (3) projects completed on or after January 1, 2007. List at least two (2) projects with a construction cost each in excess of \$5 million dollars. Provide examples of completed riverine and upland habitat restoration projects that are similar to this Project and describe the design approach. Include information that addresses the consultant's ability to create a project demonstrating:

1. Commitment to work in good faith to meet the KRRC's and stakeholder's visions for the Project, consistent with the natural wildland setting, and to optimize ecological benefits by restoring multiple integrated habitats, while respecting cultural resources and all applicable stability and other design criteria, and in a collaborative approach with the KRRC.
2. Successful installation, maintenance, adaptive management, and long-term establishment of large habitat restoration projects with similar native plant communities and revegetation.
3. Demonstrated experience and expertise in the following areas:
  - a) Registration
    - i) Restoration design team must include a registered Landscape Architect **who will sign and stamp the design**
    - ii) Habitat Restoration Design Team Lead must have a ~~with a~~ minimum of 15 years of proven experience in ecological restoration or natural habitats ~~and/or must hold a landscape contractor license in both States as a Landscape Architect, Landscape Contractor, Ecologist or Biologist.~~
  - b) Analysis and Design
    - i) Planning and design of sustainable native habitat restoration with the capacity to evolve over time as the restored area matures in similar environments and settings.
    - ii) Planning and completion of (or contracting for) native and local seed or propagule collection and propagation to support large scale restoration projects over a multiyear time scale.
    - iii) Design of irrigation systems in similar environments.
    - iv) Experience with IEV Control that utilizes multiple integrative pest management techniques that minimize environmental impacts.
    - v) Experience gathering scientific data to integrate into adaptive management decision making.
  - c) Construction and Field Engineering
    - i) Experience with heavy construction and habitat restoration activities in environmentally sensitive areas, including planting, hydroseeding and other appropriate installation techniques.
    - ii) A demonstrated commitment to environmental sensitivity.

- iii) Experience with irrigation system installation and maintenance throughout establishment and long-term maintenance phases.
  - iv) Collaboration with contractors to ensure successful habitat establishment and coverage over appropriate contract establishment periods.
  - v) Experience with long-term habitat installation and maintenance contracts and inspections.
  - vi) Experience implementing integrative pest management and IEV control.
4. Staff resources, including prolonged staffing of professional design staff at remote site with limited telecommunications, access, and other resources.
  5. Ability to discuss and review project issues with stakeholders having diverse technical backgrounds, organizational mandates and interest levels relative to the project.
  6. Coordination with permitting and regulatory agencies, and successful negotiation and completion of permit modifications while minimizing schedule effects.

### **Channel Restoration Construction Contractor (Optional, see Section 7.3)**

Submit a description of a maximum of three (3) construction projects completed on or after January 1, 2007 by the specialty channel restoration construction contractor. List at least two (2) projects with a construction cost each in excess of ~~\$5~~2 million dollars.

1. Commitment to complete the work in good faith to meet the KRRC's and stakeholders' vision for the site, consistent with the natural wildland setting, as articulated in the Project goals, objectives and design criteria, and in a collaborative approach with the KRRC.
2. Commitment to work in good faith to optimize the restoration of the site to provide the maximum possible ecological benefit, while respecting all applicable stability and other design criteria.
3. Demonstrated experience and expertise in the following areas:
  - a) Knowledge of Northern California and Southern Oregon fluvial systems including native biological resources with emphasis on coho and Chinook salmon.
  - b) Construction of fluvial system restoration designs.
  - c) Construction of natural stream channels, including detailed construction of biotechnical, bioengineering, and aquatic habitat restoration techniques, using natural construction materials such as boulders, alluvial streambed materials, logs and biodegradable fabrics, and including placement and adjustment of irregular materials (e.g., logs and boulders) to conform with the channel design intent.
  - d) Construction of naturalized fish passage systems and habitat for native salmonids.
  - e) Sustained collaboration with channel restoration designer to optimize restoration designs with respect to field conditions during the construction period, including development and implementation of design adjustments within short time frames and field-fitting of features.
  - f) Proactive management, anticipation of long-lead items, and identification and resolution of construction and design bottlenecks to limit delays in construction progress.
  - g) Ability to adjust operations to changing field conditions in order to expeditiously complete the work.
4. Knowledge of California and Oregon regulatory environment and permitting requirements as relates to implementation of large restoration projects.

5. Staff resources, including prolonged staffing at remote site with limited telecommunications, access, and other resources.
6. Ability to discuss and review Project issues with stakeholders having diverse technical backgrounds, organizational mandates and interest levels relative to the project.
7. Coordination with permitting and regulatory agencies, and successful negotiation and completion of permit modifications while minimizing schedule effects.

### **Habitat Restoration Construction Contractor (Optional, see Section 7.3)**

Submit project profiles for a maximum of three (3) projects completed on or after January 1, 2007. List at least two (2) projects with a construction cost each in excess of \$5 million dollars.

Provide examples of habitat restoration projects completed that are similar to this Project and describe the construction approach. Include information that addresses the Specialty Habitat Restoration Contractor's ability to create a project demonstrating:

1. Commitment to complete the work in good faith to meet the KRRC's and stakeholders' visions for the Project, consistent with the natural wildland setting as articulated in the Project goals, objectives and design criteria, and in a collaborative approach with the KRRC.
2. Commitment to work in good faith to optimize ecological benefits by restoring multiple integrated habitats, while respecting cultural resources and all applicable stability and other design criteria.
3. Successful completion of major habitat restoration projects with similar native plant communities' revegetation and remediation/ recycling and composting techniques.
4. Experience with heavy construction and habitat restoration activities in environmentally sensitive areas.
5. A demonstrated commitment to environmental sensitivity.
6. Demonstrated experience and expertise in the following areas:
  - a) Must have Landscape Contracting license
  - b) Planting and seeding native plants
  - c) Identifying non-native plants
  - d) Revegetation maintenance and monitoring
  - e) Installing and operating irrigation systems
  - f) Installing erosion control materials

### **5.3.5 Part 4 - Project References**

Respondent shall provide a project reference for each project profile submitted above. The reference should be for the project's owner or the project owner's representative. Each reference must include the project name, the project contact's firm, name, title, phone number, email address and relationship to the project.

The KRRC intends to contact those individuals and firms that are listed as references by the Respondent and points will be assigned based upon the reference's verification that the Respondent's characterization of its involvement in the project is accurate, as well as their overall assessment of the quality of those services provided, including project management, partnership and collaboration, cost and schedule control, quality, and commissioning and function of installed work. It is the Respondent's responsibility to verify that

all references listed can be reached by telephone and email. If a reference cannot be located based upon the information provided by the Respondent, the KRRC will not consider the listed project.

The KRRC reserves the right to maintain the confidentiality of the past performance information provided by the references listed by the Respondent, as well as references obtained by other means, and is under no obligation to share such information with the Respondent. By submitting an SOQ for consideration under this RFQ the Respondent agrees that it shall not seek to discover from any source the contents of such communication.

### 5.3.6 Part 5 - Key Personnel Resumes

Provide resumes of Key Personnel who will be assigned to this Project and who will contribute a significant effort. Each resume must include the name, qualifications, relevant experience and the anticipated degree of involvement of each Key Personnel during the design, construction and monitoring/maintenance phases of the Project.

Key Personnel shall include the Project executive, Project manager, construction design coordinator, Engineer of Record, civil design lead, river restoration design lead, habitat restoration design lead, construction manager, environmental compliance lead, QA/QC manager, risk allocation and liability transfer lead, and safety manager.

The Respondent is encouraged to submit additional resumes as necessary to fully communicate any special knowledge or capabilities of any other management or Project control team leaders with key responsibility for day-to-day execution of the Project. At the same time, Respondent is also encouraged to develop a streamlined and efficient team with clear division of responsibility and decision-making authority.

Key Personnel Resume submittal shall be no more than fifteen (~~15~~34) pages.

### 5.3.7 Part 6 - Project Approach

Provide the Respondent's approach to addressing this Project including the philosophy and approach to the design and construction of heavy civil work including tunnel and gate modifications, reservoir drawdown, dam demolition and excavation, hydropower facility demolition, sediment stabilization, river/floodplain restoration, habitat restoration, and roads and bridges. This section is limited to four (4) pages.

The KRRC will evaluate the Project approach based on the Respondent's ability to demonstrate understanding of the approaches to successfully plan and execute the Project, including describing the use of Respondent's proven systems, processes and tools, and referencing real-world examples of project success. Suggested headings include:

Project Management:

- Controlling the KRRC's budget by:

- + Balancing work that will be self-performed versus work that will be competitively bid to provide overall cost competitiveness (see Section 7.3).
  - + Potentially using a cost model to compare progress estimates against the model baseline at the work breakdown structure level.
  - + Avoiding surprises in progress estimates and GMP Submittal Package by trending the cost and schedule on a regular basis with the KRRC.
  - + Starting early in the design process with construction cost transparency, and identifying opportunities and constraints associated with meeting budget constraints.
  - + Identifying an approach to track design and construction schedule, and identifying opportunities and constraints associated with meeting schedule milestones, through a collaborative process with the KRRC
  - + Implementing a risk identification, monitoring and mitigation process.
  - + Responding quickly and creatively to unexpected events or conditions.
- Providing a cost-effective and streamlined communication protocol with the KRRC that values collaboration and transparency. This includes day to day communications as well as monitoring and reporting.
  - Providing a thoughtful and comprehensive plan to incorporate local and tribal business enterprise participation in completion of the Project.

#### Design:

- Implementing a design process that provides opportunity for collaboration with the KRRC, addresses regulatory requirements or concerns, and incorporates constructability review and contractor input.

#### Construction:

- Identifying opportunities for cost savings in construction means and methods, staging, construction access and temporary works.
- Identifying opportunities for cost savings through adaptive management of applicable construction activities over time.
- Providing a safety and security program that considers the specific geographical, hydrologic and other constraints associated with the Project site and associated design and construction activities.
- Implement a process to effectively track all regulatory requirements related to construction.

In providing this information, Respondent should consider the KRRC's obligations (under KHSA sections 7.1.6, 7.2.2 and 7.2.3) to avoid or manage the risks of cost overruns and delays in the performance of the Project.

### 5.3.8 Part 7 - Liability Transfer as Element of Risk Mitigation

Provide the Respondent's anticipated approach to complying with the requirements of the KHSA regarding indemnification of the States and PacifiCorp against liabilities arising from performance of the Project. These requirements are summarized in Section 2.5 above, and in the "Indemnification" section of the Project Agreement Term Sheet attached as Exhibit D to this RFQ. As required by Sections 7.1.3 and 7.1.4(E) and Appendix L of the KHSA, KRRC must contract with a Liability Transfer Corporation, as a "special corporate indemnitor", to indemnify these indemnitees against liability for any harm or damages to person, property, or the environment arising from, related to, or triggered by Facilities Removal, irrespective of Project Company's fault. Among other things, these requirements apply to damages caused by the release of hazardous substances, or by breaches or violations of applicable law and permits.

The description of the Respondent's anticipated approach should contain:

1. A discussion of specific business entities that the Respondent is considering as the LTC (an existing business entity that will both perform the Project work and also serve as the LTC, a sole-purpose business entity with a particular level of capitalization that will serve as the LTC separately from the existing business entity performing the Project, an insurance company or surety, or another third-party LTC entity);
2. If the Respondent has identified the specific business entity that it intends to propose as the LTC in the RFP process, the name of the business entity (to be listed in Exhibit A), information regarding the entity or the same nature as is provided by the Respondent itself, as well as a letter from the entity as to its intent to serve as the LTC for purposes of the Project;
3. A discussion of specific contractual structures under which the LTC could provide the KRRC Indemnity and, if the LTC has been identified under item (2) above, the expected contractual structure under which such LTC would be obligated;
4. Commentary on the Respondent's past experience with liability transfer arrangements, and commentary on its capacity to provide the KRRC Indemnity and establish the LTC as described, along with concerns, questions, exceptions, qualifications, assumptions and limitations; and
5. Alternative or supplemental approaches that would fully achieve the indemnification requirements.
6. Commentary on how to integrate the Project delivery approach, insurance (as described in Section 5.3.11), performance bonds (as described in Section 5.3.12), and indemnification to avoid or mitigate against the several risks of cost overruns, delays, and liabilities arising from the Project.

The Respondent should also submit a declaration, signed by an individual at the senior management level of the Respondent and any identified LTC that is not the Respondent, to the effect that the Respondent, and the LTC, if applicable, understand the nature and extent of the KRRC Indemnity and LTC requirement and, if prequalified, will undertake to submit a Proposal that complies with the indemnification requirements stated in Sections ~~7.13, 7.14(E)~~ 7.1.3, 7.1.4(E), and Appendix L of the KHSA, as restated in the RFQ. While this part of the RFQ is weighted as 20 out of 100 points in the Evaluation Scoring Criteria for the RFQ stage (Table 6-1), the RFP and then Project Agreement will require full satisfaction of the KHSA indemnification requirements.

### 5.3.9 Exhibits

Three exhibits are included in the provided Microsoft Excel file which forms part of the RFQ documents. These exhibits are organized as follows:

#### **Exhibit A: Questionnaire**

1. Declaration
2. Respondent's PC Team
  - a) Respondent's Organization
  - b) Specialty Consultants
  - c) Construction Subcontractors
3. Financial Information
  - a) Financial Pre-Qualification
  - b) Requirement Financial Submittals
4. Safety
  - a) Required Safety Submittals
  - b) Safety Performance
  - c) Safety Violations
  - d) Safety Performance – Experience Modification Rate (EMR)
5. Insurance and Bonds
  - a) Insurance
  - b) Bonds
6. Termination/Failure to Complete
  - a) Claims, Arbitration or Litigations
  - b) Occupational Safety and Health Administration (OSHA) Violations
  - c) Violations of Law
  - d) California Public Contract Code Section 10162
  - e) California Contractor's State License Law
  - f) False or Fraudulent Claims
  - g) Provisions of Law Declaration

#### **Exhibit B: General Statement of Bank Credit**

#### **Exhibit C: Proposal Manager**

A fourth exhibit is provided with anticipated terms related to the anticipated Project Agreement. The Project Company should include questions or concerns associated with these terms in their response to the RFQ.

#### **Exhibit D: Project Agreement Terms Sheet**

### 5.3.10 Submittal Checklist

The following checklist is a complete list of documents required to submit a complete and compliant SOQ. The third column provides the following indication:

- Required = Required to be submitted as part of the SOQ.
- Conditional = Required to be submitted as part of the SOQ, if applicable.
- Optional = Submitted at Respondent’s preference.

**Table 5-1 Submittal Checklist**

Check	Document	SOQ Requirement	Page Limit
	Cover Letter	Required	-
	Part 1 Organization Chart	Required	2
	Part 2 Company Profiles	Required	15
	Part 3 Project Profiles	Required	40
	Part 4 Project References	Required	2
	Part 5 Key Personnel Resumes	Required	15
	Part 6 Project Approach	Required	4
	Part 7 Liability Transfer	Required	10
	Exhibit A - Questionnaire <i>(Complete all yellow fields. Print and sign blue fields)</i> <i>Additionally the exhibit requires the following attachments to be included in the SOQ:</i>	Required	-
	3(b)(i) Financial - Full set of financial statements	Required	-
	3(b)(ii) Financial - Letter from a financial institution	Optional	-
	3(b)(iii) Financial - Schedule indicating contracts awarded to Proposer	Required	-
	3(b)(iv) Financial - Dunn & Bradstreet report	Required	-
	3(b)(v) Financial - Notarized statement from bonding company	Required	-
	3(b)(iv) Financial - List of names of bonding companies utilized in the last five (5) years	Required	-
	4(a)(i) Safety - Written safety policy etc.	Required	-
	4(a)(ii) Safety - Safety officer qualifications etc.	Required	-
	4(c) Safety - Violations	Conditional	-
	4(d) Safety - Performance EMR - Explanations	Conditional	-
	5(a) Insurance and Bonds - Insurance broker/carrier declaration	Required	-
	6(a) Termination etc. - Additional claims	Conditional	-
	6(b) Termination etc. - Additional OSHA Violations	Conditional	-
	6(c) Termination etc. - Additional violations of law	Conditional	-
	6(d) Termination etc. - Additional CA Public Contract Code Section 10162 cases	Conditional	-
	6(e) Termination etc. - Additional CA Contractor’s State License Law cases	Conditional	-
	6(f) Termination etc. - Additional false or fraudulent claims cases	Conditional	-
	Exhibit B - General Statement of Bank Credit	Optional	-
	Exhibit C – Respondent’s Proposal Manager	Required	1

### 5.3.11 Insurance

The KRRC expects to utilize an Owner-Controlled Insurance Program (OCIP) for purposes of securing certain Project coverages. The Respondent will be expected to secure certain other coverages directly.

The following minimum coverages are expected to be included in the OCIP:

1. **Commercial General Liability (CGL):** The KRRC will obtain primary CGL coverage with limits of \$2,000,000 per occurrence and \$4,000,000 general aggregate. This policy will be dedicated to this Project. The policy will extend liability coverage to the Respondent and all eligible subcontractors for their work at this Project. The policy will also respond to third-party bodily injury and property damage claims from the construction activity at the Project site. The policy provides Completed Operations Extension coverage for ten (10) years or to the statute of repose for the respective state of construction operations.
2. **Umbrella Liability:** The liability coverage provided by the KRRC's CGL policy will be augmented under the OCIP by an Umbrella Liability policy of \$200,000,000 in dedicated limits. This policy will follow the terms and conditions of the underlying primary CGL coverage. All enrolled parties will be covered under this Umbrella Liability limit, which is an added value for smaller subcontractors that cannot afford such limits.
3. **Builder's Risk/Inland Marine or Commercial Property Insurance:** A Project-specific Builder's Risk policy will be purchased. In light of the nature of the Project – dam removal as opposed to construction of new improvements – a slightly unconventional analysis will apply to determining prudent limits of coverage. At present, the KRRC anticipates obtaining coverage for 100% of the replacement value of any salvaged material or property.
4. **Contractor's Pollution Liability (CPL):** The KRRC anticipates that coverage with limits of up to \$100,000,000 will be included. It will be a dedicated policy covering all contractors and subcontractors at the Project site with no enrollment process.

The coverages described below will not be included in the OCIP. At no expense to the KRRC, the Respondent will be expected to (1) obtain and keep those coverages in force during the term of any contract, and (2) either extend its own insurance such that it covers its subcontractors or require its subcontractors to obtain and keep in force during the terms of their respective contracts, the minimum insurance limits and coverages described below. These insurance coverage limits are minimum coverage requirements, not limitations of liability.

1. **Workers' Compensation/Employer's Liability:** All contractors and subcontractors will be required to maintain Workers' Compensation and Employer's Liability coverage at all times. This coverage will be maintained in amounts no less than the applicable statutory requirements for Workers' Compensation and \$1,000,000 for Employer's Liability.
2. **Commercial Automobile Liability:** All contractors and subcontractors will be required to maintain automobile liability insurance limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage covering all owned, leased, and non-owned vehicles used in connection with the Project work.
3. **Professional Liability/Errors and Omissions Insurance:** Professional Liability or Errors and Omissions insurance acceptable to the KRRC covering Respondent's liabilities for loss due to error, omission, negligence, mistakes, or failure to take appropriate action in the performance of business or professional duties of their employees in the amount of at least \$10,000,000 per claim and in the

aggregate will be required to be obtained and maintained during the contract term and for a period of at least three (3) years after completion of the contract evidenced either by renewal of the policy for one (1) year or by endorsement or addition of an Extended Reporting (or Discovery) Period for at least three (3) years following the policy expiration date. The policy will need to provide coverage for contingent bodily injury and property damage liability coverage.

Respondent and all of its subcontractors will be required to furnish, prior to the start of work, certificates or adequate proof of the foregoing insurance, including, if specifically requested by the KRRC, PacifiCorp, or other additional insureds, copies of the actual policies and endorsements, including endorsements naming the KRRC, its consultants, and PacifiCorp as Additional Insureds. Current certificates of insurance will need to be maintained until completion of the Project Agreement. All policies of insurance will need to include appropriate clauses pursuant to which (i) each of the insurance companies waives its rights of subrogation against the KRRC and PacifiCorp in states where such waiver is allowed, and (ii) the KRRC receives written notice at least thirty (30) days prior to cancellation or a material change in a policy. Any such cancellation or material alteration shall not relieve Respondent of its continuing obligation to maintain insurance coverage in accordance with the Project Agreement.

Carriers providing coverage will need to be rated by A.M. Best with at least an A-rating and a financial size category of at least Class VII and will need to be licensed in the state(s) where work will be performed.

If the Respondent fails to procure and maintain the required insurance, the KRRC will have the right to procure and maintain the required insurance at Respondent's expense.

### **5.3.12 Performance, Payment and Other Bonds**

1. Respondent will be required to furnish performance and payment bonds, each in an amount at least equal to the Base Guaranteed Maximum Phase 2 Price as security for the faithful performance and payment of all Respondent's obligations to furnish, provide and pay for Project Company's work and related materials under the Project Agreement. Respondent may also be required to furnish such other bonds as are required by the Project Agreement.
2. All bonds will need to be in the form prescribed by the Project Agreement and will need to be issued by sureties named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 by the Audit Staff, Bureau of Government Financial Operations, U.S. Department of the Treasury.

All bonds required by the Project Agreement shall be obtained from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds.

### **5.3.13 Parent Company Guarantee**

As a general matter, in order to be included on the shortlist pursuant to this RFQ, Respondents must demonstrate sufficient financial strength to assure the KRRC that they are capable of performing the Project Company's work (i.e., a financial capability at least commensurate with the value of the Project Company's

work). To this end, Respondents may propose to supplement the financial strength of a PC Team member by proposing a parent or affiliate company to serve as the guarantor and guarantee all of the PC Team member's obligations under the Project Agreement, as applicable.

If a member of the PC Team is expecting to utilize the support of another party to fulfill its commitments under the Project Agreement, such member must submit a guarantor letter of support signed by a parent company officer, confirming the parent company's intention to provide support to the PC Team member. The letter should indicate the relationship between the guarantor and the PC Team member, confirm that it will provide the necessary financial support and other resources necessary to support the member's participation in the procurement process and in the execution of the Project Company's work, and guarantee the member's obligations under the Project Agreement.

If a Respondent chooses to submit financial information of a parent company or affiliate of a PC Team member to demonstrate the requisite financial strength, the parent company or affiliate will be required to serve as a guarantor of such PC Team member, as applicable, pursuant to a Parent Company Guarantee.

To the extent that any PC Team member has provided a guarantor for its obligations under the Project Agreement, only the financial information described in Exhibit A is required to be submitted.

# 6. SOQ EVALUATION AND SELECTION

## 6.1 General Evaluation Procedure

The KRRC's selection committee (with possible assistance provided by outside advisors) will review and evaluate the SOQs according to the requirements and criteria outlined in this Section 6. During the SOQ evaluation process, written questions or requests for clarifications may be submitted to one or more Respondents regarding its SOQ or related matters. Failure to respond in a timely manner to any such questions or requests may be grounds for elimination of the Respondent from further consideration. In addition, the KRRC may require that all or a limited number of Respondents participate in interviews.

In general, the selection process will consist of the following:

- The KRRC will open the SOQs.
- The KRRC will review the SOQs (with assistance provided by outside advisors if desired by the KRRC) to determine if they are responsive.
- The KRRC or outside advisors will attempt to contact references and verify information relating to representative projects.
- For those SOQs that are determined to be responsive, the SOQ criteria will be scored (100 total points possible) by the selection committee using the SOQ criteria established in this RFQ.
- Based upon the SOQ scores, the SOQs and corresponding Respondents will be ranked and a recommended shortlist of no more than four (4) Respondents will be prepared.
- The KRRC will confirm the approved shortlisted Respondents who will be issued the RFP and will be invited to prepare Proposals in response to the RFP.
- The shortlist will be posted electronically on [www.klamathrenewal.org](http://www.klamathrenewal.org) for viewing by all Respondents. SOQs received from Respondents will not be returned to the Respondents.

## 6.2 Responsiveness Review

Each SOQ will be reviewed to determine whether it is responsive to the RFQ. Failure to comply with the requirements of this RFQ may result in an SOQ being rejected as nonresponsive. At its sole discretion, however, the selection committee may waive any such failure to meet a minor requirement of this RFQ and may request clarification or additional information to remedy a failure.

Responsiveness review will include:

- **Compliance with RFQ.** Respondent must comply with all terms and conditions of this RFQ, including, without limitation, the requirement to provide fully populated Exhibits A, B and C with all supporting documentation.
- **Financial Condition.** The information submitted under Exhibit A must demonstrate to the KRRC that: (a) the Respondent's team member(s) and lead contractor(s) are in stable financial condition; and (b) Respondent has sufficient financial resources and capacity to carry out and complete all of the obligations required of the Project Company under the Project Agreement.
- **Insurance.** The Respondent must have the ability to obtain insurance meeting the responsiveness requirements presented in Section 5 of this RFQ.
- **Material Adverse Condition.** The Project Company must not be subject to a material adverse condition, such as pending litigation, insufficient liquidity, weak operating net income or cash flow, or excessive leverage, that gives rise to reasonable doubt concerning its ability to continue to operate as an ongoing concern, to provide performance bonds or insurance, or to maintain sufficient financial strength to undertake and successfully complete the Project and to mitigate/absorb associated risks.
- **Licensing and Registration.** The Project Company and each firm must be licensed in California and Oregon for the type of work to be performed. Each lead Designer must include in responsible charge an engineer registered in California and Oregon.

## 6.3 Comparative Evaluation Criteria

The selection committee will evaluate and rank the responsive SOQs that satisfy the responsiveness review by applying the weighted comparative evaluation criteria set forth below to generate a short list of up to four (4) Respondents.

1. **Organizational Structure:** Respondents will be evaluated based on Respondent's team structure, including its legal structure and organization, team roles and responsibilities, team members' functional relationships, and capability to perform assigned work responsibilities, and Respondent's rationale for selecting the team structure. In addition the Respondent team will be evaluated on the quality of the safety program and successful implementation of that program on past projects.
2. **Past Experience:** Respondents will be evaluated based on the experience of the members of Respondent's team, including their individual and collective performance history and experience on previous or current projects of similar complexity, challenges, and functionality as the Project. Sub-factors that will be used to score this category are as follows:

- a. Design and construction of relevant civil project components including construction access and other road and bridge improvements, large hydraulic gate design, earthen embankment dam demolition, concrete dam demolition and hydropower facility demolition.
  - b. Design and construction of relevant channel restoration components including near channel floodplain manipulation, passage features, and bank stability features.
  - c. Design and construction of relevant habitat restoration components including riverine, riparian and upland vegetation communities.
  - d. Success of Respondent team members working together on similar projects.
  - e. Respondent's team members' experience completing PDB or other collaborative delivery projects, including experience with negotiated, open-book contracting.
  - f. The experience of the Lead Contractor(s) in self-performing specific elements of construction, with particular consideration for construction access and other road and bridge improvements, installation of large hydraulic gates, and dam and hydropower facility demolition.
  - g. The experience of the Lead Contractor(s) implementing programs to utilize local and/or tribal business entities on previous projects, along with associated monitoring and reporting.
  - h. Respondent's team members' experience working locally in the watershed.
3. **Qualifications of Key Personnel:** Respondents will be evaluated based on the qualifications, experience, and past performance of Key Personnel, with the evaluation considering, among other things, his/her experience working in similar roles to those proposed on this Project based on projects of similar complexity, challenges, and functionality. Sub-factors that will be used to score this category are as follows:
- a. Qualifications, technical competence, and experience of the proposed Project Manager.
  - b. Qualifications, technical competence, and experience of the proposed Design Lead(s).
  - c. Qualifications, technical competence, and experience of the proposed Construction Design Coordinator.
  - d. Qualifications, technical competence, and experience of the proposed Construction Manager(s).
  - e. Qualifications, technical competence, and experience of the proposed environmental compliance lead.

- f. Qualifications, technical competence, and experience of the proposed risk allocation and liability transfer expertise lead.
  - g. Qualifications, technical competence, and experience of the proposed Safety Manager.
  - h. Qualifications, technical competence, and experience of the proposed Project Executive.
  - i. Qualifications, technical competence, and experience of up to five (5) additional positions that Respondent wishes to identify as Key Personnel.
4. **Approach:** Respondents will be evaluated based on the clarity and specificity of their approach to address unique challenges associated with the Project management, use of local and tribal business enterprises, design, construction, monitoring and maintenance.
5. **Liability Transfer:** Respondents will be evaluated based on their approach to fulfill the requirements summarized in Section 5.3.8 and Exhibit D.

The KRRC will evaluate and rank the responsive SOQs by scoring the comparative evaluation criteria set forth below to generate a shortlist. The total number of points that will be used in evaluating all of the factors for this SOQ is 100, allocated as shown in the following table.

**Table 6-1 Evaluation Criteria Scoring**

Criteria	Maximum Possible Points
Organizational Structure	10
Past Experience	25
Key Personnel	30
Approach	15
Liability Transfer	20
<b>TOTAL</b>	<b>100</b>

# 7. GENERAL INSTRUCTIONS AND REQUIREMENTS

## 7.1 Ineligible Parties

Consultant firms and/or individuals who are or have been involved in the preparation of documents used as part of this RFQ and/or the RFP for the Project will not be allowed to participate as part of a Project Company Team in any capacity.

The following individuals and firms (including parent or subsidiary organizations) are serving in an advisory capacity to the KRRC for this Project and are therefore prohibited from participating in any capacity as a member of the PC Team:

- AECOM
- CDM Smith, Inc.
- Chant Group
- D&H Consultants, LLC
- Engineering Solutions
- Findlay Engineering, Inc.
- GMA Hydrology, Inc.
- Hawkins, Delafield & Wood LLP
- Inter-Fluve, Inc.
- Joseph DiDonato
- Kleinschmidt Associates
- McBain Associates
- ODC Synergy, Inv.

- Perkins Coie, LLP
- Princeton Hydro
- R2 Resource Consultants, Inc.
- Risk Resources
- River Design Group, Inc.
- Ross Taylor and Associates
- Schnabel Engineering, LLC
- Stillwater Sciences
- Stream Crossing, LLC
- Water and Power Law Group PC
- Water Systems Consulting, Inc.

Additional persons or firms may be added to or deleted from the list during any stage of the competitive selection process by the KRRC's issuance of an addendum.

## 7.2 Conflicts of Interest

Each Respondent submitting a SOQ is responsible for determining whether or not its participation or the participation of other Project Company team members in the proposed Project Agreement constitutes a conflict of interest or a potential conflict of interest pursuant to California Government Code Sections 1090, 87100 et seq., and other applicable law. Each Respondent must investigate and manage any potential conflict of interest as part of considering whether to submit a SOQ and when assembling its Project team.

The existence of such a conflict of interest is a basis for the KRRC to disqualify a Respondent's participation in this RFQ process. If the KRRC determines that a Respondent is disqualified because of the existence of such a conflict of interest, it will provide the Respondent with a written statement of the facts leading to that conclusion.

## 7.3 Self-Performed Work and Subcontracted Work Generally

Respondents are being qualified in significant part based on their ability, qualifications and experience as a prime contractor to self-perform some of the work under the Project Agreement, and their ability, qualifications and experience in managing and taking responsibility as a general contractor for the work of their subcontractors.

The KRRC anticipates that at the GMP Submittal stage, when the full details of the Project work scope will have been fully developed through the completion of the Phase 1 work, the KRRC, in conjunction with the Project Company, will make two key decisions: (1) the extent of the work that will be self-performed by the Project Company, and (2) the work that will be subcontracted out, and to which subcontractors.

### 7.3.1 Self-Performed Work by the Project Company

Respondents are requested to identify in their SOQ, on a preliminary basis, the nature and extent of the work they intend to self-perform, presented on a category, value, percentage or other appropriate basis, along with an explanation of the basis for the breakdown. The KRRC intends at the RFP stage to request a more developed submittal as to the intended allocation between self-performed work and subcontracted work. As discussed above, the final allocation between self-performed and subcontracted work will be determined at the GMP Submittal stage.

The KRRC intends to negotiate with the Project Company the nature, extent, and price of the work that will be self-performed based on the Project Company's reasonable request at the GMP Submittal stage. However, Respondents should be aware that the KRRC reserves the right, at its sole discretion, to require any and all work that is proposed to be self-performed by the Project Company to instead be subjected to a competitive process if the KRRC determines that conducting such a competition will be in the KRRC's best interest.

### 7.3.2 Subcontracted Work

It is anticipated that several major construction subcontractors will be utilized by the selected Project Company to execute the work. Respondents may include proposed specialty subcontractors in their SOQ, or alternatively may describe why they believe certain subcontracted work is best procured at a later date on a competitive basis. Any proposed specialty subcontractor, and any plans to procure specialty subcontractors on a competitive basis, as set forth in the Respondent's SOQ, will be evaluated by the KRRC. The KRRC may, in its sole discretion, elect at the GMP Submittal stage to negotiate with prequalified subcontractors, in conjunction with the Project Company, the nature, extent and price of the work to be subcontracted with each such prequalified subcontractor. Respondents should be aware, however, that the KRRC reserves the right, at its sole discretion, to require that any and all work that is proposed to be self-performed by a specialty subcontractor identified in the SOQ may instead be subjected to a competitive process at the GMP Contract Amendment stage.

As part of the GMP Submittal process leading up to the GMP Contract Amendment, the KRRC plans to work with the Project Company in conducting a competition appropriate to each category of work in order to select each subcontractor. The competition may be a bid, proposal, quote, estimate or other process, as approved by the KRRC, and will in any event be qualifications-based. The prices received from each selected subcontractor will be part of the “open-book” price negotiations that will be the basis for the GMP, along with “open-book” pricing by the Project Company for the work it proposes to self-perform. The subcontractor identification and contracting process will also encourage the participation of local and tribal subcontractors, as further described below.

## 7.4 Local & Tribal Participation

### 7.4.1 KRRC Local and Tribal ~~Subcontracting~~ Participation Objectives Generally

The KRRC highly values the involvement of qualified local individuals and tribes on this Project. The KRRC intends to utilize the subcontracting process described in Section 7.3 to ensure that local and tribal ~~subcontractors are utilized~~ participation is represented in Phase 1, Phase 2 and Phase 3. The KRRC has established a separate five percent (5%) local and five percent (5%) tribal participation non-mandatory goal for each of the Project Company’s Phase 1, Phase 2 and Phase 3 work. The KRRC expects the selected Respondent to use its best efforts to carry out this policy in its hiring practices and its award of subcontracts to the fullest extent consistent with the efficient performance of the Project Agreement. The KRRC will require the Project Company to monitor and report on the continued implementation of the Project Company’s local and tribal jobs plan throughout performance of the Project Agreement.

For purposes of this RFQ, the KRRC considers any companies or individual based in Klamath County, Siskiyou County, Del Norte County, Humboldt County, Jackson County, Josephine County, Douglas County, Lake County, Trinity County, Shasta County, Tehama County or Modoc County to be “local”, with particular preference given to companies, individuals and subcontractors based in Klamath County, Siskiyou County, Del Norte County, or Humboldt County.

For purposes of this RFQ, KRRC considers “tribal business” to mean a tribally owned business that is at least 51% owned by an Indian tribe or by Indian tribe members. Indian tribe means any Indian tribe, band, nation or other organized group or community of Indians, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians or is recognized as such by the State in which the tribe, band, nation or community resides.

### 7.4.2 Respondents Past Experience in Meeting Local and Tribal Subcontracting Goals

Respondents should describe the Lead Constructor’s and Lead Designer’s experience in successfully completed projects regarding (a) the incorporation of local and tribal subcontracting entities into their

design, construction and PC Teams, and (b) meeting local and tribal subcontracting participation goals established by owners for past projects. Such experience will be taken into account by the KRRC in evaluating SOQs.

### **7.4.3 Timing of Identification of Potential Local and Tribal Subcontractors**

Respondents are not, in their SOQ, required to identify potential local and tribal subcontractors that are proposed to be utilized on this Project, as the KRRC wishes to maximize the opportunities available to local and tribal subcontractors at a more advanced stage of the Project. Because the Project's scope is still being developed at this stage, the KRRC believes that appropriate local and tribal subcontracting opportunities will emerge most clearly after the Project Company is selected and the definitive Project scope is fully defined with the GMP Contract Amendment. As part of the GMP submittal process leading up to the GMP Contract Amendment, the KRRC will establish, with the Project Company, a KRRC-supervised process of subcontracting to ensure that all local and tribal subcontractors are given ample opportunity to compete for subcontracting opportunities that will meet the KRRC's goals.

## **7.5 Obligation to Keep the Project Company Team Intact**

Respondents are advised that the entirety of the PC Team shall remain intact for the duration of the procurement process and execution of the Project. If extraordinary circumstances require a change during the procurement process, it must be submitted in accordance with Section 4.2 of this RFQ. The KRRC, in its sole discretion, will determine whether to authorize a change, recognizing that certain circumstances (such as termination of employment) may occur that are beyond the Respondent's control. Unauthorized changes to the PC Team at any time during the procurement process may result in elimination of the Respondent from further consideration.

## **7.6 KRRC Reserved Rights**

The KRRC expressly reserves the right to:

- Reject any or all of the SOQs or portions thereof, including but not limited to any SOQ received after the submittal deadline;
- Waive any defect, irregularity, or technicality in the SOQs received;
- Cancel or reissue this RFQ in whole or in part at any time;
- Require additional information from one or more Respondents to supplement or clarify the SOQs submitted;

- Conduct further investigations with respect to the qualifications and experience of each Respondent, or any Respondent PC Team member, and to request additional evidence to support any such information;
- Interview or engage in discussions with one or more of the Respondents at any stage of the procurement process;
- Disqualify any Respondent that submits a nonconforming, nonresponsive, incomplete, inadequate, or conditional proposal, or is otherwise deemed to be unqualified during any stage of the procurement process;
- Negotiate potential contract terms with any Respondent;
- Decide not to award a contract for any reason;
- Receive questions concerning this RFQ from Respondents and to provide such questions, and the KRRC's responses, to all Respondents by addendum.
- Award the proposed services, in whole or in part, to one or more Respondents;
- Issue one or more amendments, supplements, or modifications via addenda or otherwise to this RFP to extend the due date for the SOQs or for any other reason; or
- Take any other action affecting the procurement process, the RFQ process, the RFP process, or the Project that would be in the best interests of the KRRC.

The foregoing reserved rights are in addition to and shall not serve to limit any of the specific rights and conditions set forth in this RFQ.

## 7.7 Addenda

If any revisions to the RFQ or procurement process become necessary or desirable (at the KRRC's sole discretion), the KRRC may issue written addenda. The KRRC will not transmit addenda to potential Respondents. The KRRC will post all addenda on the KRRC Project website at the following address: [[www.klamathrenewal.org](http://www.klamathrenewal.org)].

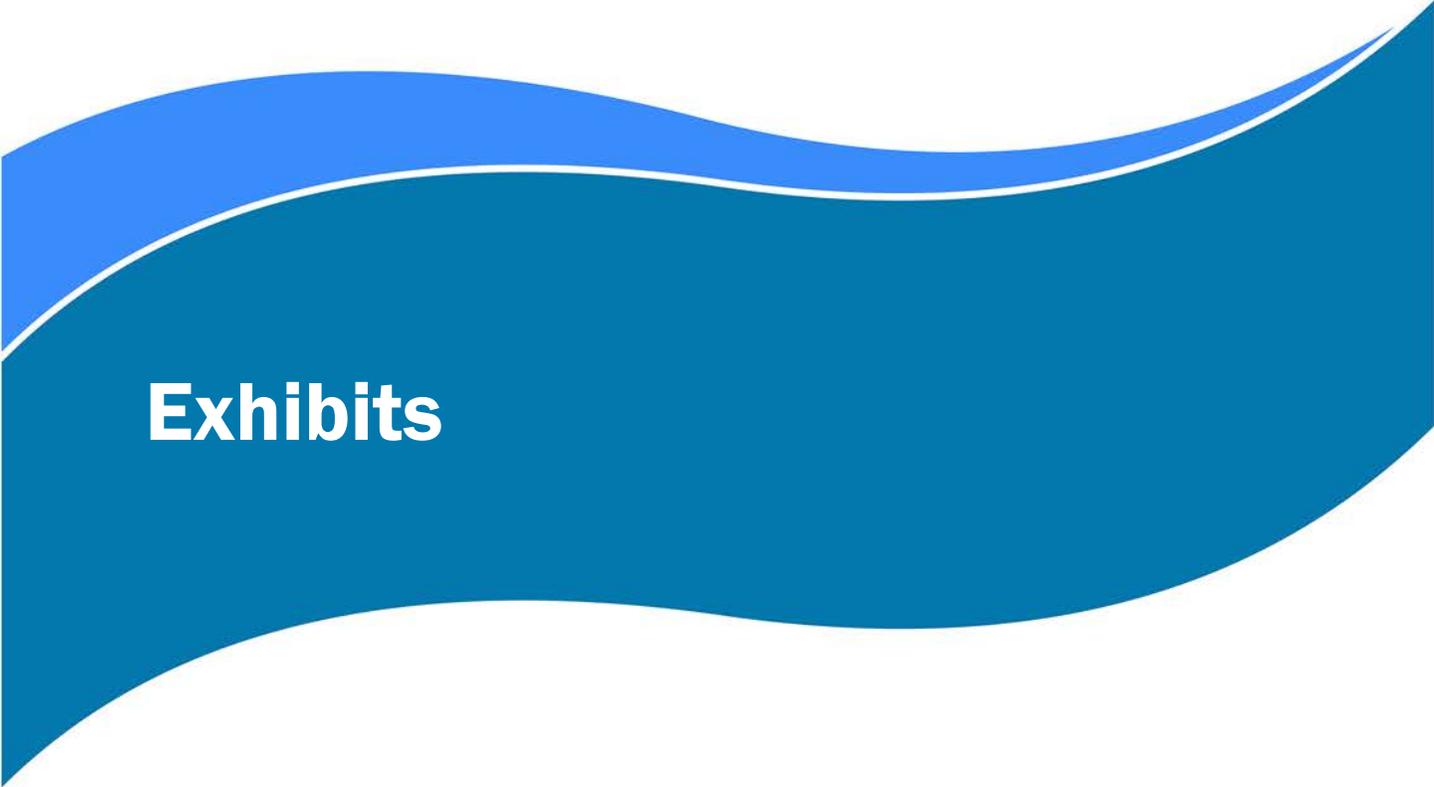
The KRRC will endeavor to notify all potential respondents who have submitted an Exhibit C, utilizing the information contained therein. However, it is Respondent's sole responsibility to obtain all addenda prior to submitting its SOQ.

## 7.8 No Reimbursement

The KRRC accepts no liability for the costs and expenses incurred by the Respondent in responding to this RFQ, or any clarification requests, and any other activities included as part of this procurement process.

## 7.9 Compliance with Law

The Respondent (and each member of the Respondent PC Team, if the Respondent PC Team involves multiple entities) will at all times comply with all applicable law, including but not limited to: (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

A decorative banner with a wavy, undulating shape. It features a dark blue base color and a lighter blue top section. The word "Exhibits" is written in white, bold, sans-serif font on the dark blue background.

# **Exhibits**

## Exhibits

Exhibits A, B and C are included in the provided Microsoft Excel Spreadsheet, while Exhibit D is provided herein.

## Exhibit D – Project Agreement Term Sheet

**Exhibit D**

**PROJECT AGREEMENT  
 TERM SHEET**

This Term Sheet is intended to provide Respondents to this RFQ with a general description of certain major contract terms for the design, construction, demolition and restoration services to be provided in connection with the removal of the Lower Klamath River dams that are expected to be included in the proposed Project Agreement.

Prospective Project teams are advised that the draft Project Agreement will be issued with the RFP and that the terms listed in this Term Sheet are subject to further development at the time the RFP is issued. Once the RFP is issued, the terms of the draft Project Agreement will supersede this Term Sheet.

Capitalized terms used in this Term Sheet have the meaning set forth in Section 1.4 (Defined Terms) of the RFQ.

<b>CONTRACT OVERVIEW</b>	
<b>Parties</b>	The KRRC and the Project Company.
<b>Third-Party Beneficiaries</b>	The States and PacifiCorp will be third-party beneficiaries to the Project Agreement, as required by the KHSA.
<b>Scope of Services</b>	The Project scope of services will include the Phase 1 Work, the Phase 2 Work and the Phase 3 Work.
<b>Compliance with Applicable Law</b>	The Project will be designed and completed in compliance with all federal, state, and local laws and regulations.
<b>Contract Term</b>	The Project Agreement will take effect upon execution, and will continue through the date on which Phase 1 Work, the Phase 2 Work and Phase 3 Work are fully performed.  The expected schedule for completion of each Phase is described in further detail in Section 2.10 (Project Schedule) of the RFQ.
<b>Convenience Termination</b>	The KRRC shall have the right to terminate the Project Agreement for its convenience at any time.
<b>Deliverable Material</b>	The Project Company shall acknowledge and agree that the KRRC shall exclusively own the materials produced or maintained in accordance with, pursuant to, or as a result of the Project Agreement. PacifiCorp and the States will have the right to review all materials developed under the Project Agreement.
<b>Project Team Members</b>	The Project Company shall bear all risk associated with the performance and costs of the Project team members.
<b>Key Personnel and Named</b>	The Project Company shall utilize Key Personnel and named subcontractors identified in the Proposal and confirmed in the GMP

<b>Subcontractors</b>	Contract Amendment for the duration of the Project. Key Personnel and named subcontractors may not be substituted without the KRRC's prior written consent.
<b>KRRC Representatives</b>	The Project Company shall fully cooperate with all consultants and representatives designated by the KRRC.
<b>Integration with Related Projects</b>	The Project Company shall agree to reasonably cooperate and coordinate its activities with those of other KRRC contractors to ensure that there is no unreasonable disruption to the IGH modifications or other projects identified by the KRRC that will be occurring at the Project site.
<b>Safety and Security</b>	The Project Company shall assume responsibility for preparing a safety and security plan and implementing and monitoring all safety and security precautions and programs related to the performance of the Phase 2 Work and Phase 3 Work.
<b>Site Access</b>	The Project Site is currently owned by PacifiCorp. The Project Company will be required to enter into a site access agreement with PacifiCorp as further described in Section 2.7 (Project Site) of the RFQ.
<b>Contract Phases</b>	<p>The Project Company is expected to complete the Project in three phases (i.e., Phase 1 Work, Phase 2 Work and Phase 3 Work), as follows and as further described in Section 3 (Project Scope of Services) of the RFQ:</p> <p>(1) Phase 1 Work commences from the Contract Date and following a notice to proceed from KRRC;</p> <p>(2) The Project Company cannot commence any Phase 2 Work until the Project Agreement Parties negotiate and execute (a) a GMP Contract Amendment based on the GMP Submittal Package prepared by the Project Company as part of Phase 1 Work, or (b) an Early Work Package Amendment;</p> <p>(3) Phase 3 Work commences upon achievement of Phase 2 Substantial Completion or earlier with KRRC consent; and</p> <p>(4) The Project Company must achieve substantial completion for Phase 2 Work and Phase 3 Work by the applicable scheduled substantial completion dates negotiated as part of the GMP Contract Amendment, as such dates may be extended in accordance with the Project Agreement.</p>
<b>LABOR AND SUBCONTRACTORS</b>	
<b>Labor</b>	The Project Company shall maintain order at all times among the Project Company's employees and subcontractors. As between the Project Company and the KRRC, the Project Company shall have exclusive responsibility for labor disputes among its employees and employees of its subcontractors.
<b>Prevailing Wages</b>	The Project Company and all subcontractors shall pay not less than the greater of the prevailing wage rate specified by California and Oregon law

	for Project work, irrespective of the State in which the work is performed.
<b>Local and Tribal Subcontracting Requirements</b>	Local and tribal subcontracting expectations are described in more detail in Section 7.4 (Local and Tribal Participation) of the RFQ.
<b>COMPENSATION – GENERALLY</b>	
<b>KRRC Payment Obligations</b>	The KRRC shall pay the Project Company the Phase 1 Fee, the Phase 2 Price and the Phase 3 Price.
<b>Payment Procedures</b>	The Project Company shall be entitled to payment on a monthly basis upon the Project Company’s submittal of a payment request to, and approval by, the KRRC, subject to retainage of up to 5% of each payment (which will be released to the Project Company upon Final Completion). Payment requests are due no later than 30 days after the end of the month in which the work occurred.
<b>COMPENSATION –PHASE 1 WORK</b>	
<b>Phase 1 Fee</b>	The Project Company shall be paid a <del>fixed sum</del> <u>time and materials not to exceed fee</u> for the performance of the Phase 1 Work, as proposed in the Proposal and negotiated by the parties.
<b>COMPENSATION – PHASE 2 WORK</b>	
<b>Phase 2 Price</b>	<p>The Project Company will be paid the Phase 2 Price for the performance of the Phase 2 Work, and assumption of all risk associated with the Phase 2 Work under the Project Agreement.</p> <p>The “Phase 2 Price” shall be an amount equal to the sum of:</p> <ol style="list-style-type: none"> <li>(1) The Phase 2 Costs (the actual allowable costs of the work);</li> <li>(2) The General Conditions Fee applicable to the Phase 2 Work (payable as a lump sum or percentage);</li> <li>(3) The Project Company Fee applicable to the Phase 2 Work (payable as a lump sum or percentage); and</li> <li>(4) The KHSA Indemnity Fee (payable as a lump sum).</li> </ol> <p>The Phase 2 Costs will be the costs of performing the Phase 2 Work, excluding certain unallowable costs which will be identified in the Project Agreement.</p> <p>The KHSA Indemnity Fee represents compensation to the Project Company for assuming the KRRC Indemnity obligations.</p> <p>The KRRC expects that the General Conditions Fee, the Project Company Fee, and the KHSA Indemnity Fee will be proposed by the Proposer, and negotiated and agreed to prior to the execution of the Project Agreement.</p> <p>The Phase 2 Price shall not exceed the negotiated Phase 2 GMP. The Project Company will be paid the Phase 2 Price on a progress payment basis in accordance with the schedule of values provided in the Project</p>

	<p>Agreement.</p> <p>The KRRC may elect at the GMP Contract Amendment stage to negotiate a fixed Phase 2 Price in lieu of a Base Guaranteed Maximum Phase 2 Price.</p>
<b>Phase 2 GMP</b>	<p>The Phase 2 GMP shall be the sum of (1) the Base Guaranteed Maximum Phase 2 Price, and (2) the Base Guaranteed Maximum Phase 2 Price Adjustments.</p> <p>The Phase 2 GMP represents the limit of the total of all amounts payable to the Project Company by the KRRC for the performance of the Phase 2 Work. Liability for and payment of amounts expended over and above the Phase 2 GMP shall be the sole responsibility of the Project Company.</p>
<b>COMPENSATION – PHASE 3 WORK</b>	
<b>Phase 3 Price</b>	<p>The Project Company will be paid the Phase 3 Price for the performance of the Phase 3 Work and assumption of all risk associated with the Phase 3 Work under the Project Agreement.</p> <p>The “Phase 3 Price” shall be an amount equal to the sum of:</p> <ul style="list-style-type: none"> <li>(1) The Phase 3 Costs (the actual allowable costs of the work);</li> <li>(2) The General Conditions Fee applicable to the Phase 3 Work (payable as a lump sum or percentage); and</li> <li>(3) The Project Company Fee applicable to the Phase 3 Work (payable as a lump sum or percentage).</li> </ul> <p>The Phase 3 Costs will be the costs of performing the Phase 3 Work, excluding certain unallowable costs which will be identified in the Project Agreement.</p> <p>The KRRC expects that the General Conditions Fee and the Project Company Fee will be proposed by the Proposer, and negotiated and agreed to prior to the execution of the Project Agreement.</p> <p>The Phase 3 Price shall not exceed the negotiated Phase 3 GMP. The Project Company will be paid the Phase 3 Price on a progress payment basis in accordance with the schedule of values provided in the Project Agreement.</p> <p>The KRRC may elect at the GMP Contract Amendment stage to negotiate a fixed Phase 3 Price in lieu of a Base Guaranteed Maximum Phase 3 Price.</p>
<b>Phase 3 GMP</b>	<p>The Phase 3 GMP shall be the sum of (1) the Base Guaranteed Maximum Phase 3 Price, and (2) the Base Guaranteed Maximum Phase 3 Price Adjustments.</p> <p>The Phase 3 GMP represents the limit of the total of all amounts payable to the Project Company by the KRRC for the performance of the Phase 3 Work. Liability for and payment of amounts expended over and above</p>

	the Phase 3 GMP shall be the sole responsibility of the Project Company.
<b>DESIGN, CONSTRUCTION, DEMOLITION AND RESTORATION</b>	
<b>Design, Construction, Demolition and Restoration Liability</b>	The Project Company shall have sole liability and responsibility for the design, construction, demolition and restoration work necessary to complete the Project, and bear all risk associated with the performance and costs of all its subcontractors. The Phase 1 Work will be performed in a manner consistent with the Project Company’s assumption of this risk. The design, construction, demolition and restoration work must be done in a manner that meets the standards set forth in the Project Agreement.
<b>Construction, Demolition and Restoration Commencement</b>	Construction, demolition and restoration work on the Project shall commence following satisfaction of specified conditions to be set forth in the Project Agreement, including but not limited to having all necessary approvals.
<b>Changes to the Project Requirements</b>	<p>The Project Company shall have the right to propose changes to the Project Requirements. The KRRC shall have the right to accept, modify, or decline any change requested by the Project Company.</p> <p>The KRRC shall have the right to make changes to the Project Requirements at any time prior to Final Completion, in its discretion, subject to appropriate performance, schedule or price relief.</p> <p>The “Project Requirements” include specifications, drawings, and other technical requirements for the performance of the Project work developed by or on behalf of the Project Company through the performance of the Phase 1 Work and established in any Early Work Package Amendment or the GMP Contract Amendment, as applicable.</p>
<b>Design, Construction, Demolition and Restoration Oversight</b>	The KRRC shall have the right at all times to monitor, inspect, sample, measure, attend, observe or conduct tests and investigations, and conduct any other oversight respecting any part or aspect of the Project to the extent necessary or advisable to comply with applicable government requirements and to verify the Project Company’s compliance with the Project Agreement. The Project Company at all times will coordinate and cooperate, and require its subcontractors to coordinate and cooperate, with the KRRC and its agents and employees.
<b>Extent of Self-Performance by Project Company</b>	The extent to which the Project Company may self-perform Project work is described in further detail in Section 7.3 (Self-Performed Work and Subcontracted Work Generally) of the RFQ.
<b>Title and Risk of Loss</b>	Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Project shall pass to the KRRC upon incorporation in the Project or payment made by the KRRC, whichever occurs first. The Project Company shall bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until the Phase 2 Substantial Completion Date.
<b>Nonconforming</b>	The KRRC may require the Project Company to correct any work that

<b>Work</b>	does not conform with the contract standards at the Project Company's expense. If the Project Company fails to correct the nonconforming work in a timely manner, the KRRC may deduct the cost of doing so.
<b>PERMITTING</b>	
<b>Permits and Approvals</b>	Required permits and agency approvals, and the party responsible for obtaining the permits and agency approvals, are described in further detail in Section 2.7 (Regulatory Overview) and in Section 2.9 (Property Ownership and FERC Approvals).
<b>Permitting Delays</b>	Uncontrollable Circumstances are expected to include unusual delays on the part of a governmental body in issuing a governmental approval, which will be determined based upon the "Assumed Governmental Approval Application Dates" and "Assumed Governmental Approval Issuance Dates" to be established in the GMP Contract Amendment.
<b>FERC Approvals</b>	The Project Company is not expected to be required to assume risk with respect to the FERC license transfer and surrender process.  The sequencing of Project work will be done in conjunction with the FERC approval process as described in Section 2.9 (Property Ownership and FERC Approvals) of the RFQ.
<b>UNCONTROLLABLE CIRCUMSTANCES</b>	
<b>Relief Generally</b>	The occurrence of Uncontrollable Circumstances will entitle the Project Company to appropriate price, schedule and performance relief, as applicable, in the event of their occurrence.
<b>Differing Site Conditions</b>	A geotechnical baseline conditions report will be prepared by KRRC. Generally, if the Project Company discovers conditions that differ from those indicated in the report, the Project Company will be entitled to Uncontrollable Circumstance relief if the differing site condition materially impacts the Project Company's cost or time of performance. Conditions of which the Project Company had actual or constructive knowledge, including conditions that could reasonably have been known, discovered or revealed as a result of the examinations, investigations, explorations, tests or studies required to be performed by the Project Company as part of the Phase 1 Services, including the review of the geotechnical baseline conditions report and performance of additional site investigations, are excluded.
<b>Regulated Site Conditions</b>	The Project Company will be required to take all necessary measures to remediate any "Regulated Site Condition," which includes conditions having historical, archaeological, religious, scientific or similar significance; presence or habitat of a species that is endangered or otherwise protected by law; and presence of hazardous substances. The Project Company will be entitled to Uncontrollable Circumstance relief if the Project Company's cost or time of performance is adversely affected by a Regulated Site Condition, to the extent such condition was not previously disclosed to the Project Company. The Project Company shall not be entitled to any relief for a Regulated Site Condition brought on to

	the site by the Project Company or any Subcontractor, or a Regulated Site Condition that is created due to Project Company Fault.
<b>Changes in Law or Regulation</b>	The Project Company will be entitled to Uncontrollable Circumstance relief for a Change in Law that occurs after the Contract Date with respect to Phase 1 Work, and after the GMP Contract Amendment Date with respect to the Phase 2 Work and Phase 3 Work.
<b>Force Majeure Events</b>	Force Majeure Events will be specifically listed in the Project Agreement and will constitute Uncontrollable Circumstances. Time extensions and compensation will be provided for Force Majeure Events.
<b>Notice and Mitigation</b>	The Project Company will be required to provide notice of the occurrence of any Uncontrollable Circumstance event, and take all measures reasonably necessary to mitigate the impact of the Uncontrollable Circumstance. Any schedule adjustment will require the Project Company to demonstrate the impact of the Uncontrollable Circumstance on the critical path of the Project schedule. The Project Company's entitlement to relief will be conditioned upon compliance with the notice, demonstration and mitigation requirements of the Project Agreement.
<b>KEY BUSINESS TERMS</b>	
<b>Performance and Payment Bonds and Parent Company Guarantee</b>	On or before the GMP Contract Amendment Date, the Project Company, as financial security for the faithful performance and payment of its obligations under the Project Agreement will: (1) provide a performance bond and a payment bond in an amount at least equal to the Base Guaranteed Maximum Phase 2 Price (as further described in Section 5.3.12 (Performance, Payment and Other Bonds) of the RFQ), and (2) cause its parent entity to enter into a Guarantee Agreement on the Contract Date, a form of which will be attached to the Project Agreement.
<b>Insurance</b>	The Project Company shall obtain and provide evidence of the required insurance under the Project Agreement, as further described in Section 5.3.11 (Insurance) of the RFQ.
<b>Liquidated Damages</b>	The Project Company's failure to achieve Phase 2 Substantial Completion on or before the Scheduled Phase 2 Substantial Completion Date, or failure to achieve Phase 3 Substantial Completion on or before the Scheduled Phase 3 Substantial Completion Date, shall result in the assessment of daily delay liquidated damages in an amount that is expected to be negotiated as part of the GMP Contract Amendment.
<b>Performance Incentives</b>	The KRRC may include certain performance incentives in the Project Agreement relating to schedule savings and shared savings.
<b>Audit Rights</b>	The KRRC, CNRA, OPUC and CPUC will have audit rights to investigate or otherwise independently verify, at any time, any payment request or certification by the Project Company. The funding agencies shall have the right to verify how funds provided to the KRRC were expended.
<b>INDEMNIFICATION</b>	

<p><b>Indemnification Generally</b></p>	<p>As required under the KHSA, the Project Agreement will contain a broad KRRC Indemnity, to be guaranteed by the Project Company’s parent company under the Parent Company Guarantee and supported by the performance bond. The KRRC Indemnity will include (1) the various indemnities that KRRC is obligated to provide to the other KRRC Indemnitees (as described below) under Section 7.1.3 of the KHSA, and (2) the various indemnities that KRRC is obligated to obtain from a “Liability Transfer Corporation (LTC)” for the benefit of the KRRC Indemnitees under the terms of Appendix L to the KHSA, Section 14(a) of the CPUC Funding Agreement, Sections 13(d) and 14(a) of the OPUC Funding Agreement, and Sections G(1)-(4) of the California Prop. 1 Grant Agreement. The Project Company will bear any indemnity obligation not covered by insurance or the performance bonds.</p>
<p><b>Liability Transfer Corporation</b></p>	<p>The LTC provided for under the KHSA (referred to in the KHSA as a “special corporate indemnitor”) may be the Project Company itself, or a separate legal entity. Whichever entity constitutes the LTC for purposes of the KHSA must meet the minimum indicia of self-sufficiency specified in Appendix L of the KHSA. These indicia relate to appropriate corporate capitalization as agreed to by the States and PacifiCorp, as well as acceptable past performance on similar projects, regulatory permitting experience, and longevity in the industry. The determination as to whether the KHSA’s requirement for a LTC will be satisfied by the Project Company through the Project Agreement, or through a separate agreement with the Project Company or with a party other than the Project Company, will be made at the RFP stage of this procurement. In Section 5.3.8 (Part 7 – Liability Transfer) of the RFQ, Respondents are requested to set forth their proposed approach to providing the KRRC Indemnity and satisfying the KRRC’s obligations under the KHSA to contract with a LTC. This section of the RFQ is written on the assumption that the Project Company will provide the KRRC Indemnity under the Project Agreement.</p>
<p><b>KRRC Indemnity</b></p>	<p>Under the KRRC Indemnity, the Project Company (except as limited by applicable anti-indemnity statutes as described below) will indemnify, defend and hold harmless the KRRC Indemnitees from and against all Loss-and-Expense (as described below) that any KRRC Indemnitee may sustain in connection with any Indemnification Claim (as described below) made by one or more third parties arising by reason of (or alleged to result from or in connection with) any Indemnification Act, Event or Circumstance (as described below).</p>
<p><b>Anti-Indemnity Statute Exclusion</b></p>	<p>The KRRC Indemnity will exclude any indemnification obligation that would be void or unenforceable under any applicable California or Oregon anti-indemnity statute. In general, these statutes prohibit the indemnification of an indemnitee from damage to the extent caused by its own negligence or willful misconduct.</p>
<p><b>KRRC Indemnitees</b></p>	<p>The “KRRC Indemnitees” include KRRC, PacifiCorp, the States, OPUC and their respective elected officials, trustees, members, appointed officers, directors, commissioners, employees, representatives, agents and contractors.</p>

<b>Loss-and-Expense</b>	<p>“Loss-and-Expense” includes any and all (1) actual loss, liability, forfeiture, obligation, damage, fine, penalty, judgment, deposit, charge, assessment, tax, cost or expense relating to any Indemnification Act, Event or Circumstance, and; (2) fees, costs and expenses of expert witnesses, contractors, and other persons incurred in connection with investigating, preparing for, defending or responding to any action, suit, litigation, arbitration, administrative proceeding or other legal or equitable proceeding having a bearing on the Project Agreement or relating to the KRRC Indemnity, and all appeals therefrom.</p>
<b>Indemnification Claims</b>	<p>“Indemnification Claims” include claims, without limitation as to amount, for or in respect of:</p> <ol style="list-style-type: none"> <li>(1) loss of or physical damage to property or assets;</li> <li>(2) death, personal injury, disease or illness of any person, including any KRRC Indemnitee;</li> <li>(3) harm, injury or damage to persons, real property, tangible property, natural resources, biota or the environment;</li> <li>(4) harm, injury or damage caused by the release, migration, movement, or exacerbation of any material, object or substance, including hazardous substances;</li> <li>(5) breaches or violations of any applicable law, regulatory approval, authorization, agreement, license, permit or other legal requirement of any kind;</li> <li>(6) any harm to persons, property or the environment;</li> <li>(7) damages resulting from either Facilities Removal or Facilities operation arising from, related to or triggered by actions associated with Facilities Removal;</li> <li>(8) damages caused by the release of any material or substance, including hazardous substances that is not covered contractually; and</li> <li>(9) diminution in land value or property claims to the extent not already covered by contractor’s insurance or mitigation funding.</li> </ol>
<b>Indemnification Act, Event or Circumstance</b>	<p>An “Indemnification Act, Event or Circumstance,” as to which the Project Company is providing indemnification for any “Loss-and-Expense,” as defined above, includes but is not limited to the following:</p> <ol style="list-style-type: none"> <li>(1) Project Company breach of the Project Agreement, or of contract representations and warranties;</li> <li>(2) Project Company negligence or willful misconduct;</li> <li>(3) Project Company non-compliance with applicable law;</li> <li>(4) Project Company failure to obtain or comply with all required governmental approvals;</li> <li>(5) Project Company release of hazardous substances;</li> <li>(6) Labor disputes;</li> <li>(7) Subcontractor claims;</li> <li>(8) Intellectual property claims; or</li> <li>(9) Harassment arising from the conduct of the Project Company.</li> </ol> <p>10) Facilities Removal or Facilities operation arising from, relating to</p>

	<p>or triggered by actions associated with Facilities Removal; and  (11)The release of any material or substance, including hazardous substances;  irrespective of whether or to what extent the Project Company had any responsibility under the Project Agreement or otherwise under law for the actions associated with the Facilities Removal or Facilities operations, or for the release of any material substance.</p> <p>The KRRC Indemnity shall be applicable irrespective of cause, fault, responsibility or the legal liability of any person in connection with the occurrence of the Indemnification Act, Event or Circumstance, including causes constituting Force Majeure Events or other Uncontrollable Circumstances.</p>
<b>No Insurance Limitation</b>	The Project Company’s obligations under the KRRC Indemnity will not be limited by any coverage exclusions or other provisions in any policy of insurance or other contract, guarantee, bond, or other instrument or agreement maintained by the Project Company that is intended to respond to Indemnification Claims.
<b>KRRC Indemnity not Limited by Restrictions on Consequential Damages or Establishing Liability Limits</b>	The Project Company’s obligations under the KRRC Indemnity will not be limited by any provision of the Project Agreement (1) restricting claims for consequential, punitive or special damages, or (2) establishing a stated dollar limitation on contract damages or liability generally.
<b>LTC as Party to KHSA</b>	The KHSA Appendix L provides that the LTC will become a party to the KHSA if ownership of the Facilities is transferred in whole or in part to the LTC. The determination of whether ownership of the Facilities will be transferred to the LTC will be made at the RFP stage.
<b>TERMINATION AND LIABILITY</b>	
<b>Project Company Non-Performance</b>	<p>The following are expected to constitute events of default for the Project Company:</p> <ol style="list-style-type: none"> <li>(1) Failure to achieve Phase 2 Substantial Completion by the end of any allowable extension period;</li> <li>(2) Failure to achieve Phase 3 Substantial Completion by the end of any allowable extension period;</li> <li>(3) Failure to obtain and maintain any required security for performance;</li> <li>(4) Failure to obtain and maintain any required insurance;</li> <li>(5) Unauthorized suspension or abandonment of the Project;</li> <li>(6) Insolvency, voluntary bankruptcy or involuntary bankruptcy;</li> <li>(7) Default by any parent company guarantor;</li> <li>(8) False or inaccurate representations or warranties by the Project Company or the parent company guarantor;</li> <li>(9) Failure or refusal to pay any undisputed amount required to be paid to the KRRC within 60 days following the due date; and</li> <li>(10) Failure or refusal to perform any material obligation under the</li> </ol>

	Project Agreement (unless excused by an Uncontrollable Circumstance).
<b>KRRC Non-Performance</b>	The following are expected to constitute events of default for the KRRC after a specified opportunity for cure:  (1) Failure or refusal to pay any undisputed amount required to be paid to the Project Company within 60 days following the due date; and (2) Failure or refusal to perform any material obligation under the Project Agreement.
<b>Non-Binding Mediation</b>	Either party may refer any dispute arising under the Project Agreement to non-binding mediation for resolution based upon mutual consent.
<b>Forum for Dispute Resolution</b>	All legal proceedings related to the Project Agreement or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the State or Federal courts located in San Francisco, CA.
<b>Limitation of Liability for Non-Performance</b>	It is anticipated that the Project Agreement will include a provision limiting the Project Company's liability for non-performance related damages to an amount equal to the GMP.
<b>Waiver of Consequential Damages</b>	No consequential or punitive damages shall be payable on any claims arising out of the performance or non-performance of obligations under the Project Agreement, by either the KRRC or the Project Company.

