

# Council Determination Report FY 2017 (253) 573-7828

Any questions - please contact Puyallup Tribal Council Offices at 573-7828; 7829; 7827; 7949 or 7982

Entered:  Time:  Status of Request:  CDR #:   
CDRIDs:  Submitted By:  BY:   
Department / Entity:

Sign and approve contract for shading of raceways at Clarks Creek Hatchery. Funding for the project is \$22,741.00 from water quality grant and \$56,006.00 from FY17 BIA Cyclical Hatchery Maintenance Fund. Total Contract \$78,747.00 Contract J. Nelson 11011G & 96112

Meeting Date:  CHAIR:  RECORDING SECRETARY:   
Method:  Action by Council:   
Motion by:  Second by:   
Bill Sterud:  Lawrence W LaPointe:   
David Z Bean:  Tim Reynon:   
James Rideout:   
Annette M Bryan:  Sylvia P Miller:   
Tally Vote:  RESOLUTION NO:   
Document tracking and Council comments:

**PUYALLUP TRIBAL COUNCIL  
AGENDA REQUEST AND REPORT FORM**

Payallup Tribal Council members: Chairman Bill Sterud, Vice-Chairman Lawrence W. LaPointe, David Z. Bean, Sylvia P. Miller, Timothy Reynon, Annette M. Bryan and James M. Rideout

**FOR YOUR DOCUMENT TO BE CONSIDERED ON TRIBAL COUNCIL'S AGENDA PLEASE FOLLOW REQUIREMENTS AS STATED 1-6:** 1. Council Offices requires a 2-day review/processing period for documents, unless an extreme emergency- please attach explanation. 2. This Form must be attached to front/top of your document before making copies. 3. Eight (8) copies are required. 4. If submitting a Resolution you must include 3 original Resolutions and any attachments in addition to the required 8 copies. 5. Do not staple original documents. 6. ARF/document must be handed to a Council employee to stamp in received. If the guidelines are not followed your document may be delayed/ sent back to you.

Any questions-please call Council Offices at (253) 680-5992, 573-7828, 573-7829, or 573-7831.

**COUNCIL STAFF USE ONLY - Do not delete this section**

Date/Time Stamp ARF/ Document Received: RECEIVED JUN 25 2017  
 ARF dropped off by Print Name: Char Naylor Initial: \_\_\_\_\_  
 Council Staff received LS Dept. ID: ENV410 CDR No. 2390

**SUBMITTED BY:** Char Naylor

**Briefly explain the Document submitted and the Action you are requesting Tribal Council takes on it:**  
Sign and approve contract for shading of raceways at Clarks Creek Hatchery. Funding for the project is \$22,741.00 from water quality grant and \$56,006.00 from FY17 BIA Cyclical Hatchery Maintenance Fund. Total Contract \$78,747.00 Contract J. Nelson 110136 + 90112

All administrative routes should be exhausted before Tribal Council considers this item. Please name the departments and/or Committees that have reviewed this request and their comments or recommendations - APPROVE, DENY, NO RECOMMENDATION, OR SEE ATTACHMENT.

REVIEWED BY:	REVIEWER'S INITIALS & DATE:	RECOMMENDATIONS:
Fisheries	<u>BSB</u> <u>6/20/17</u>	<u>Approve</u>
Law	<u>SXS</u> <u>6-22-17</u>	<u>OK (Legal sufficient)</u>
Accounting	<u>DEP</u> <u>6/21/17</u>	<u>OK</u>
Admin	<u>MDG</u> <u>6/21/17</u>	<u>APPROVE</u>

**TRIBAL COUNCIL OFFICES - MEETING USE ONLY - do not delete this section**

Council Consensus: [ ] \_\_\_\_\_  
 Action: [ ] Approved [ ] Denied \_\_\_\_\_  
 Motion # [ ] \_\_\_\_\_ Resolution # \_\_\_\_\_  
 [ ] Referred To (no further action) \_\_\_\_\_  
 [ ] Response Required \_\_\_\_\_  
 [ ] Tabled until \_\_\_\_\_  
 COUNCIL VOTE: FOR AGAINST ABSTAINED NOT VOTING

JUN 22 2017  
 11:21 AM



# PUYALLUP TRIBE OF INDIANS



## Manufacture and installation of metal shading for 16 Raceways at Clarks Creek Hatchery (Raceway Shading Project)

### PUYALLUP TRIBE OF INDIANS & J. NELSON ENTERPRISES INC. CONTRACT AGREEMENT

This Agreement is entered into between the **Puyallup Tribe of Indians**, 3009 East Portland Avenue, Tacoma, WA, 98404 hereinafter referred to as “**PUYALLUP**” and **J. Nelson Enterprises Inc.** 23015 Orville Road E Orting, WA 98360-9770 hereinafter referred to as “**CONTRACTOR**”. PUYALLUP and CONTRACTOR hereby agree that the CONTRACTOR shall furnish and install seven (7) Access (Forestry) Gates as depicted in the attached photo to the field dimensions identified by the Tribe’s Project Manager for a specific amount within a specific timeline as stated herein.

1. The period of time for this Agreement shall begin once the Agreement has been signed and executed by both PUYALLUP and CONTRACTOR. All work included in this contract will be complete within 90 calendar days after execution of this Agreement by both parties. If CONTRACTOR fails to complete the work within this timeframe the owner may assess Liquidated Damages in the amount of \$50 per calendar day. CONTRACTOR acknowledges that the actual damages likely to result from failure to complete the work within this timeframe would be difficult for PUYALLUP to prove. The parties intend that CONTRACTOR’S payment of the Liquidated Damages Amount would serve to compensate PUYALLUP and they do not intend for it to serve as punishment.
2. Contractor agrees to furnish all materials, labor, tools, equipment, supervision, supplies, and other things, necessary or required to construct the Raceway Shading Project, consisting of posts and trusts assemblies with 8100 square feet of roof for 16 raceways. Appendix A includes design, and costs. All fabrication will occur at the contractors shop near Orting, Washington, and delivery and installation of the Raceway Shading at the Clarks Creek Hatchery by December 1, 2017. (Collectively referred to herein as the “Raceways Shading Project”). The parties intend by this contract to incorporate provisions required by Puyallup Tribal law and federal law. The parties agree the Tribe will periodically inspect the work in progress. The Contractor’s work shall be to the reasonable Satisfaction of the Tribe.
3. The total price will be \$78,747.00. Payment will be made within 30 days of receipt of invoice. The Tribe shall inspect the work at the contractor’s shop as work progresses.
4. PUYALLUP’s representative and Project Manager authorized to implement the terms and conditions of this Agreement is designated as Char Naylor, Project Manager.
5. For any conflict between the terms of the Agreement and the terms contained in Exhibit A (the quote referenced above) the terms of this Agreement shall control.

6. PUYALLUP shall make payment to CONTRACTOR no later than thirty (30) calendar days after PUYALLUP's accounting department begins processing CONTRACTOR's invoice. Payment by PUYALLUP does not constitute a waiver of any claims by PUYALLUP against CONTRACTOR concerning or arising out of this Agreement.

**Mailing Address:** Puyallup Tribe of Indians  
Attn: Char Naylor  
3009 E. Portland Ave  
Tacoma, WA 98404

7. The CONTRACTOR agrees to maintain for inspection by PUYALLUP for three years after final payment all books, records, documents, and other evidence pertaining to the costs and expenses of this Agreement, hereinafter collectively called, "records", to the extent and in such detail as will properly reflect all net costs, direct and indirect, of labor, materials, supplies, and services, and other costs of whatever nature for which reimbursement is claimed under the provisions of this Agreement.
8. Upon PUYALLUP's final payment to the CONTRACTOR for services provided under this Agreement, any and all reports, data, and findings or other materials or deliverables under this Agreement shall become the property of and remain under the sole proprietorship of PUYALLUP. CONTRACTOR will keep all information learned under this Agreement confidential and will not release any such information, either orally or in writing, to parties other than PUYALLUP, its agents, CONTRACTORS or employees without the express written permission of PUYALLUP.
9. PUYALLUP and CONTRACTOR each binds themselves and their partners, agents, assigns, successors and legal representatives to this Agreement and each binds their partners, successors and legal representatives with respect to all terms and conditions of this Agreement.
10. Neither PUYALLUP nor CONTRACTOR shall delegate, assign or transfer their duties or interest in this Agreement without the written consent of the other party. Any such assignment, delegation or transfer shall be subject to the same terms and conditions as this Agreement.
11. This Agreement, including its referenced attachments, represents the entire and complete Agreement between the parties and supersedes all prior negotiations, representations, or understandings either written or oral between the parties. This Agreement may be amended or modified only in writing signed by both parties. Nothing whatsoever in this Agreement constitutes or shall be construed as a waiver of PUYALLUP's sovereign immunity. This Agreement shall not be valid unless each and every PUYALLUP signature designated below is affixed.
12. Services under this Agreement are provided by CONTRACTOR acting in a consulting, contracting or personal services capacity and not as a PUYALLUP employee. CONTRACTOR is not entitled to any payments not expressly stated herein for any fringe benefit whatsoever. CONTRACTOR acknowledges that CONTRACTOR is responsible for all applicable federal and state taxes, and all unemployment, labor and industries coverage. CONTRACTOR certifies that CONTRACTOR: (a) possesses all of the skills and tools necessary to perform the services; (b) will coordinate with PUYALLUP to establish specific hours for performing the services; and (c) has thoroughly investigated the location for performing the services.
13. In the event payment for services under this Agreement is made from federal or state funds, CONTRACTOR shall abide by all applicable federal and state laws and regulations governing

such funds which laws and regulations are hereby incorporated by reference. The applicable provisions of 25 CFR 276.12 and 40 CFR 31.36(i) attached hereto are specifically incorporated herein by this reference. Any rights to payment of the CONTRACTOR are subject to the limitations on and availability of such funds to PUYALLUP. The CONTRACTOR shall, whether or not federal or state funds are involved, without additional expense to PUYALLUP, comply with all applicable laws and obtain all required licenses and permits necessary to execute the provisions of this Agreement. CONTRACTOR shall file all required returns and notices. When working on the PUYALLUP Indian Reservation, CONTRACTOR shall comply with all Tribal laws. Before commencing work, CONTRACTOR shall obtain all required Tribal licenses and permits.

14. CONTRACTOR shall maintain throughout the duration of this Agreement the following insurance requirements: General Liability Insurance in the amount of \$1,000,000 per occurrence / \$2,000,000 aggregate; Automobile Liability in the amount of \$1,000,000 per accident; and proof of Worker's Compensation coverage. PUYALLUP shall be named as primary non contributory additional insured on the General Liability and Automobile insurance policy and endorsements stating such shall be provided.
  - a.) MUTUAL WAIVER OF SUBROGATION: To the extent damages are covered by insurance carried by or for the benefit of CONTRACTOR, CONTRACTOR waives all claims for damages against PUYALLUP and its personnel unless such a waiver is prohibited by the applicable insurance policy or policies.
  - b.) THIRD PARTIES: Nothing contained in this Agreement shall create rights in favor of contractual relationship with or a cause of action in favor of any person or entity not a party hereto. Neither PUYALLUP nor CONTRACTOR may assign this Agreement or any rights arising under it to any third party, either during performance or after performance, without the written consent of the other.
15. CONTRACTOR shall indemnify and hold PUYALLUP harmless from any and all costs, liabilities, or obligations by reason of the failure of CONTRACTOR or his or her employees, agents; secondary contractors or assigns to comply with any applicable law.
16. CONTRACTOR shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, age, sex, national origin, or handicap, with regard to employment "upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training." CONTRACTOR shall comply with the requirements contained in the Puyallup Tribal Employment Rights Ordinance (TERO).
17. CONTRACTOR shall indemnify and hold harmless PUYALLUP, its employees and agents against all loss, damage, liability, or costs to the extent related to or arising out of the CONTRACTOR's negligence in connection with this Agreement. CONTRACTOR shall reimburse PUYALLUP for all costs reasonably incurred to defend PUYALLUP against such claims through attorneys of PUYALLUP's choice.
18. CONTRACTOR shall promptly notify PUYALLUP of any litigation arising from or affecting its operations under this Agreement, including any bankruptcy or insolvency proceedings of CONTRACTOR or of its assignees or SECONDARY CONTRACTORS. The CONTRACTOR shall not assign its rights under this Agreement without first obtaining PUYALLUP's written approval.
19. The negotiation and execution of this Agreement shall be deemed by the parties to have occurred within the PUYALLUP Indian Reservation and any interpretation thereof shall be in accordance with the laws of the PUYALLUP Tribe.

20. PUYALLUP procurement policy requires confirmation that CONTRACTOR has not been suspended or debarred. CONTRACTOR affirms herein by signature below that it has not been suspended or debarred as of the contract date.
21. PUYALLUP may immediately suspend operations under this Agreement by issuing written notice of any breach to the CONTRACTOR. Suspension shall continue until PUYALLUP's authorized representative certifies in writing that the breach is remedied. If CONTRACTOR is still in breach after seven (7) calendar days from the notice of suspension, PUYALLUP may, without further notice, terminate all rights of CONTRACTOR under this Agreement.
22. Any failure by PUYALLUP to suspend or terminate this Agreement in case of breach shall not waive CONTRACTOR's duty to perform strictly in accordance with this Agreement. Failure by CONTRACTOR to perform on its part any duty, term or condition herein shall constitute a material breach of this Agreement by the CONTRACTOR.
23. The Contract may be terminated by PUYALLUP for convenience. Termination for convenience is effective upon written receipt by CONTRACTOR. Should termination occur CONTRACTOR shall be paid for all work completed prior to receipt of notice. No payment will be made for anticipated overhead or profit included in the CONTRACTOR's proposal. The CONTRACTOR may only terminate this Agreement for cause provided that PUYALLUP is afforded the opportunity and adequate time to cure the cause for which CONTRACTOR is attempting to terminate this Agreement.
24. Any notice required to be sent pursuant to the provisions of this Agreement shall be sent by Certified Mail or hand delivered to CONTRACTOR or its agents, employer or CONTRACTORS.
25. The failure of PUYALLUP to assert any claim or right at any time under this Agreement shall not waive its right to assert that claim or right or any other claim or right at a later time.
26. PUYALLUP's Project Manager and Authorized Representative or designee shall be authorized to observe any work done by the CONTRACTOR which is covered by this Agreement.

Executed this 26 day of June 2017.

PUYALLUP TRIBE OF INDIANS

J. NELSON ENTERPRISES INC.



\_\_\_\_\_  
Bill Sterud  
Chairman, Puyallup Tribal Council

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

**Federal Provisions  
incorporated in contract by Para. 13**

**(7 pages attached)**

## §276.12

existence, current use, and continued need for the property.

(3) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of non-expendable property shall be investigated and fully documented.

(4) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(5) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

(f) When the total inventory value of any unused expendable personal property exceeds \$500 at the expiration of need for any grant purposes, the grantee may retain the property or sell the property as long as he compensates the Bureau for its share in the cost. The amount of compensation shall be computed in accordance with paragraph (d)(1)(ii)(B) of this section.

(g) Specific standards for control of intangible property are provided as follows:

(1) If any program produces patentable items, patent rights, processes, or inventions, in the course of work aided by a Bureau grant, such fact shall be promptly and fully reported to the Bureau. Unless there is prior agreement between the grantee and Bureau on disposition of such items, the Bureau shall determine whether protection on such invention or discovery shall be sought and how the rights in the invention or discovery—including rights under any patent issued on it—shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's memorandum for heads of executive departments and agencies), dated August 23, 1971, and Statement of Government Patent Policy as printed in 36 FR 16889.

(2) Where the grant results in a book or other copyrightable material, the author or grantee is eligible to copyright the work if it is found that (i) the retention of the copyright is not precluded by statute and (ii) equity or the public interest is best served by doing so, by reason of special circumstances. If it is found that the public interest is

## 25 CFR Ch. I (4-1-11 Edition)

best served by limiting the term of any copyright to be obtained, such limits shall be set forth in the grant agreement. "Developmental" copyrights may be requested during the development, testing, or evaluation of copyrightable materials in order to prevent them from prematurely falling into the public domain. The copyright will be in accordance with copyright laws. However, the Government shall receive a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use the work for Government purposes. A copy of any copyright obtained by a grantee shall be provided to the Bureau. Program income received as royalties from copyrights on materials produced under grants is retained by the grantee during the grant period and is to be used according to the provisions of §276.6(c). Specific agreements between the Bureau and the grantee shall be entered into before the grant is awarded to determine the uses of the royalty income after the grant is completed or terminated.

(h) The use of Bureau-owned facilities under the jurisdiction of the Commissioner by a grantee for purposes of carrying out a grant may be authorized when the facilities are not needed for Bureau purposes.

[40 FR 51316, Nov. 4, 1975, as amended at 43 FR 37446, Aug. 23, 1978; 64 FR 13897, Mar. 23, 1999]

### §276.12 Procurement standards.

(a) The standards contained in this section do not relieve the grantee of the contractual responsibilities arising under its contracts. The grantee is the responsible authority, without recourse to the Bureau regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in support of a grant. This includes but is not limited to: disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to the tribal, Federal or other authority which has proper jurisdiction.

(b) Grantees may use their own procurement regulations provided that procurements made with Bureau grant



funds adhere to the standards set forth as follows:

(1) The grantee shall maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Bureau grant funds. Grantee's officers, employees or agents, shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. To the extent permissible by law, rules or regulations, such standards shall provide for penalties, sanctions, or other disciplinary actions to be applied for violations of such standards by either the grantee officers, employees, or agents, or by contractors or their agents.

(2) All procurement transactions regardless of whether negotiated or advertised and without regard to dollar value shall be conducted in a manner so as to provide maximum open and free competition. The grantee should be alert to organizational conflicts of interest or non-competitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade. However, this provision will apply only after the Indian preference requirements prescribed in §276.13 have been met.

(3) The grantee shall establish procurement procedures which provide for, as a minimum, the following procedural requirements:

(i) Proposed procurement actions shall be reviewed by grantee official to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(ii) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. In competitive procurements, such description shall not contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. When so used, the specific features of the named

brand which must be met by offerors should be clearly specified.

(iii) Positive efforts shall be made by the grantees to use small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed using Bureau grant funds. However, this provision will apply only after the Indian preference requirements prescribed in §276.13 have been met.

(iv) The type of procuring instruments used (i.e., fixed price contracts, cost reimbursable contracts, etc.) shall be appropriate for the particular procurement and for promoting the best interest of the grant program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(v) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to paragraph (b)(3)(vi) of this section is necessary to accomplish sound procurement. However, procurement of \$10,000 or less need not be so advertised. Where such advertised bids are obtained the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the grantee, price and other factors considered. (Factors such as discounts, transportation costs, taxes may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the grantee. Any or all bids may be rejected when it is in the grantee's interest to do so.

(vi) Procurements may be negotiated if it is impractical and unfeasible to use formal advertising. Generally, procurements may be negotiated by the grantee if:

(A) The public exigency will not permit the delay incident to advertising;

(B) The material or service to be procured is available from only one person or firm; (all contemplated sole source procurements where the aggregate expenditure is expected to exceed \$5,000 shall be referred to the Bureau for prior approval).

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(C) The total amount involved does not exceed \$10,000;

(D) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institutions;

(E) No acceptable bids have been received after formal advertising;

(F) The purchases are for highly perishable materials or medical supplies; for material or services where the prices are established by law; for technical items or equipment requiring standardization and interchangeability of parts with existing equipment; for experimental, developmental or research work; for supplies purchased for authorized resale; and for technical or specialized supplies requiring substantial initial investment for manufacture;

(G) Otherwise authorized by law, rules or regulations. Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(vii) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(viii) Procurement records or files for purchases in amounts over \$10,000 shall provide at least the following pertinent information: Justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiation.

(ix) A system for contract administration shall be maintained to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely followup of all purchases.

(c) In addition to provisions to define a sound and complete agreement, the grantee shall include the following provisions in all contracts and subgrants:

(1) Contracts shall contain such contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances

where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) All contracts, amounts for which are over \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions where the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) In all contracts for construction or facility improvement awarded over \$100,000, grantees shall observe the bonding requirements provided in §276.4.

(4) All construction contracts awarded by recipients and their contractors or subgrantees having a value of more than \$10,000, shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Labor Regulations (41 CFR part 87). However, this Equal Employment Opportunity provision will apply only after the Indian preference requirements prescribed in §276.13 have been met.

(5) All contracts and subgrants for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The grantee shall report all suspected or reported violations to the Bureau.

(6) When required by the Federal grant program legislation, all construction contracts awarded by grantees and subgrantees over \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5). Under this Act, contractors shall be required to pay wages to laborers and

mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The grantee shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The grantee shall report all suspected or reported violations to the Bureau.

(7) Where applicable, all contracts awarded by grantees and subgrantees over \$2,000 for construction contracts and over \$2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible if the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked over 8 hours in any calendar day or 40 hours in the work week. Section 107 of the Act applies to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety, and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(8) Contracts or agreements, the principal purpose of which is to create, develop, or improve products, processes or methods; or for exploration into fields which directly concern public health, safety, or welfare; or constraints in the field of science or technology in which there has been little

significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Bureau. The contractor shall be advised as to the source of additional information regarding these matters.

(9) All negotiated contracts (except those of \$10,000 or less) awarded by grantees shall include a provision to the effect that the grantee, the Bureau, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts, and transcriptions.

(10) Contracts and subgrants of amounts over \$100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1251 et seq.) as amended. Violations shall be reported to the Bureau and the Regional Office of the Environmental Protection Agency.

#### § 276.13 Indian preference in grant administration.

Any grant or subgrant shall require that to the greatest extent feasible:

(a) Preferences and opportunities for training and employment in connection with the administration of such a grant or subgrant shall be given to Indians.

(b) Preference in the award of a subgrant, contract or subcontract in connection with administration of a grant shall be given to Indian organizations and economic enterprises.

(c) A tribal governing body may develop its own Indian preference requirements to the extent that such requirements are not inconsistent with the purpose and intent of paragraphs (a) and (b) of this section for grants executed under this part.

documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement con-

tracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or sub-

grantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

(j) *Payment to consultants.* (1) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by grantees or by a grantee's contractors or subcontractors to the maximum daily rate for a GS-18. (Grantees may, however, pay consultants more than this amount). This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; grantees will pay these in accordance with their normal travel reimbursement practices. (Pub. L. 99-591).

(2) Subagreements with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

(k) *Use of the same architect or engineer during construction.* (1) If the grantee is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(1) The grantee received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

**§31.37**

**40 CFR Ch. I (7-1-12 Edition)**

(ii) The award official approves non-competitive procurement under §31.36(d)(4) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(iii) The grantee attests that:

(A) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subagreement for services during construction; and

(B) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.

(C) No employee, officer or agent of the grantee, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(D) None of the grantee's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to subagreements.

(2) However, if the grantee uses the procedures in paragraph (k)(1) of this section to retain an architect or engineer, any Step 3 subagreements between the architect or engineer and the grantee must meet all of the other procurement provisions in §31.36.

[58 FR 8068 and 8087, Mar. 11, 1993, and amended at 58 FR 8075, Mar. 11, 1993; 60 FR 19639, 19644, Apr. 19, 1995; 66 FR 3794, Jan. 16, 2001; 73 FR 15913, Mar. 26, 2008]

**§31.37 Subgrants.**

(a) *States.* States shall follow State law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with §31.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to

the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 31.10;

(2) Section 31.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in §31.21; and

(4) Section 31.50.

**§31.38 Indian Self Determination Act.**

Any contract, subcontract, or subgrant awarded under an EPA grant by an Indian Tribe or Indian Intertribal Consortium shall require to the extent feasible:

(a) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians as defined in the Indian Self Determination Act (25 U.S.C. 450b); and

(b) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) [25 U.S.C. 1452].

[66 FR 3794, Jan. 19, 2001]

**DECISION FOR NON-COMPETITIVE NEGOTIATION**

1. In accordance with SECTION 3-6 of the Puyallup Tribe of Indians Operating Purchasing Manual, I hereby make the following findings:

a. Fisheries Requisition N/A

(Departmental)

(Number)

Dated 7-June-2017

specifies

Raceway Shading

(Date, MO, Year)

(Quantity / End Item)

Requiring delivery to

Clarks Creek Hatchery 5722 66<sup>th</sup> Ave E Puyallup, WA 98371

(Destination address)

By Required Delivery Date 1-December-2017

(Date, MO, Year)

b. The required end-item(s) is / are not available from any established source contract.

c. The estimated value of this proposed contract is \$ 78,747

2. The basis for a determination for non-competitive purchase is as follows:

J. Nelson Enterprises, Inc. is able to design build ensuring a cost savings to the Puyallup Tribe of Indians.

(In sub-para. 2, state all facts involved concerning the lack of competition and the basis for "sole source" purchase.) This determination is based on our cost analysis for 16 salmon hatchery raceways each measuring 16 feet by four feet and the statements of the Fisheries Enhancement Chief and the Fisheries Water Quality Technician which are attached hereto and incorporated herein by the reference.

3. Upon the basis of the foregoing facts, I hereby determine that it is impracticable and infeasible to secure competition as there is only one known supplier and the proposed contract is for purchase on a non-competitive basis under the Program Operations Purchasing Manual (1984) section 3-6 (1)(a)(2), (6) from J. Nelson Enterprises, Inc. 23015 Orville Road E. Orting, WA 98360

(Enter name & address of sole source concern)

\_\_\_\_\_ 

(Signature: Contracting Official)

Date Signed

23/06/2017

(Date, MO, Year)

## Decision for Non-Competitive Negotiation

J. Nelson will fabricate 16 metals shade structures for the new raceways at Clarks Creek Hatchery. This will save the Tribe costly engineering fees for design drawings.

We first came across the J. Nelson Fabrication company when they bid on a formal advertised job to build a fish trap in the Electron Fish Ladder. Aside from providing the lowest bid they were able to review the design, notify the engineer and make significant improvements at a cost savings to the Tribe. At the same time we had a contract with Bellingham Marine to fabricate three fish tanks used in hauling both juvenile and adult salmon for transplanting. These three tanks are still in use after 10 years of service. When we needed three additional tanks built we again got bids for construction. This time J. Nelson reviewed the design, made significant improvements and reduced the cost of each tank from \$13,000 to \$7,500.

The Army Corps of Engineers also liked their tank design and has since had J. Nelson fabricate two aluminum tanks and one stainless tank for hauling fish at the Buckley fish trap. These tanks get a real work out when the pink salmon arrive and they have never had a problem with them. The fact that the USACE purchased three fish tanks from J. Nelson speaks volumes about the quality, durability, cost and design features they incorporate.

When the Tribe bid out the construction job for our \$3.8 million dollar Clarks Creek Hatchery we ended up hiring Apollo Construction from Tri-cities. Apollo then subcontracted the metal work associated with the hatchery work including, start tanks, incubation racks, fish ladder, safety rails, grating, aeration towers, bird netting support frame and fish fence. J. Nelson was awarded this work and again did a tremendous job for us.

They also have constructed a variety of fish trap and guidance equipment for Seattle City Light, Tacoma Power, the Muckleshoot Tribe and others as illustrated on their website located at [www.jnelsonenterprises.com](http://www.jnelsonenterprises.com). Because of their unique ability in fabricating fisheries equipment and cost effectiveness, J. Nelson Enterprises, Inc. is used by fisheries on jobs that involve fish hatchery maintenance, public and employee safety, and security for facilities.

Blake E. Smith  
Enhancement Chief, Puyallup Tribal Fisheries  
6824 Pioneer Way E.  
Puyallup, WA 98371

Blake E. Smith

Date: 6-23-17



# memo

To: Tribal Council  
From: Elsie Wescott  
CC: Sam Stiltner  
Date: 6-19-2017  
Re: Hatchery Raceway Shade Project

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In addition to the quote provided by J. Nelson Enterprises, I solicited three vendors to provide quotes for materials, fabrication, and installation of a shade structure to be build over the newly constructed raceways at the Clarks Creek Hatchery. Of the three companies, HCI Steel Building, Tacoma Steel Supply Inc., and Metal Roof Specialties, the latter provided a quote for materials only. I haven't received anything back from the other two vendors.

We are selecting J. Nelson Enterprises for this project due to the background work he has provided in fabricating fisheries equipment for the Tribe. Hatchery work includes start tanks, incubation racks, fish ladder, safety rails, grating, aeration towers, bird netting support frame and fish fence. J. Nelson was awarded this work and did a tremendous job for us. Because of their unique ability in fabricating fisheries equipment and cost effectiveness, J. Nelson Enterprises, Inc. is used by Fisheries on jobs that involve fish hatchery maintenance, public and employee safety, and security for facilities.

Username Password  
Forgot Username? Forgot Password? Log In  
Create an Account

SAM.gov will be down for scheduled maintenance this Saturday, 6/24, from 8AM to 8PM (EDT).

# Entity Dashboard

[Entity Overview](#)

**Entity Registration**

- Core Data
- Assertions
- Reps & Certs
- POCs

**Exclusions**

- Active Exclusions
- Inactive Exclusions
- Excluded Family Members

[RETURN TO SEARCH](#)

## J NELSON ENTERPRISES INC

YVWC - YELON2013 - CALENDAR 43212  
Status: Expired

Expiration Date: 02/19/2013

Purpose of Registration: Cannot be determined

23018 DECVALL ED E  
KOSTER, W., 98366-9270  
UNITED STATES

## Entity Overview

### Entity Registration Summary

Name: J NELSON ENTERPRISES INC  
Business Type: Business or Organization  
Last Updated By: None Specified  
Registration Status: Expired  
Activation Date: N/A  
Expired On: 02/19/2013

### Exclusion Summary

Active Exclusion Records? No



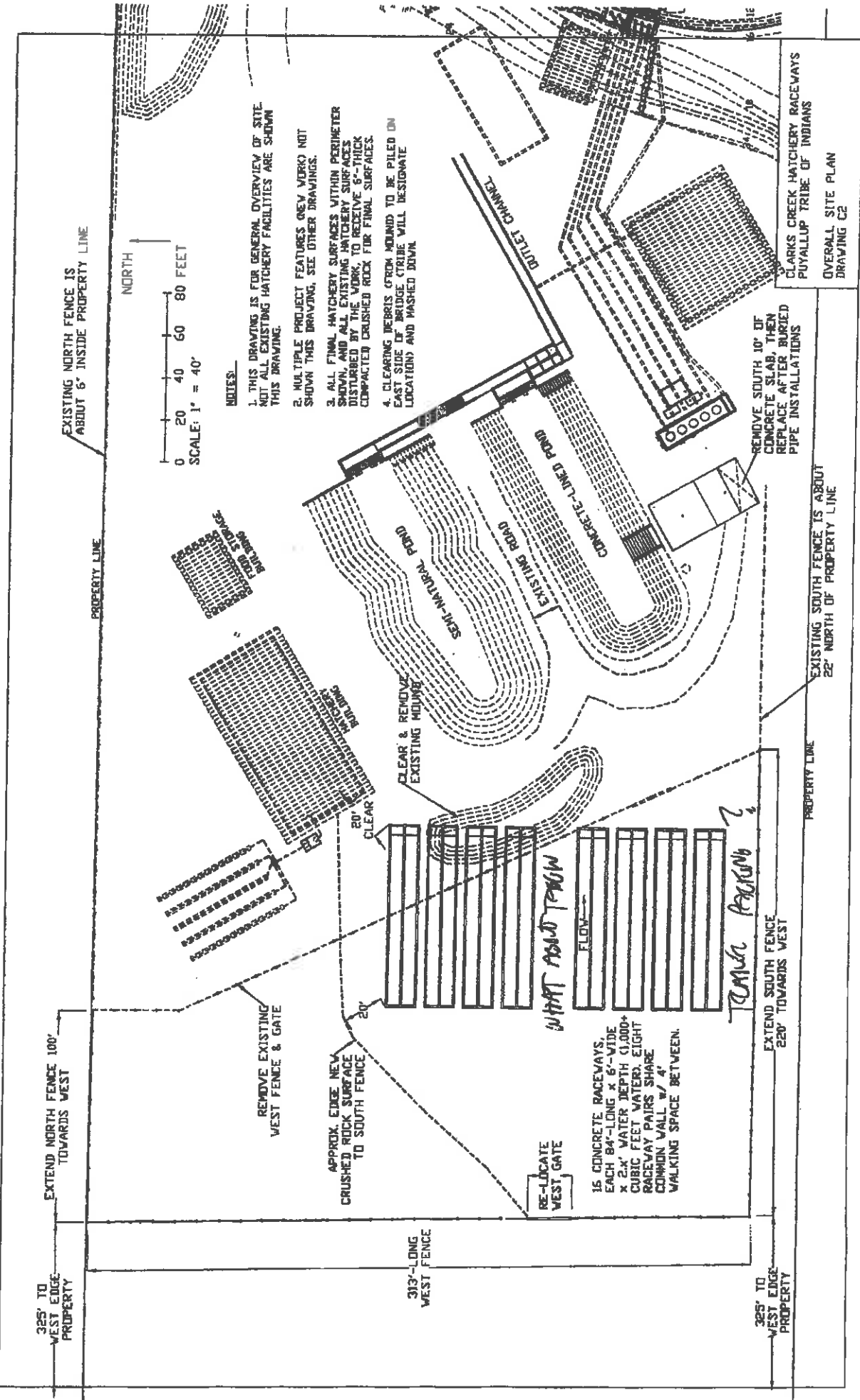
Entity ID: JYVWC-2013-43212  
Entity Name: J NELSON ENTERPRISES INC

Search Records  
Data Access  
Check Status  
About  
Help  
Disclaimer  
Accessibility  
Privacy Policy  
FAPIS.gov  
GSA.gov/IAE  
GSA.gov  
USA.gov

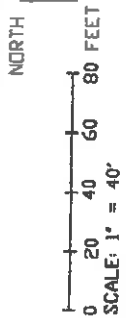
# Appendix A

Clarks Creek Salmon Hatchery  
 Puyallup Tribe of Indians  
 Raceway Fish Sheds Covers

Materials	Lot		
Fabrication Labor	Lot		\$38,747.00
Installation Labor	Lot		\$22,500.00
			\$18,500.00
<b>Total cost</b>			<b>\$78,747.00</b>
Total square foot covered area 7776 square feet			
Total post/truss assemblies 72			
Total roof material 8100 square feet			
Total horizontal tubes 256			
Total stainless steel wedge anchors 268			
Total stainless steel mounting bolt sets 258			
Total roof panels, (36" X 72") 450			
Total roof panel fasteners 5000			



EXISTING NORTH FENCE IS ABOUT 6" INSIDE PROPERTY LINE



**NOTES:**

1. THIS DRAWING IS FOR GENERAL OVERVIEW OF SITE. NOT ALL EXISTING HATCHERY FACILITIES ARE SHOWN THIS DRAWING.
2. MULTIPLE PROJECT FEATURES (NEW WORK) NOT SHOWN THIS DRAWING, SEE OTHER DRAWINGS.
3. ALL FINAL HATCHERY SURFACES WITHIN PERIMETER SHOWN, AND ALL EXISTING HATCHERY SURFACES DISTURBED BY THE WORK TO RECEIVE 6" THICK COMPACTED CRUSHED ROCK FOR FINAL SURFACES.
4. CLEARING DEBRIS FROM MOUND TO BE PILED ON EAST SIDE OF BRIDGE (STRIBE WILL DESIGNATE LOCATION) AND WASHED DOWN.

CLARK'S CREEK HATCHERY RACEWAYS  
PUYALLUP TRIBE OF INDIANS  
OVERALL SITE PLAN  
DRAWING C2

EXTEND NORTH FENCE 100'  
TOWARDS WEST

325' TO WEST EDGE PROPERTY

REMOVE EXISTING WEST FENCE & GATE

APPROX. EDGE NEW CRUSHED ROCK SURFACE TO SOUTH FENCE

313'-LONG WEST FENCE

RE-LOCATE WEST GATE

16 CONCRETE RACEWAYS, EACH 84'-LONG x 6'-WIDE x 2.5' WATER DEPTH (1,000+ CUBIC FEET WATER). EIGHT RACEWAY PAIRS SHARE COMMON WALL w/ 4' WALKING SPACE BETWEEN.

WHAT ABOUT TANK?



CLEAR & REMOVE EXISTING MOUND

20' CLEAR

REMOVE SOUTH 10" OF CONCRETE SLAB, THEN REPLACE AFTER BURIED PIPE INSTALLATIONS

EXISTING SOUTH FENCE IS ABOUT 22' NORTH OF PROPERTY LINE

PROPERTY LINE

EXTEND SOUTH FENCE 220' TOWARDS WEST

325' TO WEST EDGE PROPERTY

PROPERTY LINE

NORTH

BULLET CHANNEL

EXISTING ROAD

CONCRETE-LINED POND

SEMI-NATURAL POND

SHED FOR PIPE STORAGE

SHED FOR PIPE STORAGE

# CLARK'S CREEK SALMON HATCHERY

Puyallup Tribe of INDIANS

RACEWAY FISH SHADE COVERS

