



Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801

January 30, 2009

To All Bidders:

REQUEST FOR PROPOSAL (RFP) - RFP-20090130 REGARDING THE FUTURE OPERATIONS OF WIND TURBINES AT TVA'S BUFFALO MOUNTAIN FACILITY

Your firm is invited to provide a proposal regarding the future operations of wind turbines at TVA's Buffalo Mountain Facility. The enclosed RFP provides instructions for submitting proposals. This RFP, however, does not commit TVA to award a contract or to pay any costs incurred in the development and submission of any proposal.

This package consists of 1) RFP with attachments and 2) a Draft Contract. The Draft Contract is included for information only. Should your firm be awarded a contract it is anticipated that the language would be much the same as that included in the Draft Contract.

Upon receipt of this RFP, proposers shall immediately cease contact with TVA technical organizations either onsite or in a corporate office with regard to this solicitation. Any violation of this direction will be basis for disqualification. Any discussion or questions concerning this procurement shall be directed to the person identified herein and must be submitted in written form either by facsimile, letter, or e-mail. Any information given to prospective proposers concerning this RFP will be furnished promptly to all other prospective proposers as an amendment of the RFP if that information is necessary in submitting proposals or if the lack of it would be prejudicial to any other prospective proposers.

Any discussion or questions concerning this procurement shall be directed to me.

Telephone	(423) 751-8192
Fax	(423) 751-4619
E-mail	spthomas@tva.gov

TVA reserves the right to reject any or all proposals received as a result of the RFP, waive informalities and minor irregularities, or negotiate separately with any proposer in the event TVA considers such action to be in the best interest of TVA. By submitting a proposal, proposer agrees with TVA's method of conducting competition, TVA's evaluation criteria, and payment by electronic funds transfer.

TVA reserves the right to select the proposal which is considered to be in the overall best interest of TVA or make an award to more than one contractor. This RFP, however, does not commit TVA to award a contract or to pay any costs incurred in the development and submission of any proposal.

Sincerely,

Stacci Thomas
Contract Manager
Fossil Power Contract Services

Enclosures: RFP with Attachments
Attachment A Scope of Work - Schedule 2 - Ongoing Operations & Maintenance Services
Attachment B Schedule of Prices
Attachment C Proposal Statement
Attachment D TVA Information Form
Attachment E Small Business and Small Disadvantaged Business Subcontracting Plan
Draft Contract

TENNESSEE VALLEY AUTHORITY

REQUEST FOR PROPOSAL (RFP)

RFP-20090130

REGARDING ONGOING OPERATIONS OF WIND TURBINES
AT TVA'S BUFFALO MOUNTAIN FACILITY

DATE OF ISSUE: JANUARY 30, 2009

I. SCOPE AND INTENT

In October of 2000, TVA commissioned three (3) Vestas-47 wind turbines mounted on 65 meter towers at Buffalo Mountain about 10 miles north of Oliver Springs, Tennessee, near Knoxville. Generators are 750 KW manufactured by ABB. TVA is the owner of these three turbines. Subsequently, TVA commissioned additional turbines at the same site under a power purchase agreement. The turbines providing power under the power purchase agreement are not the subject of this RFP.

TVA is currently soliciting proposals from vendors regarding the future of three turbines and the underlying wind turbine site. TVA will entertain various options including, but not limited to: Contractor furnished Operations and Maintenance services, technical / R&D partnering arrangements, Contractor ownership coupled with a power purchase agreement, or other arrangements that will provide TVA with the continued beneficial use of the three turbines and/or their output. **TVA is open to considering innovative arrangements.**

The purpose of this RFP is to solicit proposals which, when evaluated, are intended to result in the execution of a contract(s) between TVA and the successful Offeror(s).

For Offerors of operations and maintenance services, technical / R&D partnering arrangements, or other services to TVA, a more detailed description of the services require is included as Attachment A to this RFP.

II. COMMERCIAL TERMS AND CONDITIONS

Proposed terms and conditions for the contract are included in the attached draft contract. These conditions will be conformed and included in any final contract to reflect the final agreement reached between TVA and the successful Offeror. Should the successful Offeror propose a power purchase or other similar arrangement, then TVA's standard terms and conditions for power purchase agreements would be the basis for the final agreement.

III. PROPOSAL EVALUATION, SELECTION, AND AWARD

Proposals shall contain all information requested and shall be in sufficient form and detail to enable a comprehensive understanding and analysis.

Evaluation will be based upon Offeror's demonstrated capability to provide quality equipment and services of the type and nature required and the cost to TVA. Evaluation will consider the following criteria (but not necessarily subcriteria), which are listed in decreasing order of importance, although the scale of difference between each item may be insignificant:

1. Technical and Management Evaluation. Proposals will be evaluated pursuant to technical and management information provided in accordance with Section IV.B, Technical and Management Proposal.

2. Commercial Evaluation. Proposals will be evaluated based upon Offeror's pricing information and financial responsibility provided in accordance with Section IV.C, Commercial Proposal

Pursuant to the evaluation procedures, TVA may investigate the qualifications and facilities of each firm. The Offeror must agree that TVA personnel may perform a survey, visit the Offeror's facilities, and a preaward cost audit.

Any award resulting from this solicitation will be made to the Offeror whose proposal is determined to be in the overall best interest of TVA. TVA intends to select a firm or firms for award based upon the initial proposals, without discussions. It is, therefore, emphasized that all proposals should be submitted on the most favorable terms to TVA that the Offeror can submit. TVA reserves the right to reject any or all proposals received as a result of this request, waive informalities and minor irregularities in offers received, or negotiate separately with any Offeror if the determination is made that such action would be in the best interest of TVA.

IV. SITE WALKDOWN

Prospective offerors are invited to attend a site walkdown to review the location, familiarize themselves with the local situations under which the work is to be performed, materials and physical conditions and to make their own computation of the cost and difficulties in connection with the execution of the work.

TVA technical representatives will be available to answer any technical questions, and escorted access to the jobsite (with TVA representatives) will only be provided on the date of the walkdown. Attendance should be limited to three (3) representatives from each offeror.

The site walkdown with offerors will be scheduled soon and the exact date and times transmitted to offerors.

The jobsites is an operating plant, so please dress accordingly.

V. PROPOSAL SUBMITTAL REQUIREMENTS

Proposal Due Date

OFFEROR'S PROPOSAL IS DUE BY 4:00 P.M. EDT ON MONDAY, MARCH 2, 2009. The proposal package must be addressed and marked as follows:

**Stacci Thomas
Tennessee Valley Authority, LP 2F
1101 Market Street
Chattanooga, Tennessee 37402**

PROPRIETARY INFORMATION - PROPOSAL IN RESPONSE TO TVA RFP-20090130

Proposed Format and Number of Copies Required

The proposal should not be unnecessarily voluminous or elaborate. 3 copies of the proposal should be submitted for ease of information dissemination and review. A diskette containing the proposal in an electronic form compatible with MicroSoft OfficeXP Professional should also be included with the package.

The proposal shall contain all information requested in the RFP and shall be in sufficient form and detail to enable a comprehensive understanding and analysis.

A. INTRODUCTION

This section shall contain the following information:

- Firm's complete name and address, point of contact, telephone number
- Identification of the individual(s) authorized to conduct negotiations on behalf of the Offeror.
- A signed copy of each of the following certifications and data questionnaires:

Attachment C	Proposal Statement
Attachment D	TVA Information Form
Attachment E	Small Business and Small Disadvantaged Business Subcontracting Plan

B. TECHNICAL AND MANAGEMENT PROPOSAL

In order that this section be evaluated strictly on the technical and managerial merits of the proposal, no cost information should be included here. This section shall include the following information:

TECHNICAL APPROACH

This section shall include a detailed description of the Offeror's equipment, available services, available personnel, ability to respond to unscheduled repairs, time to repair, and similar items that provide TVA a complete understanding of the technical proposal. Offeror should demonstrate an ability to plan work so as to minimize costs. NOTE: Offeror should include in this section any additional services or non-commercial benefits that are being offered as a part of its proposal.

EXPERIENCE AND PAST PERFORMANCE

Offeror shall provide a list of customers to whom Offeror has provided similar equipment, and or services including appropriate contact persons and telephone numbers. A minimum of five references must be submitted.

PROFESSIONAL QUALIFICATIONS

The Offeror shall provide the professional qualifications for (a) maintenance personnel and their ability to diagnose problems, and (b) other personnel who may be assigned to TVA work. These qualifications should include any specialized training, education, and/or experience required. Offeror must also submit resumes of its field service management team.

ORGANIZATIONAL SUPPORT

The proposal should address the Offeror's commitment and proposed approach to providing services under this contract. Information on the locations of the firm's offices which would provide services under this contract should also be presented.

C. COMMERCIAL PROPOSAL

This section of the Offeror's proposal shall include the following information and in the same format as presented below.

1. Pricing

Pricing information must be complete and in sufficient form and detail to enable a comprehensive understanding and analysis. Each Offeror should include any pricing discounts for multi-year arrangements.

2. Financial Strength

Offeror shall submit information to demonstrate financial capability and stability.

3. Insurance
Insurance requirements are provided in the draft contract. Any exceptions to these requirements should be clearly identified.
4. Subcontracting
Offeror shall identify and provide complete information for any proposed subcontractors, including individuals who are independent contractors.

ONGOING OPERATIONS AND MAINTENANCE SERVICES

SCOPE OF WORK

I. SCOPE OF WORK - FOR OPERATIONS AND MAINTENANCE SERVICES

A. For proposing to provide ongoing operations and maintenance services the following work will be required:

- (1) Performance of scheduled maintenance;
- (2) Performance of unscheduled maintenance / repair;
- (3) Provision of replacement parts;
- (4) Perform other required maintenance services including, but not limited to, such things as replacing gear box oil, etc.;
- (5) Conduct safety and job briefings;
- (6) Submission of monthly reports;
- (7) Monitoring of the towers;
- (8) SCADA resets;
- (9) Performance of Met tower repair; and
- (10) Performance of general grounds maintenance

B. TVA will require the following deliverables and reports:

- (1) Monthly reports;
- (2) All service, equipment, and work records;
- (3) Maintain site logs; and
- (4) Provide supporting documentation to verify that safety and job briefings were conducted.

PROPOSAL STATEMENT

Offeror hereby provides written acknowledgment of the following:

1. To the best of Offeror's belief, the cost or pricing data or salary and markup elements submitted under this proposal are accurate, complete, and current as of this date.
2. Offeror agrees to fully cooperate with TVA during the course of the preaward survey and audit, if required, of Offeror's proposal and to provide records or documentation to TVA's satisfaction that fully substantiates all elements of Offeror's proposal including but not limited to salary markups. Offeror further agrees and understands that TVA at its sole option may, for any reason, elect to award all or any portion of the RFP work to other contractor(s) or to not award the work at all, and that TVA assumes no liability to pay any Offeror direct or indirect costs incurred in the development and submission of its proposal.
3. Proposal submitted under this RFP addresses the following exceptions to the RFP and/or draft contract terms and conditions:

NO EXCEPTIONS

SEE ATTACHED EXCEPTIONS

(Note: Offeror understands that TVA reserves the sole right to determine if Offeror's exceptions constitute an unacceptable proposal.)

Company (Offeror)

Signature of Authorized Representative

Printed Name

Title

Date

TVA VENDOR INFORMATION

RFP-20090130 Enclosure 1 Attachment D

Company Name: _____

Street Address _____

Mailing Address (if different) _____

City _____ County _____ State _____ Zip _____

City _____ County _____ State _____ Zip _____

Telephone: _____ Fax: _____

Internet E-mail Address (if available): _____

Internet E-mail Address or EDI ID for sending orders (if available): _____

Has your company ever been known by another name? Yes No

If "Yes," please fill out the following if they might have been in TVA's vendor database under another name.

Previous Information: Company Name: _____

Street Address _____

Mailing Address (if different) _____

City _____ County _____ State _____ Zip _____

City _____ County _____ State _____ Zip _____

CLASS CODE: (Choose One)

- A Small Disadvantage Business*
- B Other Small Business**
- C Large Business
- D JWOD Nonprofit Agency***
- E Educational Institution
- F Hospital

- G Non-Profit Organization
- K State/Local Government
- L Foreign Contractor
- M Domestic Contractor Performing Outside U.S.
- N Federal Agency
- U Historically Black College/Univ. or Min. Inst. (HBCU/MI)

*As defined in FAR 19.001. Includes HubZone small disadvantaged business concerns, Indian reservations, and all 8(a) concerns.

**Small business concern (including an individual) as defined in FAR 19.001 when Small Disadvantaged Business does not apply. Includes HubZone small business concerns.

***A non-profit agency employing people who are blind or severely disabled.

BUSINESS STATUS: (Check any that apply)

- Minority-Owned Business* Women-owned Business* 8(a) certified (as defined by SBA)

*Must be 51% owned operated and controlled

HubZone Code: Choose one if applicable. For an explanation of the Small Business Administration's HubZone code and to readily determine if your company qualifies as a HubZone business, you may access information at <http://www.sba.gov/hubzone>.

Qualified HubZone Small Business Concern

Qualified HubZone Small Business Concern/8A

Fuel Provider Yes No

Buyer (Surplus Property) Yes No

Do you accept VISA? Yes No

Tax Payer ID No.: (required) _____

1099: Yes No

1099: TVA is required to report for companies who are a service provider to TVA.

Are you a service provider? Yes No

Is service provider an individual, employed by TVA and scheduled to receive a W-2? Yes No

(If 1099 is to be mailed to an address which is different than your mailing address, please provide the separate Tax address):

Attention: _____ Address: _____

City: _____ State: _____ Zip Code: _____

VALLEY BUSINESS PRESENCE:

TVA considers a company as having a Valley business presence if one of the following criteria is met:

- A company that provides products, labor, and/or services through an operational business unit located in the Tennessee Valley region.
- Although headquartered outside the Valley, contributes to the economic development of the Valley by maintaining a meaningful presence through the employment of personnel residing in the Valley who perform at least 60 percent of the work performed for TVA.

Note: For purposes of calculating Valley spend, significant amounts paid by non-Valley prime contractors to Valley subcontractors or residents in the performance of the contract shall also be included. Based on the above description, can your business be classified as Valley Business Presence? Yes No

EXECUTIVE CONTACT:

Name: _____ Title: _____ Phone No.: _____

City: _____ State: _____ Zip Code: _____

E-mail Address: _____ Fax No.: _____

PROVIDER OF INFORMATION:

Vendor's Signature: _____ Date: _____

Print Name: _____ Title: _____ Phone No.: _____

For TVA Use Only

Name of Contracting Officer Requesting Vendor No.: _____ Contracting Officer's Fax No.: _____

Phone No.: _____ Vendor Record No.: _____ EFT information sent to Accts Payable? Yes No

(TVA Contracting Officer ONLY E-mail form to "Supplier Information" or fax to (423) 751-7613)

Please double-click on icon below for TVA Vendor Information Map.

Acrobat Document



17300 Map.pdf

SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN

Contractor: _____
Address: _____

Contract Number: _____

Item/Service: _____

The following, together with any attachments, is hereby submitted as a Subcontracting Plan to satisfy the applicable requirements of Public Law 95-507.

1. (a) The following percentage goals (expressed in terms of a percentage of total planned subcontracting dollars) will be applicable to any contract awarded as a result of this solicitation.
 - Small Business (SB) Concerns: ___% of total planned subcontracting dollars under this contract will go to subcontractors who are Small Business Concerns.
 - Small Disadvantaged Business (SDB) Concerns: ___% of total planned subcontracting dollars under this contract will go to subcontractors who are Small Business Concerns owned and controlled by socially and economically disadvantaged individuals.
 - Small Woman-Owned Business (SWB) Concerns: ___% of total planned subcontracting dollars under this contract will go to subcontractors who are Small Woman-Owned business concerns.
- (b) The following dollar values correspond to the percentage goals shown in (a) above.
 - Total dollars planned to be subcontracted to Small Business: \$_____
 - Total dollars planned to be subcontracted to Small Disadvantaged Business: \$_____.
 - Total dollars planned to be subcontracted to Small Woman-Owned Business: \$_____.
- (c) The total estimated dollar value of all planned subcontracting (to all types of businesses) under this contract is \$_____.
- (d) The following principal products and/or services will be subcontracted under this contract, and the distribution among Small and Small Disadvantaged businesses is as follows:

(Products/services planned to be subcontracted to Small Concerns are identified by *; to Small Disadvantaged by **; and to Small Woman-Owned by ***)

***Purchased material and equipment**
***** Design and supply detection equipment**

(ATTACHMENT MAY BE USED IF ADDITIONAL SPACE IS REQUIRED)

- (e) The following method was used in developing subcontract goals (e.g., what source lists were used and what organizations were or will be contacted to obtain SB, SWB and SDB sources?).

Indirect and overhead costs **have/have not been** included in the goals specified in 1(a) and 1(b).

If "have been" is checked, explain the method used in determining the proportionate share of indirect and overhead cost to be incurred with Small Business, Small Woman-Owned Business and Small Disadvantaged Business subcontractors.

2. The following individual will administer the subcontracting program:

This individual's specific duties, as they relate to the firm's subcontracting program, are as follows:

General overall responsibility for review, monitoring and execution of the plan including, but not limited to:

- (a) Obtaining Small Business, Small Woman-Owned Business, and Small Disadvantaged Business sources from all applicable agencies, such as Small Business Administration.
- (b) Assuring inclusion of SB, SWB, and SDB firms in all solicitations, where appropriate.
- (c) Attending or arranging for attendance at Business Opportunity Workshops, Minority Business Enterprise Seminars, and Trade Fairs.
- (d) Conducting or arranging for conduction of motivational training for purchasing personnel pursuant to the intent of Public Law 95-507.
- (e) Monitoring attainment of proposed goals.
- (f) Reviewing solicitations to remove statements, clauses, etc. which may tend to prohibit SB, SWB, and SDB participation.
- (g) Additions to (or deletions from) the duties specified above are as follows:

3. The following efforts will be taken to assure that Small and Small Disadvantaged Concerns will have an equitable opportunity to compete for subcontracts:

- (a) Outreach efforts will be made as follows:
 - Contacts with minority and small business trade associations
 - Contacts with business development organizations
 - Attendance at small and minority business procurement conferences and trade fairs.
- (b) The following internal efforts will be made to guide and encourage buyers:
 - Workshops, seminars and training programs will be conducted.
 - Activities will be monitored to evaluate compliance with this subcontracting plan.

(c) Small Business, Small Woman-Owned Business, and Small Disadvantaged Business source lists, guides and other data identifying small and small disadvantaged business vendors will be maintained and utilized by buyers in soliciting subcontracts.

(d) Additions to (or deletions from) the above listed efforts are as follows:

4. The Contractor agrees that the clause entitled Utilization of Small Business Concerns and Small Business Concerns Owned and Controlled by Socially and Economically Disadvantaged Individuals will be included in all subcontracts which offer further subcontracting opportunities, and all subcontractors who receive subcontracts in excess of \$500,000 will be required to adopt and comply with a subcontracting plan similar to this one. Such plans will be reviewed by comparing them with the provisions of Public Law 95-507, and assuring that all minimum requirements of an acceptable subcontracting plan have been satisfied. The acceptability of percentage goals shall be determined on a case-by-case basis depending on the supplies/services involved, the availability of potential small and small disadvantaged subcontractors, and prior experience. Once approved and implemented, plans will be monitored through the submission of periodic reports; and/or, as time and availability of funds permit, periodic visits to subcontractor's facilities to review applicable records and subcontracting program progress.
5. The Contractor agrees to submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the Contractor with the subcontracting plan.
6. The Contractor agrees that it will maintain at least the following types of records to document compliance with this subcontracting plan:
 - (a) Small, Woman-Owned and Disadvantaged Business source lists, guides and other data identifying SB, SWB, and SDB vendors.
 - (b) Organizations contacted for Small, Small Woman-Owned, and Small Disadvantaged Business sources.
 - (c) On a contract-by-contract basis, records on all subcontract solicitations over \$100,000 indicating on each solicitation: 1) whether small business was solicited; and, if not, why not; 2) whether Small Disadvantaged Business was solicited; and, if not, why not; 3) whether Small Woman-Owned Business was solicited; and, if not, why not; and 4) reasons for the failure of solicited Small Business or Small Disadvantaged Business to receive the subcontract award.
 - (d) Records to support other outreach efforts: contacts with minority and small business trade associations, etc.; attendance at small and minority business procurement conferences and trade fairs.
 - (e) Records to support internal activities to guide and encourage buyers: workshops, seminars, training programs, etc.; monitoring activities to evaluate compliance.
 - (f) On a contract-by-contract basis, records to support award data submitted to the government to include name and address of subcontractor.
 - (g) Records to be maintained in addition to the above are as follows:

Signed: _____

Date:

(Title)

COMPLIANCE GOALS FOR MINORITY PARTICIPATION

<u>FOSSIL PLANTS</u>	<u>COUNTY</u>	<u>GOALS</u>
Allen Fossil Plant Memphis, TN 38109	Shelby	32.3
Bull Run Fossil Plant Clinton, TN 37716	Anderson	6.6
Colbert Fossil Plant Tuscumbia, AL 35674	Colbert	11.9
Cumberland Fossil Plant Cumberland City, TN 37050	Stewart	12.0
Gallatin Fossil Plant Gallatin, TN 37066	Sumner	15.8
John Sevier Fossil Plant Rogersville, TN 37857	Hawkins	2.6
Johnsonville Fossil Plant New Johnsonville, TN 37134	Humphreys	12.0
Kingston Fossil Plant Kingston, TN 37763	Roane	4.5
Paradise Fossil Plant Drakesboro, KY 42337	Muhlenberg	3.5
Shawnee Fossil Plant West Paducah, KY 42086	McCracken	5.2
Watts Bar Fossil Plant Watts Bar Dam, TN 37395	Rhea	8.6
Widows Creek Fossil Plant Stevenson, AL 35772	Jackson	8.6

ENCLOSURE 2

**DRAFT CONTRACT FOR
OPERATIONS AND MAINTENANCE SERVICES**

ONLY

RFP-20090130

DATE OF ISSUE: DECEMBER 3, 2008

CONTRACT NO.: _____

TENNESSEE VALLEY AUTHORITY
PROFESSIONAL SERVICES CONTRACT

This CONTRACT, by and between _____ (hereinafter called "Contractor"), and the TENNESSEE VALLEY AUTHORITY (hereinafter called "TVA") is effective _____;

IN CONSIDERATION of the mutual covenants hereinafter contained, the parties agree to the provisions specified in the Terms and Conditions, and Attachments hereto.

WORKSCOPE/DELIVERABLES

Contractor agrees to provide the following:

CONTRACT MONETARY LIMITATION

The total of payments under this contract shall not exceed the sum of _____ (\$_____). No minimum amount of work under this contract is guaranteed. Contractor expressly understands and agrees that TVA shall not be liable for any amounts in excess of this monetary limit except pursuant to a fully executed written supplement to this contract authorizing any additional amount.

TERM OF CONTRACT

The term of this contract shall begin with its effective date and end _____. The contract term, at TVA's option, may be extended beyond the original contract expiration date. The contract term shall not be increased or deemed to be increased except pursuant to a fully executed written supplement to the contract.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed by their duly authorized officials.

SUPPLIER _____

TENNESSEE VALLEY AUTHORITY

By _____

By _____

Name _____

Name _____

Title _____

Title Project Manager , Fossil Power Contracts

Date _____

Date _____

TERMS AND CONDITIONS

ASSIGNMENT

This Contract or any interest therein or in any moneys due or to become due shall not be assigned, used as collateral, or otherwise disposed of without previous written consent of TVA's Contracting Officer.

AUDIT RIGHTS

Contractor shall keep accurate records and books of accounts in machine readable form supporting the items and costs billed under this Contract. TVA, or its agents, shall have the right to audit without restrictions and at no additional cost to TVA, at any time during normal working hours, all costs incurred by Contractor and billed to TVA and may examine Contractor's records specifically relating thereto. Any payments to Contractor which are not in accordance with Contract terms or are not supported by valid evidence shall be refunded to TVA. If TVA makes an overpayment to Contractor as a result of Contractor overbillings, Contractor shall be liable to TVA for interest on the amount of such overpayment, to be computed (1) for the period beginning on the date the overpayment was made to Contractor and ending on the date Contractor repays the amount of such overpayment to TVA, and (2) at the rate or rates identified in the Prompt Payment Act.

Contractor shall preserve and make available its records, both manual and those which are in machine readable form, for a period of 3 years from the date of final payment by TVA.

BUSINESS LICENSE

Unless otherwise determined by TVA's Contracting Officer in TVA's sole discretion, Contractor, by entering into the Contract, certifies that all applicable Federal, State, and local licenses and permits have been obtained and are in full force and effect. This includes, but is not limited to, professional licenses, business licenses, and corporate licenses and certifications. Contractor shall secure and pay for all necessary permits and/or other licenses required in connection with this Contract. Failure to have the applicable licenses and releases will be considered a material breach of Contract.

CHANGES

TVA's Contracting Officer may at any time, by written notice, and without notice to the sureties, make changes in the work within the general scope of this Contract, including but not limited to changes: (1) in the drawings, designs or specifications; (2) in the method or manner of performance of Contractor's work; (3) in TVA's furnished facilities, equipment, materials, services or site; (4) directing acceleration or deceleration in the performance of Contractor's work.

If such changes cause an increase or decrease in the amount of work under this Contract or in the time necessary for its performance, an equitable adjustment will be made in the price or the time allowed for performance, or both, and the Contract shall be modified in writing accordingly. TVA shall not be liable for increased costs in connection with any changes or delays, whether in tort or in Contract, except as specifically provided herein. Contractor must assert its claims for adjustments under this clause within 30 days from the date the change is ordered, and in the meantime Contractor shall proceed with the work as so changed. No claims will be accepted after 30 days unless TVA's Contracting Officer so chooses. In no case shall a claim be considered after final payment under this Contract.

All unchanged work shall proceed as required in the Contract. If at any time Contractor believes that acts or omissions by TVA constitute a change to work not covered by a change notice, Contractor must notify TVA in writing within 14 calendar days from its discovery in order for the request to be considered.

COMPENSATION

- A. TVA agrees to pay Contractor in accordance with _____ for all time spent in the actual performance of services described in the scope of work. This rate shall not apply to any time spent in travel, unless approved in advance by TVA's Contracting Officer.
- B. In addition to the compensation specified above, TVA will reimburse Contractor for other expenses as follows; however, all costs must be reasonable in nature and TVA reserves the right to reject any invoice for costs which, in TVA's sole judgment, are determined to be unreasonable. Contractor should submit questionable costs to TVA's Contracting Officer for advance approval.

1. For TVA authorized transportation and subsistence expenses incurred in connection with the performance of this Contract provided, that such reimbursement shall be subject to and computed and paid in accordance with the lesser of Contractor's standard policy or TVA's Travel Regulations, "Travel Allowance and Reimbursement", which is available from TVA's Procurement Internet Site at <http://supplier.tva.gov> or from the Contracting Officer upon request. TVA shall not reimburse Contractor's employees for daily commuting expenses to or from the assigned worksite. No burden or markup shall be applied to travel expenses.
2. For actual reasonable miscellaneous expenses.
3. Reimbursement for the actual reasonable and allowable cost of subcontracts as approved in advance by TVA's Contracting Officer in writing will be on the basis of which are non-profit-bearing and shall not be subject to any cost burdens by Contractor. All subcontracts must be approved in advance in accordance with subcontract approval provisions in the Contract. The rate for a subcontractor shall not exceed the billing rate, including actual salary rates and applicable salary burdens as specified in the Contract for an equivalent Contractor employee.

(Note: Should any work be subcontracted to any entity affiliated in any way with Contractor, Contractor will be reimbursed for the cost of the work only as defined in this Contract. Any fees paid to such affiliated entity shall be paid by Contractor from fees earned as provided herein.)

COMPENSATION - TERMS OF PAYMENT

Payment(s), less such discounts or deductions as are provided for in the Contract or by law, will be made by electronic fund transfer (after completing a TVA Electronic Vendor Payment Form). Payment will be made by electronic fund transfers not more than 45 calendar days after the later of (i) receipt of a proper invoice(s) by TVA at the office designated in the Contract for receipt of invoices or (ii) acceptance by TVA of the work, material, or equipment required by the Contract at the TVA location specified. Separate invoice(s) must be submitted for each payment.

Neither payment nor acceptance by TVA for the limited purpose described in this clause shall constitute a waiver of any rights under the Contract or at law, including rights under any warranty herein. Should TVA, in good faith, dispute any portion of the invoice, TVA shall pay the undisputed portion, and at the same time, shall advise Contractor in writing of the reason(s) for disputing the invoice.

For purposes of this provision only, the following definitions shall apply:

1. "Proper invoice" includes, but is not limited to, a numbered and dated invoice, containing the TVA Contract number and release number (if applicable) and line item numbers as listed, discount or terms of payment and F.O.B. point applicable to this Contract, description of article or service, quantity, unit price, and total amount, together with supporting documentation as required by TVA.
2. "Acceptance" means receipt by TVA of the work, material, or equipment meeting the Contract requirements and acknowledgment by an authorized representative of TVA that such Contract specifications have been met. Solely for the purposes of establishing a payment date, such acceptance and acknowledgment shall be deemed to be the seventh day after the date on which, in accordance with the terms and conditions of the Contract, the property is actually delivered at the F.O.B. point or performance of the service is actually completed unless TVA actually accepted such property or services before such seventh day or unless a later acceptance period is specifically provided for elsewhere in the Contract; provided, however, such acceptance may be revoked at any time by TVA upon the discovery of a latent defect in design, material, or workmanship, or a latent nonconformity of the work, material, or equipment to the Contract requirements.

All invoices shall be submitted to .

Payments under this Contract are subject to the provisions of the Prompt Payment Act.

CONTRACT INTERPRETATION / DISPUTES / FORUM SELECTION / JURY WAIVER / DAMAGES

Interpretation: TVA is a corporate agency and instrumentality of the United States and this Contract shall be governed by and construed under Federal law. In the event Federal law does not provide a rule of decision for any particular disagreement, the law of the State of Tennessee shall apply; provided, however, in no event shall Tennessee's choice of law provisions apply. All questions concerning interpretation or clarification of this Contract shall be immediately submitted in writing to TVA's Contracting Officer for resolution. Pending resolution of any dispute,

Contractor shall proceed with the work in accordance with the determinations, instructions, and clarifications of TVA's Contracting Officer.

Disputes/Forum Selection: The parties will use their best efforts to resolve disputes informally at the lowest possible levels of decision making, and consensual alternative dispute resolution processes may be used. The parties agree that any lawsuit between them that asserts a claim or claims arising out of or related to this Contract (whether sounding in Contract, tort, or otherwise) shall be filed and litigated to conclusion only in the United States District Court for the Eastern District of Tennessee, and each party hereby consents to the jurisdiction and venue of that court for all such lawsuits. Notwithstanding the foregoing sentence, either party may bring an action which seeks to enforce a right of indemnity or contribution in any federal court with proper jurisdiction and venue in which the underlying claim for which indemnity or contribution is being asserted.

Jury Waiver/Damages: The parties further agree that in any litigation (1) each will stipulate to have a United States Magistrate Judge conduct any and all proceedings in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, and (2) each will waive any right it may have to a trial by jury. The parties further agree that in cases involving damages claims, the parties will simultaneously exchange their final positions regarding reasonable damages amounts 30 days prior to trial and will request the Magistrate Judge, if there is a finding of liability, to determine for each claim for which there is liability which final damages position is more reasonable based on the evidence of record and to award as damages the amount of the more reasonable final position.

This clause is not a "disputes" clause within the meaning of the Contract Disputes Act, 41 U.S.C. §§ 601-613, and this Contract is not subject to that Act.

DELAYS, REMEDIES, AND WAIVERS

If Contractor does not meet Contract performance schedules or maintain adequate progress within the time specified regardless of reason, TVA's Contracting Officer may terminate Contractor's right to proceed with all or any part of the Contract and may complete the Contract by whatever method TVA's Contracting Officer deems prudent, charging against Contractor (and its sureties, if any) any excess cost. However, if Contractor, within 7 calendar days from the beginning of any delay, notifies TVA's Contracting Officer in writing of causes of delay, Contractor's right to proceed shall not be terminated when TVA's Contracting Officer determines, in his or her sole judgment, delay is due to unforeseen causes beyond Contractor's control and without its fault, such as strikes, quarantines, embargoes, floods, or acts of God. Within seven (7) days after the cessation of any such delay, Contractor shall file a written notice with TVA specifying the duration of the delay. Failure to give any of the above notices shall be sufficient ground for denial of any extension of time. If TVA determines that the delay was unforeseeable and that it was beyond the control of and without the fault or negligence of Contractor, TVA will determine the duration of the delay and will extend the time of performance accordingly.

Contractor's delays due to delays of its subcontractors or suppliers, whether party to the Contract or not, will not be excusable unless (1) delay was also due to causes beyond their control and without their fault, and (2) goods or services could not have been procured in the open market. Determination of causes and extension of time are final and conclusive except as challenged in writing by Contractor within 30 days. Even if a delay is excusable, TVA's Contracting Officer may terminate Contractor's right to proceed if termination would be in TVA's best interest. In such case, Contract shall be equitably adjusted and modified accordingly. Failure to agree to adjustment shall be a dispute concerning a question of fact. To allow or require completion of Contract after specified completion time shall not constitute an extension of time or a waiver of any right or remedy TVA may have because of Contractor's delay. No extension of time shall release Contractor's sureties from their obligations. No waiver of any breach of this Contract shall waive any other or subsequent breach. No time limits in this Contract shall be waived by TVA's Contracting Officer's consideration of any untimely notice or information by Contractor. All rights and remedies afforded TVA shall be cumulative, that is, in addition to every other right and remedy provided under this Contract or by law. Contractor's sole remedy for delays shall be an extension of time.

DELIVERY

All material deliveries shall be accompanied by appropriate documentation, such as packing lists, providing the necessary information such as description of items, quantity, weight, etc., in order to correctly and accurately receive the delivery. If this Contract was awarded on prices f.o.b. origin and actual weight exceeds the weight given in Contractor's offer, the excess transportation costs will be deducted from Contractor's invoice unless such excess weight is the result of a Contract change made by TVA. Delivery dates may be used in measuring and/or evaluating supplier performance.

ENTIRE AGREEMENT

This Contract embodies the entire agreement between TVA and Contractor and supersedes all other communications, either oral or written. The parties shall not be bound by, or be liable for any statement, representation, promise, inducement or understanding not set forth herein. No amendments or modifications shall be valid unless incorporated into the Contract in writing.

ENVIRONMENTAL CONSIDERATIONS

Contractor shall conduct its activities in connection with the performance of this Contract in such a way as to minimize, insofar as is reasonably possible, the impact on the environment and shall assist TVA in carrying out commitments contained in the Environmental Evaluation Record and/or the Environmental Impact Statement, if such documents are applicable to the project, as well as such other environmental commitments as TVA may have made in relation to the work to be undertaken by Contractor. In considering the impact of its activities upon the environment, Contractor shall take into account such factors as, among other things, air pollution, erosion control, noise control, solid waste disposal, and waste water disposal. TVA will monitor Contractor's activities and initiate requests for corrective actions as required.

Additionally, TVA seeks to make environmental quality an integral part of the way TVA and its suppliers do business. Specifically, TVA seeks to reduce "Reportable Environmental Events" (REEs) (occurrences which violate environmental regulatory requirements and which require notification to, or lead to enforcement action by, Federal, State, or local regulatory agencies). Contractor agrees to immediately notify TVA of any REEs which occur at any of Contractor's facilities or work sites at any location during the term of contract performance and to provide TVA with reasonable additional information about such REEs as requested.

HEALTH AND SAFETY

- A. **Standards.** No person employed by Contractor or any subcontractor in the performance of work pursuant to this Contract at a project or worksite owned or controlled by TVA shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his safety or health. In order to provide the necessary controls for protection of employees and prevention of damage to property and for avoidance of work interruption in the performance of this Contract, Contractor shall comply with the provisions of Section 107 of the Contract Work Hours and Safety Standards Act (CWHSSA) (this contractual reference to CWHSSA does not apply to contracts for commercial items as defined at 41 U.S.C. 403(12), although provisions of CWHSSA itself may still apply), and the Occupational Safety and Health Act of 1970 (OSHA) regulations, and such other requirements for the protection of health or safety as may apply; provided that Contractor shall comply with such additional specifications including TVA supplemental standards and site specific requirements relating to safety and health. In the event of conflict between OSHA regulations and the TVA specifications, the more stringent shall apply. It shall be the responsibility of Contractor and any subcontractor to initiate and maintain such programs as may be necessary to comply with the foregoing requirements; to provide for frequent and regular inspection of the job sites, materials, and equipment; to identify and prohibit work in an unsafe or unhealthful work place, including the use of unsafe machinery, tools, materials, or equipment; and to permit only those employees qualified by training or experience to operate equipment and machinery.
- B. **Compliance by Subcontractors.** Contractor shall be responsible for securing compliance by its subcontractors and all the safety and health provisions contained herein.
- C. **Technical Contract Manager.** For the purpose of these safety and health provisions, Technical Contract Manager means (a) the TVA Technical Contract Manager or the Technical Contract Manager's designee, (b) when there is no Technical Contract Manager, the TVA employee supervising the work at the location where the work is to be performed under the Contract (Jobsite Representative).
- D. **Safety and Health Plan.** Work to be performed under this Contract will be evaluated for any recognized potential hazards as determined by the Technical Contract Manager; in the event that a potential hazard is recognized, Contractor, prior to commencement of the work, will:
1. When required by the Technical Contract Manager, submit a site specific safety and health plan in writing 30 days prior to start of Contract work, or as otherwise stated in this Contract, describing how it proposes to promote health and safety in the work environment; such plan must be approved by the Technical Contract Manager prior to the start of work by Contractor.
 2. When required by the Technical Contract Manager, meet in conference to discuss development, implementation, and coordination of Contractor's safety and health program in conjunction with Contract requirements.

Evaluation and approval under the requirements of this provision of the Contract shall not affect Contractor's obligations under the indemnity provision of this Contract.

- E. Accident Records. Contractor and its subcontractor will maintain an accurate record of all accidents and occupational diseases in accordance with the provision of 29 C.F.R. pt. 1904. In addition, Contractor shall maintain such records as required by the Technical Contract Manager of the costs for repairing or replacing property, materials, supplies, and equipment damaged in accidents occurring while doing work incident to this Contract.
- F. Contractor Safety Representative. The Contractor shall retain a representative onsite at all times while work is in progress who shall be responsible for the Contractor's safety and health program and who shall have authority to correct hazardous conditions. The contractor's representative shall respond promptly to the Technical Contract Manager in order to reduce or eliminate conditions which in the opinion of the Technical Contract Manager constitute a threat to or appear to threaten life, health or property at the work location.
- G. Temporary Access and Public Safeguards. Contractor shall build and maintain such temporary bridges, roads, and other means of passage as are necessary and not otherwise provided by TVA; shall provide for convenient access to the various parts of the work and to adjacent private property which may be affected by the work; and shall provide such temporary fences or guards as may be necessary to keep livestock on adjoining property from entering the lands occupied by the work. Contractor shall also provide such barricades, warning signs and lights, watchmen, etc., as are necessary to protect the public and the work. Should conditions arise on the work, which require that immediate and unusual provisions be made to protect the public from danger or loss of damage due directly or indirectly to the prosecution of the work, Contractor shall make the necessary provisions. Contractor shall be responsible for the sufficiency and safety of all such temporary works and provisions and shall be responsible for all damage resulting from their insufficiency. Contractor shall not disturb, close, or obstruct any existing highways or other communications systems until permission therefore has been obtained from the Technical Contract Manager.
- H. Cleaning Up. Contractor shall, at all times, keep the work area, including storage areas used by it, reasonably free from hazardous and unsanitary accumulations of waste materials or rubbish, and prior to completion of the work, shall remove any rubbish from the premises and all tools, scaffolding equipment, and material not the property of TVA. Upon completion of the work, Contractor shall leave the work and premises in a clean, neat, and workmanlike condition satisfactory to the Technical Contract Manager.
- I. Breach of Safety and Health Provisions. It shall remain the responsibility of Contractor to ensure that the foregoing provisions are complied with at all times; provided, however, the Technical Contract Manager shall have the right (but not the duty) to inspect Contractor's operations as he or she deems appropriate to assure that the requirements for health and safety under the Contract are being met. In the event that apparent deficiencies in complying with the foregoing provisions are brought to the attention of TVA through such inspections or otherwise, TVA will promptly notify Contractor through its Technical Contract Manager. Upon receipt of such notice, Contractor shall immediately take such action as may be required to determine the existence of and to correct deficiencies. If Contractor fails or refuses to correct an unhealthful or unsafe condition, the Technical Contract Manager shall have the authority to issue an order stopping all or part of the work being performed under the provisions of this Contract until satisfactory corrective action has been taken. No part of the time lost as the result of any stop order shall be the subject of a claim for extension of time or for excess costs or damages by Contractor. Any stop order issued by the Technical Contract Manager shall apply to work performed by any subcontractor as well as by the prime Contractor under this Contract. The Technical Contract Manager shall have the authority to require removal of any person from a TVA work location (regardless of the status of such person as an employee of Contractor or any subcontractor) if, in the opinion of the Technical Contract Manager, the presence of such person endangers the safety or health of others.
- J. Investigation of Accidents. TVA shall have the option to examine the site of any accident immediately following its occurrence to determine (1) the cause or causes of such accident; (2) the degree of personal injuries; (3) the damage to TVA-owned property; (4) the effect of such accident upon completion of the work provided for under the Contract; and (5) other pertinent information. In order to accomplish this, TVA shall have the authority to question any persons having knowledge relative to or present when such accident occurred, including employees and agents of the Contractor and all subcontractor(s).
- K. Respiratory Protective Equipment. Any person employed by Contractor or by any subcontractor in the performance of work pursuant to this Contract at a plant or jobsite owned or controlled by TVA shall wear respiratory protective equipment when required by the TVA project or plant procedures for safety or health considerations and, therefore, shall be required to be clean shaven in the area between the sealing surface of the device and the face. Any person requiring the use of corrective eyewear shall also be required to have

special respirator glasses when reporting to work in order to be mask-fitted promptly. Any person employed by Contractor or by any subcontractor refusing to comply with this requirement shall be denied access to plant facilities. No part of the time lost as the result of any denied access to plant facilities shall be the subject of a claim for extension of time or for excess costs or damages by Contractor or any subcontractor.

INDEMNITY

Contractor, by entering into agreement for the scope of work covered by the Contract, acknowledges awareness of the location, nature and hazards of such work scope. As such, Contractor releases TVA, its agents and employees, from all liability for Contractor's personal injuries, property damage, or loss of life or property arising out of or in any way connected with the performance of this Contract. Contractor shall indemnify and defend TVA, its agents and employees, and save each of them harmless from any and all liability to Contractor's employees or any third parties for personal injuries, property damage, or loss of life or property resulting from or in any way connected with the performance of this Contract. However, the foregoing indemnification shall not apply to injuries or damages to persons or property for which the proximate cause is the sole negligence of TVA, its agents or employees.

Contractor shall bear all expenses incurred by TVA, its agents or employees, in defending all claims and action for damages arising out of the foregoing injuries, damages or losses, and shall pay all judgments that may be rendered in such actions, except where the proximate cause of such injuries, damages, or losses was the sole negligence of TVA, its agents or employees.

Contractor shall defend and save harmless TVA from all claims for material furnished or work done and shall promptly discharge the same and not suffer any mechanics or other liens to remain outstanding against any of the property used in connection with the work. Furthermore, Contractor shall, on request, furnish satisfactory evidence that all persons who have done work or furnished materials have been fully paid. Contractor shall pay TVA the cost, including overhead, of any services or materials provided by TVA to any persons, including subcontractors, engaged in carrying out any of Contractor's obligations in connection with this Contract. TVA reserves the right to withhold from any sums due Contractor sufficient sums to satisfy all such claims. If after written notice from TVA, Contractor fails to satisfy such claims, TVA may adjust and pay the same upon a fair and reasonable basis out of any withheld funds.

Contractor shall be an independent Contractor for all purposes of this Contract, and all persons engaged in fulfilling Contractor's obligations under the Contract shall be the servants of Contractor or its subcontractors and not the servants or agents of TVA. Nothing contained in this Contract or any subcontract awarded by Contractor shall create any contractual duty of TVA to Contractor's subcontractor(s).

Contractor shall comply with Federal, State, and local laws (including regulations) affecting performance of its obligations under this Contract and will indemnify and defend TVA from all liability resulting from its violation of such laws, regardless of whether TVA and Contractor are determined to be joint employers or co-employers. Contractor is responsible for ensuring compliance, including compliance by its subcontractors, with applicable compensation laws, rules, and regulations such as Fair Labor Standards Act.

If this Contract is for Nuclear-related materials and/or services and contains a Condition entitled Nuclear Energy Hazards and Nuclear Incidents, nothing in this Condition Indemnity shall be construed as reducing the rights of Contractor provided under the provisions of Condition Nuclear Energy Hazards and Nuclear Incidents.

LABOR PROVISIONS

Contractor and its subcontractors shall comply with the following labor provisions which are applicable to this Contract:

2008 Project Maintenance and Modifications Agreement (PMMA)

The labor documents are available from TVA's Procurement Internet Site at <http://supplier.tva.gov> or from the Contracting Officer upon request.

Contractor is responsible for ensuring that subcontractors fully comply with these requirements, as appropriate, depending on the nature of the work.

Contractor questions regarding the labor provisions should be directed to the Contracting Officer or TVA's Manager, Labor Relations.

INSURANCE

Unless otherwise specified in this Contract, Contractor shall secure and maintain in effect, at all times during the performance of work, insurance coverages with limits not less than those set forth below with insurers and under forms of policies satisfactory to TVA. Contractor shall deliver to TVA no later than ten (10) days after execution of the Contract, and in any event prior to commencement of work on a TVA site, a completed Certificate of Insurance, attached hereto. Contractor shall also furnish certified copies of the policies to the Contracting Officer promptly upon TVA's request.

The insurance to be provided hereunder shall be written by one or more nationally reputable insurance companies authorized to do business in Tennessee which shall be rated "A" or better by A.M. Best Company.

	<u>Coverage</u>	<u>Minimum Amounts and Limits</u>
1.	Workers Compensation Part A. Part B. Employer's Liability	Statutory requirements \$1,000,000 each occurrence
2.	Commercial General Liability Combined Single Limits	\$1,000,000 each occurrence
3.	Automobile Liability (owned, hired, and non-owned) Combined Single Limits	\$1,000,000 each occurrence

Note: Deductibles or retention amounts under the policies described above shall not exceed 5 percent of the per occurrence coverage limits, without the express written consent of the Contracting Officer.

- A. TVA is not maintaining any insurance on behalf of Contractor covering against loss or damage to the work or to any other property of Contractor unless otherwise specifically stated herein and as may be described by appendix hereto. In the event Contractor maintains insurance against physical loss or damage to Contractor's construction equipment and tools, such insurance shall include an insurer's waiver of rights of subrogation in favor of TVA, the United States, and their employees and agents.
- B. The policy of insurance which affords General Liability shall contain a provision or endorsement stating that such insurance:
1. Applies to the indemnity liability assumed by Contractor under this Contract, subject to all of the terms and conditions of such insurance;
 2. Provides coverage for premises/operations, at least 2-year products/completed operations, and other coverages or endorsements required by the Contracting Officer.
- C. The General Liability, Automobile Liability, and Excess Liability policies provided under this Contract shall provide for Items 1 through 4. The Employer's Liability policy shall provide for item 2.
1. TVA, the U.S., their officers, agents, employees, and volunteers are added as additional insureds on a primary noncontributory basis to Contractor's (liability) insurance policies shown above and with respect to any liability of additional insureds arising out of or resulting from Contractor's operations performed for the additional insureds, including, but not limited to, liability of the additional insureds for the general supervision of such operations.
 2. It includes an insurer's waiver of rights of subrogation in favor of TVA, the United States, and their employees and agents.
 3. It states that it is primary, noncontributory insurance.
 4. It contains a severability of interest clause.
- D. The requirements contained herein as to types and limits, as well as TVA's approval of insurance coverage to be maintained by Contractor, are not intended to and shall not in any manner limit or qualify the liabilities and obligations of Contractor under the Contract.
- E. Contractor shall provide at least thirty (30) days written notice of cancellation, expirations, terminations, and material alterations of the insurance policies.

- F. Failure by Contractor or its subcontractors to provide and maintain current, valid certificates of insurance throughout the Contract performance period shall be a material breach of Contract for which TVA may exercise any rights or remedies it may have under the Contract or at law, including the right to withhold moneys due and owing Contractor hereunder. The failure of TVA to review certificates does not waive any of its rights. In the alternative, TVA may, at its sole option, accept Contractor's written certification that it or its subcontractors self-insure in accordance with applicable workers' compensation laws for all duties, liabilities, and obligations it has or may have under such laws; provided, however, that Contractor must provide to TVA satisfactory written evidence showing that its or its subcontractors' self-insurance plan(s) have been authorized by the appropriate State regulatory entity.
- G. Contractor shall require each of its subcontractors to maintain Workers' Compensation insurance at least in accordance with statutory requirements. In the event Contractor requires any of its subcontractors to provide any additional insurance, Contractor shall require that TVA, the United States, their officers, agents, employees and volunteers be named as additional insureds with respect to such insurance, and that such insurance shall provide for the insured's waiver of subrogation rights in favor of TVA, the United States, and their employees and agents.
- H. Should any of the work:
1. Be upon or contiguous to navigable bodies of water, Contractor shall also carry insurance covering its employees for benefits available under the U.S. Longshoremen's and Harbor Workers' Compensation Act or Jones Act to the extent required by law;
 2. Involve watercraft (27 ft. or longer) owned or operated by Contractor, liability arising out of such watercraft shall be insured by Protection and Indemnity insurance with a combined single limit not less than \$5,000,000 each occurrence. Watercraft less than 27 ft. shall be insured under the Commercial General Liability policy. If the hull is insured, such insurance shall provide for an insurer's waiver of subrogation rights in favor of TVA, the United States, and their employees and agents;
 3. Involve aircraft (fixed wing or helicopter) owned or operated by Contractor, liability arising out of such aircraft shall be insured for a combined single limit not less than \$10,000,000 each occurrence and such limit shall apply to Bodily Injury (including passengers) and Property Damage Liability. If the aircraft is insured, such insurance shall provide for an insurer's waiver of subrogation rights in favor of TVA, the United States, and their employees and agents.
 4. Involve design and engineering and professional services contracts, a minimum of \$5,000,000 of Professional liability (errors & omissions) insurance should be provided. If the Professional Liability policy is written on a "claims made" policy form, Contractor shall arrange for at least two (2) years extended discovery period (tail period) to be incorporated into the policy prior to its termination.

LAWS AND REGULATIONS

The Contract shall be interpreted under and governed by federal law. However, Contractor and its employees and representative(s) shall comply with all applicable federal, state, and local laws, ordinances, statutes, rules, and regulations in effect during performance of work under the Contract. In the event of violation(s) by Contractor, all fines and penalties assessed against Contractor, along with any corrective actions and rework, shall be paid for by Contractor and will not be considered as a reimbursable cost under the Contract. In addition, Contractor indemnifies and holds harmless TVA and the United States and their officers, employees and agents, from any liability resulting from any such violation of law, to the extent that such violations of law are attributable to the action or inaction of Contractor and/or its personnel.

If, during the performance of this Contract, Contractor is impacted by changed or new laws, ordinances, statutes, rules, or regulations which are enacted and were not known or foreseeable at the time of signing this Contract, Contractor shall notify TVA in writing of such impact. Such notification shall take place no later than 30 days from the date of enactment of the changes. Documented impacts which affect the cost or time of performance of this Contract may be handled in accordance with the Contract condition, Changes.

If Contractor discovers any discrepancy or inconsistency between this Contract and any law, ordinance, statute, rule, regulation, order or decree, Contractor shall report the same immediately, in writing, to TVA for disposition.

Contractor recognizes that even though Contractor's compensation from TVA may be computed on a per hour basis, Contractor is responsible for complying with the Fair Labor Standards Act and shall pay the personnel performing services under this Contract in such a way that Contractor is in compliance with the Fair Labor Standards Act regardless of whether such compensation is on a salary basis or on a per hour basis.

The requirements of this clause are also applicable to Contractor's subcontractor(s) and Contractor, not TVA, shall be solely responsible for ensuring subcontractor compliance with the requirements of this clause.

LONG-TERM RELATIONSHIP

As a participant to a long-term Contract relationship, TVA is entitled to the best deal Contractor has to offer any of its customers. While the relationship should be a "win-win" situation for both TVA and Contractor, TVA should be a preferred customer under this Contract.

MATERIAL CONTROL

Prior to utilizing any chemicals (i.e., solvents, primers, resins, paints, or other chemical elements) or consumables (i.e., welding rods, grinding wheels, etc.) in the performance of this Contract, Contractor shall deliver the said items to the appropriate site location as designated by the Technical Contract Manager for receipt and labeling. TVA personnel will ensure the said items comply with site procedures, properly label the items, and clear them for use in completion of the Contract requirements. Any chemical not previously cleared for use at the appropriate site shall be accompanied by a Material Safety Data Sheet (MSDS) and are at risk for being rejected for use at the site. Accordingly, Contractor should notify the Contracting Officer in advance when it is known that unapproved chemicals may be necessary for the completion of the Contract requirements. Failure to comply with the provisions of this clause may be considered breach of Contract.

NEW PRODUCTS

Unless otherwise specified or agreed to by the Contracting Officer, all goods furnished shall be new, unused, not surplus (never before sold for use), and not rebuilt. TVA may require that manufacturer be made a party to any contract covering or including manufactured goods. Contractor shall include the requirements of this section in each subcontract hereunder.

NEWS RELEASES

Contractor shall not make any announcement, take any photographs, post related information on any website, or release any information concerning this Contract, its business relationship with TVA, or any related project to any member of the public, press, business entity, or any official body unless such release is required in compliance with any applicable Federal, State, or local laws, ordinances, statutes, rules, and regulations in effect at the time. The only exception to this Contract requirement is, with prior approval for each request from TVA's Contracting Officer, TVA may be used as a reference. Violations of this requirement may constitute a material breach of Contract.

NONDISCLOSURE

Contractor agrees not to divulge to third parties, without the prior written consent of TVA, any information that a prudent business person would consider sensitive or which is designated by TVA as proprietary or confidential, obtained from or through TVA or developed or obtained by Contractor in connection with the performance of this Contract. Access to sensitive TVA information must be approved in advance by TVA's Contracting Officer and Technical Contract Manager. If so requested by TVA, Contractor further agrees to require its employees to execute a nondisclosure agreement prior to performing any services under this Contract. Notwithstanding the above, the preceding shall not apply if the information was public knowledge, already known by Contractor, was obtained by Contractor from a third party who did not receive the information from TVA, or was independently developed by Contractor's employees who did not have access to such information. This provision shall be made applicable to all subcontractors under this Contract.

NOTIFICATION OF WORK IMPACT

Contractor shall promptly notify TVA after identification of any circumstances which prevent completion of work under this Contract or necessitate modifications to the scope of work, technical requirements, cost, or schedule. Oral notification to TVA shall be confirmed in writing by Contractor no later than five (5) working days after such oral notification. Such circumstances shall include those resulting from the actions or inactions of TVA, Contractor, or others or any event outside Contractor's control including, but not limited to, events of force majeure (such as acts of God, fire, accident, severe weather, or labor disputes), or what Contractor believes constitutes differing site condition(s) (before such conditions are disturbed and before proceeding with any related work), and changes in law or other governmental action.

No adjustment will be made unless the required notice has been given. In no event shall Contractor incur costs for differing site conditions work without approval of the Technical Contract Manager or his designated representative and authorization to proceed with the work by TVA's Contracting Officer. Additionally, no adjustment will be allowed

due to Contractor's failure to visit the site of the work in order to acquaint themselves with the existing conditions before submitting offers.

- A. The notice shall state, on the basis of the most accurate information available to Contractor:
1. the date, nature, and circumstances of the action, inaction, event; or differing site conditions;
 2. the name, function, and activity of each individual involved in or knowledgeable about such action or event;
 3. the identification of any documents and the substance of any oral communication involved in such action or event;
 4. the particular elements of performance (i.e., cost, schedule, technical requirements) for which Contractor is seeking an adjustment and detailed justification for such requested adjustments; and
 5. Contractor's estimate of the time by which TVA must respond to Contractor's notice to minimize cost, delay, or disruption of performance.
- B. Following submission of the notice pursuant to paragraph A above, Contractor shall diligently continue performance of work to the maximum extent possible, unless the Contracting Officer directs otherwise. TVA shall respond to Contractor's written notice and will:
1. confirm that the action or event of which Contractor gave notice constitutes or justifies a change to the contract and redirect Contractor's performance accordingly;
 2. notify Contractor that the action or event of which Contractor gave notice does not constitute or justify a contract change or any modification of contract scope, cost, or schedule, and when necessary, direct the mode of further performance; or
 3. in the event Contractor's notice information is inadequate to make a decision under subsections 1 or 2 above, instruct Contractor what additional information is required and establish the date by which it should be furnished and the date thereafter by which TVA will respond.
- C. Following resolution of Contractor's notice pursuant to paragraph B above, TVA shall make a revision to the work release as required on the price, performance schedule, and such other provisions of the work as may be affected.
- D. Failure of Contractor to notify TVA of any work impact, claim, or exception to any ruling or instruction by TVA within thirty (30) days of the arising of such event shall be deemed a waiver by Contractor of its right to any compensation or other relief on account thereof.

PATENTS AND COPYRIGHTS

Contractor hereby indemnifies and shall hold harmless TVA and their representatives from all suits, claims, actions, losses, damages, and expenses, including attorney's fees, and at its expense shall defend any suit against TVA, in so far as it is based on the claim of infringement of any United States patent or of any copyright, for any material, equipment, or work furnished under this Contract. TVA shall immediately notify Contractor in writing of any such suit or claim and permit Contractor to defend same, and give all needed and available information and assistance to enable Contractor to do so. Contractor shall pay all damages and costs finally awarded therein against TVA, but Contractor shall not be liable under any compromise made without its consent. If in any such suit said invention or its utilization by TVA, Contractor, or any party on TVA's behalf is held to constitute infringement, or is otherwise determined to violate any right secured by patent or copyright, Contractor at its expense shall procure for TVA the necessary licenses and right to continued utilization of said invention; provided that, subject to TVA's written approval, Contractor at its expense may replace or modify said invention so that it becomes noninfringing, provided that any substituted or modified equipment, materials, or processes shall meet all the requirements and be subject to this Contract. The aforementioned obligations shall not apply to any equipment, materials, processes, the detailed design of which (excluding rating and/or performance specifications) has been furnished in writing by TVA. Contractor warrants that any information received by TVA under this Contract is without binder of secrecy and is not under obligation of privilege or confidentiality to any third party.

PRE-EMPLOYMENT DRUG TESTING FOR NON-NUCLEAR CONTRACTS

Drug Screening Program. In addition to the provisions covered under the Drug-Free Workplace Act of 1988, Contractor shall implement and/or maintain a pre-employment drug screening program for their employees and employees of their subcontractors expected to perform work or actually performing work for more than 30 consecutive calendar days or 90 cumulative days in any 180-day period on property owned, leased, or otherwise controlled by TVA.

Employees working on TVA property less than the above-specified amount of time but who will be performing safety-sensitive type functions such as operation of heavy equipment or working in unprotected elevations and/or meeting other conditions as determined by TVA's Contracting Officer may also be tested at TVA's option.

Drug screening tests must be conducted on or before the date Contractor employee or subcontractor reports to work on TVA property, but not more than 30 calendar days prior to such reporting date. In case of emergency, TVA may approve drug testing to be done after the first day. Testing requirements are waived if the Contractor employee or subcontractor has had a negative drug screen within the last 60 days with Contractor and Contractor's drug testing program meets TVA's minimum requirements or if the Contractor employee or subcontractor has been subject to a random drug testing program with a contractor during the last 30 days.

Contractor is responsible for its own drug screening program which must meet the following drug testing standards:

1. Testing laboratory must be certified by the Substance Abuse and Mental Health Service Administration (SAMHSA) to perform urine drug testing. The list of certified laboratories is published monthly in the Federal Register.
2. Collection and transport of specimens shall follow legally accepted practices relative to proper chain of custody documentation.
3. Analytical positive drug test results must be reviewed by a Medical Review Officer (MRO), the MRO being:
"A licensed physician who has knowledge of substance abuse disorders and has appropriate postgraduate medical training to evaluate and interpret drug testing results."
4. At a minimum, the following drugs will be tested for at the cutoff levels listed below.

Drug	Screening Limit (ng/ml)	Confirmation Limit (ng/ml)
Marijuana	50	15
Cocaine	300	150
Opiates	2,000	2,000
Amphetamines	1000	500
PCPs	25	25

5. Contractor shall provide quarterly statistical reports to TVA's Contracting Officer which provide the following:
 - Number of employees tested
 - Number of tests deemed positive by the MRO
 - Number of individuals refusing to be tested
 - Specific drugs that were positive

These standards do not exempt Contractor from complying with applicable Department of Transportation or any other Federal or State drug and/or alcohol testing programs covering its employees.

Any Contractor employee or subcontractor who refuses to submit to testing or who tests positive under a drug screening program established by Contractor shall be immediately removed by Contractor from work on TVA property and will not be assigned again to perform work or provide service under Contract with TVA for a period of 3 years for a first positive drug test result and permanently for a second positive drug test result. A refusal to be tested must be deemed to constitute a positive drug test result. Contractor is responsible for informing their employees and subcontractors of these requirements and to specify the consequences associated with refusal to submit to testing and/or positive test results.

The cost of preparing and administering (including recordkeeping) a drug screening program and the cost of Contractor employees' and subcontractor's time to have test performed, laboratory expenses, and expenses of test review results by an MRO shall be Contractor's responsibility and shall be included in the Contract.

TVA shall have the right to audit all documentation and records describing and supporting Contractor's drug screening program, including the cost of Contractor's drug screening program.

Failure of Contractor to comply with these drug screening requirements shall constitute a material breach of Contract entitling TVA to suspend payments, terminate the Contract, or take such action as may be in accordance with the law or the Contract.

In addition, TVA has developed and implemented an employment suitability tracking and clearance program for all contractor employees. Through this system, Contractor is required to access a centralized computer database in order to:

- Confirm that individuals Contractor or its subcontractors intend to assign to perform work for TVA do not have active rehiring restrictions imposed against them, and
- Provide resignation and/or termination-for-cause data for inclusion in this database.

Contractor will be provided instructions for database access and data input.

PRICES, PRICE CHANGES, REVISIONS, AND WARRANTY

Prices will be determined by applying an agreed-upon multiplier/discount to manufacturer's commercial price lists, bulletins, and supplements thereto identified in the Schedule of Prices.

Prices will remain firm at least 1 year after contract award; and neither price increases nor decreases shall be applicable to this contract during this period without regard to any price changes by Contractor to its other customers.

Any allowable adjustment to prices under this contract shall not be proportionately larger than the general change in prices to all customers upon which the adjustment under this contract is based.

If, as a result of a general change in prices or discounts, Contractor has changed prices to all of its customers, the price under this contract shall, subject to the following provisions, be adjusted accordingly.

Prompt notice of price changes (increases or reductions) must be furnished to Contracting Officer. The effective date of price increases shall be the date the Contracting Officer accepts the price changes or the effective date of the increase stated in Contractor's notice to Contracting Officer, whichever is later. The effective date of price reductions under this contract shall be the effective date of such reduction to other customers.

Price changes shall apply only to requests for delivery placed after the effective date of such price changes. A request for delivery will be deemed to have been placed on the date Contractor receives the release.

If a price change results in a price increase which the Contracting Officer, in his or her sole discretion, determines to be unacceptable to TVA or not proven to be applicable to all customers, TVA, in lieu of paying the increased price, may upon written notice, cancel the remainder of the contract (including any orders mailed by TVA without knowledge of the price increase if canceled within 20 days of receipt of notice of the price increase) without liability to either party.

Contractor warrants that each price at which it sells to TVA under this agreement shall be no higher than the price at which the contractor customarily sells to other commercial customers taking into consideration similarity of quantities, terms and conditions, and amount of quality assurance documentation.

QUANTITY

Goods or services shall be provided in such quantities, to the locations, and at such times, as requested by TVA or its agents on individual releases or telephone orders confirmed by releases. TVA makes no guarantee or representation whatsoever that it will purchase the estimated amount or any amount, and TVA reserves the right to purchase the materials covered by this Contract from other sources. It is agreed that this is not a requirements Contract and that TVA shall have a legal obligation to purchase only the amounts for which TVA issues specific releases. Clarifications shall be secured by Contractor from requester. Quantity volume discounts shall apply only to individual releases requesting a single delivery location and delivery date, unless agreed otherwise.

REPORTING REQUIREMENTS

Throughout the Contract performance period, Contractor shall submit various periodic reports as requested by TVA. The information shall be submitted in the frequency (generally weekly) and form designated by TVA. Such reports shall be consistent with and follow the format of established TVA reporting mechanisms. Periodic reports shall be

submitted weekly to the designated TVA representative and TVA's Contracting Officer and may typically include, but not be limited to, schedule update, safety report, and employee hours and/or headcount (including its subcontractor's employees of any tier). The cost of such reports is included in the Contract pricing, and TVA will not authorize additional expenditures for such reports.

SHIPMENT/DELIVERY

Contractor shall ship in accordance with the instructions contained in the Contract or specific instructions issued by TVA. If Contractor routes shipments contrary to those instructions, invoices must be supported by carriers' freight bills. However, TVA is obligated to pay an amount equal only to shipping costs that would have been incurred had Contractor followed the specified instructions and is entitled to exercise any rights and remedies it may have, including claiming from or deducting and retaining from any moneys due Contractor an amount equal to such difference plus an administrative fee of \$50. Unless authorized by TVA, no additional valuation or cargo insurance will be charged for shipments made f.o.b. origin.

The material/equipment provided under this Contract shall be prepared for shipment and marked in such manner as to identify, to protect from damage in transit, to receive at destination, and to facilitate unloading. As a minimum, each shipment will be accompanied by a packing list providing information to accurately identify the items (such as description, quantity, contract number, etc.), and a freight bill or bill of lading containing Contractor's name and the TVA Contract number. Additional instructions may be specified at time of shipment or placement of order.

Partial shipments shall be approved by TVA, and the person's name approving the partial shipment shall be shown on the packing list. Failure to adhere to this provision may result in the shipment being returned to the supplier at supplier's expense.

Contractor shall be responsible for and make good any and all damage due to improper preparation for shipment, regardless whether shipped f.o.b. origin or f.o.b. destination.

To be environmentally responsible, TVA requires suppliers to package products in recyclable, reusable containers when possible and to reduce packaging volume.

SITE WORK

Upon arrival at the job-site, Contractor shall notify the Contracting Officer and report directly to the Technical Contract Manager named in the Contract or their designated site representative. Upon final departure from the job-site, Contractor shall notify the Contracting Officer and coordinate processing out with the Technical Contract Manager or their designated site representative in accordance with site procedures.

Contractor shall confine its operations to the areas assigned by TVA. The use of any off-site areas shall be at Contractor's expense. Contractor shall coordinate its work with the operations of TVA and other contractors so as to avoid confusion and delay. TVA reserves the right to require Contractor to schedule the order of performance of its work in such a manner as will minimize interference with the work of any of the parties involved. Contractor shall promptly notify TVA of any work impact due to collateral work by others.

Contractor may be required to furnish an inventory list of all equipment brought to the TVA project site. The list will be used by the Technical Contract Manager, or his designated representative, to check equipment onto and off of the job-site.

The possession, transportation, gift, sale, or use of controlled substances, alcohol, explosives, firearms (that are not on site as part of Contractor's performance), or incendiary devices is prohibited at the TVA job-site. In addition to any other remedies TVA may have at law or under this Contract, TVA may require Contractor to prohibit any person violating this provision from further work at the TVA job-site.

SUPPLIER BUY BACK

Contractor agrees to support TVA in its material management efforts, especially inventory reduction, by buying back unused material supplied by Contractor that is determined to be excess; coordinating movement of excess materials between facilities; and assisting TVA in the sale of surplus inventory.

TVA shall be entitled to full credit or payment at the applicable purchase price for materials returned by TVA that meet all of the following criteria:

- New, unused material;

- Reasonable quantities;
- Material is in original packaging, if packaged, or as new condition if unpackaged;
- Buy back is requested within a reasonable timeframe from purchase date (within 60 days of project completion, not to exceed one year from date of delivery to TVA or product shelf life, whichever is shorter);
- Material is a standard stock item, as opposed to a unique or special order item;
- Materials are not fasteners or similar items for which any required certification, documentation, or traceability would be lost.

Items that do not meet all of the above conditions may still be candidates for supplier buy back at less than full purchase price. Credit or payment for these items shall be negotiated on a case-by-case basis by TVA and Contractor. Contractor will cooperate with the designated TVA representative in identifying such materials for potential buy back and the amount of credit or payment therefore.

Payment for returned material shall be by check made payable to TVA or by credit memo against outstanding invoices, issued within 30 days of delivery or the making of materials available for contractor pickup by TVA. TVA will pay for delivery of returned materials arranged by it or for increased costs for pickup of materials by Contractor.

SUPPLIER CODE OF CONDUCT

TVA is entrusted with use of public resources to perform a mission of public service, and must conduct all of its activities with a high level of integrity to maintain public confidence. TVA's suppliers must share this TVA commitment to integrity. TVA's Supplier Code of Conduct applies to all individuals and organizations that supply services or materials to TVA, including managed task contractors, consultants, staff augmentation contractors, and vendors and their employees, agents, and subcontractors. Suppliers/Contractors are expected to educate all of their representatives involved in business with TVA to ensure they understand and comply with TVA's Supplier Code of Conduct, a copy of which is available on TVA's Procurement Internet Site at <http://supplier.tva.gov>.

TAXES

TVA is a Federal Government agency and, therefore, state sales and use taxes are not applicable to materials, supplies, equipment, or services sold directly to TVA. By entering into the Contract, Contractor certifies that no such state sales or use taxes have been included in its offer or the Contract.

Contractor is responsible for payment of any other taxes it incurs in performance of this Contract, including sales or use taxes on products installed or consumed by Contractor rather than sold directly to TVA, and for taking all measures to identify and claim any available exemptions or reductions to such taxes (such as exemptions for electrical generating equipment under Tennessee Code Ann. § 67-6-209(e)). Applicable taxes should be included in Contractor's price. This shall include any applicable Federal Excise taxes or duties. If subsequently enacted additions, deletions, or changes to such taxes affect Contractor's costs under this Contract, prices will be increased or decreased accordingly.

TERMS INCORPORATED BY REFERENCE

This contract incorporates certain provisions by reference. These articles and clauses apply, to the extent applicable, as if they were set forth in their entirety. Clauses incorporated by reference are available from TVA's Supplier Portal Internet Site at <http://supplier.tva.gov> under "Clauses Incorporated by Reference." The following clauses are incorporated by reference and apply as follows:

Affirmative Action and Equal Opportunity; Anti-Kickback Procedures; Asbestos Containing Materials; Drug Free Workplace; Lobbying; Nondiscrimination in Public Accommodations; Officials Not To Benefit; Payment of Interest; Small Business Policy; Walsh-Healey;

TERMINATION FOR CONVENIENCE

- A. The performance of work under this Contract may be terminated by TVA in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer, in his sole judgment, shall determine that such termination is in the best interest of TVA. Any such termination shall be effected by delivery to Contractor of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated and the date upon which such termination becomes effective.
- B. After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, Contractor shall:
 1. Stop work under the Contract on the date and to the extent specified in the Notice of Termination;

2. Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
 3. Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
 4. Assign to TVA, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of Contractor under the orders and subcontracts so terminated, in which case TVA shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all of the purposes of this clause.
 6. Transfer title to TVA and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to TVA.
 7. Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
 8. Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this Contract which is in the possession of Contractor and in which TVA has or may acquire an interest.
- C. After receipt of a Notice of Termination, Contractor shall submit to the Contracting Officer Contractor's termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than six months from the effective date of termination, unless an extension in writing is granted by the Contracting Officer upon request of Contractor made in writing within such six-month period or authorized extension thereof.
- D. Subject to the provisions of subsection C above, Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done.
- E. In the event Contractor and the Contracting Officer fail to agree, as provided in subsection D above, upon the amount to be paid to Contractor, the Contracting Officer shall determine the amount, if any, due Contractor and shall provide that Contractor be paid such amount to be determined as follows:
1. All balances due under the terms of the Contract for completed work accepted by TVA appropriately adjusted for any credits or amounts due TVA;
 2. The costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto;
 3. The cost of settling and paying claims arising out of the termination of subcontracts which are properly chargeable to the terminated portion of the Contract;
 4. The reasonable administrative costs incurred in the settlement of the Contract; and
 5. A reasonable fee on (2) above to the extent not covered in (1) above; provided, however, that if it appears that Contractor would have sustained a loss or not made a fee on the entire Contract had it been completed, no fee shall be allowed.
- F. In the event of partial termination, the estimated cost of the continued portion of the Contract may be equitably adjusted by agreement between Contractor and the Contracting Officer.

- G. The total sum to be paid to Contractor under this clause shall not exceed the total Contract price as reduced by the amount of payments otherwise made and as further reduced by the Contract price of work not terminated.
- H. TVA may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by Contractor in connection with the terminated portion of this Contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which Contractor would be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by Contractor to TVA upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Pub. L. No. 94-41 (85 State. 97) for the Renegotiation Board for the period from the date such excess payment is received by Contractor to the date on which such excess is repaid to TVA.
- I. If, after notice of termination of this Contract under the provisions of any other clause of this Contract, it is determined for any reason that grounds for such termination did not exist or were excusable under the terms of such other clause, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued under this clause.
- J. Any disagreement between TVA and Contractor under the provisions of this clause shall be resolved in accordance with the terms and conditions of the Contract.
- K. Contractor shall make available to the Contracting Officer or such other Person or Persons as may be designated by him, all books, records, documents, and other evidence bearing on the costs and expenses of Contractor under this Contract and relating to the work terminated hereunder.

TERMINATION FOR DEFAULT

Contractor shall be considered in default of its contractual obligation under this Contract if it:

- A. performs work which fails to conform to the requirements of this Contract;
- B. fails to meet the Contract schedule or fails to make progress so as to endanger performance of this Contract;
- C. abandons or refuses to proceed with any or all work, including modifications directed pursuant to terms and conditions of the contract unless excused from such performance under the terms of this Contract;
- D. fails to provide, within the time specified in the following paragraph, in response to demand by TVA in the event that an order for relief in bankruptcy is entered with respect to Contractor or Contractor becomes insolvent or makes a general assignment for the benefit of creditors, adequate assurance of Contractor's future performance in accordance with the terms and conditions of the Contract. TVA shall be the sole judge of the adequacy of said assurance; or
- E. fails to fulfill any of the terms of this Contract.

If TVA intends to declare contractor in breach upon the occurrence of any of the foregoing, TVA shall notify Contractor in writing of the nature of the failure and of TVA's intention to terminate all or part of the Contract for default.

If Contractor does not cure such failure within ten (10) calendar days from receipt of notification, or sooner if consideration of safety to persons is involved, or if Contractor fails to provide satisfactory evidence that such default will be timely corrected, TVA may without notice to Contractor's sureties, if any, terminate in whole or in part Contractor's right to proceed with work by written notice and prosecute the work or similar work to completion by contract or by any other method deemed expedient. TVA may take possession of and utilize any materials, plant, tools, equipment, and property of any kind furnished by Contractor and necessary to complete the work.

In addition to any other remedies or damages available to TVA under the contract or at law, Contractor and its sureties, if any, shall be liable for all excess costs incurred in completion of the terminated work or similar work, including but not limited to the cost of administration of any contract awarded to others for completion.

Upon termination for default, Contractor shall:

1. immediately discontinue work on the date and to the extent specified in the notice and place no further contracts or subcontracts to the extent that they relate to the performance of work terminated;

2. inventory, maintain and transfer title to TVA and deliver as directed by the Contracting Officer completed supplies, materials or equipment, or partially completed supplies, materials or equipment (work in progress) and all parts, tools, fixtures or other manufacturing materials which Contractor specifically produced or acquired for the terminated portion of this Contract, as well as any such items furnished to Contractor by TVA to perform the terminated work;
3. promptly obtain cancellation upon terms satisfactory to TVA of all contracts, subcontracts, rentals, or any other agreements existing for performance of the terminated work or assign those agreements to TVA as directed;
4. cooperate with TVA in the transfer of information and disposition of work in progress so as to mitigate damages;
5. comply with other reasonable requests from TVA regarding the terminated work;
6. continue to perform in accordance with all of the terms and conditions of the Contract such portion of work that is not terminated; and
7. Demobilize from the TVA site and offices in accordance with TVA's instructions.

Contractor shall be paid the appropriate portion of Contract price for work completed and accepted, to the extent such payment plus TVA's re-procurement costs and other damages do not exceed such portion of the Contract price.

If after termination pursuant to this clause, it is determined for any reason that Contractor was not in default including but not limited to, any of the reasons set forth in Condition Delays, Remedies, and Waivers, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Condition Termination For Convenience.

TITLE AND RESPONSIBILITY FOR MATERIALS AND WORK

- A. Contractor shall be responsible for loss or damage to work in progress, materials, equipment, property, or lands, until completion and final acceptance of work under this Contract. Contractor's responsibility for materials and plant equipment required for the performance of the Contract shall include:
 1. All Contractor and TVA furnished material and equipment.
 2. Storage of all material and equipment in a secure place and in a manner subject to TVA review and approval. Outside storage of materials and equipment subject to degradation by the elements shall be in weather tight enclosures provided by Contractor.
 3. Transportation of all materials and plant equipment as required from storage to work areas.
 4. Maintaining of complete and accurate records of all materials and plant equipment received, stored, and issued for use in performance of the Contract.
- B. Contractor shall plan and perform its work so as not to:
 1. Enter upon lands in their natural state, whether controlled by TVA or others, unless prior written authorization is received from TVA. This includes damage or destruction to cultivated and planted areas, and vegetation such as trees, plants, shrubs, and grass on or adjacent to the job-site which, as determined by TVA, do not interfere with the performance of this Contract. This includes damage arising from performance of work through operation of equipment or stockpiling of materials.
 2. Damage, close, or obstruct any highway, road, or other property without prior receipt of any required permits or written permission from the appropriate Federal, State, or local government agency or property owner.
 3. Disrupt or otherwise interfere with the operation of any utility facility including utility pipelines, telephone lines, or electric transmission lines unless otherwise specifically authorized by this Contract and prior written permission has been obtained from the owner.
- C. Contractor shall not be entitled to any extension of time or compensation due to Contractor's failure to protect all materials, equipment, and property as described herein. All costs in connection with any repairs or restoration obstruction, damage, or use shall be borne by Contractor and shall not be reimbursable.

- D. The title to water, soil, rock, gravel, sand, minerals, timber, and any other materials developed or obtained in any excavation or other operations of Contractor or any of its subcontractors and the right to use or dispose of these materials is reserved by TVA. Neither Contractor, its subcontractors, nor any of their representatives or employees shall have any right, title, or interest in these materials nor shall they assert or make any claim thereto. Contractor may, at the sole discretion of TVA, be permitted to use in its work any such materials without charge which meet the requirements of the Contract.
- E. Title to materials and equipment furnished and sold to TVA passes to TVA when they come to rest in satisfactory and acceptable condition following transportation to the designated delivery point. In addition, when any progress payment is made, title to material and equipment acquired and work performed vests in TVA, and title to all like property thereafter acquired or produced by Contractor and properly chargeable to this contract vests in TVA. This provision vests in TVA full, absolute title and not merely a security interest. It does not relieve Contractor from sole responsibility for the care and protection of such property or the restoration of any damaged work until completion of the Contract or waive TVA's right to require the fulfillment of all contractual terms.

TVA AND CONTRACTOR REPRESENTATIVES

TVA's Contracting Officer (Contract Manager/Procurement Agent) is TVA's duly authorized representative for all purposes until otherwise stated. No changes shall be made without written consent of TVA's Contracting Officer. Unless otherwise provided, Contractor shall furnish all correspondence regarding this Contract to TVA's Contracting Officer.

TVA's Contracting Officer may designate a Technical Contract Manager (TCM). The TCM will act for TVA in regard to all technical matters under the Contract but has no authority to modify the Contract or to issue direction contrary to the Contract. Communications, technical documents, samples, etc., relative to all technical matters should be directed to the TCM.

WARRANTIES

Contractor warrants that all items and/or other work furnished pursuant to this Contract:

- A. comply with the Contract;
- B. are free from latent and patent defects of any kind;
- C. are suitable and adequate for their intended purpose(s) including, but not limited to, those purposes stated in the Contract; and
- D. will provide efficient and satisfactory service for at least 18 months after first use by TVA in actual service.

Contractor shall, at its expense, reperform, remove, repair, replace, and/or reinstall as necessary all items/work, or portions thereof, which fail to comply with any or all the aforementioned warranties. All costs associated with such reperformance, removal, repair replacement, or reinstallation shall also be borne by Contractor. If it is impractical for TVA to wait for Contractor, TVA may have such actions performed at Contractor's expense.

Items/work, or portion thereof, which fail to comply with the aforementioned warranties may be rejected. Correction shall not extend performance time or preclude any claim by TVA for damages resulting from delay in performance or from any other cause. Operation or use by TVA of items/work, or any portion thereof, shall not constitute a waiver of TVA's rights under this Contract.

Any reperformed or replaced items/work shall be warranted as provided in A through D above.

Contractor warrants that all items/work are free from claims, demands, and encumbrances and that it will defend title thereto.

TVA shall also be entitled to any manufacturer's or other applicable warranty, and Contractor hereby assigns to TVA the right to enforce any such warranty.

The foregoing warranties and remedies are in addition to any specific warranties, guarantees, or remedies contained in this Contract or available at law.

SCOPE OF WORK

PRICING SCHEDULE