



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

October __ 2007

TO: _____

REQUEST FOR PROPOSAL (RFP) - RFP-20071022 - TO PROVIDE ASSISTANCE IN PERMITTING VARIOUS FLYASH EXPANSION PROJECTS

Your firm is invited to provide a proposal to provide a proposal for the subject material. 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	Draft Contract
	Attachment A	Specification
	Exhibit 1	- Draft Construction Terms & Conditions
	Attachment B	Rate Sheet
	Attachment C	Proposal Statement
	Attachment D	TVA Information Form
	Attachment E	Small Business and Small Disadvantaged Business Subcontracting Plan

TENNESSEE VALLEY AUTHORITY

REQUEST FOR PROPOSAL (RFP)

RFP-20071022

TO PROVIDE ASSISTANCE IN PERMITTING VARIOUS FLYASH EXPANSION PROJECTS

DATE OF ISSUE: October __, 2007

I. SCOPE AND INTENT

The purpose of this RFP is to solicit proposals which, when evaluated, are intended to result in the execution of a contract between TVA and the successful Offeror to provide assistance to TVA in permitting various flyash expansion projects. A more detailed description is included at Attachment A to this Enclosure 1.

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 the contract to reflect the final agreement reached between TVA and the successful Offeror.

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. PROPOSAL SUBMITTAL REQUIREMENTS

Proposal Due Date

OFFEROR'S PROPOSAL IS DUE BY 4:00 P.M. EDT ON [REDACTED], 2007. The proposal package must be addressed and marked as follows:

**Stacci Thomas
Tennessee Valley Authority, LP 3J
1101 Market Street
Chattanooga, Tennessee 37402**

PROPRIETARY INFORMATION - PROPOSAL IN RESPONSE TO TVA RFP-20071022

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

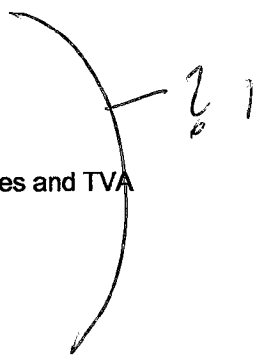
This section shall contain the following information:

- 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:

- Experience and Past Performance with TDEC Solid Waste Projects
 - Experience and Past Performance with Ash Monofills
 - Experience and Past Performance with Mechanically Stabilized Slopes and TVA Mechanically Stabilized Walls
 - Staffing availability to perform work
- 

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.

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.

2. Financial Strength

Offeror shall submit information to demonstrate financial capability and stability.

3. Subcontracting

Offeror shall identify and provide complete information for any proposed subcontractors, including individuals who are independent contractors.

Request for Proposal
Construction Package Preparation
Coal Combustion Byproduct Disposal Facility
Peninsula Site
TVA - Kingston Fossil Plant

TVA - Fossil Power Group requests a priced proposal be provided for engineering services related to the preparation of construction documents. This project is to construct gypsum disposal areas as described in this RFP in accordance with the permit documents, current as of the date of RFP issuance. The permit documents for this expansion have been prepared by others. The final permit for the area is expected to be issued in November, 2007.

The area to be developed for construction at this time includes the areas as denoted on permit drawing 10W427-3 and described below:

- **PROPOSED STORMWATER POND (6.87 ACRES)**
 - Earthen-lined impoundment with sloping bottom with a minimum embankment crest elevation of 768.
 - Associated stormwater piping
- **PHASE 1 (51.24 ACRES)**
 - Geologic Buffer
 - Drainage Corridor
 - Earth Embankment
- **PROPOSED GYPSUM DEWATERING FACILITY AREA**
 - General grading to the elevations shown on drawing 10W427-6
 - Additional finish grading will be designed by others at a later time
- **20-FT WIDE RELOCATED ACCESS ROAD (Approx 6000 LF)**
 - Design of new unimproved roadways to replace existing unimproved roadways being displaced by the project
 - Roadway details shall show construction of compacted earth fill sub-base, followed by 12 inches of compacted densely graded stone aggregate base
- Prepare construction drawings for work depicted in Drawings 10W427-4 and 10W427-5, along with the necessary details shown on 10W427-14 through 10W427-23.
 - Additional information such as dimensions, specific elevations, etc shall be added to the details as necessary in order to provide the information necessary for bidding and construction
- Prepare construction drawings and specifications for the underdrain lift station as shown on 10W427-24, including any civil, structural, mechanical, electrical, as well as instrumentation and control details
 - Duplex lift station is to be level-controlled with alternating starts between the pumps
 - 2 wired signals, a high level alarm and a general pump alarm, from the lift station to the MCC will be required. In the MCC, these signals will then interface with a wireless system (designed by others) that transmits back to the main control room
 - Electrical service for the lift station will be from an MCC located near the proposed plan which is currently in the design phase

- Develop necessary specifications, details, sections, horizontal and vertical control data, and basic dimensions for construction of the areas
- Earth material required for the geologic buffer, embankment construction, and general fill activities will be taken from the Area designated as Phase II. A progressive grading plan shall be developed to reflect the general progression of borrowing activities in this area that will compliment the eventual construction of the area such that construction activities for the present project will not result in additional work in the future (e.g. excavating to grades in areas that will require fill during construction of Phase II)

Construction Documents - Required drawings and technical specifications for constructing the base and associated features in accordance with Permit Documents (prepared by others)

- Drawings - Drawings shall be prepared in AutoCAD and be suitable for use in digital terrain modeling packages for surveying and construction
 - All topography shall be constructed in layers on 3 dimensional state plane coordinate (TN Lambert, NAD 27) in model space
 - All topography shall be in layers
 - Permit Drawings will provided by TVA in AutoCAD format
 - All drawings are to be in accordance with the TVA CAD DRAFTING STANDARDS AND PROCEDURES (FPG.SP.09.010)
 - Drawings shall be prepared on the TVA W sized DCA title block (provided by TVA), approximately 27" tall and 46" wide
 - Drawing shall be numbered 10W428-1, -2, -3, etc
 - AutoCAD Xref file usage is not permitted under the TVA Drafting Standard; the files are to be bound and exploded prior to submittal
 - Drawings shall be prepared such that the ZOOM-EXTENTS command can be used when plotting drawings to scale
 - Drawing shall be numbered 10W303-1, -2, -3, etc
 - Each sheet shall be a different file, with the drawing border encapsulating the entire contents of the file in model space
 - Portable Document Formats (Adobe PDF, Microsoft MDI, or similar platforms) are not acceptable as submittal documents at any stage of the construction document preparation process except as specifically approved by the Technical Contract Manager.

- **Technical Specifications** - Technical specifications shall be provided for procurement and installation by TVA construction forces or by a contractor.
 - Technical Specifications shall be limited to documents necessary for procurement and construction
 - Technical Specifications shall be written to coordinate with the terms and requirements of the TVA Construction Contract Terms and Conditions, provided as Exhibit 1 to this Attachment A, so as not to have a conflict between sections of the documents
 - Technical Specifications shall be prepared based upon the approved quality control protocols outlined in Appendix F (Material Specifications and Construction Quality Assurance and Quality Control Plan) as developed for the permit documents
 - Contract terms (General Conditions, Special Conditions, Close-out Documents, Performance Bond, Final Release of Lien, etc) are not required and will be issued by TVA Procurement
 - Bidding Documents, if necessary, will be prepared by TVA procurement personnel
 - Electronic files shall be provided in MS WORD format. Portable Document Formats (Adobe PDF, Microsoft MDI, or similar platforms) are not acceptable as submittal documents at any stage of the construction document preparation process except as specifically approved by the Technical Contract Manager.

Quantities Estimates and Opinion of Probable Cost - Estimates of quantities for construction as well as an Opinion of Probable Cost shall be provided

Calculations - Copies of structural, storm water and drainage calculations shall be provided upon completion

- Digital spread sheet output, when utilized, shall be provided in MS Excel format
- Written discussion text that is not handwritten shall be submitted in MS Word formats
- Data files or executable files shall be provided for utilization when commercially available software packages are utilized for design purposes, including but not limited to, structural and drainage calculations.
- Portable Document Formats (Adobe PDF, Microsoft MDI, or similar platforms) are not acceptable as submittal documents at any stage of the construction document preparation process except as specifically approved by the Technical Contract Manager.

Site Visits - Visits to the site are encouraged for use in preparation of the proposal and during the design process. Site visits will require notification of the plant personnel and a TVA escort. Photos are allowed. Proper personal protective equipment (PPE) for the conditions, typically consisting of hard hats, safety glasses, hearing protection, and sturdy footwear are required

Meetings and Coordination - Close coordination shall be maintained on a continuous basis with TVA.

- Attendance at a design review meeting conducted at the plant site will be required
- Submittal of a 4 draft sets of documents will be required for distribution 10 calendar days prior to the date of the design review meeting

Final Documents - Comments resulting from the review of the draft set and the design review meeting shall be incorporated into the documents prior to submission of the final set.

- Final Document set shall include 6 bound copies of all construction drawings and specifications as well as one unbound set for additional reproduction
- Electronic copies
 - Drawings in AutoCAD format
 - Specifications in WORD format
- Completed calculations
- Portable Document Formats (Adobe PDF, Microsoft MDI, or similar platforms) are not acceptable as submittal documents except as specifically approved by the Technical Contract Manager.

Project Schedule - Listed below are Key Dates for this project.

RFP Issued	October 26, 2007
Proposals Due to TVA	November 16, 2007
Contract Awarded	November 30, 2007
Draft Document Package Submitted to TVA for Review	January 18, 2007
TVA Returns Comments	January 25, 2008
Final Review Set For TVA-Wide Distribution (Essentially Complete)	January 31, 2008
100% Design Review Meeting at Kingston Fossil Plant	February 08, 2008
Incorporate Comments from the 100% Design Review Meeting	February 15, 2008

The Technical Contract Manager (TCM) will be designated upon issuance of a contract by TVA.

Evaluation of Offerors

Evaluation of offerors will be based upon the following, in no particular order of importance:

- Prior Experience with solid waste facilities
- Prior Experience with storm water ponds, pumping systems, site grading, and related facilities of similar magnitude to the one proposed
- Proximity to the TVA office in Chattanooga
- Proximity to the proposed project site
- Familiarity to TVA processes and procedures as demonstrated by prior TVA experience on the individual or company level
- Cost of services

Report

**ENCLOSURE 1
ATTACHMENT A
EXHIBIT 1**

**DRAFT CONSTRUCTION CONTRACT
TERMS & CONDITIONS**

RFP-_____

TO CONSTRUCT DRY FLYASH FACILITIES

DATE OF ISSUE: _____

NOTE: This Exhibit is provided to the Offeror for information purposes ONLY. This contract represents the terms and conditions typically used by TVA in contract construction projects. The Offeror should assume that the technical specifications prepared for this project must be coordinated with the terms and conditions in this attachment to the extent applicable to the technical specifications.

CONTRACT NO.: _____

TENNESSEE VALLEY AUTHORITY

CONSTRUCTION CONTRACT

PROJECT

PLANT

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 up to !!! 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 **Contract**, Fossil Power Contracts

Date _____

Date _____

h:/contr/shared/_____.doc

TERMS & 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 - FIXED PRICE

Examination of Costs. Contractor shall keep accurate records and books of accounts showing the items and costs billed under this Contract, as well as cost data supporting the Contract proposal and/or other representations, including detailed supporting cost data for assumptions and calculations of firm fixed price(s) specified in the Contract. Upon reasonable notice, TVA, its agents, or the United States General Accounting Office 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 cost data relevant to the firm fixed price(s) for the purposes described hereafter. Contractor shall also maintain nonfinancial documentation and records related to work hereunder but not delivered to TVA.

Firm Fixed Price(s). It is hereby expressly agreed by TVA and Contractor that TVA's right to audit Contractor's firm fixed price(s) is for the purposes of (1) providing TVA with updated information to support future contract pricing decisions; (2) providing TVA's Office of the Inspector General (OIG) with access to data and information as required for the OIG to carry out its responsibilities in accordance with prescribed statutory requirements; (3) discovering any errors/irregularities by Contractor that may have been relied upon by TVA in establishing the firm fixed price(s); and (4) identifying any duplicate billings or payments.

Availability of Records. Contractor shall preserve and make available its records and books of accounts, both manual and those which are in machine readable form, for a period of 3 years from the date of final payment under this Contract. If this Contract is terminated, said records shall be preserved and made available for a period of 3 years from the date of any resulting final settlement. Records and books of accounts which relate to litigation or the settlement of claims arising out of the performance of this Contract, or costs and expenses of this Contract to which exception has been taken by TVA shall be retained until such appeals, litigations, claims, or exceptions have been disposed of.

Errors/irregularities. In the event Contractor errors/irregularities are discovered by audit or other means and TVA relied upon such errors/irregularities in accepting the firm fixed price(s), said rates shall be reduced accordingly, with such reduction retroactive to the effective date of the Contract and applicable amounts refunded to TVA.

Overpayments. Any payments to Contractor which are not in accordance with Contract terms or are not supported by Contractor books, records, documents, or other valid evidence shall also be refunded to TVA.

Misrepresentation of Cost or Pricing Data. If any price, including profit or fee, negotiated in connection with this Contract or any cost reimbursable under this Contract was increased by any significant amount because Contractor or a subcontractor misrepresented cost or pricing data in negotiations, the price or cost shall be reduced accordingly. This provision also applies to any future supplement or modification to this Contract which involves the submission of cost or pricing data.

Special and Consequential Damages. If as a result of an audit TVA determines Contractor's overcharges exceed ten percent of charges submitted during the audit period or if Contractor knowingly submits overcharges or misrepresents cost or pricing data in any amount, Contractor agrees to reimburse TVA both the amount of the overcharges plus special and consequential damages. This includes, but is not limited to, costs associated with the discovery and determination of the amount of those overcharges, the discovery of misrepresented cost or pricing data, and the quantification of any overcharges resulting there from. TVA and Contractor agree that the amount of such special and consequential damages shall not exceed twenty-five percent of the amount of overcharges and/or the amount of overcharges resulting from misrepresented cost or pricing data.

Interest on Overpayments. 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 as prescribed in the Prompt Payment Act.

Statistical Sampling. TVA may use statistical sampling methods to determine a point estimate of the total amount, if any, of TVA overpayments or underpayments to Contractor.

Subcontracts. Contractor shall include the requirements of this section in each subcontract hereunder.

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.

CONTRACT INTERPRETATION AND DISPUTES

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. 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. The parties further agree that in any such 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 provision 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.

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.

FACILITIES TO BE PROVIDED BY TVA

To the extent available and to the extent Contractor's usage does not interfere with TVA's or any other Contractor's activities, to be determined solely by TVA, the following facilities shall be provided or furnished at no additional cost to Contractor by TVA:

1. water from TVA's water system at existing outlets;
2. electricity at existing outlets;
3. compressed air at existing outlets;
4. temporary parking facilities; and
5. limited use of elevators for routine personnel use only. Elevator use shall be coordinated with the onsite representative. Elevators shall not be used to transport equipment, materials, and supplies unless approved by TVA.

An uninterrupted supply of water, electricity, and air is not guaranteed; and TVA does not guarantee outlets to be functional. These items are provided as a matter of courtesy, and this shall not create any obligation by TVA to provide such items. It is Contractor's responsibility to obtain utility services, equipment and materials necessary to perform the contract in the event these are not available from TVA.

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 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

Use this table as suggested coverage limits for general liability.

Contract Value	Coverage Limits
Under \$1 million	\$1 million
Over \$1/under \$3 million	\$2 million
Over \$3/under \$5 million	\$3 million
Over \$5/under \$10 million	\$5 million
Over \$10/under \$20 million	\$10 million
Over \$20/under \$30 million	\$20 million
> \$30 million or unusual work	contact TVA Risk Manager

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 Alabama, Kentucky, Tennessee, Georgia, Mississippi, Virginia, North Carolina which shall be rated "A" or better by A.M. Best Company.

	Coverage	Minimum Amounts and Limits
1.	Workers Compensation	
	Part A.	Statutory requirements
	Part B. Employer's Liability	\$100,000 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 |

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. 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.

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.

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.

PERFORMANCE AND PAYMENT BONDS

After award of the contract, TVA will require Contractor to execute the attached forms of Performance and Payment Bonds as requested in the contract), with surety on the U. S. Treasury's list of acceptable sureties and with a minimum **A. M. Best** rating of **A** or better within 10 days after the forms are presented for signature. Each bond shall be executed in the amount of 100 percent of the contract price.

Contractor should include an amount for the bond premiums in its prices. Contractor shall complete the "Surety Bond Cost Data" form attached hereto. Where the contract contains option items, the appropriate bond premium should also be included in the option item prices and on the "Surety Bond Cost Data" form. In the event changes of contract increase the contract amount, TVA's Contracting Officer may require additional bond coverage either by increasing the penal sum of the existing bonds or by obtaining additional bonds. This additional coverage must also be with a surety on the U. S. Treasury's list of acceptable sureties with a minimum **A. M. Best** rating of **A** or better. Any increase in bond premiums caused thereby should be included in Contractor's quotation for the change of contract and stated on the "Surety Bond Cost Data" form. If TVA decides to waive or reduce the bond requirement(s), the appropriate bond amount(s) will be deducted from payments or subtracted from the contract price.

Should any surety providing bonding become unacceptable to TVA's Contracting Officer, Contractor shall promptly furnish additional security as may be required to protect the interest of TVA and of persons supplying labor or materials under the contract. This additional bond coverage must be with a surety on the U. S. Treasury's list of acceptable sureties, with a minimum **A. M. Best** rating of **A** or better.

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.

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.

SMALL BUSINESS SUBCONTRACTING

TVA is committed to increasing expenditures with small businesses and TVA contractors must upon request negotiate a subcontracting plan and make good faith efforts to meet the plan. Absent a negotiated plan, each contractor is encouraged to assist TVA in meeting the following goals.

*Small Business	30 percent of contract expenditures
Small Minority Business	10 percent of contract expenditures
Small Woman-Owned Business	10 percent of contract expenditures
HUB Zone Small Business	3 percent of contract expenditures
Small Veteran-Owned	3 percent of contract expenditures
Small Service-Disabled Veteran-Owned Business	3 percent of contract expenditures
Valley Business	73 percent of contract expenditures

*This goal includes subcontracts with the five listed categories of small businesses.

In order to include supplier contributions, Contractor shall report subcontract expenditures under this Contract with each of the above five business categories in such form and manner as required by TVA 15 days after the close of each calendar quarter and shall cooperate in any studies or surveys as TVA may require in order to determine compliance with the subcontracting plan. Contractor shall report data thru the web-based, online Subcontract Reporting System (SRS).

"Small Business" is defined in Title 13, Code of Federal Regulations (CFR), as amended, which contains detailed industry definitions and related procedures. For purposes of this condition, "Small Minority Business" shall have the same definition contained in 13 CFR, as amended, for "Small Disadvantaged Business." "Small Woman-Owned Business" is defined as a small business that is at least 51 percent owned by one or more women, and whose management and daily business are controlled and operated by one or more women. A "HUBZone" business is defined as a small business located in a historically underutilized business zone including economically depressed metropolitan areas, rural counties, or Indian reservations. "HUBZone Small Businesses" appear on the list of Qualified HUBZone Small Business Concerns maintained by the SBA. "Small Veteran-Owned Business" is defined as a small business that is at least 51 percent owned by one or more honorably discharged veterans, and whose management and daily business are controlled and operated by such veterans. "Small Service-Disabled Veteran-Owned Business" is defined as a small business that is at least 51 percent owned by one or more veterans with service-connected disability as defined in 38 USC 101(16), and whose management and daily business are controlled and operated by such veterans (or by the spouse or caregiver of a veteran with a permanent and severe disability).

Liquidated Damages for SMWOB Subcontracting Plan.

- A. Failure to make a good faith effort to comply with the subcontracting plan, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under this clause or willful or intentional action to frustrate the plan.
- B. If, at Contract completion, or in the case of a commercial products plan, at the close of the fiscal year for which the plan is applicable, Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph C of this clause that Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with this clause, Contractor shall pay TVA liquidated damages in an amount stated. The amount of damages attributable to Contractor's failure to comply shall be an amount equal to the actual dollar amount by which Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to government contracts by which Contractor failed to achieve each subcontract goal.
- C. Before the Contracting Officer makes a final decision that Contractor has failed to make such good faith effort, the Contracting Officer shall give Contractor written notice specifying the failure and permitting Contractor to demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that Contractor failed to make a good faith effort to comply with the subcontracting plan, the

Contracting Officer shall issue a final decision to that effect and require that Contractor pay TVA liquidated damages as provided in paragraph B of this clause.

- D. With respect to commercial products plans, i.e., company-wide or division-wide subcontracting plans, the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial products plan.
- E. Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.
- F. Liquidated damages shall be in addition to any other remedies that the government may have.

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:

All Solicitations, Purchase Orders, or Contracts
Affirmative Action and Equal Opportunity; Asbestos Containing Materials; Officials Not To Benefit; Payment of Interest; Small Business Policy;

All Solicitations and Contracts Over \$100,000
Anti-Kickback Procedures; Drug Free Workplace; Lobbying; Nondiscrimination in Public Accommodations; Walsh-Healey;

All Solicitations and Contracts with Individuals
Drug Free Workplace;

All Construction Work in Excess of \$10,000
Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246).

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.

TERMS OF PAYMENT - MILESTONE PAYMENTS

Payment(s), less such deductions provided by this Contract or by law, will be made for the achievement of milestones for equipment as listed below. When a change in the agreement is approved, the total Contract price shall be altered to the new total and the new milestone payment will be adjusted.

The payment for equipment will be made in accordance with the following milestones:

percent
percent
percent
percent

A milestone payment will not be approved until all preceding milestones have been approved. Payment for achievement of each milestone will be made as follows:

Milestone payment(s), less such discounts or deductions as are provided for in the contract or by law, will be paid by electronic fund transfer (after completing a TVA Electronic Vendor Payment Form) not more than 45 calendar days after receipt by Accounts Payable Department of certification from TVA's Technical Contract Manager that milestone is complete per Contract requirements, and after receipt of proper invoice(s) and any shipping documentation which TVA's Contracting Officer may reasonably require.

The acceptance by Contractor of the final payment shall operate as and shall be a release to TVA and its officers and agent from all claims and liability to Contractor for anything done or furnished, for or relating to the work, or for any act or omission of TVA or of any person relating to or affecting the work.

When any payment is made under this Contract, title to all material acquired and work performed under this Contract, shall vest in TVA, and title to all like property thereafter acquired or produced by Contractor and properly chargeable

to the Contract under generally accepted accounting principles shall vest in TVA. This provision is intended to vest in TVA full, absolute title and not merely a security interest. This provision shall not be construed as relieving Contractor from the sole responsibility for the care and protection of such property or the restoration of any damaged work until completion of the Contract, or as a waiver of the right of TVA to require fulfillment of all of the terms of the Contract.

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 law, including rights under Condition Warranty.

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

"Proper invoice" shall mean a numbered and dated invoice, containing the TVA Contract number and itemized by the line items as detailed in the Contract, together with any documentation required to be submitted therewith by any other provision of the Contract.

"Acceptance" shall mean 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 the designated Technical Contract Manager.

Payments under this Contract are subject to the provisions of the Prompt Payment Act. For amounts due TVA, Contractor shall pay TVA interest, at the rate payable by TVA under the Prompt Payment Act, on any overdue amount. Interest shall run from the date payment is due under this Contract until the date TVA receives payment or the date the remittance is postmarked, whichever is earlier. Payment of interest shall be due thirty (30) days after TVA's invoice for such interest is dated.

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.

TVA's Contracting Officer may also designate a Jobsite Representative(s) (JREP). The TVA JREP monitors Contractor's compliance with the wage rate and classification requirements and Health and Safety provisions of this Contract, if applicable. The TVA JREP has no authority to change or waive compliance with the provisions of the Contract or to order additional work. If the **Terms of Payment** made a part of this Contract require progress payments, the TVA JREP will, as appropriate, prepare progress estimates and final estimates of the amount of work done or materials delivered and the value thereof in accordance with the terms of the Contract.

Before starting work, Contractor shall designate in writing an authorized representative to represent and act for Contractor and shall specify any limitations of such representative's authority. All communications given to the authorized representative by TVA in accordance with this Contract shall be binding upon Contractor.

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 years 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 reformed 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

RATE SCHEDULE

JOB TITLE	RATE PER HOUR

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-20071022
Enclosure 1
Attachment D

OMB No. 3316-0062
Exp. Date: 2/29/2004

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)

- | | |
|---|---|
| <input type="checkbox"/> A Small Disadvantage Business* | <input type="checkbox"/> G Non-Profit Organization |
| <input type="checkbox"/> B Other Small Business** | <input type="checkbox"/> K State/Local Government |
| <input type="checkbox"/> C Large Business | <input type="checkbox"/> L Foreign Contractor |
| <input type="checkbox"/> D JWOD Nonprofit Agency*** | <input type="checkbox"/> M Domestic Contractor Performing Outside U.S. |
| <input type="checkbox"/> E Educational Institution | <input type="checkbox"/> N Federal Agency |
| <input type="checkbox"/> F Hospital | <input type="checkbox"/> 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 <input type="checkbox"/> No <input type="checkbox"/>
<i>(TVA Contracting Officer ONLY E-mail form to "Supplier Information" or fax to (423) 751-7613)</i>	

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: _____

(Title)

Date:

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

RFP-20071022

**TO PROVIDE ASSISTANCE IN ^{PREPARATION OF} ~~PERMITTING~~
VARIOUS FLYASH EXPANSION PROJECTS**

DATE OF ISSUE: October 22, 2007

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 up to !!! 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 _____
Name _____
Title _____
Date _____

By _____
Name _____
Title Contract, Fossil Power Contracts
Date _____

h:/contr/shared/_____.doc

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TERMS & 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.

CERTIFICATE OF FINANCIAL INTEREST AND COMPENSATION

Contractor, by entering into the Contract, certifies that it has no undisclosed financial or other interest that would conflict with or affect the full and faithful performance of services hereunder.

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 (FIXED PRICE OR FIXED RATE - HOURLY, DAILY, OR WEEKLY)

TVA agrees to pay Contractor in accordance with Attachment B, "Rate Schedule", for all time spent in the actual performance of services excluding all travel time hereunder unless specifically authorized in advance by the TVA Technical Contract Manager in writing.

In addition to the compensation specified above, TVA further agrees to reimburse Contractor as follows:

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- A. For actual reasonable miscellaneous Contractor expenses that are directly required to perform the services required herein and are approved by TVA. Such costs shall not be subject to any indirect cost burden.
- B. For TVA authorized transportation and subsistence expenses incurred in connection with the performance of services hereunder; provided, however, 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, a copy of which is included as Attachment !!! _____, "Travel Allowance and Reimbursement," hereto. Such costs shall not be subject to any indirect cost burden.
- C. For the actual reasonable and allowable cost of subcontracting as approved in advance by the TVA Technical Contract Manager in writing. Such costs shall not be subject to any indirect cost burden.

CONTRACT INTERPRETATION AND DISPUTES

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. 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. The parties further agree that in any such 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 provision 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.

CONTRACTOR RESPONSIBILITIES

Contractor agrees to provide the services of qualified personnel to perform the services as more fully described elsewhere in this Contract, when and as requested by TVA and agreed upon by Contractor. TVA reserves the right to request Contractor's personnel to perform services at other TVA locations and facilities. TVA reserves the right to assign to other contractors work related to the scope of work contained in this Contract or perform the work itself if such assignment is determined to be in the best interest of TVA.

Contractor shall provide such services as authorized by TVA's Contracting Officer and under the direction of the Technical Contract Manager.

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

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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.

DELIVERABLE REQUIREMENTS AND REPORTS

Contractor shall perform all work pursuant to the technical requirements as provided by the Technical Contract Manager (TCM) and applicable laws, codes, rules, and regulations in effect at the time of the services.

Contractor shall be responsible for the development and technical preparation, review, and approval of all deliverables and associated schedules for deliverables. Contractor's responsibility and liability for services provided shall be as set forth in the Contract.

Contractor shall adhere to the programmatic requirements specified by the TCM to control the deliverables with regard to form and format. These requirements are intended to ensure proper interfacing with existing and future engineering project design basis and output documents such that uniform continuity exists between Contractor designs and TVA past and future designs.

Drawings, calculations, and supporting data shall be submitted in a sequence which will enable TVA to monitor and/or audit the design process. Submittals shall include purpose, requirements, technical data, computer programs, assumptions, methods, sources of information, calculations and/or logical analyses, results, conclusions, and any other information, including all QA records, if applicable, that may be needed by TVA after the work is completed. Submittals shall include enough detail to enable a qualified individual to understand them without recourse to the preparer.

TVA and Contractor will establish a plan for an orderly transfer at the completion of the Contract of any documents not previously transferred.

SECURITY - INFORMATION TECHNOLOGY (IT) SECURITY TRAINING

All TVA employees and contractors who use TVA's information systems must complete Information Security and Privacy Awareness training in support of the Federal Information Security Management Act (FISMA) and TVA's IT Security Policy as a means of protecting the confidentiality, integrity, and availability of IT resources and information.

In order to have and maintain access to TVA information systems, all users will receive an assigned TVA network ID and must individually complete initial computer security awareness training regarding acceptable use of information resources, then subsequently complete the periodic refresher as revisions are updated annually. The primary goal of this annual training is to improve end user awareness of IT security requirements, policies, and best practices. Failure of any user to comply with training and annual refresher requirements, or misuse or abuse of TVA resources, will result in loss of access privilege to TVA's information system and the user could be subject to disciplinary action, up to and including termination and possible criminal prosecution, if the activity results in damage to TVA's information, IT resources, or such activity results in a privacy or confidentiality breach.

Contractor personnel that receive a TVA network ID will receive an e-mail with instructions for completing the requirement and an associated deadline for completion. Contractor personnel will also receive an Employee ID and a personal identification number ("PIN") to access the training online. With ID and PIN, the initial security training [Acceptable Use (Initial) of Information Resources] and the annual refresher training [Annual (Refresher) Info. Security and Privacy], as scheduled by TVA, are available online at <http://tvau.tva.gov> (TVA Online Learning; then, click on Computer Training). Contractor or subcontractor employees' failure to timely complete initial and or refresher training which results in revocation of system access shall not be a basis for reimbursement to Contractor or for any claim by Contractor caused by accompanying delay.

[This provision replaces and supersedes the former requirement for vendors to report quarterly to TVA upon the level of security awareness training.]

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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.

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 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

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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

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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.

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 Alabama, Kentucky, Tennessee, Georgia, Mississippi, Virginia, North Carolina which shall be rated "A" or better by A.M. Best Company.

	Coverage	Minimum Amounts and Limits
1.	Workers Compensation Part A. Part B. Employer's Liability	Statutory requirements \$100,000 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.

C. 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.

D. The policy of insurance which affords General Liability shall contain a provision or endorsement stating that such insurance:

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3. Applies to the indemnity liability assumed by Contractor under this Contract, subject to all of the terms and conditions of such insurance;
 4. Provides coverage for premises/operations, at least 2-year products/completed operations, and other coverages or endorsements required by the Contracting Officer.
- D. 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.
5. 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.
 6. It includes an insurer's waiver of rights of subrogation in favor of TVA, the United States, and their employees and agents.
 7. It states that it is primary, noncontributory insurance.
 8. It contains a severability of interest clause.
- H. 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.
- I. Contractor shall provide at least thirty (30) days written notice of cancellation, expirations, terminations, and material alterations of the insurance policies.
- J. 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. 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.
- K. 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.
- I. Should any of the work:
5. 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;
 6. 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;
 7. 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.

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8. 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.

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.

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

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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.

PREVAILING WAGE AND BENEFIT REQUIREMENTS FOR SERVICES CONTRACT EMPLOYEES

TVA has determined as a matter of policy that, except where TVA expressly determines otherwise, TVA contracts, for which the principal purpose is to provide services in the United States through the use of service employees, shall require compliance with the minimum compensation and related requirements of the Service Contract Act and the implementing regulations of the United States Department of Labor. In accordance with the Attachment, "Service Contract Labor Standards," Contractor shall, among other things, comply with the applicable provisions and procedures of the Service Contract Act, as amended, including, but not limited to, the minimum wage and benefit requirements thereof and any applicable wage determinations (including collective bargaining agreement provisions) attached hereto or referenced herein.

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 for 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.

QUALIFICATIONS OF CONTRACTOR'S PERSONNEL

TVA reserves the right to request from Contractor in writing, prior to assigning any personnel to perform services, individual's qualifications and relevant experience, and assignment shall be made thereafter only with TVA's written approval. Upon request, Contractor shall provide a record of qualifications and experience for any personnel to TVA.

Contractor shall be responsible for determining that all subcontractors and Contractor's personnel are qualified to perform their assigned work. Contractor shall not employ any person undergoing sentence of imprisonment at hard work, except those exceptions covered by Executive Order 11755. If it is determined that a subcontractor or Contractor's personnel fail to meet TVA's qualifications, performance requirements, or for any other reason fails to meet the standards established in this Contract, TVA reserves the right to direct Contractor to discontinue the services of such subcontractor or personnel. TVA shall not be required to provide Contractor or Contractor's

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personnel with any justification for such action. TVA further reserves the right to require Contractor, at no cost to TVA, to review any work provided by such unqualified personnel and, if such work is determined not to be in accordance with the standards established in this Contract, Contractor shall be responsible for reperforming such work at no additional cost to TVA. Notice to Contractor may be given either in writing or orally; if given orally, TVA shall confirm the oral notice in writing within five (5) working days.

TVA has in place an overall security system. Contractor shall become familiar with the security system requirements and ensure compliance by all of its employees. Contractor shall determine that each Contractor employee or subcontractor assigned to perform services at a TVA facility shall be required to undergo medical examination and security investigation as TVA may require. Contractor employees assigned to perform services who cannot work within any applicable medical restriction imposed, or who do not meet TVA's security requirements, or whose access to the site is denied or revoked, shall not be permitted to perform services for TVA.

Contractor will credit to TVA the expenses for Contractor employees who fail the specified security clearance requirements, the medical examinations, and/or fail to meet contractual requirements.

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.

RIGHTS TO TECHNICAL DATA

TVA shall have complete and unrestricted ownership rights to all documents, drawings, reports, computer software, and other work products generated, prepared, or provided to TVA by Contractor under this Contract, including the rights to use, copy or otherwise duplicate, disclose or display, modify, or prepare derivative works of such work products in any manner whatsoever and permit others to do the same. Upon request, Contractor shall assign to TVA all copyright ownership in work products produced under this Contract. Technical data and engineering techniques and computer software not generated, prepared, or provided under this Contract but utilized for work performed under this Contract shall remain the property of Contractor. However, Contractor shall continue to make available to TVA such technical data and techniques as required to maintain the integrity of work performed by Contractor, including any subsequent necessary modifications. Additionally, Contractor hereby agrees that third party licensed computer software that is not commercially available shall not be utilized for work under this Contract unless appropriate rights for TVA's continued utilization can be obtained at reasonable cost.

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.

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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.

SMALL BUSINESS SUBCONTRACTING

TVA is committed to increasing expenditures with small businesses and TVA contractors must upon request negotiate a subcontracting plan and make good faith efforts to meet the plan. Absent a negotiated plan, each contractor is encouraged to assist TVA in meeting the following goals.

*Small Business	30 percent of contract expenditures
Small Minority Business	10 percent of contract expenditures
Small Woman-Owned Business	10 percent of contract expenditures
HUB Zone Small Business	3 percent of contract expenditures
Small Veteran-Owned	3 percent of contract expenditures
Small Service-Disabled Veteran-Owned Business	3 percent of contract expenditures
Valley Business	73 percent of contract expenditures

*This goal includes subcontracts with the five listed categories of small businesses.

In order to include supplier contributions, Contractor shall report subcontract expenditures under this Contract with each of the above five business categories in such form and manner as required by TVA 15 days after the close of each calendar quarter and shall cooperate in any studies or surveys as TVA may require in order to determine compliance with the subcontracting plan. Contractor shall report data thru the web-based, online Subcontract Reporting System (SRS).

"Small Business" is defined in Title 13, Code of Federal Regulations (CFR), as amended, which contains detailed industry definitions and related procedures. For purposes of this condition, "Small Minority Business" shall have the same definition contained in 13 CFR, as amended, for "Small Disadvantaged Business." "Small Woman-Owned Business" is defined as a small business that is at least 51 percent owned by one or more women, and whose management and daily business are controlled and operated by one or more women. A "HUBZone" business is defined as a small business located in a historically underutilized business zone including economically depressed metropolitan areas, rural counties, or Indian reservations. "HUBZone Small Businesses" appear on the list of Qualified HUBZone Small Business Concerns maintained by the SBA. "Small Veteran-Owned Business" is defined as a small business that is at least 51 percent owned by one or more honorably discharged veterans, and whose management and daily business are controlled and operated by such veterans. "Small Service-Disabled Veteran-Owned Business" is defined as a small business that is at least 51 percent owned by one or more veterans with service-connected disability as defined in 38 USC 101(16), and whose management and daily business are controlled and operated by such veterans (or by the spouse or caregiver of a veteran with a permanent and severe disability).

Liquidated Damages for SMWOB Subcontracting Plan.

- A. Failure to make a good faith effort to comply with the subcontracting plan, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under this clause or willful or intentional action to frustrate the plan.
- B. If, at Contract completion, or in the case of a commercial products plan, at the close of the fiscal year for which the plan is applicable, Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph C of this clause that Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with this clause, Contractor shall pay TVA liquidated damages in an amount stated. The amount of damages attributable to Contractor's failure to comply shall be an amount equal to the actual dollar amount by which Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to government contracts by which Contractor failed to achieve each subcontract goal.
- C. Before the Contracting Officer makes a final decision that Contractor has failed to make such good faith effort, the Contracting Officer shall give Contractor written notice specifying the failure and permitting Contractor to

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demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that Contractor pay TVA liquidated damages as provided in paragraph B of this clause.

- D. With respect to commercial products plans, i.e., company-wide or division-wide subcontracting plans, the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial products plan.
- E. Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.
- F. Liquidated damages shall be in addition to any other remedies that the government may have.

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:

All Solicitations, Purchase Orders, or Contracts
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; All Solicitations and Contracts Over \$100,000
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:

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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.

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- 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;

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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.

TERMS OF PAYMENT - AFTER DELIVERY OR PERFORMANCE - FIXED PRICE

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 the designated Technical Contract Manager.

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

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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.

WARRANTY OF PROFESSIONAL SERVICES

- A. Contractor warrants that all services provided under this Contract shall comply with the Contract and shall be performed at least in accordance with prevailing professional standards. Contractor shall be held responsible for all services performed by Contractor's personnel under Contractor's supervision, including work performed in its home office, other offices, or at a specific TVA work location. It is expressly understood that the requirements of this subsection are also applicable to Contractor's subcontractors and that Contractor shall be solely responsible for compliance by its subcontractors.
- B. In the event Contractor fails to perform any services in accordance with warranty requirements, Contractor shall be responsible for the following:
 - 1) Contractor shall reperform such deficient services at no additional cost to TVA or, at TVA's election, shall refund to TVA the amounts paid for such services and all related services of which the defective or deficient services comprise a material part: and
 - 2) In addition, Contractor shall be responsible for the costs of such reanalysis, redesign, removal, and reconstruction (hereinafter called "rework") as may be required as a result of such deficient services; provided that, where Contractor's failure to perform its services in accordance with warranty requirements was not the sole cause requiring such rework, Contractor shall only be responsible for such costs in proportion to Contractor's fault.

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