

Tennessee Valley Authority

§ 1308.6

or duly authorized representative acting within the limits of the representative's authority. The TVA Purchasing Agent who administers a contract for TVA is designated as the duly authorized representative of the Director of Purchasing to act as Contracting Officer for all purposes in the administration of the contract (including, without limitation, decision of claims under the disputes clause). Such a designation continues until it is revoked or modified by written notice to the Contractor and the Purchasing Agent from TVA's Director of Purchasing.

(f) The term *Contractor* means a party to a TVA contract which contains a disputes clause. The term "Contractor" does not include TVA.

(g) The term *disputes clause* means a clause in a TVA contract requiring that a contract dispute be resolved through a TVA-conducted administrative process. It does not include, for example, arbitration provisions, or provisions specifying an independent third party to decide certain kinds of matters or special mechanisms to establish prices or price adjustments in contracts.

(h) The term *Hearing Officer* means a member of the Board who has been designated to hear and determine a particular matter pending before the Board.

(i) The term *TVA* means the Tennessee Valley Authority.

(j) A term defined as in a contract subject to this part shall have the meaning given it in the contract.

§ 1308.3 Exclusions.

(a) This part does not apply to any TVA contract which does not contain a disputes clause.

(b) Except as otherwise specifically provided, this part does not apply to any TVA contract entered into prior to March 1, 1979, or to any dispute relating to such a contract.

§ 1308.4 Coverage of certain excluded Contractors.

(a) A Contractor whose contract is excluded from this part under §1308.3(b) may elect to proceed under this part and the Act with respect to any dispute pending before a Contracting Officer on March 1, 1979, or initiated thereafter. If

the disputes clause in the contract is not an "all disputes" clause (*see Patton Wrecking & Dem. Co. v. Tennessee Valley Authority*, 465 F.2d 1073 (5th Cir. 1972)), a Contractor's election under this section shall cause the provisions of the first two sentences of section 6(a) of the Act to apply to the contract, and such an election shall be irrevocable.

(b) A Contractor makes an election under paragraph (a) of this section by giving written notice to the Contracting Officer stating that the Contractor elects to proceed with the dispute under the Act. For disputes pending on March 1, 1979, the notice shall be actually received by the Contracting Officer within 30 days after the Contractor receives the Contracting Officer's decision. For disputes initiated thereafter, the notice shall be included in the document first requesting a decision by the Contracting Officer.

§ 1308.5 Interest.

TVA shall pay a Contractor interest on the amount found to be due on a claim:

(a) From the date payment is due under the contract or the Contracting Officer receives the claim, whichever is later, until TVA makes payment;

(b) At the rate payable pursuant to section 12 of the Act on the date from which interest runs pursuant to paragraph (a) of this section.

§ 1308.6 Fraudulent claims.

(a) If a Contractor is unable to support any part of a claim and it is determined that such inability is attributable to the Contractor's misrepresentation of fact or fraud, the Contractor shall be liable to TVA, as set out in section 5 of the Act, for:

(1) An amount equal to the unsupported part of the claim; plus

(2) All TVA's costs attributable to reviewing that part of the claim.

(b) The term "misrepresentation of fact" has the meaning given it in section 2(7) of the Act.

(c) Prior to TVA's filing suit for amounts due under this section, TVA shall provide the Contractor with a copy of any opinion under §1308.16 or §1308.37(b), and shall request the Contractor to pay voluntarily the amount TVA asserts is due to it.

§ 1308.7

(d) A determination by TVA that fraud or misrepresentation of the fact has been committed is not subject to decision under a disputes clause.

(e) The provisions of this section are in addition to whatever penalties or remedies may otherwise be provided by law.

§ 1308.7 Effective date.

Subject to §1308.3(a), this part applies to any TVA contract having an effective date on or after March 1, 1979.

Subpart B—Contracting Officers

§ 1308.11 Contractor's request for relief.

Any request for relief which a Contractor believes is due under a contract shall be submitted to the Contracting Officer in writing, in accordance with the terms of the contract, including applicable time limits.

§ 1308.12 Submission and decision of Contractor's claim.

(a) If Contractor and TVA are unable to resolve Contractor's request for relief by agreement within a reasonable time, Contractor may submit a claim to the Contracting Officer.

(b) The Contracting Officer shall issue a decision to the Contractor on a submitted claim in conformity with the contract's disputes clause. Specific findings of fact are not required, but may be made. Such findings are not binding in any subsequent proceeding except as provided in §1308.15. The decision shall:

- (1) Be in writing;
- (2) State the reasons for the decision reached;
- (3) Include information about the Contractor's rights of appeal under sections 7 and 10 of the Act (including time limits); and
- (4) Notify the Contractor, as appropriate, of the special procedures available under §§1308.35 and 1308.36 at the Contractor's election. A copy of the provisions of this part shall be furnished with the decision.

§ 1308.13 Time limits for decisions.

(a) If a submitted claim involves \$50,000 or less, the Contracting Officer shall issue the decision within 60 days

18 CFR Ch. XIII (4-1-07 Edition)

from actual receipt of the claim. If a submitted claim involves more than \$50,000, the Contracting Officer within 60 days from actual receipt shall either issue a decision or notify the Contractor of the date by which a decision shall be rendered, which shall be within a reasonable time. The Contracting Officer shall not be deemed to be in "actual receipt" of a claim until the claim meets all requirements of §1308.2(c).

(b) The Contracting Officer shall issue a decision within any time limits set by an order under §1308.24. If a Hearing Officer grants a stay of an appeal pursuant to §1308.25, the Contracting Officer shall issue a decision within any time limits specified by the stay order, or within a reasonable time after receipt of the stay, if it sets no time limits.

(c) As used in this subpart, the reasonableness of a time period depends on the amount or kind of relief involved and complexity of the issues raised, the adequacy of the Contractor's supporting data, contractual requirements for auditing of Contractor's cost or other data, and other relevant factors.

§ 1308.14 Request for relief by TVA.

When TVA believes it is due relief under a contract, the Contracting Officer shall make a request for relief against the Contractor, and shall attempt to resolve the request by agreement. If agreement cannot be reached within a reasonable time, the Contracting Officer shall issue a decision which complies with the requirements of §1308.12(b).

§ 1308.15 Finality of decisions.

A decision by a Contracting Officer under the disputes clause of a contract subject to this part is final and conclusive and not subject to review by any forum, tribunal, or Government agency unless an appeal or suit is timely commenced under this part or section 10(a) (2) and (3) of the Act.

§ 1308.16 Decisions involving fraudulent claims.

If a Contracting Officer denies any part of a Contractor's claim for lack of support, and the Contracting Officer is of the opinion that the Contractor's inability to support that part of the