

**PART 1316—GENERAL CONDITIONS
AND CERTIFICATIONS FOR IN-
CORPORATION IN CONTRACT
DOCUMENTS OR ACTIONS**

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AUTHORITY: 16 U.S.C. 831-831dd.

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Subpart A—General Information

§ 1316.1 Applicability.

This part sets out the text of certain conditions and certifications which may be included by reference in certain TVA contract documents or actions. The provisions set out in this part are not automatically incorporated in all TVA actions.

**Subpart B—Text of Conditions and
Certifications**

**§ 1316.2 Affirmative action and equal
opportunity.**

When so indicated in TVA contract documents or actions, the following clause is included by reference in such documents or actions:

**AFFIRMATIVE ACTION AND EQUAL
OPPORTUNITY**

(a) To the extent applicable, contract incorporates the following provisions: “Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era” clause, 41 CFR 60-250.4; the “Affirmative Action for Handicapped Workers” clause, 41 CFR 60-741.4; and the “Equal Opportunity” clause, 41 CFR 60-1.4. Contractor complies with applicable regulatory requirements, including information reports and affirmative action programs.

(b) *Certification of Nonsegregated Facilities:*

(1) By submission of its offer, the offeror certifies that it does not and will not maintain or provide for employees any segregated facilities at any of its establishments, and that it does not and will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract.

(2) As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, or housing facilities provided to employees which are segregated by explicit directive or are in fact segregated on the basis of race, religion, color, or national origin, because of habit, local custom, or otherwise.

(3) Contractor further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) identical certifications will be obtained from proposed subcontractors prior to the award of subcontractors exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that it will retain such certifications in its files; and that it will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

Notice to Prospective Subcontractors of Requirement for Certifications of Nonsegregated Facilities. A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provision of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (*i.e.*, quarterly, semiannually, or annually).

(4) NOTE: The penalty for making false statements in offers is prescribed in Title 18 U.S.C. 1001.

(End of clause)

§ 1316.3 Anti-kickback procedures.

When so indicated in TVA contract documents or actions, the following clause is included by reference in such documents or actions:

ANTI-KICKBACK PROCEDURES

Contractor shall comply with the following:

(a) *Definitions.* As used in this clause, terms shall have the meanings defined in the

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Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act).

(b) The Act prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to TVA or in the contract price charged by the subcontractor to a prime contractor or higher tier subcontractor.

(c)(1) Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in section (b) of this clause in its own operations and direct business relationships.

(2) When Contractor has reasonable grounds to believe that a violation described in section (b) of this clause may have occurred, Contractor shall promptly report in writing the possible violation. Such reports shall be made to the TVA Inspector General.

(3) Contractor shall cooperate fully with TVA or any other Federal agency investigating a possible violation described in section (b) of this clause.

(4) (i) Regardless of the contract tier at which a kickback was provided, accepted, or charged under the contract in violation of section (b) of this clause, the Contracting Officer may—

(A) Offset the amount of the kickback against any monies owed by TVA under this contract; and/or

(B) Direct that Contractor withhold from sums owed the subcontractor the amount of the kickback.

(ii) The Contracting Officer may order that monies withheld under subsection (c)(4)(i)(B) of this clause be paid over to TVA unless TVA has already offset those monies under subsection (c)(4)(i)(A) of this clause. In the latter case, Contracting shall notify the Contracting Officer when the monies are withheld.

(5) Contractor agrees to incorporate the substance of this clause, including this subsection (c)(5), in all subcontracts under this contract.

(End of clause)

§ 1316.4 Buy American Act supply contracts.

When so indicated in TVA contract documents or actions, the following clause is included by reference in such documents or actions:

BUY AMERICAN ACT SUPPLY CONTRACTS

(a) In TVA's acquisition of end products, the Buy American Act (41 U.S.C. 10a-10d) provides that preference be given to domes-

tic end products. A domestic end product means:

(1) An unmanufactured end product which has been mined or produced in the United States; and

(2) An end product manufactured in the United States if the cost of components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

(b) Contractor agrees that there will be delivered under this contract only domestic end products, except end products:

(1) Which are for use outside the United States;

(2) Which TVA determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(3) As to which TVA determines the domestic preference to be inconsistent with the public interest; or

(4) As to which TVA determines the cost to be unreasonable.

(End of clause)

§ 1316.5 Clean Air and Water Acts.

When so indicated in TVA contract documents or actions, the following clause is included by reference in such documents or actions:

CLEAN AIR AND WATER ACTS

(a) If performance of this contract would involve the use of facilities which have given rise to a conviction under section 113(c)(1) of the Clean Air Act (42 U.S.C. 7413) or section 309(c) of the Federal Water Pollution Control Act (33 U.S.C. 1319), offeror shall include in its offer a statement clearly setting forth the facts and circumstances of said conviction and shall list the facilities which gave rise to said conviction. If no such statement is submitted, submission of an offer constitutes certification by the offeror that performance of this contract will not involve the use of facilities which have given rise to a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Federal Water Pollution Control Act. As used in this clause "facilities" shall have the meaning set forth in 40 CFR 15.4.

(b) TVA will not award a contract to any offeror whose performance would involve the use of any facility or facilities which have given rise to a conviction as set forth in paragraph (a) of this clause except to the extent TVA, in its sole judgment, determines that such contract is exempt at the time of contract award from the provisions of 40 CFR part 15 as set forth therein.

(c) A condition of award of this contract is that contractor shall notify the Contracting