

§ 1308.3

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*

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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.

(d) A determination by TVA that fraud or misrepresentation of the fact