

§ 1316.4

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-

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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

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Officer in writing of the receipt of any communication from the U.S. Environmental Protection Agency (EPA) indicating that a facility to be utilized for this contract is under consideration to be listed on the EPA List of Violating Facilities. Prompt notification shall be required prior to contract award.

(End of clause)

§ 1316.6 Discrimination on the basis of age.

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

DISCRIMINATION ON THE BASIS OF AGE

Executive Order 11141, 3 CFR, 1964-1965 Comp., p. 179, states that it is the policy of the Executive Branch of the United States that: Contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement; and that contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(End of clause)

§ 1316.7 Drug-free workplace.

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

DRUG-FREE WORKPLACE

(a) *Definitions.* As used in this provision:

Controlled substance means a controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulations at 21 CFR 1308.11 through 1308.15

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

Criminal drug statute means a Federal or non-Federal criminal statute involving the

manufacture, distribution, dispensing, possession, or use of any controlled substance.

Drug-free workplace means a site, including TVA premises, for the performance of work done in connection with a specific contract at which employees of Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

Employee means an employee of a contractor directly engaged in the performance of work under a Government contract.

Individual means an offeror/contractor that has no more than one employee, including the offeror/contractor.

(b) *Offerors Other than Individuals.* By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds \$25,000, certifies and agrees that, with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will—

(1) Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish a drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this section;

(4) Notify such employees in the statement required by paragraph (b)(1) of this section that, as a condition of continued employment on the contract resulting from this solicitation, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer within 10 days after receiving notice under paragraph (b)(4)(ii) of this section from an employee or otherwise receiving actual notice of such conviction;

(6) Within 30 days after receiving notice under subsection (b)(4) of this section of a conviction, impose the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: