

**VIRGIN ISLANDS WATER AND POWER AUTHORITY
PROFESSIONAL GENERAL CONTRACT TERMS**

TABLE OF CONTENTS

CLAUSE NO.

1. DEFINITIONS
2. GENERAL STATEMENT OF RESPONSIBIITY OF CONTRACTOR
3. COMMENCEMENT, PROSECUTION AND COMPLETION OF PROJECT
4. PERMITS AND RESPONSIBILITY FOR WORK ETC.
5. ACCESS TO WORK IN PROGRESS
6. PROGRESS REPORTS AND WORKING SCHEDULES
7. CHANGES
8. SUSPENSION OR INTERRUPTION OF WORK
9. A. TERMINATION FOR DEFAULT
B. TERMINATION FOR CONVENIENCE
10. DELAY AND DAMAGES
11. CONTRACT PRICE
12. TERMS OF PAYMENT
13. COMPLIANCE WITH APPLICABLE LAW AND ACCEPTABLE PRACTICES
14. INSURANCE
15. INJURY AND DAMAGE CLAIMS
16. RIGHT TO AUDIT
17. CONTINGENT FEES
18. GRATUITIES
19. NOTICE

20. ENFORCEMENT

21. GOVERNING LAW

22. EFFECTIVE DATE OF CONTRACTS

23. ENTIRE AGREEMENT MODIFICATION

24. OTHER REQUIREMENTS

25. STANDARD OF CARE

26. FALSE CLAIMS

VIRGIN ISLANDS WATER AND POWER AUTHORITY PROFESSIONAL GENERAL CONTRACT TERMS

1. DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

- a. The term **“Work”** or **“Scope of Work”** shall mean all work described in the Specifications, Request for Proposals, Invitation or Bid or Contract and all requirements of these Professional General Contract Terms (including alterations made before the Contract was signed and changes provided for by Clause 10 hereof).
- b. The term **“Specifications”** shall mean the detailed description of, and requirements for, work to be performed, including all plans and drawings, which are a part of the Specifications.
- c. The term **“Authority”** shall mean the purchaser and owner of the Work, the Virgin Islands Water and Power Authority, or an authorized agent thereof.
- d. The term **“Contractor”** shall mean the successful bidder who had been awarded the Contract for the performance of the Work, and shall include his/her legal personal representatives, successors, and assigns.
- e. The term **“Contract”** shall mean the written agreement between the Authority and the Contractor.
- f. The term **“Site”** shall mean anywhere the work is required to be performed.
- g. The term **“Contracting Officer”** shall mean the Executive Director of the Authority and any other officer or employee who is properly designated and shall include, except as otherwise provided, the authorized representative of the Contracting Officer acting within the limits of his authority. The Contracting Officer shall not mean the Project Coordinator.

2. GENERAL STATEMENT OF RESPONSIBILITY OF THE CONTRACTOR

a. The Contractor shall perform the work in accordance with the terms of the Contract. This work includes all necessary services, the furnishing of all labor, materials, equipment, tools, supervision, transportation and insurance, except as otherwise provided. The obligation of the Contractor shall be deemed to carry with it the obligation to incur all items of necessary expense to perform the Work.

b. The Contractor shall be an independent contractor and shall have complete and undivided responsibility for complying with the Contract, including sole discretion for the means by which the Work is to be performed. Without any qualification of such undivided responsibility, the Contractor shall have the right to enter into such subcontracts, purchase orders, and other

commitments with third parties for the performance of any part of the Work, as may in his opinion be advantageous or necessary for the expeditious or economical prosecution of the Work. The Contractor shall not assign the Contract or any of his/her duties or responsibilities thereunder.

c. Any provisions of the Contract which appear to give the Authority the right to direct the Contractor as to the means by which the Work is to be performed, or to exercise any control over the Work shall mean that the Contractor shall be obliged to follow the desires of the Authority only as to the end results and shall not in any way modify or relieve the Contractor of his/her complete and undivided responsibility for the means by which the Work is to be performed.

d. All services performed or materials provided by Contractor under the Contract shall strictly comply with the terms, conditions, and requirements, and shall be done in a professional and workmanlike manner in accordance with the Contract.

e. Contractor shall be responsible for the professional quality, technical accuracy and timely completion of its services furnished under the Contract. Contractor shall, without additional compensation, and at its own cost and expense, correct or revise any errors, omissions or other deficiencies in the services.

3. COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK

a. The Contractor agrees to commence the Work promptly after receipt of a written Notice to Proceed from the Authority and to complete it no later than the Contract completion date.

b. The Contractor shall furnish and maintain during the performance of the Work, a competent resident supervisory representative who shall have the title of Project Manager: Provided that the Authority shall have the right to require the removal from the Site of any employee of the Contractor of any subcontractor if in the judgment of the Contracting Officer such removal is necessary to protect the interest of the Authority.

c. The Contract completion date shall be the date specified in the Contract, unless the parties have agreed to an acceptable later date, except that the completion date may be extended under Clauses 10 or 13 hereof. The Work shall be deemed to be completed upon acceptance by the Contracting Officer following written notification from the Contractor that the Work has been performed in accordance with the Contract scope.

4. LICENSES AND RESPONSIBILITY FOR WORK, ETC.

Contractor shall comply with all federal and local laws, codes or regulations, which apply to performance of the Work. Contractor shall secure at its own expense, all necessary license and certificates necessary to perform the Scope of Work.

5. ACCESS TO WORK IN PROGRESS

The work shall be performed at the Site or in the Contractor's office or at a location mutually satisfactory to both parties and such location shall not be changed without approval of the Project Coordinator. The Project Coordinator shall have access during the normal working hours where the Work is performed and to all of the data, calculations, models, test results, specimens and documents and any other matter related to the performance of the work scope of the contacts.

6. PROGRESS REPORTS AND WORKING SCHEDULES

The Contractor shall prepare monthly progress reports of the Work or such reports as required by the Project Coordinator. When requested by the Authority, the Contractor shall furnish the underlying documents used in the preparation of any progress report including, if applicable, estimated material and equipment, procurement, manufacturing, shipping, installation and construction schedules: Provided that if, in the judgment of the Contractor, furnishing copies would involve inordinate expense the Authority may be provided access to such document instead.

7. CHANGES

The Contracting Officer may at any time and without notice to the sureties issue a written request for changes in the Work if within its general scope. Within the time specified in the request but not later than thirty (30) days after its receipt, the Contractor shall submit an estimate of the effect of the changes, if any, upon the Contract price, the completion date, or other terms or conditions of the Contract. The changes shall not be put into effect, nor shall any work proceed, until ordered in writing by the Contracting Officer. Contractor's actions in proceeding with the changes to the scope of work without first securing written authorization from the Contracting Officer shall result in the legal presumption that shall be prima facie that the Contractor is not entitled to additional compensation. Compensation for changes to the scope of work, or extensions of the completion date because of changes, or other modifications of the Contract due to change shall be set forth in Contract change orders. Provided however, that disagreement between the parties on adjustments for changes shall not excuse the Contractor from proceeding with the prosecution of the Work as changed.

8. SUSPENSION OR INTERRUPTION OF WORK

a. The Contracting Officer may in writing, order the Contractor to suspend all or any part of the Work for such period of time as he may determine to be appropriate for the convenience of the Authority.

b. If without the fault or negligence of the Contractor the performance of all or any part of the Work is suspended or interrupted hereunder for any unreasonable period of time, the Contract price shall be adjusted for any increase in the cost of performing the Work excluding profit necessarily caused by such unreasonable period of suspension or interruption, and the Contract shall be modified in writing accordingly. Provided that a claim therefor shall be asserted in writing as soon as practicable after the termination of such adjustment or interruption; and

provided further that no adjustment shall be made to the extent that performance by the Contractor would have been prevented by other causes, even if the Work had not been so suspended or interrupted.

c. Paragraph b, above shall not be construed to apply to specific periods of delay or suspension for which advance provision has been made such as anticipated weather conditions.

9. A. TERMINATION FOR DEFAULT

- (i) If the Contractor shall commit a material breach or default of any of its covenants or obligations under the Contract and shall fail to commence to remedy the same within seven (7) work days after receipt of written notice thereof by the Authority, and also to proceed with due diligence to remedy the same and in all events, to remedy the same within ten (10) work days after such written notice, the Authority may terminate by fifteen (15) days written notice the Contractor's right to proceed with the Work or such part thereof as to which there has been a default. In such event, the Authority may take over the Work and prosecute same to completion by contract or otherwise and the Contractor and his sureties may be liable to the Authority for any excess cost occasioned the Authority thereby, and for damages inclusive of any excess cost occasioned by the Authority until such reasonable time as may be required for final completion of the Work. If the Contractor's right to proceed is so terminated, the Contractor shall provide so that the Authority can utilize in the completion of the Work such materials, data, reports, calculations, and information as has been compiled by Contractor in the performance of the Work which the Authority has previously paid for.
- (ii) If the Authority shall commit a material breach or default of any of its covenants or obligations under the Contract and shall fail to commence to remedy the same within seven (7) work days after receipt of written notice thereof by the Contractor, and also to proceed with due diligence to remedy the same and in all events, to remedy the same within ten (10) work days after such written notice, the Contractor may, by fifteen (15) days written notice to the Authority, terminate the Authority's right to proceed with the Work or such part thereof as to which there has been a default. In such event, the Authority may be liable for damages.
- (iii) Upon receipt of a termination notice, Contractor shall (a) promptly discontinue all Work to the extent directed; and (b) secure the Work site to avoid damage or injury to persons or property.

B. TERMINATION FOR CONVENIENCE

- (a) The Authority may, at any time, terminate the Contract for its convenience and without cause.

- (b) Upon receipt of written notice from the Authority of such termination for the Authority's convenience, the Contractor shall:
 - i. cease operations as directed by the Authority in the notice;
 - ii. take actions necessary, or that the Authority may direct for the protection and preservation of the Work;
 - iii. except for Work directed to be performed prior to the effective date of the termination stated in the notice, terminate all existing subcontracts and purchase order and enter into no further subcontracts and purchase orders.
- (c) In the case of such termination for Authority's convenience, the Contractor shall be entitled to receive payment for Work executed and reasonable costs incurred (as outlined in b (iii)) by reason of such termination. All materials, supplies and equipment purchased in connection with the scope of work shall, if and when paid for by the Authority, becomes the property of the Authority.

10. DELAYS AND DAMAGES

The Contractor shall not be liable for any failure or delay in the completion of the Work resulting from any cause beyond his control and without his fault or negligence, including but not restricted to, compliance with any instructions or priority requests of the Federal Government or any agency thereof, or the Government of the Virgin Islands, acts of God, acts of the public enemy, acts or omissions of the Authority or its agents, acts of another contractor in the performance of a contract with the Authority, fires, floods, epidemics, unusually severe weather, strikes, lockouts, embargoes, wars, riots, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault of or negligence of both the Contractor and such subcontractors and suppliers: Provided, that the Contractor shall within 10 days from the beginning of any such delay, unless the Contracting Officer shall grant a further period of time prior to the date of final settlement of the Contract, notify the Contracting Officer in writing of the delay and causes of delay: and provided, further, that the Contractor shall be excused for delays of suppliers only if the Contracting Officer shall determine that the materials or supplies to be furnished are not procurable in the open market. Any excusable failure or delay hereunder shall extend the Contract completion date accordingly, upon agreement by the Authority, but shall not affect any of the other terms or conditions of the Contract.

11. CONTRACT PRICE

The Work shall be performed for the Contract price. This Contract price shall be subject to change only in accordance with Clauses 12 hereof and shall be inclusive of all duties, fees, and levies, and all taxes imposed with respect to the performance of the Work.

12. TERMS OF PAYMENT

- (1) Payments will be in accordance with the following:
 - a. The total number of increments of progress payments Work shall not exceed 6. Each increments of Work shall equal the Contract price.
 - b. Progress payments will be made within thirty (30) days after the issuance of a Certificate of Acceptance by the Project Coordinator of an itemized and duly certified invoice issued by the Contractor based upon completion of each increment of Work as listed under paragraphs 2 herein.
 - c. In making such partial payments there shall be retained ten percent (10%) on the invoiced amount until final completion and acceptance of the Work: Provided, however, that the Contracting Officer at any time after fifty percent (50%) of the Work has been completed, may approve the payment of any of the remaining partial payments in full.
 - d. All material and work covered by partial payments made shall thereupon become the sole property of the Authority, but the provisions shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work or as a waiver of the right of the Authority to require the fulfillment of all the terms of the Contract.
- (2) Upon completion and acceptance of the Work, the amount due the Contractor under this Contract will be paid upon the presentation of a properly executed and duly certified invoice thereof. The Contractor shall furnish the Authority with a release, if required, of all claims against the Authority arising under and by virtue of the Contract, other than such claims, if any, as may be specifically excepted by the Contractor from the operation of the release in stated amounts to be set forth therein.

The obligation of the Authority to make any of the payments required under the Contract shall, in the discretion of the Contracting Officer, be subject to (i) workmanship, (ii) any claims, which the Authority may have against the Contractor and (iii) satisfaction of payment obligations to subcontractors or third party's making claims against Contractor with regard to the performance of the Scope of Work. Any overpayment to the Contractor shall, unless otherwise adjusted, be repaid to the Authority upon demand.

- (3) Upon presentation of a request for payment, Contractor shall provide a statement of payments made or owed to all subcontractor(s), which statement shall be independently verified by the subcontractor(s). The Authority reserves the right to withhold payments to Contractors that fail to satisfy subcontractor claims(s).

13. COMPLIANCE WITH APPLICABLE LAWS AND ACCEPTED PRACTICES

a. The Contractor shall comply strictly with all federal and local laws, codes, and regulations.

b. Should any amendments or additions to territorial laws, codes, or regulations subsequent to the date of advertisement for bids affect any designs or requirements set forth in the Work so as to increase the Contract price or extend the Contract completion date, such amendments or additions shall be deemed to be changes within the meaning of Clause 7 hereof.

14. INSURANCE

The Insurance requirements are as set forth in the attached Exhibit A

15. INDEMNIFICATION FOR INJURY AND DAMAGE CLAIMS

(a) Contractor shall indemnify, defend, and hold the Authority and its servants, employees and agents harmless against any and all claims, damages, injuries, suits, actions, causes of action for damages or alleged damages, orders, judgments, expenses, costs, and attorney's fees, arising after the commencement of the contract, brought for damages or alleged damages arising out of any injury or loss of life, claim or demand of any person or property in any way connected with or arising out of the performance of the work. It is the intention and express agreement of the parties that the Authority shall not be liable for any bodily or personal injuries, loss of life or damage, to Contractor, its servants, employees, agents, invitees, or to Contractor's subcontractors, subcontractor employees, agents, or invitees, or to any other person, or property of Contractor, irrespective of how the same may be caused, whether from action of the elements, or acts of negligence of the Authority, its employees or agents, the Contractor, its servants, employees, agents, or invitees, or the Contractor's subcontractors, subcontractor employee, agents and invitees. It is the intention of the parties that this paragraph shifts the cost of all insurance, whether benefitting Contractor or the Authority, or both, to the Contractor.

(b) If the Authority is sued for acts arising out of those set out in (a) above, the Contractor shall promptly accept the tender of defense made by the Authority, as a condition of this contract.

(c) It is further the intention of the parties, that Contractor, its servants, employees, agents, and its carrier will not look to or require the Authority to contribute to any settlement.

(d) Notwithstanding any other provisions of this Agreement to the contrary, neither the Authority or Contractor shall be liable whether in contract, tort (including negligence), strict liability, products liability, indemnity, contribution, or any other cause of action for punitive, special, indirect, incidental or consequential losses or damages, including loss of profits, use, opportunity, revenues, financing, bonding capacity, or business interruptions; provided that the limitation of liability set forth in this Section shall not apply to Contractor's: (i) indemnity obligations with respect to Third-Party Claims, (ii) willful misconduct, and/or (iii) gross negligence. "Third-Party Claim" means a claim by any person other than (i) a Party or (ii) person

providing or receiving indemnity under this Contract.

16. RIGHT TO AUDIT

Contractor shall establish and maintain a reasonable accounting system that enables the Authority to readily identify Contractor's assets, expenses, costs of goods, and use of funds. The Authority shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of the Contractor, including, but not limited to those kept by the (Contractor), its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

Contractor shall, at all times during the term of this Agreement and for a period of five years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials. The Contractor shall at any time requested by the Authority, whether during or after completion of this Agreement, and at Contractor's own expense make such records available for inspection and audit (including copies and extracts of records as required) by the Authority along with an adequate workspace and access to photocopying machines. Such records shall be made available to the Authority during normal business hours at the Contractor's office or place of business and subject to a three-day written notice/without prior notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for the Authority.

Contractor shall ensure the Authority has these rights with Contractor's employees, agents, assigns, successors, and subcontractor, and the obligation of these rights shall be explicitly included in any subcontracts or agreements formed between the Contractor and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Contractor's obligations to Authority.

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the Authority unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Contractor to the Authority in excess of one-half of one percent (.5%) of the total contract billings, the Contractor shall reimburse the Authority for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, the Authority may recoup the costs of the audit work from the Contractor. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a

reasonable amount of time (not to exceed 90 days) from presentation of the Authority's findings to Contractor.

17. CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract nor is there any agreement or understanding for a commission, percentage, brokerage, or contingent fees, in connection with obtaining this contract. For breach or violation of this provision the Authority shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract price, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

18. GRATUITIES

The Authority may, by written notice to the Contractor, terminate this Contract if it is found by the Authority, after notice and hearing, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative thereof, to any officer or employee of the Authority with a view towards securing the Contract or securing favorable treatment with respect to the performance of such Contract. The Authority's findings hereunder shall be conclusive.

In the event this Contract is terminated pursuant to this paragraph, the Authority shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and (ii) as a penalty, in addition to any other damages to which the Authority is entitled by law, to exemplary damages in an amount (as determined by the Authority) which shall not be less than three nor more than ten times the costs incurred or paid by the Contractor in providing any such gratuities to any such officer or employee.

The rights and remedies of the Authority under this provision shall not be exclusive and are in addition to any other remedies provided by law or under this Contract.

19. NOTICE

Any notice which shall be required to be given under the Contract shall be in writing in duplicate, mailed in a postage prepaid wrapper, registered and addressed, in the case of the Contractor to his home office, and in the case of the Authority to the Contracting Officer.

20. ENFORCEMENT

The failure of either party to enforce at any time any of the provisions of the Contract or any rights in respect thereto, or to exercise any option herein provided, shall not be construed to constitute a waiver of such provision, right or option or in any way effect the validity of the contract or the obligation and responsibilities of the parties thereto. The exercise by either party of any of its right or options herein shall not preclude or prejudice either party from exercising any other right it may have.

21. GOVERNING LAW

The laws of the Virgin Islands shall govern the interpretation and construction of the Contract to the extent applicable, otherwise the laws of the State of New York shall be the governing. The Authority shall not invoke the defense of sovereign immunity in any litigation arising under the Contract.

22. EFFECTIVE DATE

The Contract shall become effective retroactive to the date of signature by the authorized representative of the Contractor or the Authority, whichever is later, which later date shall be the effective date of the Contract.

23. ENTIRE AGREEMENT: MODIFICATION

The Contract constitutes the entire agreement between the parties. The Contract may not be amended or modified except by an instrument in writing signed by duly authorized representatives of the parties.

24. OTHER REQUIREMENTS

All of the reports, information, data, studies, reports, memoranda documents, etc., prepared or assembled by Contractor pursuant to the Work are confidential and Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the Authority.

All documents and data, written or otherwise generated by Contractor under the Contract including original drawings, estimates, reports, specifications, calculations, field notes, data, etc., and work product are to become the property of and shall be delivered to the Authority. Contractor to retain once reproducible copy of these documents generated by the Contractor.

Contractor shall remove from the Work any person assigned thereto who is deemed by the Authority to be objectionable and shall indemnify and hold harmless the Authority regarding any claim arising out of such action. Contractor shall not remove or reassign its Project Manager in charge of the Work or its other key personnel designated in the Contract without the prior approval of the Authority unless such person is no longer employed by the Contractor.

25. STANDARD OF CARE

The standard of care applicable to Consultant's services will be the degree of skill and diligence normally practiced by professionals or consultants performing same or similar services.

26. FALSE CLAIMS

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, the Virgin Islands Water and Power Authority, or any officer, department, board, commission, or other agency thereof, knowing such claim to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is an offense under Virgin Island law.