



Memorandum from the Office of the Inspector General

July 31, 2007

Paul R. LaPointe, WT 3A-K

**FINAL REPORT – INSPECTION 2007-506I – REVIEW OF NON-COMPETE  
CONTRACTS**

Attached is the subject final report for your review and action. As discussed with your staff, the subject report is being issued in presentation format. Your staff's informal comments to the draft report have been incorporated in the final report. Please advise us of your planned actions in response to our findings within 60 days of the date of this report.

Information contained in this report may be subject to public disclosure. Please advise us of any sensitive information in this report which you recommend be withheld.

If you have any questions, please contact Michael A. Driver, Project Manager, at (423) 751-8158 or Gregory C. Jaynes, Deputy Assistant Inspector General, Inspections, at (423) 751-7821. We appreciate the courtesy and cooperation received from your staff during the audit.

Ben R. Wagner  
Deputy Inspector General  
ET 3C-K

HRK:BKA

Attachment

cc (Attachment):

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OIG File No. 2007-506I



# Review of Non-Compete Contracts

2007-506I  
July 31, 2007



# Table of Contents

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- ◆ Summary
- ◆ Background
- ◆ Objective and Scope
- ◆ Methodology
- ◆ Finding 1: Incomplete Documentation
- ◆ Finding 2: Adequacy of the Justification
- ◆ Finding 3: Classification Issues
- ◆ Recommendations



# Summary

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Our objective was to determine whether TVA non-competed contracts are issued and administered in compliance with TVA policies and procedures, including assessing the justification for the non-competed contract award.

In summary, we selected 52 non-compete contracts for review and found:

- ◆ Two could not initially be located for review and seven did not have Form 17388 and/or the appropriate Notification/Approval required by TVA policies and procedures.
- ◆ Three of the contracts reviewed did not appear to have an appropriate justification as outlined in Section 9 (b) of the TVA Act and INSTRUCTION 1, Business Practice 9 (BP9), Implementing Procedures.
- ◆ Multiple contracts, which are not governed by BP9, are classified under a justification that does not apply to the contract.



# Background

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- ◆ Section 9 (b) of the TVA Act generally requires competition for purchases and contracts for supplies and services. The following provides procurement guidance for TVA personnel:
  - BP9 outlines TVA’s policy related to competition. The objective of BP9 is to support TVA’s goals and lower the total cost of acquired goods and services.
    - ◆ According to INSTRUCTION 1, BP9, Implementing Procedures, titled Management of TVA’s Supply Chain Process, “The instruction also provides for more consistent control and oversight of existing contracts through better contract management and reemphasizes Procurement’s responsibility for ensuring TVA obtains the best value for its contracts.”
  - The Technical Contract Manager User Guide (TCMUG) was developed “to provide all TVA Technical Contract Managers (TCM’s) with guidelines to assist them in performing their duties involving TVA’s Supply Chain activities.”
- ◆ According to INSTRUCTION 1, BP9, Implementing Procedures, “it is TVA’s Policy to complete all of its purchase orders/contracts for material, equipment, supplies, and services, including consultant and professional services.”
  - TVA defines competition as soliciting proposals from two or more businesses that can satisfy a requirement.



# Background (continued)

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- The level of competition should be sufficient to ensure TVA obtains the best value from its purchase.
- The requirement to obtain competition includes contract amendments that are outside the scope of the original contract.
- ◆ PassPort is the TVA system used for supply chain management.
- ◆ Under TVA Policy, requisitioners are required to justify any requested non-competitive contract or revision/amendment outside the scope of the original contract.
- ◆ Form 17388, Request for Approval Non-Competed Contracts or Supplements, is to be used to justify non-competed contracts and obtain appropriate levels of management approval.



# Background (continued)

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- ◆ The head of each major organization (Level 1) must be notified prior to award of any contract greater than \$1 million or cumulative amendments exceeding \$1 million. The TVA Board of Directors must be notified prior to award of any Consulting contracts greater than \$25,000 or cumulative amendments exceeding \$25,000.
- ◆ Acceptable justifications for a non-competed contract or contract amendment are as follows:
  - Emergency procurements – contracts that protect property or life from destruction, or return a critical operating unit from a forced outage.
  - Small dollar procurements - contracts under \$25,000 where the benefit expected to be derived from competition would not exceed the cost of the competitive process.
  - Single and sole source procurements<sup>1</sup> – contracts that occur when only one supplier or manufacturer has the knowledge, expertise, experience, and capability to perform the given task.
  - Supplemental contract/amendments – contracts that include the procurement of materials, equipment parts, or services which, because of a particular circumstance, are available from only one source. Examples would be specific parts or services required to keep warranties in effect, purchase of brick to match brick already installed, or equipment that must match installation specifications for previously used equipment.

<sup>1</sup>Sole source terminology was discontinued in 2002 based on the terminology used in BP9. BP9 refers to this type of contract as a single source contract.



# Background (continued)

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- Federal Supply Schedule (FSS) procurements – FSS contracts awarded by the General Services Administration.<sup>2</sup>
- Interagency Agreements – procurements from other government entities.<sup>2</sup>
- ◆ We included in our Fiscal Year 2007 Inspection Plan a review of non-compete contracts to assess whether TVA non-competed contracts are issued and administered in compliance with TVA policies and procedures.
  - As of February 2007, there were 3,840 non-compete contracts in the PassPort database.
  - For testing purposes, we excluded FSS and Interagency contracts along with contracts with a status of closed, complete, review, terminated, or history as of December 31, 2006.
    - ◆ The resulting population included 873 contracts.
    - ◆ The contract population with a determinable contract amount had a value of over \$1.4 billion.<sup>3</sup>
    - ◆ Contracts included in the population began as early as 1968 and do not expire until 2049.
    - ◆ There are 121 contracts with an undetermined contract value<sup>4</sup> and 100 with an undetermined contract end date.

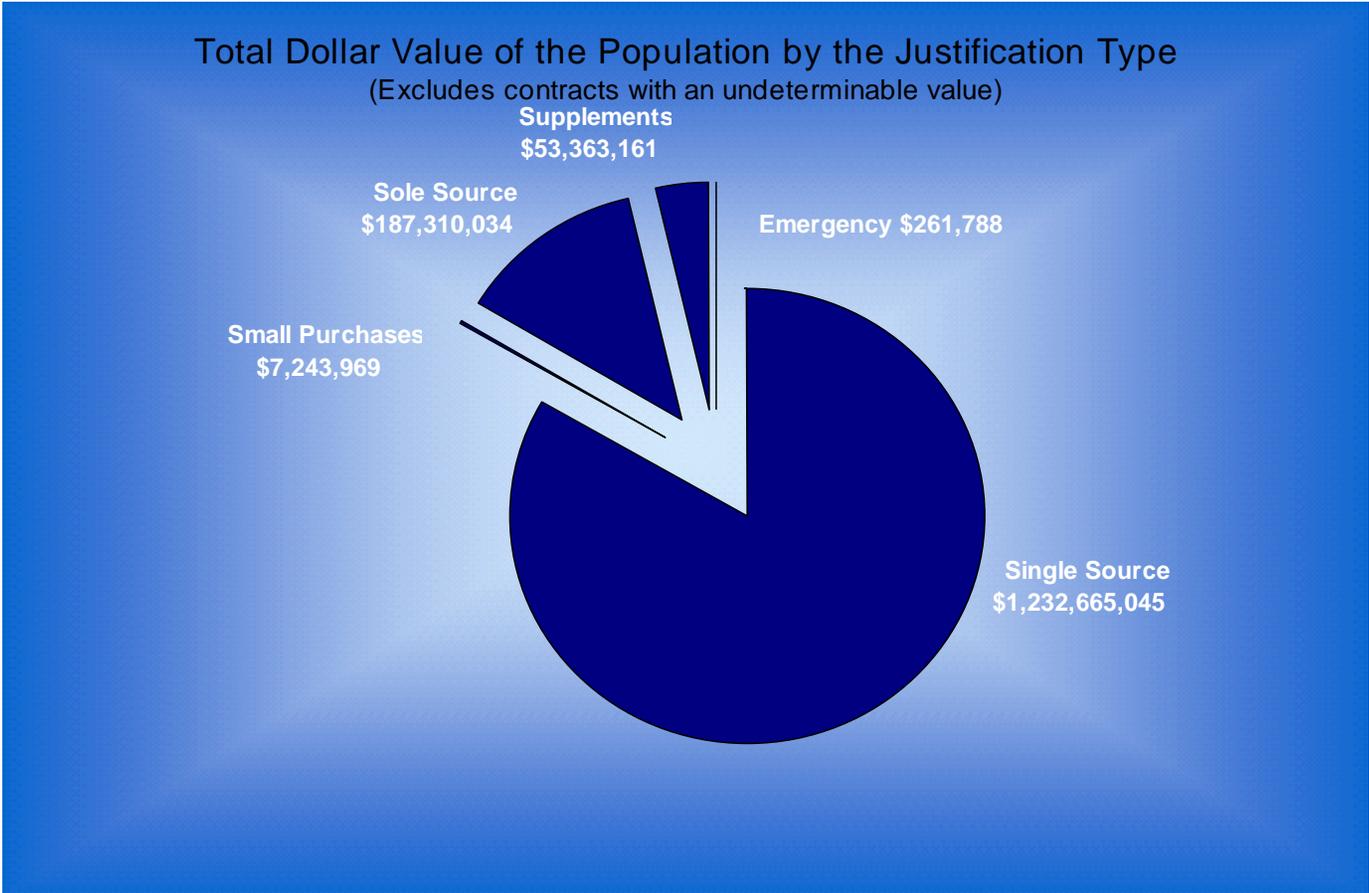
<sup>2</sup>We have excluded federal supply schedule and interagency agreements procurements from our scope.

<sup>3</sup>Contract amount based on data in PassPort.

<sup>4</sup>Amended contract values listed as \$999,999,999.00 were considered undetermined. In addition, utility contracts with the amended contract values of \$99,999,999 and \$999,001,289 were also considered undetermined.



# Background (continued)



# Objective and Scope

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## **Objective:**

The objective of our review was to determine whether TVA non-competed contracts are issued and administered in compliance with TVA policies and procedures, including assessing the justification for the non-competed contract award.

## **Scope:**

Our population included non-competed contracts classified as emergency, sole source, single source, small dollar procurements, and supplements that had a status of approved, pending, or issued as of December 31, 2006. A sample size of 52 contracts was selected.



# Methodology

## Methodology:

To achieve our objective, we:

- Gained an understanding of the key process and control activities related to the awarding of non-compete contracts by:
  - ◆ Reviewing TVA policies and procedures applicable to non-compete contracts.
  - ◆ Interviewing TVA Procurement personnel.
- Used PassPort data to judgmentally select a sample of 52 contracts for review. Specifically, we:
  - ◆ Assessed compliance with TVA policies by determining if (1) Form 17388 was completed and approved as required and (2) the required non-compete justification was in accordance with prescribed guidelines.
  - ◆ Reviewed the (1) terms of the contract, (2) amendments, and (3) other information included in the contract file to assess the appropriateness of the documented justification.
  - ◆ Interviewed contract managers to attain additional information related to the selected non-compete contracts.

The selected sample consisted of the following justifications:

Justification of Contract	Number Selected in Sample	Original Contract Amount	Amended Contract Amount
Single/Sole Source	33	\$ 59,007,327	\$ 119,262,656
Small Purchase	16	\$ 320,372	\$ 2,041,899
Supplement	3	\$ 569,080	\$ 5,004,010
<b>Total</b>	<b>52</b>	<b>\$ 59,896,779</b>	<b>\$ 126,308,565</b>



# Methodology (continued)

The sample included the following types of contracts:

Type of Contract	Number Selected in Sample	Original Contract Amount	Amended Contract Amount
AP Miscellaneous	3	\$ 153,000	\$ 153,000
Broker Agreement	2	\$13,000,000	\$ 16,000,000
Contract with Credit Card Payments	1	\$ 5,000	\$ 64,000
Engineered Equipment	4	\$22,539,600	\$ 65,653,769
Sales/Revenue	1	\$ -	\$ -
Licensing Agreement	2	\$ 344,999	\$ 3,649,910
Loan/Lease Agreement	1	\$ 391,478	\$ 2,154,576
Membership Subscription	2	\$ 6,050,000	\$ 6,050,000
Professional Services	17	\$ 7,438,632	\$ 20,541,120
Service Contract	19	\$ 9,974,070	\$ 12,042,190
<b>Total</b>	<b>52</b>	<b>\$59,896,779</b>	<b>\$126,308,565</b>

This inspection was conducted in accordance with the “Quality Standards for Inspections.”



# Finding 1: Incomplete Documentation

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- ◆ For the 52 contracts selected for review, (1) 2 of the contracts and associated files could not initially be located and (2) 7 did not have Form 17388 and/or the appropriate Notification/Approval required by TVA policies and procedures.
  - Of the 52 contracts in our sample, 2 contracts could not be attained during the course of our review.
    - ◆ We were informed by the responsible contract manager that the contracts may have been sent to be entered into Electronic Document Management System (EDMS). However, these contracts could not be located by the EDMS Group.
    - ◆ Procurement management stated that files are sent to EDMS upon completion. However, neither of these contracts have reached the end date indicated in PassPort.
    - ◆ One of these contracts was found in storage after our initial review was complete.
  - Of the contracts reviewed, 7 were lacking the required Form 17388, and 2 were lacking the appropriate Notifications/Approvals. Both Form 17388 and a required Notification/Approval were missing from the contract file for 2 of the contracts we reviewed.
  - Although management and the form itself states that Form 17388 is not required for contracts under \$25,000, the TCMUG requires that the form be completed for all non-compete contracts.
    - ◆ Our sample included 16 contracts that were classified as small dollar purchases. None of these contracts included an initial Form 17388.



# Finding 1: Incomplete Documentation (continued)

- The following chart shows that contracts with a single/sole source justification had the most documentation issues.

Justification of Contract	Number of Discrepancies	Original Contract Amount	Amended Contract Amount
Single/Sole Source	5	\$ 2,029,705	\$ 8,941,124
Small Purchase	1	\$ 20,000	\$ 400,000
Supplement	1	\$ 195,000	\$ 1,325,000

- The following chart shows that the type of contracts with the most documentation issues were Professional Service.

Type of Contract	Number of Discrepancies	Original Contract Amount	Amended Contract Amount
Professional Services	5	\$ 2,029,705	\$ 8,941,124
Services	2	\$ 215,000	\$ 1,725,000



# Finding 2: Adequacy of the Justification

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- ◆ We found that 3 (about 6 percent) of the contracts reviewed did not appear to have (1) an appropriate justification as outlined in Section 9 (b) of the TVA Act and BP9 Instruction 1 and/or (2) supporting documentation for the justification.
  - Even though classified as non-competed, multiple vendors were considered for 3 of the 33 single/sole source procurements reviewed.
    - ◆ Correspondence included in 1 contract file indicated that the selected vendor was being paid twice as much as others providing the same service to TVA. The cost of other available vendors was listed in the contract file.
      - When this issue was discussed with Procurement at the completion of the review, Procurement stated this contract was awarded on a sole source basis to provide backup in Washington, D.C., for 2 valley contracts.
    - ◆ According to the justification included in 2 of the contract files, informal reviews of other available vendors were conducted. We found no other documentation supporting that these reviews had been conducted.
      - Procurement stated that informal reviews are done to ensure due diligence for the sole source issuance and should not be included in the contract file. Additionally, they stated that the required signatures on Form 17388 are sufficient for approval.



# Finding 2: Adequacy of the Justification (continued)

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- The following chart shows that only contracts with a sole/single source justification had issues.

Justification of Contract	Number of Discrepancies	Original Contract Amount	Amended Contract Amount
Single/Sole Source	3	\$ 81,476	\$ 670,016



# Finding 3: Classification Issues

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- ◆ We found that some of the contracts in our sample were not governed by BP9, yet were classified under the non-compete contract justifications in PassPort because there were no other appropriate classifications therein.
  - The following are contracts included in our sample that are not governed by BP9:
    - ◆ The Board of Directors authorized TVA organizations, other than Procurement, to initiate programs and find a suitable vendor to support the program. These contracts were classified as single/sole source procurements, but were initiated by other organizations and did not have supporting documentation for a single/sole source justification:
      - A contract for service fees for Electro notes relating to TVA Power Bonds.
      - A contract for New York Mercantile Exchange Futures Clearings relating to the TVA Financial Trading Program.
      - A contract for enhancement to the Security Deposit Program.
    - ◆ A River System Operations and Environment revenue contract for disposal services for outside entities was classified as single/sole source procurement.
    - ◆ A cooperative agreement classified as a small dollar purchase which was amended to \$251,000.
    - ◆ A contract entered into by Realty Management for a line-use agreement was classified as a sole/single source procurement.



# Finding 3: Classification Issues (continued)

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- ◆ A cooperative agreement was included as a sole source contract.
- ◆ An incentive contract related to a TVA program was included as a sole source contract.

## Additional Information:

- ◆ We originally selected 74 non-compete contracts for review but excluded 22 administrative contracts which are only used to track accounts payable.
- ◆ We noted that 45 out of 314 (14 percent) small dollar procurements in the population were with utilities and had an undetermined value in both the original and amended value fields.
- ◆ There were 3 PassPort keying errors identified in the sample that are being corrected by Procurement.
  - A keying error resulted in an increase in the contract value.
  - A contract was incorrectly classified as non-compete.
  - A keying error resulted in a sole source contract being classified as a small dollar contract.
- ◆ We noted during our review that contracts with supplements that have been competed remain classified as non-compete contracts in PassPort.



# Recommendations

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- ◆ We recommend that the Senior Vice President of Procurement consider:
  - Ensuring that established policies and procedures relating to documentation are followed.
  - Ensuring that adequate documentation exists to support non-compete contract decisions.
  - Clarifying whether Form 17388 is required for contracts with a value less than \$25,000.
  - Establishing classifications in PassPort for contracts originating outside of Procurement which are not governed by BP9.

