PART 923—ENVIRONMENT, SUSTAINABLE ACQUISITION, AND MATERIAL SAFETY

Authority: 42 U.S.C. 7101 and 50 U.S.C. 2401

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Parent topic: SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

Subpart 923.1—Sustainable Acquisition

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923.170 Policy.

The Department of Energy's (DOE) policy is to promote sustainable acquisition by acquiring products and services that are energy-efficient, contain recycled or biobased content, and have other environmentally preferable attributes, as specified in applicable statutory, regulatory, and Executive Order based requirements. *See* FAR 2.101 for applicable definitions. More information on environmentally preferable products and services is available from the DOE Sustainable Acquisition Program.

923.171 Applicability to contractors.

Many of the Department's major facilities are operated by contractors. Provisions regarding those contracts may be found at part 970 of this chapter. At other locations, the Department makes significant use of contractors to operate and maintain its facilities. As such, the Department

encourages the greatest possible use of energy efficient and environmentally sustainable products and services by its facility support contractors. The DOE Sustainable Acquisition Program is to be followed by all contractors operating DOE facilities or motor vehicle fleets.

923.172 Contract clauses.

Insert the clause at 952.223-78, Sustainable Acquisition Program, in all contracts under which the contractor operates Government-owned facilities or motor vehicle fleets, or significant portions thereof, or performs construction at a Government-owned facility.

Subpart 923.4—Contractor Compliance With Environmental Management Systems

923.404 Contract clause.

The FAR Environmental Management Systems clause at 52.223-19should be used in contracts where the contractor operates a DOE site or portion thereof. Some DOE sites have a single Environmental Management System for the site while others have separate Environmental Management Systems for various portions of the site which may be operated by different contractors. Check with local environmental management personnel regarding the applicability of the FAR 52.223-XX clause to a specific contract.

Subpart 923.70—Environmental, Energy and Water Efficiency, Renewable Energy Technologies, and Occupational Safety Programs

923.7001 Nuclear safety.

The DOE regulates the nuclear safety of its major facilities under its own statutory authority derived from the Atomic Energy Act and other legislation. The DOE also regulates, under certain specific conditions, the use by its contractors of radioactive materials and ionizing radiation producing machines.

923.7002 Worker safety and health.

(a) The Atomic Energy Act mandates that DOE shall either pursue civil penalties, as implemented at 10 CFR part 851, for a violation under 42 U.S.C. 2282c, or a contract fee reduction, but not both. For a contract fee reduction—

(1) The clause prescribed at §§ 942.71(d) and 923.7003(f), which is 952.242-71, Conditional Payment of Fee, Profit, or Other Incentives, addresses contract fee reductions (for both non-management and operating contracts and management and operating contracts; for the latter, §§ 942.71(d) and

923.7003(f) refer to clause prescribed in 970.1504-3(b)).

(2) The clause provides, among other things, for an appropriate reduction to the fee, profit, or other incentives under the contract in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker safety and health concerns.

(3) When reviewing performance failures that would warrant a reduction of otherwise earned fee, the Contracting Officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clause. The mitigating factors are specified in the clause.

(4) The Contracting Officer must obtain the concurrence of the Head of the Contracting Activity: prior to effecting any reduction of fee, profit or other incentives otherwise payable under the clause at 952.942-71, Conditional Payment of Fee, Profit, or Other Incentives; and prior to determining that no reduction is warranted for performance failure(s) that would otherwise warrant a reduction.

(b) In the event of a violation by the contractor or any contractor employee of any Department regulation relating to worker safety and health concerns, before deciding to pursue a contract fee reduction, the Contracting Officer must coordinate with the Office of Nuclear Safety within the Office of Enforcement in the Office of Enterprise Assessments (or designated successor office).

923.7003 Contract clauses.

(a) A decision to include or not include environmental, safety and health clauses in DOE contracts shall be made by the contracting officer in consultation with appropriate personnel within the Office of Environment, Health, Safety and Security (or designated successor office). For M&O contracts see 970.2303-3 and insert the clause at 970.5223-1.

(b) When work is to be performed at a facility where the DOE will exercise its statutory authority to enforce occupational safety and health standards applicable to the working conditions of the contractor and subcontractor employees at such facility, the clause at 952.223-71, Integration of Environment, Safety, and Health into Work Planning and Execution, shall be used in such contract or subcontract if conditions (b)

(1) through (3), are satisfied—

(1) DOE work is segregated from the contractor's or subcontractor's other work;

(2) The operation is of sufficient size to support its own safety and health services; and

(3) The facility is government-owned, or leased by or for the account of the government.

(c) In facilities not meeting the requirements of paragraph (b) of this section and which are a production or utilization facility where there is use or possession of source, special nuclear, or byproduct materials, DOE policy is not to enforce radiological safety and health standards pursuant to the contract or subcontract but rather to rely upon Nuclear Regulatory Commission (NRC) licensing requirements (including agreements with States under section 274 of the Atomic Energy Act). Pursuant to this policy, neither the clause found at 952.223-71, Integration of Environment, Safety, and Health into Work Planning and Execution, nor 952.223-72, Radiation Protection and Nuclear Criticality, is to be incorporated in the contracts or subcontracts for work at such facilities. Notwithstanding this general policy with respect to facilities not meeting the requirements of

paragraph (b) of this section, the Secretary or his designee may determine in special cases, that DOE needs to enforce radiological safety and health standards pursuant to the contract or subcontract (see paragraph (d) of this section). When such a determination is made, the clause found at 952.223-72, Radiation Protection and Nuclear Criticality, shall be included in the contract or subcontract.

(d) In facilities not meeting the requirements of paragraph (b) or (c) of this section and where there is a machine capable of producing ionizing radiation, it is DOE policy not to regulate such activity where it is adequately regulated by a State or other Federal agency. In such cases, neither clause 952.223-71, Integration of Environment, Safety, and Health into Work Planning and Execution, nor 952.223-72, Radiation Protection and Nuclear Criticality, shall be incorporated in the contract. Where the contracting officer, with appropriate environmental, safety and health advice determines that no State or other Federal agency exists to adequately regulate the operation and/or use of such machines, the clause found at 952.223-72, Radiation Protection and Nuclear Criticality, shall be included in the contract. The Assistant Secretary for Health, Safety and Security (or designee) shall be consulted to determine if a non-agreement State or a facility located in a non-agreement State has been reviewed by any other DOE office to establish that the State agency has the essential authority and resources for enforcing the radiation protection standards. This is to assure reasonable consistency in the assessment of radiation protection in non-agreement States and subsequent use of 952.223-72.

(e) In a situation where the contractor or subcontractor is performing DOE work at more than one location, inclusion of either, or both, 952.223-71, Integration of Environment, Safety, and Health into Work Planning and Execution, and 952.223-72, Radiation Protection and Nuclear Criticality, may be appropriate. In such cases, the contract or subcontract must include language to specify the extent of applicability of each clause used. For example, with a parenthetical: (Applicable only to work performed at a contractor site which has 952.223-71 or 952.223-72 clause in its contract or subcontract).

(f) Unless the clause for management and operating contracts is prescribed (see § 970.1504-3(b)), insert the clause at 952.242-71, Conditional Payment of Fee, Profit, and Other Incentives, in all contracts that contain the clause at 952.204-2, Security Requirements, the clause at 952.250-70, Nuclear Hazards Indemnity Agreement, or both clauses.

(g) The contracting officer shall insert the clause at 952.223-75, Preservation of Individual Occupational Radiation Exposure Records, in contracts containing 952.223-71, Integration of Environment, Safety, and Health into Work Planning and Execution, or 952.223-72, Radiation Protection and Nuclear Criticality.