Subpart 970.03—Improper Business Practices and Personal Conflicts of Interest

Parent topic: PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

970.0309 Whistleblower Protection of Contractor Employees.

970.0309-1 Applicability.

The contracting officer shall refer to subpart 903.9 regarding the applicability of the DOE Employee Protection Program to management and operating contracts.

970.0370 Management Controls and Improvements.

970.0370-1 Policy.

(a) Management and operating contractors shall develop and maintain systems of management and quality control to discourage waste, fraud and abuse; and to ensure that components, products, and services that are provided to the Department of Energy (DOE) satisfy the contractor's obligations under the contract.

(b) As a part of the required overall management structure, the contractor must maintain management control systems which, in compliance with the requirements of the clause at 970.5203-1—

(1) Are documented and satisfactory to DOE;

(2) Ensure that all levels of management are accountable for effective management systems and internal controls within their areas of assigned responsibility;

(3) Cover both programmatic and administrative functions;

(4) Provide reasonable assurance that Government resources are safeguarded against theft, fraud, waste, and unauthorized use;

(5) Promote efficient and effective operations;

(6) Ensure that all obligations and costs incurred are in compliance with the intended purposes and the terms and conditions of the contract;

(7) Properly record, manage, and report all revenues, expenditures, transactions and assets;

(8) Maintain financial, statistical and other reports necessary to maintain accurate, reliable, and

timely accountability and management controls; and

(9) Are periodically reviewed to ensure that the systems provide reasonable assurance that the objectives of the system are being accomplished and that these controls are working effectively.

(c) Management and operating contractors shall also develop and maintain a baseline program of quality assurance that will implement documented performance and quality standards, and management controls and assessment techniques to ensure components, services, and products meet DOE's, design criteria and other governing and applicable specifications.

(d) DOE expects all its contractors to seek to identify improvements in any aspect of performance. Management and operating contracts are very large and complex; therefore, the opportunities to identify changes in performance that will increase the effectiveness or efficiency of contract performance are more prevalent than under other contracts. The clause at 970.5203-2 requires DOE management and operating contractors to affirmatively seek to identify, evaluate, and institute, where appropriate, processes that will improve the effectiveness or efficiency of any aspect of contract performance. It further requires the contractor to communicate any such improvements to DOE, other management and operating contractors, and DOE major facilities contractors. The contractor is required to participate in efforts by those contractors to address common problems or the institution of improvements. It allows the contractor to enlist the aid of the DOE contracting officer where necessary to institute or communicate the improvements. The obligations under the clause in no way affect the contractor's obligations under other provisions of the contract to notify or acquire the approval of the contracting officer.

970.0370-2 Contract clause.

(a) The contracting officer shall insert the clause at 970.5203-1, Management Controls, in all management and operating contracts.

(b) The contracting officer shall insert the clause at 970.5203-2, Performance Improvement and Collaboration, in all management and operating contracts.

970.0371 Conduct of employees of DOE management and operating contractors.

970.0371-1 Scope of section.

This section establishes the policies for maintaining satisfactory standards of conduct on the part of individuals employed by DOE management and operating contractors.

970.0371-2 Applicability.

The policies in this section are applicable to all DOE management and operating contractors.

970.0371-3 Definition.

Employees, as used in this section, are defined to mean individuals employed by the contractor, both full and part-time, who are assigned to work under a DOE management and operating contract.

970.0371-4 Gratuities.

Employees of a management and operating contractor shall not, under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties, accept any gratuity or special favor from individuals or organizations with whom the contractor is doing business, or proposing to do business, in accomplishing the work under the contract. Reference is made to the requirements prescribed in 48 CFR 3.502.

970.0371-5 Use of privileged information.

Management and operating contractor employees shall not use privileged information for personal gain, or make other improper use of privileged information which is acquired in connection with their employment on contract work. For the purposes of this subsection, the term “privileged information” includes but is not limited to, unpublished information relating to technological and scientific developments; medical, personnel, or security records of individuals; anticipated materials' requirements or pricing action; possible new sites for DOE program operations; internal DOE decisions; policy development; and knowledge of selections of contractors or subcontractors in advance of official announcement.

970.0371-6 Incompatibility between regular duties and private interests.

(a) Employees of a management and operating contractor shall not be permitted to make or influence any decisions on behalf of the contractor which directly or indirectly affect the interest of the Government, if the employee's personal concern in the matter may be incompatible with the interest of the Government. For example: An employee of a contractor will not negotiate, or influence the award of, a subcontract with a company in which the individual has an employment relationship or significant financial interest; and an employee of a contractor will not be assigned the preparation of an evaluation for DOE or for any DOE contractor of some technical aspect of the work of another organization with which the individual has an employment relationship, or significant financial interest, or which is a competitor of an organization (other than the contractor who is the individual's regular employer) in which the individual has an employment relationship or significant financial interest.

(b) The contractor shall be responsible for informing employees that they are expected to disclose any incompatibilities between duties performed for the contractor and their private interests and to refer undecided questions to the contractor.

970.0371-7 Outside employment of contractor employees.

Employees of a management and operating contractor are entitled to the same rights and privileges with respect to outside employment as other citizens. Therefore, there is no general prohibition against contractor employees having outside employment. However, no employee of a contractor performing work on a full or part-time basis under a DOE management and operating contract may engage in employment outside official hours of duty or while on leave if such employment will:

(a) In any manner interfere with the proper and effective performance of the duties of the position;

(b) Appear to create a conflict-of-interest situation, or

(c) Appear to subject DOE or the contractor to public criticism or embarrassment.

970.0371-8 Employee disclosure concerning other employment services.

(a) Management and operating contractors are responsible for requiring its employees to file with the contractor, a written disclosure statement concerning outside employment services which involve the use of information in the area of the employee's employment with the contractor. The disclosure shall contain such information concerning the outside employment as the contractor may prescribe. As a minimum, the employee's disclosure shall:

(1) Acknowledge that the employee has read and is familiar with:

(i) The requirements and restrictions prescribed in this section;

(ii) Current version of DOE Order 486.1, Department of Energy Foreign Government Sponsored or Affiliated Activities;

(iii) Current version of DOE Order 241.1, Scientific and Technical Information Management; and

(iv) The requirements of the contractor's contract with DOE relating to patents.

(2) Include information concerning any rate of remuneration significantly in excess of the employee's regular rate of remuneration;

(3) Identify any actual or potential conflicts with DOE's policies regarding conduct of employees of DOE's contractors set forth in this section;

(4) Address any potential impacts that such employment may have on the contractor's responsibility to report fully and promptly to DOE all significant research and development information; and

(5) Identify any potential conflicts such employment may have with the patent provisions of the contractor's contract with DOE.

(b) The contractor shall provide a copy of all disclosures to the contracting officer.

970.0371-9 Contract clause.

The contracting officer shall insert the clause at 970.5203-3, Contractor's Organization, in all management and operating contracts. The approval authority of the Secretary of Energy required in paragraph (c) may not be delegated. In paragraph (a), the words “and managerial personnel (see 970.5245-1(k))” may be inserted after “(see 952.215-70)”.