Subpart 970.04—Administrative Matters

Parent topic: PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

970.0404 Safeguarding classified information.

970.0404-2 General.

(a) DOE policies, definitions, provisions, and clauses associated with safeguarding and security of classified information are in part 904.

(b) For DOE management and operating contracts and other contracts designated by the Senior Procurement Executive or designee, the clause at 970.5215-3, “Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts,” implements the requirements of section 234B of the Atomic Energy Act (42 U.S.C. 2282b) that provide for an appropriate reduction in the fee or amount paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any rule, regulation, or order relating to the safeguarding or security of classified information, including Restricted Data.

970.0404-3 Responsibilities of contracting officers.

(a) Management and operating contracts which may require the processing or storage of Restricted Data or Special Nuclear Material require application of the applicable DOE Directives in the safeguards and security series.

(b) The contracting officer shall refer to subpart 904.71 for guidance concerning the prohibition on award of a DOE contract under a national security program to a company owned by an entity controlled by a foreign government when access to proscribed information is required to perform the contract.

970.0407 Contractor records retention.

970.0407-100 Applicability. 0

970.0407-1-110 Alternate retention schedules.

Records produced under the Department's contracts involving management and operation responsibilities relative to DOE-owned or -leased facilities are to be retained and disposed of in accordance with the requirements contained in 36 CFR Chapter XII, Subchapter B, “Records Management” and National Archives and Records Administration (NARA)-approved DOE Records Disposition Schedules (consult current schedule), rather than those set forth at 48 CFR subpart 4.7, Contractor Records Retention.

970.0407-120 Access to and ownership of records.

Contracting officers may agree to contractor ownership of certain categories of records designated in the instruction contained in paragraph (b) of the clause at 970.5204-3, Access to and Ownership of Records, provided the records do not fall within a DOE Privacy Act system of record and the Government's rights to inspect, copy, and audit these records are not limited. These rights must be retained by the Government in order to carry out the Department's statutory responsibilities required by the Atomic Energy Act and other statutes for oversight of its contractors, including compliance with the Department's health, safety and reporting the Privacy Act requirements, and protection of the public interest.

970.0407-130 Contract clause.

The contracting officer shall insert the clause at 970.5204-3, Access to and Ownership of Records, in management and operating contracts and other contracts that contain:

(a) The Integration of Environment, Safety, and Health into Work Planning and Execution clause located at either 952.223-71 or 970.5223-1; or

(b) The clause at 952.223-72, Radiation Protection and Nuclear Criticality.

970.0470 Department of Energy Directives.

970.0470-1 General.

(a) The contractor is required to comply with the requirements of applicable Federal, State and local laws and regulations, unless relief has been granted by the appropriate authority. For informational purposes, the contracting officer may append the contract with a list of applicable laws or regulations (see 970.5204-2, Laws, Regulations, and DOE Directives, paragraph (a)).

(b) The Department of Energy Directives System is a system of instructions, including orders, notices, manuals, guides, and standards, for Departmental elements. In certain circumstances, requirements contained in these directives may apply to a contractor through operation of a contract clause. Program and requirements personnel are responsible for identifying requirements in the Directives Program which are applicable to a contract, and for developing a list of applicable requirements and providing it to the contracting officer for inclusion in the contract.

(c) Where directives requirements are established using either the Standards/Requirements Identification Process or the Work Smart Standards Process, the applicable process should also be used to establish the environment, safety, and health portion of the list identified in paragraph (b) of this section.

(d) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under a management and operating contract may be determined by a DOE approved process to evaluate the work and the associated hazards, and identify an appropriately tailored set of standards, practices, and controls, such as a tailoring process included in a DOE approved Safety Management System

implemented under 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution. When such a process is used, the contracting officer shall ensure that the set of tailored requirements, as approved by DOE pursuant to the process, is incorporated into the list identified in paragraph (b) of this section. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement which varies from an ES&H requirement of an otherwise applicable law or regulation, the contractor must request an exemption or other appropriate regulatory relief that may be specified in the governing regulation.

970.0470-2 Contract clause.

The contracting officer shall insert the clause at 970.5204-2, Laws, Regulations, and DOE Directives, in management and operating contracts. The contracting officer may modify the clause to indicate the location in the contract of List A, List B, or both.