

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-13, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 21, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 95-10320 Filed 4-26-95; 8:45 am]
BILLING CODE 4910-13-U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Review of Existing Regulations

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: This document extends, by 30 days, the comment period of a document published by the Minerals Management Service (MMS) in the **Federal Register** on March 28, 1995 (60 FR 15888) which requested comments on a review of existing MMS regulations under Executive Order 12866. The extension was requested by the American Petroleum Institute.

DATES: The comment period is extended to May 27, 1995. Comments should be received or postmarked by that date.

ADDRESSES: Mail written comments to Department of the Interior; Minerals Management Service; Mail Stop 4013; 1849 C Street NW.; Washington, DC 20240; Attention: Bettine Montgomery, MMS Regulatory Coordinator, Policy and Management Improvement.

FOR FURTHER INFORMATION CONTACT: Bettine Montgomery, Policy and Management Improvement, telephone (202) 208-3976; Fax (202) 208-4891.

Dated: April 21, 1995.

Lucy R. Querques,

Associate Director for Policy and Management Improvement.
[FR Doc. 95-10329 Filed 4-26-95; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF ENERGY

48 CFR Part 970

[Regulation Identifier Number 1991-AB20]

Acquisition Regulation; Department of Energy Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Amendment of a notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) today amends its March 2, 1995, notice of proposed rulemaking (60 FR 11646) which proposed amendments to the DOE Acquisition Regulation (DEAR) provisions applicable to subcontracting by management and operating contractors. Today's amendments do not affect the principal provisions of the proposal which are: Substitution of more commercial-like subcontracting objectives, expectations, and standards for the so-called "Federal norm" that, in effect, requires DOE's management and operating contractors to follow certain Federal-oriented prescribed procedures in their award of subcontracts; and elimination of the reference concerning General Accounting Office protest jurisdiction over such subcontract awards. Rather, this amendment of the earlier notice deals with administrative matters, mostly technical, that DOE reserved for further analysis and action during the public comment period. DOE today amends its notice of proposed rulemaking to redesignate most of the requirements of DEAR 970.7104 to two other subsections of the DEAR and to eliminate certain of them. The amendment also moves two paragraphs previously set forth in DEAR 970.7104 to another existing subsection.

DATES: Written comments on this amended notice of proposed rulemaking must be received on or before May 30, 1995. Comments on today's amendment should be submitted separately from those related to the March 2, 1995, notice of proposed rulemaking. This is necessary as the Department may elect to finalize those portions of the March 2 rule, which are unaffected by today's amendment, in more than one stage.

ADDRESSES: Comments on the proposed rulemaking should be sent to the following address: U.S. Department of

Energy, Office of Contractor Management and Administration (HR-55), Attention: James J. Cavanagh, 1000 Independence Avenue SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: James J. Cavanagh, Office of Contractor Management and Administration (HR-55), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585; telephone 202-586-8257.

SUPPLEMENTARY INFORMATION:

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- I. Background.
- II. Section-by-Section Analysis.
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I. Background

On March 2, 1995, DOE published in the **Federal Register** (60 FR 11646) a notice of proposed rulemaking. That notice proposed to amend the DEAR to modify requirements for management and operating contractor purchasing systems. Principally, DEAR subpart 970.71 is being amended to identify certain purchasing system objectives and standards, eliminate the application of the "Federal norm," place greater reliance on commercial practices, and remove the provisions concerning General Accounting Office protest jurisdiction over management and operating contractor subcontract awards.

Today's notice does not alter any of the above-described principal provisions of the proposed amendments. The main focus of this notice is an administrative matter discussed in the Supplementary Information section of the March 2 notice and reserved for further analysis and action during the comment period. That issue is whether to eliminate DEAR § 970.7104.

The March 2 proposed rulemaking stated:

Section 970.7104, Conditions of purchasing by management and operating contractors, is removed. DOE believes it is not necessary to retain this section since many of the requirements comply with provisions of statutes and are already reflected in contract clauses. These requirements, will therefore, continue to be applicable as contractual requirements. Some of the requirements, however, are not specifically prescribed in other parts of the DEAR. The Department will review such requirements prior to finalization of this proposed rule and may redesignate appropriate paragraphs, in the final rule, to other parts of the DEAR, if necessary. If such requirements are identified, the Department will publish a **Federal Register** notice, prior to issuing a final rule, listing the paragraphs being considered for redesignation.

DOE's analysis showed that, except for seven items proposed for deletion as discussed below, most of the provisions of § 970.7104 should be retained either in the preaward process or in the subcontract document itself. Moreover, DOE has reconsidered the desirability of proposing to eliminate the convenient listing of these subjects and the clarity that comes with such a listing. Further, removing the section could be interpreted incorrectly as proposing to eliminate the underlying substantive requirements identified elsewhere. Therefore, DOE has chosen instead to propose elimination of seven subparagraphs of that section and relocation of most of the subjects from § 970.7104 to two contract clauses, thereby removing the content of § 970.7104 in its entirety. The amendment proposes no new policy and adds no new requirements for a contractor. For the most part, the regulatory treatment of each subject has been simplified and shortened. For details, see the section-by-section analysis below.

II. Section-by-Section Analysis

A. In accordance with Section II, paragraph 6 of the notice of proposed rulemaking published on March 2, 1995, the Department of Energy has performed a detailed review of the subjects covered by DEAR 970.7104 to determine which requirements should be redesignated in the other parts of the DEAR. This amendment to the notice of proposed rulemaking reflects the proposed disposition of the provisions of DEAR 970.7104-1 through 970.7104-47. The redesignation table set forth below will

graphically reflect this proposed disposition.

B. The Department has decided that the subjects of 970.7104 which are to continue to play a part in the award of subcontracts under DOE management and operating contracts fall generally into two categories. The first category consists of processes that lead to the award of prospective subcontracts, and the second category consists of those clauses that should be included in appropriate subcontracts and provisions that guide the administration of certain of those clauses. As a result of this recognition, this amendment proposes to deal with the first category as additions to an existing clause. A new clause is proposed to deal with the subjects that comprise the second category.

C. This amendment proposes to add subjects in the first category to the clause currently set forth at 970.5204-22, "Contractor Purchasing System." The March 2, 1995, notice of proposed rulemaking proposed to change paragraph (a) of 970.5204-22. Today's amendment proposes to further amend paragraph (a) to insert the phrase "this clause, DEAR 970.5204-XX, and" in the first sentence. It would also expand the content of that clause to cover requirements that directly relate to the management and operating contractor's purchasing system and methods in the award of subcontracts.

D. This amendment also proposes to identify subjects in the second category in paragraph (b) of a new clause at 970.5204-XX. The purpose of that clause would be to continue to provide a convenient listing of clauses and

related requirements that management and operating contractors would be required to include in, or apply to, prospective subcontracts. That new clause in its paragraph (a) would contain a general instruction directing the inclusion of the listed clauses and, where appropriate, the application of attendant regulations governing the subject matter of the cited clause. Paragraph (a) would recognize that certain of the listed clauses flow down pursuant to the management and operating contractor's prime contract with the Department (e.g., Employment of the Handicapped). Certain other clauses that would be included in appropriate subcontracts either are not included in the prime contract (e.g., Service Contract Act) or, if included, do not contain a flowdown instruction. For these latter two types of clauses, paragraph (a) would instruct the contractor to apply requirements to subcontracts in the same manner as the Department does for the award of a DOE prime contract which is not a management and operating contract.

E. For certain subjects, such as termination and indemnification, there would be coverage of different aspects of the same subject in both of the clauses at 970.5204-22 and at 970.5204-XX.

F. The following table identifies the new location of each item in 970.7104 and indicates whether the original requirement for the subject provision is based on an Executive Order, Department policy, Federal regulation or statute.

Old citation 970.-	Subject	New citation 970.5204-
7104-1	Contingent Fees (P)	Deleted.
7104-2	Record Retention (S)	XX(b)(20).
7104-3	Utility Services (P)	22(b).
7104-4	Leasing Property, Plant or Equipment (P)	22(q).
7104-5	Leasing of Motor Vehicles (P)	22(m).
7104-6	Strategic and Critical Materials (P)	22(t).
7104-7	Purchases of Special Items (S/R/P)	22(p).
7104-8	Purchasing Alternative Determinations (P)	22(q).
7104-9	Qualification Requirements (P)	Deleted.
7104-10	Organization Conflicts of Interest (S)	XX(b)(16).
7104-11	Cost or Pricing Data (S)	XX(b)(5).
7104-12	Small Business and Small Disadvantaged Business Concerns (S)	XX(b)(23) and 970.1901.
7104-13	Labor Surplus Concerns (P)	Deleted.
7104-14	Convict Labor (P)	Deleted.
7104-15	Contract Work Hours and Safety Standards Act (S)	XX(b)(4).
7104-16	Davis-Bacon Labor Standards for Construction (S)	XX(b)(8).
7104-17	Walsh-Healey (P)	Deleted.
7104-18	Equal Employment Opportunity (E)	XX(b)(11).
7104-19	Service Contract Act (S)	XX(b)(22).
7104-20	Vietnam Vets (S)	XX(b)(24).
7104-21	Environmental & Occupational Safety & Health (S/P)	XX(b)(10).
7104-22	Buy American (S)	22(g).
7104-23	Patents, Data and Copyrights (S/P)	XX(b)(17).
7104-24	Bonds & Insurance (S/P)	22(f).
7104-25	Indemnification (S/P)	22(l) and XX(b)(14).

Old citation 970.-	Subject	New citation 970.5204-
7104-26	Taxes (P)	XX(b)(25).
7104-27	Audit of Subcontractors (S/R/P)	22(e).
7104-28	Construction & A-E conflict-of-interest (P)	22(h).
7104-29	Quality Assurance (P)	22(r).
7104-30	Termination (P)	22(v) and XX(b)(26).
7104-31	Authorization of Subcontractors' Use of Government Supply Sources (P)	Deleted.
7104-32	Safeguarding Classified Information (S)	XX(b)(21).
7104-33	Cost Accounting Standards (S)	XX(b)(7).
7104-34	Clean Air & Water (S/R)	XX(b)(3).
7104-35	Air Transportation by U.S. Flag Carriers (S)	XX(b)(1).
7104-36	Acquisition of Real Property (S/P)	22(c).
7104-37	Management, Acquisition and use of Information Resources (P)	22(n).
7104-38	Privacy Act (R)	XX(b)(19).
7104-39	Officials Not To Benefit (P)	Deleted.
7104-40	Subcontractors' Reporting Systems (P)	XX(b)(6).
7104-41	Employment of the Handicapped (S)	XX(b)(9).
7104-42	Unclassified Controlled Nuclear Information (R)	22(w).
7104-43	Government Property (S/R)	22(k).
7104-44	Foreign Travel (P)	XX(b)(13).
7104-45	Anti-Kickback (S)	XX(b)(2).
7104-46	Setoff of Assigned Subcontractor Proceeds (P)	22(s).
7104-47	Additional Flowdown and Extension Provisions	
	—Exam. of records by Comptroller General (S)	XX(b)(12).
	—Accts Records and Inspection (S/P)	XX(b)(20).
	—Printing (P)	XX(b)(18).
	—Priorities (S/R)	22(o).

(E)=Executive Order.
(P)=Policy.
(R)=Regulation.
(S)=Statute.

G. The substance of the material related to Small Business and Small Disadvantaged Business Concerns cited in DEAR Subpart 970.7104-12,

paragraphs (a), (b), (c) and (d) have been relocated in DEAR Part 970.1901, paragraphs (c) and (d).

H. From DEAR 970.7104, it is proposed to delete seven subsections as identified and for the reasons set forth in the following table:

Old citation 970.-	Subject	Reason for deletion
7104-1	Contingent Fees	These subject matters have been incorporated into appropriate subcontracts of management and operating (M&O) contracts as a matter of DOE policy. Because it has been decided that these subject matters should be handled in the same manner as for subcontracts under non-M&O cost-reimbursement contracts, flowdown is no longer required.
7104-9	Qualification Requirements	The preference of the Federal procurement system that this subsection reflected has been substantially altered by section 7101 of the Federal Acquisition Streamlining Act of 1994.
7104-14	Convict Labor	
7104-17	Walsh-Healy Public Contracts Act	
7104-39	Officials Not to Benefit	
7104-13	Labor Surplus Area Concerns	
7104-31	Authorization for Subcontractors' Use of Government Supply Sources.	The authority for contracting officers to allow management and operating contractor subcontract level access to Government supply sources exists at DEAR 970.51.

I. This amendment to the March 2, 1995, notice of proposed rulemaking will also redesignate the substance of 970.7103, paragraph (c)(7) to 970.5204-22(e)(4) to make clear that the contractor is required to determine the allowability of subcontractor reimbursable costs in accordance with 48 CFR (FAR) part 31.

J. Conforming amendments will be made to 970.5204-21, -5204-24, -5204-

45, and -5204-50 to remove references to text proposed to be deleted.

III. Public Comments

DOE invites interested persons to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in this rule. Three copies of written comments should be submitted to the address indicated in the ADDRESSES section of this rule. All

comments received will be available for public inspection during normal work hours. All written comments received by the date indicated in the DATES section of this notice will be carefully assessed and fully considered prior to the effective date of these amendments as a final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to

determine the confidential status of the information and to treat it according to its determination in accordance with 10 CFR 1004.11.

IV. Procedural Requirements

The procedural requirements discussed in section IV of the Supplementary Information of the March 2, 1995, notice of proposed rulemaking (60 FR 11646) apply as well to this amendment of proposed rulemaking.

List of Subjects in 48 CFR Parts 933 and 970

Government procurement.

Issued in Washington, D.C. on April 20, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), sec 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99-145 (42 U.S.C. 7256a), as amended.

2. At 970.1901 add paragraphs (c) and (d) as follows:

970.1901 General.

* * * * *

(c) Contractors may provide in their purchasing systems and methods for the setting aside of requirements for small disadvantaged businesses, provided there are sufficient qualified entities available to assure effective competition, and provided that the cost or price of the successful offer is found by the contractor to be fair and reasonable.

(d) In pursuit of the objective of contractor purchasing of a fair proportion of supplies and services from small business concerns, small disadvantaged business concerns and woman-owned business concerns, the HCA may authorize the use of innovative means after receipt of proper approval by the Procurement Executive and the DOE Office of Small and Disadvantaged Business Utilization.

970.5204-21 Property.

3. At 970.5204-21, Property, remove the phrase "As prescribed in 970.7104-43," from the introductory text.

4. At 970.5204-22, the clause "Contractor Purchasing System" is revised to read as follows:

970.5204-22 Contractor purchasing system.

* * * * *

Contractor Purchasing System (month year TBE)

(a) General. The contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause, 48 CFR (DEAR) 970.5204-XX, and 48 CFR (DEAR) 970.71. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR (DEAR) 970.7102. The contractor's purchasing performance will be evaluated against agreed-upon criteria in accordance with the performance criteria and measures clause(s) set forth elsewhere in this contract. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer.

(b) Acquisition of Utility Services. Utility services shall be acquired in accordance with the requirements of 48 CFR (DEAR) 970.0803.

(c) Acquisition of Real Property. The contractor shall contract for real property in accordance with 48 CFR (DEAR) Subpart 917.74.

(d) Advance Notice of Proposed Subcontract Awards. The contractor shall provide advance notice of proposed subcontract awards in accordance with 48 CFR (DEAR) 970.7109; shall document purchases in writing; and shall establish and maintain subcontract files which present an accurate and adequate record of all purchasing transactions.

(e) Audit of Subcontractors.

(1) The contractor shall assure that its purchasing systems and methods provide for: (i) periodic post-award audit of cost-reimbursement subcontractors at all tiers, and (ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. Contractors' purchasing systems and methods shall provide, in appropriate cases, for the timely involvement of the contractor and the DOE contracting officer in resolution of subcontract cost allowability.

(3) Where audits of subcontractors of any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved

and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR (FAR) part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR (DEAR) part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR (DEAR) 970.7105 and 48 CFR (DEAR) 970.3102-15(b). In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the contractor.

(f) Bonds and Insurance.

(1) The contractor shall obtain from a subcontractor a payment bond on Standard Form 25A, modified to name the contractor as well as the United States of America as obligees, for all fixed price, unit-price and cost-reimbursement construction subcontractors in excess of \$25,000. The penal amounts shall be determined as set forth in 48 CFR (FAR) 28.102-2(b).

(2) The contractor may accept more than one corporate surety upon recognizance, stipulation, bond, or undertaking in both construction and other contracts, provided that in no case will the liability of any co-surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety may reinsure amounts in excess of its capacity with a corporate surety having the required underwriting capacity that appears on the acceptable list of corporate sureties. No such reinsurance is acceptable in connection with construction subcontracts. Corporate co-sureties may individually obligate themselves for a definite sum less than the full amount of the bond; however, all such obligations must total the entire amount of the bond and each co-surety must bind itself "jointly and severally" for the purpose of allowing a joint action or actions against any or all of the corporate sureties.

(g) Buy American. The contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR (FAR) 52.225-3, as amended by 48 CFR (DEAR) 970.5203-3.

(h) Construction and Architect-Engineer Contracts.

(1) Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."

(3) Prevention of Conflict of Interest.

(i) The contractor shall not award a contract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" contract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The contractor shall not award both a cost-reimbursement contract and a fixed-

price contract for construction or architect-engineer services or any combination thereof to the same firm where those contracts will be performed at the same site.

(iii) The contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) *Contractor-Affiliated Sources.* Purchase or transfer of equipment, materials, supplies, or services from a contractor-affiliated source shall be treated in accordance with 48 CFR (DEAR) 970.7105.

(j) *Contractor-Subcontractor Relationship.* The obligations of the contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.

(k) *Government Property.* The contractor's purchasing system and methods for the identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of 48 CFR (FAR) part 45, 48 CFR (DEAR) part 945, the Federal Property Management Regulations, the DOE Property Management Regulations, and their contracts.

(l) *Indemnification.* No subcontractor may be otherwise indemnified except with the prior approval of the Procurement Executive.

(m) *Leasing of Motor Vehicles.* Contractors shall abide by 48 CFR (FAR) 8.11 and 48 CFR (DEAR) 908.11.

(n) *Management, Acquisition and Use of Information Resources.* The contractor shall provide in its purchasing system and methods, with regard to the purchase of automatic data processing resources and telecommunications facilities, services, and equipment, for review and approval of requirements in ways that conform to the procedures contained in applicable DOE Directives (Orders and Notices).

(o) *Priorities, Allocations and Allotments.* The contractor shall provide in its purchasing system and methods for the extension to appropriate subcontracts of priorities, allocations and allotments in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(p) *Purchase of Special Items.* Purchase of the following items shall be in accordance with the following provisions of 48 CFR (DEAR) subpart 908.71 and the Federal Property Management Regulations, as shown:

(1) Motor vehicles	908.7101
(2) Aircraft	908.7102
(3) Security Cabinets	908.7106
(4) Alcohol	908.7107
(5) Helium	908.7108
(6) Fuels and packaged petroleum products	908.7109
(7) Coal	908.7110
(8) Arms and Ammunition	908.7111

(9) Heavy Water	908.7121(a)
(10) Precious Metals	908.7121(b)
(11) Lithium	908.7121(c)
(12) Products and services of the blind and severely handicapped	FPMR 41 CFR 101-26.701
(13) Products made in Federal penal and correctional institutions	FPMR 41 CFR 101-26.702

(q) *Purchase vs. Lease Determinations.* The contractor shall provide for a system to determine whether required equipment and property should be purchased or leased. The system shall establish appropriate thresholds for application of lease vs. purchase determinations and shall be used in making such determinations: (1) at time of original acquisition; (2) when lease renewals are being considered; and (3) at other times as circumstances warrant.

(r) *Quality Assurance.* The contractor shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(s) *Setoff of Assigned Subcontractor Proceeds.* The contractor shall provide that in cases in which a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR (DEAR) 932.803.

(t) *Strategic and Critical Materials.* The contractor may use strategic and critical materials and shall fulfill its requirements in accordance with 48 CFR (FAR) 8.002.

(u) *Suspended, Debarred or Ineligible Contractors.* Proposed awards to firms or individuals on the GSA Consolidated List of Debarred, Suspended and Ineligible Contractors shall be forwarded to DOE for approval notwithstanding any prior purchasing system acceptance.

(v) *Termination.* When subcontracts are terminated as a result of the termination of all or a portion of this contract, the contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR (FAR) subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR (FAR) subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the contracting officer.

(w) *Unclassified Controlled Nuclear Information.* In its purchasing system and methods, the contractor shall provide for the treatment of unclassified uncontrolled nuclear information to be handled in accordance with 10 CFR part 1017.

970.5204-24 Subcontractor cost or pricing data.

5. At 970.5204-24, *Subcontractor cost or pricing data*, remove the phrase "As prescribed in 970.7104-11," from the introductory text.

970.5204-45 Termination.

6. At 970.5204-45, *Termination*, remove the phrase "As prescribed in 970.7104-30," from the introductory text.

970.5204-50 Cost and schedule control systems.

7. At 970.5204-50, *Cost and schedule control systems*, remove the phrase "As prescribed in 970.7104-40," from the introductory text.

8. Add new subsection 970.5204-XX, *Flowdown of contract requirements to subcontracts*, to read as set forth below:

970.5204-XX Flowdown of contract requirements to subcontracts.

Insert the following clause.

Flowdown of Contract Requirements to Subcontracts (month year TBE).

(a) The contractor shall include the clauses in paragraph (b) of this clause in appropriate subcontracts.

(1) To the extent that the clause is included in this prime contract, the contractor shall comply with that portion of the clause that directs application to subcontracts.

(2) To the extent that the clause is not included in this prime contract, or where it is included, but there is no instruction for treatment in subcontracts, the contractor shall include the clause in accordance with applicable regulatory guidance which would apply if the subcontract were a prime contract with the Federal government.

(3) In all cases, where a regulation is cited, the contractor shall comply with the regulation in administration of the related clause.

(b) Clauses and related regulations.

(1) *Air transportation by U.S.-flag carriers.* Clause at 48 CFR (FAR) 52.247-63.

(2) *Anti-Kickback Act of 1986.* Clause at 48 CFR (FAR) 52.203-7.

(3) *Clean Air and Water.* Clause at 48 CFR (FAR) 52.223-2, and follow the requirements of 48 CFR (FAR) 23.1.

(4) *Contract Work Hours and Safety Standards Act.* Clause at 48 CFR (FAR) 52.222-4, and follow the requirements of 48 CFR (FAR) 22.3.

(5) *Cost or Pricing Data.* Clause at 48 CFR (DEAR) 970.5204-24.

(6) *Cost and Schedule Control Systems.* Clause at 48 CFR (DEAR) 970.5204-50.

(7) *Cost Accounting Standards.* Clause at 48 CFR (FAR) 52.230-2, as prescribed in 48 CFR (DEAR) 970.30.

(8) *Davis-Bacon Act.* Clauses as directed at 48 CFR (FAR) 22.407, and follow the requirements of 48 CFR (FAR) 22.4 to the same extent that they would apply if the subcontract had been directly awarded by DOE. 48 CFR (DEAR) Subpart 922.4 and 48 CFR (DEAR) 970.2273 provide guidance to assist in determining the applicability of these regulations.

(9) *Employment of the Handicapped.* Clause at 48 CFR (FAR) 52.222-36, and follow the requirements of 48 CFR (FAR) 22.14.

(10) *Environmental and Occupational Safety and Health.* Clauses as prescribed in 48 CFR (DEAR) 970.2303-2.

(11) *Equal Employment Opportunity*. Clauses as prescribed in 48 CFR (FAR) 22.810, as applicable, and follow the requirements of 48 CFR (FAR) 22.8, 48 CFR (DEAR) 922.8, E.O. 11246 and 40 CFR part 60.

(12) *Examination of Records by Comptroller General*. Clause at 48 CFR (FAR) 52.215-1.

(13) *Foreign Travel*. Clause at 48 CFR (DEAR) 970.5204-52.

(14) *Nuclear Hazards Indemnity*. Clause at 48 CFR (DEAR) 970.2870.

(15) *Officials Not To Benefit*. Clause at 48 CFR (FAR) 52.203-1.

(16) *Organizational Conflicts of Interest*. Clause at 48 CFR (DEAR) 952.209-72.

(17) *Patent, Data and Copyrights*. Appropriate clauses as required by 48 CFR (DEAR) parts 927 and 970.

(18) *Printing*. Clause at 48 CFR (DEAR) 970.5204-19.

(19) *Privacy Act*. Clauses at 48 CFR (FAR) 52.224-1 and 48 CFR (FAR) 52.224-2, and follow the requirements of 48 CFR (FAR) 24.1.

(20) *Record Retention*. Clause at 48 CFR (DEAR) 970.5204-9.

(21) *Safeguarding Classified Information*. Appropriate clauses as prescribed at 48 CFR (DEAR) 970.0404.

(22) *Service Contract Act*. Clauses at 48 CFR (FAR) 52.222-40 and 48 CFR (FAR) 52.222-41.

(23) *Small Business and Small Disadvantaged Business Concerns*. Clause at 48 CFR (FAR) 52.219-9.

(24) *Special Disabled and Vietnam Era Veterans*. Clause at 48 CFR (FAR) 52.222-35, and follow the requirements of 48 CFR (FAR) Subpart 22.13.

(25) *Taxes*. Clause at 48 CFR (DEAR) 970.5204-23.

(26) *Termination*. Appropriate clause or clauses as set forth at 48 CFR (FAR) 52.249-1 through 52.249-14.

(c) *Other*. Errors in or omissions from the above DOE-compiled listing of contract requirements requiring flowdown to appropriate subcontracts shall not be construed as waiving a requirement for the contractor to comply with a requirement for subcontracts appearing elsewhere in this contract or a requirement for subcontracts as required by law. Such errors or omissions shall not form the basis for a defense by the contractor in a legal or administrative proceeding.

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