

Department of Energy

970.0801-1

970.0407-1-2 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 48 CFR 970.5204-3, Access to and Ownership of Records, provided 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 requirements, and protection of the public interest.

970.0407-1-3 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5204-3, Access to and Ownership of Records, in management and operating contracts.

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 System 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 48 CFR 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 DEAR 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.

Subpart 970.08—Required sources of supplies and services

970.0801 Excess personal property.

970.0801-1 Policy.

The provisions of 48 CFR subpart 8.1 (Federal Acquisition Regulation), 41 CFR 101-43 (Federal Property Management Regulation), and 41 CFR 109-43

970.0808

(DOE Property Management Regulation) apply to DOE's management and operating contracts.

970.0808 Acquisition of printing.

970.0808-1 Scope of section.

This section prescribes the Department's policy concerning duplicating or printing services which may be required in the performance of management and operating contracts.

970.0808-2 Policy.

Management and operating contractors shall provide or secure duplication and printing services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and applicable DOE Directives.

970.0808-3 Contract clause.

The contracting officer shall insert the clause at 970.5208-1, Printing, in all management and operating contracts.

Subpart 970.09—Contractor qualifications

970.0905 Organizational conflicts of interest.

Management and operating contracts shall contain an organizational conflict of interest clause substantially similar to the clause at 48 CFR 952.209-72, Organizational Conflicts of Interest, and which is appropriate to the statement of work of the individual contract. In addition, the contracting officer shall assure that the clause contains appropriate restraints on intra-corporate relations between the contractor's organization and personnel operating the Department's facility and its parent corporate body and affiliates. Such restraints shall include personnel access to the facility, technical transfer of information from the facility, and the availability from the facility of other advantages flowing from performance of the contract. The contracting officer is responsible for ensuring that M&O contractors adopt policies and procedures in the award of subcontracts that will meet the Department's need to

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safeguard against a biased work product and an unfair competitive advantage. To this end, the organizational conflicts of interest clause in management and operating contracts shall include Alternate I.

970.0970 Performance guarantees.

970.0970-1 Determination of responsibility.

(a) In the award of a management and operating contract, the contracting officer shall determine that the prospective contractor is a responsible contractor and is capable of providing all necessary financial, personnel, and other resources in performance of the contract.

(b) DOE contracts with entities that have been created solely for the purpose of performing a specific management and operating contract. Generally, such newly created entities will have very limited financial and other resources. In such instances, when making the determination of responsibility required under this section, the contracting officer may evaluate the financial resources of other entities only to the extent that those entities are legally bound, jointly and severally if more than one, by means of a performance guarantee or other equivalent enforceable commitment to supply the necessary resources to the prospective contractor and to assume all contractual obligations of the prospective contractor. A performance guarantee should be the means used unless an equivalent degree of commitment can be obtained by an alternative means.

(c) The guaranteeing corporate entity(ies) must be found to have sufficient resources in order to satisfy its guarantee.

970.0970-2 Solicitation provision.

The contracting officer shall insert the provision at 48 CFR 970.5209-1, Requirement for Guarantee of Performance, in solicitations when the awardee will be required to be organized solely for performance of the requirement.