

## Department of Energy

970.5203-1

words “Limitation of Cost or Limitation of Funds.”

### 970.5070 Indemnification.

#### 970.5070-1 Scope and applicability.

(a) Section 170d. of the Atomic Energy Act of 1954, as amended, requires DOE to enter into agreements of indemnity with contractors whose work involves the risk of public liability for the occurrence of a nuclear incident or precautionary evacuation.

(b) Details of such indemnification are discussed at 48 CFR 950.70.

#### 970.5070-2 General.

DOE contractors with whom statutory nuclear hazards indemnity agreements under the authority of section 170d. of the Atomic Energy Act of 1954, as amended, are executed will not normally be required or permitted to furnish financial protection by purchase of insurance to cover public liability for nuclear incidents. However, if authorized by the DOE Headquarters office having responsibility for contractor casualty insurance programs, DOE contractors may be

(a) Permitted to furnish financial protection to themselves, or

(b) Permitted to continue to carry such insurance at cost to the Government if they currently maintain insurance for such liability.

#### 970.5070-3 Contract clauses.

(a) The clause at 48 CFR 952.250-70, Nuclear Hazards Indemnity Agreement, shall be included in all management and operating contracts involving the risk of public liability for the occurrence of a nuclear incident or precautionary evacuation arising out of or in connection with the contract work, including such events caused by a product delivered to a DOE-owned, facility for use by DOE or its contractors. The clause at 48 CFR 952.250-70 also shall be included in any management and operating contract for the design of a DOE facility, the construction or operation of which may involve the risk of public liability for a nuclear incident or a precautionary evacuation.

(b) The clause at 48 CFR 952.250-70 shall not be included in contracts in which the contractor is subject to Nu-

clear Regulatory Commission (NRC) financial protection requirements under section 170b. of the Act or NRC agreements of indemnification under section 170 c. or k. of the Act for activities to be performed under the contract.

### Subpart 970.52—Solicitation Provisions and Contract Clauses for Management and Operating Contracts

#### 970.5200 Scope of subpart.

This subpart prescribes some of the solicitation provisions and contract clauses for use in management and operating contracts. The provisions and clauses contained in this subpart supplement the provisions and clauses prescribed in the FAR and in other parts of the DEAR (48 CFR 901 through 48 CFR 952), and, pursuant to the individual provision or clause prescription, are to be used in addition to or in place of such clauses. Management and operating contracts are hybrid contracts, in some cases including aspects of several FAR contract types, for example, supplies and construction. For some FAR solicitation provisions and contract clauses, this subpart prescribes their use despite the hybrid nature of the work required. To assist Departmental contracting personnel in determining the applicability of FAR and DEAR clauses to management and operating contracts, additional guidance is published and made available by the Office of Procurement and Assistance Policy, within the Headquarters procurement organization.

#### 970.5201 Text of provisions and clauses.

##### 970.5203-1 Management controls.

As prescribed in 48 CFR 970.0370-2(a) and 48 CFR 970.3270(a)(4), insert the following clause:

###### MANAGEMENT CONTROLS (DEC 2000)

(a)(1) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the contractor are

properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely.

(2) The systems of controls employed by the contractor shall be documented and satisfactory to DOE.

(3) Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility.

(4) The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively.

(b) The contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

(End of clause)

**970.5203-2 Performance improvement and collaboration.**

As prescribed in 48 CFR 970.0370-2(b), insert the following clause:

PERFORMANCE IMPROVEMENT AND  
COLLABORATION (DEC 2000)

(a) The contractor agrees that it shall affirmatively identify, evaluate, and institute practices, where appropriate, that will improve performance in the areas of environmental and health, safety, scientific and technical, security, business and administrative, and any other areas of performance in the management and operation of the contract. This may entail the alteration of existing practices or the institution of new procedures to more effectively or efficiently perform any aspect of contract performance or reduce overall cost of operation under the

contract. Such improvements may result from changes in organization, simplification of systems while retaining necessary controls, or any other approaches consistent with the statement of work and performance measures of this contract.

(b) The contractor agrees to work collaboratively with the Department, all other management and operating, DOE major facilities management contractors and affiliated contractors which manage or operate DOE sites or facilities for the following purposes: (i) to exchange information generally, (ii) to evaluate concepts that may be of benefit in resolving common issues, in confronting common problems, or in reducing costs of operations, and (iii) to otherwise identify and implement DOE-complex-wide management improvements discussed in paragraph (a). In doing so, it shall also affirmatively provide information relating to its management improvements to such contractors, including lessons learned, subject to security considerations and the protection of data proprietary to third parties.

(c) The contractor may consult with the contracting officer in those instances in which improvements being considered pursuant to paragraph (a) involve the cooperation of the DOE. The contractor may request the assistance of the contracting officer in the communication of the success of improvements to other management and operating contractors in accordance with paragraph (b) of this clause.

(d) The contractor shall notify the contracting officer and seek approval where necessary to fulfill its obligations under the contract. Compliance with this clause in no way alters the obligations of the Contractor under any other provision of this contract.

(End of clause)

**970.5203-3 Contractor's organization.**

As prescribed in 48 CFR 970.0371-9, insert the following clause:

CONTRACTOR'S ORGANIZATION (DEC 2000)

(a) Organization chart. As promptly as possible after the execution of this contract, the contractor shall furnish to the contracting officer a chart showing the names, duties, and organization of key personnel (see 48 CFR 952.215-70) to be employed in connection with the work, and shall furnish supplemental information to reflect any changes as they occur.

(b) Supervisory representative of contractor. Unless otherwise directed by the contracting officer, a competent full-time resident supervisory representative of the contractor satisfactory to the contracting officer shall be in charge of the work at the site, and any work off-site, at all times.