

## Department of Energy

970.5232-2

(End of clause)

### 970.5231-4 Preexisting conditions.

As prescribed in 48 CFR 970.3170, insert the following clause:

PREEXISTING CONDITIONS (DEC 2000)

(a) The Department of Energy agrees to reimburse the contractor, and the contractor shall not be held responsible, for any liability (including without limitation, a claim involving strict or absolute liability and any civil fine or penalty), expense, or remediation cost, but limited to those of a civil nature, which may be incurred by, imposed on, or asserted against the contractor arising out of any condition, act, or failure to act which occurred before the contractor assumed responsibility on [Insert date contract began]. To the extent the acts or omissions of the contractor cause or add to any liability, expense or remediation cost resulting from conditions in existence prior to [Insert date contract began], the contractor shall be responsible in accordance with the terms and conditions of this contract.

(b) The obligations of the Department of Energy under this clause are subject to the availability of appropriated funds.

(End of clause)

*Alternate I (DEC 2000).* As prescribed in 48 CFR 970.3170 (a), in contracts with incumbent management and operating contractors, substitute the following for paragraph (a) of the basic clause:

(a) Any liability, obligation, loss, damage, claim (including without limitation, a claim involving strict or absolute liability), action, suit, civil fine or penalty, cost, expense or disbursement, which may be incurred or imposed, or asserted by any party and arising out of any condition, act or failure to act which occurred before [Insert date this clause was included in contract], in conjunction with the management and operation of [Insert name of facility], shall be deemed incurred under Contract No. [Insert number of prior contract].

*Alternate II (DEC 2000).* As prescribed in 48 CFR 970.3170 (b), add the following paragraph (c) to the basic clause in contracts with management and operating contractors not previously working at that particular site or facility:

(c) The contractor has the duty to inspect the facilities and sites and timely identify to the contracting officer those conditions which it believes could give rise to a liability, obligation, loss, damage, penalty, fine, claim, action, suit, cost, expense, or disbursement or areas of actual or potential

noncompliance with the terms and conditions of this contract or applicable law or regulation. The contractor has the responsibility to take corrective action, as directed by the contracting officer and as required elsewhere in this contract.

(End of clause)

### 970.5232-1 Reduction or suspension of advance, partial, or progress payments upon finding of substantial evidence of fraud.

As prescribed in 48 CFR 970.3200-1-1, insert the following clause:

Reduction or Suspension of Advance, Partial, or Progress Payments (DEC 2000)

(a) The contracting officer may reduce or suspend further advance, partial, or progress payments to the contractor upon a written determination by the Senior Procurement Executive that substantial evidence exists that the contractor's request for advance, partial, or progress payment is based on fraud.

(b) The contractor shall be afforded a reasonable opportunity to respond in writing.

(End of clause)

### 970.5232-2 Payments and advances.

As prescribed in 48 CFR 970.3270(a)(1), insert the following clause:

Payments and Advances (DEC 2000)

(a) *Installments of fixed-fee.* The fixed-fee payable under this contract shall become due and payable in periodic installments in accordance with a schedule determined by the contracting officer. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the contracting officer.

(b) *Payments on Account of Allowable Costs.* The contracting officer and the contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the contracting officer (for example, negotiated fixed amounts) shall be made from advances of Government funds. When pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until