

worker safety and health concerns. The clauses, in part, provide for reductions in the amount of fee, profit, or share of cost savings that is otherwise earned by the contractor for performance failures relating to worker safety and health violations under the Department's regulations.

(2) The clauses provide for reductions of fee or profit that is earned by the contractor depending upon the severity of the contractor's failure to comply with contract terms or conditions relating to worker safety and health concerns. When reviewing performance failures that would otherwise warrant a reduction of earned fee, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clauses. Some of the mitigating factors that must be considered are specified in the clauses.

(3) The contracting officer must obtain the concurrence of the Head of the Contracting Activity—

(i) Prior to effecting any reduction of fee or amounts otherwise payable to the contractor in accordance with the terms and conditions of the clause entitled "Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health" or of the clause entitled "Conditional Payment of Fee or Profit—Protection of Worker Safety and Health"; and

(ii) For determinations that no reduction of fee is warranted for a particular performance failure(s) that would otherwise warrant a reduction.

(4) Section 234C of the Atomic Energy Act provides that DOE shall either pursue civil penalties (implemented at 10 CFR part 851) for a violation under section 234C of the Atomic Energy Act (42 U.S.C. 2282c) or a contract fee reduction, but not both.

(5) The contracting officer must coordinate with the Office of Price Anderson Enforcement within the Office of the Assistant Secretary for Environment, Safety and Health (or with any designated successor office) before pursuing a contract fee reduction in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the

enforcement of worker health and safety concerns.

[68 FR 68777, Dec. 10, 2003]

923.7003 Contract clauses.

(a) A decision to include or not include environmental, safety and health clauses in DOE contracts shall be made by the contracting officer in consultation with appropriate environmental, safety and health program management personnel.

(b) When work is to be performed at a facility where the DOE will exercise its statutory authority to enforce occupational safety and health standards applicable to the working conditions of the contractor and subcontractor employees at such facility, the clause at 952.223-71 shall be used in such contract or subcontract if conditions (b) (1) through (3), are satisfied:

(1) DOE work is segregated from the contractor's or subcontractor's other work;

(2) The operation is of sufficient size to support its own safety and health services; and

(3) The facility is government-owned, or leased by or for the account of the government.

(c) In facilities not meeting the requirements of 923.7002(b) above and which are a production or utilization facility where there is use or possession of source, special nuclear, or by-product materials, DOE policy is not to enforce radiological safety and health standards pursuant to the contract or subcontract but rather to rely upon Nuclear Regulatory Commission (NRC) licensing requirements (including agreements with states under section 274 of the Atomic Energy Act). Pursuant to this policy, neither the clause found at 952.223-71 nor 952.223-72 is to be incorporated in the contracts or subcontracts for work at such facilities. Notwithstanding this general policy with respect to facilities not meeting the requirements of paragraph (b) above, the Secretary or his designee may determine in special cases, that DOE needs to enforce radiological safety and health standards pursuant to the contract or subcontract (see paragraph (d) below). When such a determination is made, the clause found at

952.223-72 shall be included in the contract or subcontract.

(d) In facilities not meeting the requirements of either 923.7002(b) or 923.7002(c) of this section and where there is a machine capable of producing ionizing radiation, it is DOE policy not to regulate such activity where it is adequately regulated by a state or other Federal agency. In such cases, neither clause 952.223-71 nor 952.223-72 shall be incorporated in the contract. Where the contracting officer, with appropriate environmental, safety and health advice determines that no state or other Federal agency exists to adequately regulate the operation and/or use of such machines, the clause found at 952.223-72 shall be included in the contract. The Assistant Secretary for Environment, Safety and Health (or designee) shall be consulted to determine if a non-agreement (NRC) state or a facility located in a non-agreement state has been reviewed by any other DOE office to establish that the state agency has the essential authority and resources for enforcing the radiation protection standards. This is to assure reasonable consistency in the assessment of radiation protection in non-agreement states and subsequent use of 952.223-72.

(e) In a situation where the contractor or subcontractor is performing DOE work at more than one location, inclusion of either, or both, 952.223-71 and 952.223-72 may be appropriate. In such cases, the contract or subcontract must include language to specify the extent of applicability of each clause used. For example, with a parenthetical: (Applicable only to work performed at a contractor site which has 952.223-71 or 952.223-72 clause in its contract or subcontract).

(f) Except as prescribed in 48 CFR 970.1504-5(c), the contracting officer shall insert the clause at 48 CFR 952.223-76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health, in all contracts that contain both the clause at 48 CFR 952.204-2, Security, and the clause at 48 CFR 952.250-70, Nuclear hazards indemnity agreement.

(g) Except as prescribed in 48 CFR 970.1504-5(c), the contracting officer shall insert the clause at 48 CFR 952.223-77, Conditional Payment of Fee or Profit—Protection of Worker Safety and Health, in all contracts that do not contain the clause at 48 CFR 952.204-2, Security, but that do contain the clause at 48 CFR 952.250-70, Nuclear hazards indemnity agreement.

[49 FR 12003, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994; 62 FR 2312, Jan. 16, 1997. Redesignated and amended at 68 FR 68777, Dec. 10, 2003]

PART 925—FOREIGN ACQUISITION

Subpart 925.1—Buy American Act—Supplies

Sec.

925.102 Policy.

925.105 Evaluating offers.

925.108 Excepted articles, materials, and supplies.

Subpart 925.2—Buy American Act—Construction Materials

925.202 Policy.

925.204 Violations.

Subpart 925.7—Restrictions on Certain Foreign Purchases

925.702 Restrictions.

Subpart 925.9—Additional Foreign Acquisition Clauses

925.901 Omission of the audit clause.

Subpart 925.70—Acquisition of Nuclear Hot Cell Services

925.7000 Scope of subpart.

925.7001 Definitions.

925.7002 Policy.

925.7003 Requirements.

925.7004 Contract clause.

AUTHORITY: 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418(b); and 50 U.S.C. 2401 *et seq.*

SOURCE: 49 FR 12003, Mar. 28, 1984, unless otherwise noted.

Subpart 925.1—Buy American Act—Supplies

925.102 Policy

(b) Contracting officers may make the determination required by FAR 25.102(a), provided such determination