

is functioning that demonstrably affects continuous improvement in WS&H by use of lessons-learned and best practices inter- and intra-DOE sites.

(2)(i) Except in the case of performance based firm-fixed-price contracts (see paragraph (b)(3) below), the contracting officer, for purposes of this clause, will at the time of contract award, or as soon as practicable thereafter, allocate the total amount of fee or profit that is available under this contract to equal periods of [insert 6 or 12] months to run sequentially for the entire term of the contract (*i.e.*, from the effective date of the contract to the expiration date of the contract, including all options). The amount of fee or profit to be allocated to each period shall be equal to the average monthly fee or profit that is available or otherwise payable during the entire term of the contract, multiplied by the number of months established above for each period.

(ii) Under this clause, the total amount of fee or profit that is subject to reduction in a period in which a performance failure occurs, in combination with any reduction made under any other clause in the contract that provides for a reduction to the fee or profit, shall not exceed the amount of fee or profit that is earned by the contractor in the period established pursuant to paragraph (b)(2)(i) of this clause.

(3) For performance-based firm-fixed-price contracts, the contracting officer will at the time of contract award include negative monetary incentives in the contract for contractor violations relating to the protection of worker safety and health.

(c) Protection of Worker Safety and Health. Performance failures occur if the contractor does not comply with the contract's WS&H terms and conditions, which may be included in the DOE approved contractor Integrated Safety Management System (ISMS). The degrees of performance failure under which reductions of fee or profit will be determined are:

(1) First Degree: Performance failures that are most adverse to WS&H or could threaten the successful completion of a program or project. For contracts including ISMS requirements, failure to develop and obtain required DOE approval of WS&H aspects of an ISMS is considered first degree. The Government will perform necessary review of the ISMS in a timely manner and will not unreasonably withhold approval of the WS&H aspects of the contractor's ISMS. The following performance failures or performance failures of similar import will be deemed first degree:

(i) Type A accident (defined in DOE Order 225.1A).

(ii) Two Second Degree performance failures during an evaluation period.

(2) Second Degree: Performance failures that are significantly adverse to WS&H.

They include failures to comply with approved WS&H aspects of an ISMS that result in an actual injury, exposure, or exceedance that occurred or nearly occurred but had minor practical long-term health consequences. The following performance failures or performance failures of similar import will be considered second degree:

(i) Type B accident (defined in DOE Order 225.1A).

(ii) Non-compliance with approved WS&H aspects of an ISMS that results in a near miss of a Type A or B accident. A near miss is a situation in which an inappropriate action occurs, or a necessary action is omitted, but does not result in an adverse effect.

(iii) Failure to mitigate or notify DOE of an imminent danger situation after discovery, where such notification is a requirement of the contract.

(3) Third Degree: Performance failures that reflect a lack of focus on improving WS&H. They include failures to comply with approved WS&H aspects of an ISMS that result in potential breakdown of the contractor's WS&H system. The following performance failures or performance failures of similar import will be considered third degree:

(i) Failure to implement effective corrective actions to address deficiencies/non-compliance documented through external (*e.g.*, Federal) oversight and/or reported per DOE Order 232.1A requirements, or internal oversight of DOE O 440.1A requirements.

(ii) Multiple similar non-compliances identified by external (*e.g.*, Federal) oversight that in aggregate indicate a significant WS&H system breakdown.

(iii) Non-compliances that either have, or may have, significant negative impacts to workers that indicate a significant WS&H system breakdown.

(iv) Failure to notify DOE upon discovery of events or conditions where notification is required by the terms and conditions of the contract.

(End of clause)

[69 FR 68780, Dec. 10, 2004]

#### 952.224-70 Paperwork Reduction Act.

Insert the following clause if it is anticipated that information collection from 10 or more persons will be necessary under the contract.

##### PAPERWORK REDUCTION ACT (APR 1994)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of

general public interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

(b) The contractor shall request the required OMB clearance from the contracting officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the contracting officer. The contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the contracting officer.

[49 FR 12042, Mar. 28, 1984, as amended at 59 FR 9109, Feb. 25, 1994; 62 FR 2312, Jan. 16, 1997]

**952.225-70 Subcontracting for nuclear hot cell services.**

As prescribed in 925.7004, insert the following clause in solicitations and contracts.

SUBCONTRACTING FOR NUCLEAR HOT CELL SERVICES (MAR 1993)

(a) *Definitions.*

*Costs related to the decommissioning of nuclear facilities*, as used in this clause, means any cost associated with the compliance with regulatory requirements governing the decommissioning of nuclear facilities licensed by the Nuclear Regulatory Commission. Such costs for foreign facilities and for Department of Energy facilities are costs of decommissioning associated with the compliance with foreign regulatory requirements or the Department's own requirements.

*Costs related to the storage and disposal of nuclear waste*, as used in this clause, means any costs, whether required by regulation or incurred as a matter of prudent business practice, associated with the storage or disposal of nuclear waste.

*Foreign company*, as used in this clause, means a company which offers to perform nuclear hot cell services at a facility which is not subject to the laws and regulations of the United States, its agencies, and its political subdivisions.

*Nuclear hot cell services*, as used in this clause, means services related to the examination of, or performance of various operations on, nuclear fuel rods, control assem-

blies, or other components that are emitting large quantities of ionizing radiation, after discharge from nuclear reactors, which are performed in specialized facilities located away from commercial nuclear power plants, generally referred to in the industry as "hot cells."

*Nuclear waste*, as used in this clause, means any radioactive waste material subject to regulation by the Nuclear Regulatory Commission or the Department of Energy, or in the case of foreign offers, by comparable foreign organizations.

*United States company*, as used in this clause, means a company which offers to perform nuclear hot cell services at a facility subject to the laws and regulations of the United States, its agencies, and its political subdivisions.

(b) In selecting a competitive offer for a first-tier subcontract acquisition of nuclear hot cell services, the contractor shall (1) consider neither costs related to the decommissioning of nuclear waste facilities nor costs related to the storage and disposal of nuclear waste, or (2) add these costs to offers of foreign companies, if—

(i) one or more of the offers is submitted by a United States company and includes costs related to the decommissioning of nuclear facilities and costs related to the storage and disposal of nuclear waste because it is subject to such cost; and

(ii) one or more of the offers is submitted by a foreign company and does not include these types of costs. (A foreign company might not be subject to such costs or might not have to include these types of cost in its offer if the firm is subsidized in decommissioning activity or storage and disposal of nuclear waste, or a foreign government is performing the activities below the actual cost of the activity.)

(c) Upon determining that no offer from a foreign firm has a reasonable chance of being selected for award, the requirements of this clause will not apply.

[58 FR 8911, Feb. 18, 1993; 58 FR 39679, July 26, 1993]

**952.226-70 Subcontracting goals under section 3021(a) of the Energy Policy Act of 1992.**

As prescribed in 926.7007(a), insert the following provision:

SUBCONTRACTING GOALS UNDER SECTION 3021(A) OF THE ENERGY POLICY ACT OF 1992 (PUB. L. 102-486) (JUN 1996)

(a) *Definition.* Energy Policy Act target groups, as used in this provision means:

(1) An institution of higher education that meets the criteria of 34 CFR 600.4(a) and has a student enrollment that consists of at least 20 percent: