

in each craft involved in the performance of the contract work. All solicitations for construction contracts shall reference the affirmative action requirements and the offeror's obligation to make good faith efforts to employ women in craft positions.

(3) Pursuant to the OFCCP order dated August 30, 1976, agencies shall develop "Special Bid Conditions" for use on high impact projects in non-plan areas. These special bid conditions will include mandatory goals and timetables for the utilization of minorities. The Procurement Executive using the criteria issued by OFCCP will determine those projects that are "high impact." The contracting officer is responsible for compliance with policies and procedures contained in the OFCCP "Construction Compliance Program Operations Manual." Language for inclusion in solicitations or contracts contained in the manual may be modified, provided all of the requirements are retained. The contracting officer shall develop the goals and timetables and shall confer with the appropriate OFCCP regional office. The Office of Civil Rights will provide assistance as necessary, when requested. Special bid conditions will be submitted by the contracting officer to the appropriate OFCCP regional office for approval unless otherwise directed by the Procurement Executive. When special bid conditions are applicable, adequate presolicitation lead time should be allowed for submission of the special bid conditions to OFCCP national and regional offices.

(c) An attempt to limit in any major respect the equal opportunity requirements included in an invitation for bids or request for proposals for a construction contract shall constitute grounds for a determination that the offeror does not qualify as a responsible offeror and for rejection of the bid or proposal. In the case of construction acquisition by DOE prime contractors, this determination shall be made only with the approval of the DOE contracting officer.

[49 FR 11998, Mar. 28, 1984, as amended at 56 FR 41965, Aug. 26, 1991, 58 FR 36365, July 7, 1993; 59 FR 9106, Feb. 25, 1994]

922.807 Exemptions.

(c) Contracting officer requests for exemption from E.O. 11246 should be directed to the Procurement Executive for submission to the Director, OFCCP.

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG FREE WORKPLACE

Subpart 923.4—Use of Recovered Materials

Sec.

923.405 Procedures [DOE supplemental coverage—paragraph (e)].

923.471 [Reserved]

Subpart 923.5—Workplace Substance Abuse Programs

923.570 Workplace substance abuse programs at DOE sites.

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923.7001 Nuclear safety.

923.7002 Worker Safety and Health.

923.7003 Contract clauses.

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

Subpart 923.4—Use of Recovered Materials

923.405 Procedures [DOE supplemental coverage—paragraph (e)].

(e) When acquiring items designated in the EPA Comprehensive Procurement Guidelines, the EPA recommended percentage of recovered/recycled content or range of content contained in the Recovered Materials Advisory Notice (RMAN) shall be specified in the solicitation and contract as the minimum percentage of recovered/recycled content or range of content. Acquisition of a product with recycled

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923.570-3

content exceeding the RMAN recommended content or range of content is encouraged if the product performs acceptably.

[68 FR 6358, Feb. 7, 2003]

923.471 [Reserved]

Subpart 923.5—Workplace Substance Abuse Programs

SOURCE: 57 FR 32676, July 22, 1992, unless otherwise noted.

923.570 Workplace substance abuse programs at DOE sites.

(a) The Department of Energy (DOE), as part of its overall responsibilities to protect the environment, maintain public health and safety, and safeguard the national security, has established policies, criteria, and procedures for contractors to develop and implement programs that help maintain a workplace free from the use of illegal drugs.

(b) Regulations concerning DOE's contractor workplace substance abuse programs are promulgated at 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

923.570-1 Applicability.

(a) The policies, criteria, and procedure specified in 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, apply to contracts for work performed at sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, where such work:

(1) Has a value of \$25,000 or more, and;

(2) Has been determined by DOE to involve:

(i) Access to or handling of classified information or special nuclear materials;

(ii) High risk of danger to life, the environment, public health and safety or national security; or

(iii) The transportation of hazardous materials to or from a DOE site.

(b) Except as otherwise provided for in this subpart, contracts subject to the requirements of 10 CFR part 707

and this subpart shall not be subject to FAR 23.5, Drug Free Workplace.

[57 FR 32676, July 22, 1992; 57 FR 41974, Sept. 14, 1992]

923.570-2 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 48 CFR 970.5223-3, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations where the work to be performed by the contractor will occur on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 48 CFR 923.570-1, Applicability.

(b) The contracting officer shall insert the clause at 48 CFR 970.5223-4, Workplace Substance Abuse Programs at DOE Sites, in contracts where the work to be performed by the contractor will occur on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 923.570-1, Applicability.

[57 FR 32676, July 22, 1992, as amended at 62 FR 42074, Aug. 5, 1997; 65 FR 81007, Dec. 22, 2000]

923.570-3 Suspension of payments, termination of contract, and debarment and suspension actions.

(a) The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and the debarment and suspension of a contractor relative to failure to comply with 48 CFR 970.5223, Workplace Substance Abuse Programs at DOE Sites.

(b) For purposes of 10 CFR part 707, the specific causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are:

(1) The contractor fails to either comply with the requirements of 10 CFR part 707 or perform in a manner consistent with its approved program;

(2) The contractor has failed to comply with the terms of the provision at 48 CFR 970.5204-57; or

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes for violations occurring on the DOE-owned or -controlled site, as to indicate that the contractor has failed to make a good faith effort to provide a drug free workplace.

[57 FR 32676, July 22, 1992, as amended at 62 FR 42074, Aug. 5, 1997; 65 FR 81007, Dec. 22, 2000]

Subpart 923.7—Contracting for Environmentally Preferable and Energy-efficient Products and Services

923.703 Policy.

Executive Order 13149, dated April 21, 2000, entitled *Greening the Government Through Federal Fleet and Transportation Efficiency*, provides that the Federal Government exercise leadership in the reduction of petroleum consumption through improvements in its motor fleet fuel efficiency and increases in its use of alternative fuel vehicles and alternative fuels. The specific provisions affecting the Department's acquisition program are as follows. Part 2 of the Executive Order establishes goals for the reduction of petroleum consumption in the motor vehicle fleet and requires the development of strategies for the increased use of alternative fuel vehicles, increased use of alternative fuels accompanied by improved alternative fuel infrastructure, and the acquisition of higher fuel economy vehicles. Procurement personnel involved in the acquisition of motor vehicles, including lease, and motor vehicle products should familiarize themselves with these requirements and assist their fleet management personnel in acquiring vehicles and products which comply with the requirements of the Executive Order and the Department's compliance strategy. In addition, section 403 of the Executive Order provides for the acquisition of environmentally preferable motor vehicle products, including the use of biobased motor vehicle products. Environmentally preferable motor vehicle products include re-refined motor vehicle lubricating oils, retread tires, recycled engine coolants, and bio-based

motor vehicle products. Use of these products is addressed by the Department's Affirmative Procurement Program required by 48 CFR (FAR) 23.404, Agency affirmative procurement programs, as implemented by 48 CFR (DEAR) 923.405, Procedures [DOE supplemental coverage—paragraph (e)]. Environmentally preferable motor vehicle products are among the items designated in the Comprehensive Procurement Guidelines, which lists products with recovered content that Federal agencies and their contractors are to buy. That list is published by the Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6962, and regulations published at 40 CFR part 247.

[68 FR 52131, Sept. 2, 2003]

Subpart 923.70—Environmental, Conservation, and Occupational Safety Programs

923.7001 Nuclear safety.

(a) The DOE regulates the nuclear safety of its major facilities under its own statutory authority derived from the Atomic Energy Act and other legislation. The DOE also regulates, under certain specific conditions, the use by its contractors of radioactive materials and ionizing radiation producing machines.

[49 FR 12003, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994]

923.7002 Worker Safety and Health.

(a)(1) Except when the clause prescribed at 48 CFR 970.1504-5(c) is used, the clauses entitled "Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health" and "Conditional Payment of Fee or Profit—Protection of Worker Safety and Health" implement the requirements of section 234C of the Atomic Energy Act for the use of a contract clause that provides for an appropriate reduction in the fee or amount paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of

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