

970.0970

the contracting officer shall assure that the clause contains appropriate restraints on intra-corporate relations between the contractor's organization and personnel operating the Department's facility and its parent corporate body and affiliates. Such restraints shall include personnel access to the facility, technical transfer of information from the facility, and the availability from the facility of other advantages flowing from performance of the contract. The contracting officer is responsible for ensuring that M&O contractors adopt policies and procedures in the award of subcontracts that will meet the Department's need to safeguard against a biased work product and an unfair competitive advantage. To this end, the organizational conflicts of interest clause in management and operating contracts shall include Alternate I.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36371, July 22, 2009]

970.0970 Performance guarantees.

970.0970-1 Determination of responsibility.

(a) In the award of a management and operating contract, the contracting officer shall determine that the prospective contractor is a responsible contractor and is capable of providing all necessary financial, personnel, and other resources in performance of the contract.

(b) Department of Energy (DOE) contracts with entities that have been created solely for the purpose of performing a specific management and operating contract. Generally, such newly created entities will have very limited financial and other resources. In such instances, when making the determination of responsibility required under this section, the contracting officer may evaluate the financial resources of other entities only to the extent that those entities are legally bound, jointly and severally if more than one, by means of a performance guarantee or other equivalent enforceable commitment to supply the necessary resources to the prospective contractor and to assume all contractual obligations of the prospective contractor. A performance guarantee

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should be the means used unless an equivalent degree of commitment can be obtained by an alternative means.

(c) The guaranteeing corporate entity(ies) must be found to have sufficient resources in order to satisfy its guarantee.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36371, July 22, 2009]

970.0970-2 Solicitation provision.

The contracting officer shall insert the provision at 970.5209-1, Requirement for Guarantee of Performance, in solicitations when the awardee will be required to be organized solely for performance of the requirement.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36371, July 22, 2009]

Subpart 970.11—Describing Agency Needs

970.1100 Policy.

970.1100-1 Performance-based contracting.

(a) It is the policy of the Department of Energy (DOE) to use, to the maximum extent practicable, performance-based contracting methods in its management and operating contracts. The Office of Federal Procurement Policy's Seven Steps to Performance-Based Acquisition located at Web site http://www.acquisition.gov/comp/seven_steps/home.html provides guidance concerning the development and use of performance-based contracting concepts and methodologies that may be generally applied to management and operating contracts. Performance-based contracts: Describe performance requirements in terms of results rather than methods of accomplishing the work; use measurable (i.e., terms of quality, timeliness, quantity) performance standards and objectives and quality assurance surveillance plans; provide performance incentives (positive or negative) where appropriate; and specify procedures for award or incentive fee reduction when work activities are not performed or do not meet contract requirements.

(b) The use of performance-based statements of work, where feasible, is the preferred method for establishing