

Subpart 970.23—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety and Drug-Free Work Place

970.2301 Sustainable acquisition.

970.2301–1 Policy.

There are many environmentally beneficial and resource efficient programs described in various subparts of FAR Part 23. For ease of use, DOE refers to all of these as the DOE Sustainable Acquisition Program with guidance for the many products at <http://www.hss.energy.gov/pp/epp>. Contractors operating DOE facilities shall comply with the requirements of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, and Executive Order 13514, Federal Leadership in Environmental, Energy, and Economic Performance. The contractor shall also consider the best practices within the DOE Acquisition Guide, Chapter 23, *Acquisition Considerations Regarding Federal Leadership in Environmental, Energy, and Economic Performance*.

[75 FR 57695, Sept. 22, 2010]

970.2301–2 Contract clauses.

(a) Section 3(f) of Executive Order 13423 requires contractors to comply with the provisions of the Order to the same extent as the Federal agency would be required to comply if it operated the facility or fleet. Insert the clause at 970.5223–6, Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, in such contracts.

(b) Insert the clause at 970.5223–6, Sustainable and Environmentally Preferable Purchasing Practices, or its Alternate I in contracts for the management and operation of DOE facilities, or other contracts under which the contractor manages Government facilities or fleets, or conducts mission operations at Government facilities, or performs construction at DOE facilities. Inclusion of this contract clause applies to contractors that are responsible for the management and operation of the DOE's facilities or the conduct of mission operations at the De-

partment's facilities, including elements of the National Nuclear Security Administration (NNSA), the Power Marketing Administrations, and the National Laboratories. All such contracts should also include the following clauses: FAR 52.223–2, Affirmative Procurement of Biobased Products under Service and Construction Contracts; FAR 52.223–10, Waste Reduction Program; FAR 52.223–XX, Compliance with Environmental Management Systems (see 923.903 regarding the applicability of this clause to specific DOE contracts); FAR 52.223–15, Energy Efficiency in Energy Consuming Products; and FAR 52.223–17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.

[75 FR 57695, Sept. 22, 2010]

970.2303 Hazardous materials identification and material safety.

970.2303–2–70 General.

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

(b) The inclusion of environmental, safety and health clauses in DOE contracts shall be made by the contracting officer in accordance with this subpart and in consultation with appropriate environmental, safety and health program management personnel.

(c)(1) For DOE management and operating contracts and other contracts designated by the Senior Procurement Executive, or designee, the clause entitled “970.5215–3 Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts” implements 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 clause, in part, provides for reductions

Department of Energy

970.2305-2

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)(i) Section 234C of the Atomic Energy Act states 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.

(ii) The contracting officer must coordinate with the Office of Price Anderson Enforcement within the Office of the Assistant Secretary for Health, Safety and Security (or with any designated successor office) before pursuing 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 safety and health concerns.

[65 FR 81009, Dec. 22, 2000, as amended at 68 FR 68782, Dec. 10, 2003. Redesignated and amended at 74 FR 36372, 36378, July 22, 2009]

970.2303-3 Contract clauses.

(a) When work under management and operating contracts and subcontracts thereunder is to be performed at a facility where 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 48 CFR 970.5223-1, Integration of Environment, Safety and Health into Work Planning and Execution, shall be used in such contract or subcontract and made applicable to the work if conditions in paragraphs (a)(1) through (3) of this section, 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.

(b) The clause set forth in 952.223-72, Radiation Protection and Nuclear Criticality, shall be included in those

contracts or subcontracts for, and be made applicable to, work to be performed at a facility where DOE does not elect to assert its statutory authority to enforce occupational safety and health standards applicable to the working conditions of contractor and subcontractor employees, but does need to enforce radiological safety and health standards pursuant to provisions of the contract or subcontract rather than by reliance upon Nuclear Regulatory Commission licensing requirements (including agreements with States under section 274 of the Atomic Energy Act).

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36372, July 22, 2009]

970.2305 Workplace substance abuse programs—management and operating contracts.

970.2305-1 General.

(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 management and operating contractors to develop and implement programs that help maintain a workplace free from the use of illegal drugs.

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

970.2305-2 Applicability.

(a) All management and operating contracts awarded under the authority of the Atomic Energy Act of 1954, as amended, are required to implement the policies, criteria, and procedures of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

(b) Except as otherwise provided for in this subpart, management and operating contracts subject to the requirements of 10 CFR part 707 and this subpart shall not be subject to 48 CFR subpart 23.5, Drug Free Workplace.

[65 FR 81009, Dec. 22, 2000, as amended at 75 FR 68221, Nov. 5, 2010]