

Other Classified Information” and the 952.223–76 clause entitled “Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health” 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 the safeguarding of Restricted Data or other classified information. 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 clause. Some of the mitigating factors that must be considered are specified in the clause.

(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 952.204–76 clause entitled “Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information” or of the 952.223–76 clause entitled “Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and 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.

[67 FR 14876, Mar. 28, 2002, as amended at 68 FR 68776, Dec. 10, 2003; 74 FR 36361, July 22, 2009]

#### **904.404 Solicitation provision and contract clause.**

(d) The security clauses to be used in DOE contracts are found at 952.204. They are:

(1) *Security, 952.204–2*. This clause is required in contracts and subcontracts, the performance of which involves or is likely to involve classified information, access to special nuclear materials or the provision of protective services. DOE utilizes the National Industrial Security Program but DOE’s security authority is derived from the

Atomic Energy Act which contains specific language not found in other agencies’ authorities. For this reason, DOE contracts must contain the clause at 952.204–2 rather than the clause at 48 CFR 52.204–2.

(2) *Classification/Declassification, 952.204–70*. This clause is to be used in all contracts which involve classified information.

(3) *Sensitive foreign nation controls, 952.204–71*. This clause is required in unclassified research contracts which may involve making unclassified information about nuclear technology available to certain sensitive foreign nations. The contractor shall be provided at the time of award the listing of nations referenced in DOE Order 142.3 or its successor. (The attachment referred to in the clause shall set forth the applicable requirements of the DOE regulations on dissemination of unclassified published and unpublished technical information to foreign nations.)

(4) *Disclosure of information, 952.204–72*. This clause may be used in place of the clauses entitled “Security” and “Classification” in contracts with educational institutions for research work performed in their own institute facilities that are not likely to produce classified information.

(5) *Facility Clearance, 952.204–73*. This solicitation provision should be used in solicitations expected to result in contracts and subcontracts that require employees to possess access authorizations.

(6) Except as prescribed in 970.1504–5(b), the contracting officer shall insert the clause at 952.204–76, 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 the clause at 952.204–2, Security, but that do not contain the clause at 952.250–70, Nuclear Hazards Indemnity Agreement.

(7) *Computer Security, 952.204–77*. This clause is required in contracts in which the contractor may have access to

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computers owned, leased or operated on behalf of the Department of Energy.

[49 FR 11941, Mar. 28, 1984; 49 FR 38949, Oct. 2, 1984, as amended at 54 FR 27646, June 30, 1989; 59 FR 24358, May 11, 1994; 67 FR 14871, Mar. 28, 2002; 67 FR 14876, Mar. 28, 2002; 68 FR 68777, Dec. 10, 2003; 71 FR 40885, July 19, 2006; 74 FR 23124, May 18, 2009; 74 FR 36361, July 22, 2009; 76 FR 7690, Feb. 11, 2011]

### Subpart 904.6 [Reserved]

### Subpart 904.7—Contractor Records Retention

#### 904.702 Applicability.

(b) Contracts containing the clause at 952.223–71 Integration of Environment Safety, and Health into Work Planning and Execution, or the Radiation Protection and Nuclear Criticality clause at 952.223–72, must also include the Preservation of Individual Occupational Radiation Exposure Records clause at 952.223–75 which will necessitate retention of records in accordance with schedules contained in applicable DOE Directives in the records management series, rather than those found at 48 CFR subpart 4.7.

[74 FR 36361, July 22, 2009]

### Subpart 904.8—Government Contract Files

#### 904.803 Contents of contract files.

(a) (29) The record copy of the Individual Acquisition Action Report shall be included in the file section containing procurement management reports.

[49 FR 11941, Mar. 28, 1984, as amended at 74 FR 36361, July 22, 2009]

#### 904.804 Closeout of contract files.

##### 904.804–1 Closeout by the office administering the contract.

(a) The Head of the Contracting Activity (HCA) shall ensure that necessary procedures and milestone schedules are established to meet the requirements of 48 CFR 4.804–1, and that resources are applied to effect the earliest practicable deobligation of excess funds and the timely closeout of all contract files which are physically

completed or otherwise eligible for closeout action.

(b) Quick closeout procedures for cost reimbursable and other than firm fixed price type contracts are covered under 48 CFR 42.708.

[49 FR 11941, Mar. 28, 1984, as amended at 62 FR 53757, Oct. 16, 1997; 74 FR 36361, July 22, 2009; 76 FR 7690, Feb. 11, 2011]

#### 904.805 Storage, handling, and disposal of contract files.

Contract files shall be disposed of in accordance with applicable DOE Order 243.1. (See current version.)

[74 FR 36361, July 22, 2009]

### Subpart 904.70—Facility Clearance

#### 904.7000 Scope of subpart.

This subpart sets forth the Department of Energy policies and procedures regarding Facility Clearances for contractors and subcontractors that require access to classified information or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for classified activities being performed at the facility and upon a favorable foreign ownership, control, or influence (FOCI) determination.

[67 FR 14876, Mar. 28, 2002]

#### 904.7001 Applicability.

The provisions of this subpart shall apply to all offeror(s), contractors, and subcontractors who will or do have access to classified information or a significant quantity of special nuclear material.

[49 FR 11941, Mar. 28, 1984, as amended at 59 FR 9104, Feb. 25, 1994; 76 FR 7690, Feb. 11, 2011]

#### 904.7002 Definitions.

*Contract* means the prime contract and the subcontract at any tier.

*Contracting officer* means the DOE contracting officer.

*Contractor* means the contractor and the subcontractor at any tier.

*Facility clearance* means an administrative determination that a facility is eligible to access, produce, use, or store