

923.7002

and ionizing radiation producing machines.

[49 FR 12003, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994; 74 FR 36365, July 22, 2009]

923.7002 Worker safety and health.

(a)(1) Except when the clause prescribed at 970.1504-8(c) is used, the clauses entitled “952.223-76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health” or “952.223-77, 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

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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 Health, Safety and Security (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, as amended at 74 FR 36365, July 22, 2009]

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 Office of Health, Safety and Security 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, Integration of Environment, Safety, and Health into Work Planning and Execution, 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 paragraph (b) of this section and which are a production or utilization facility where there is use or possession of source, special nuclear, or byproduct 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, Integration of Environment, Safety, and Health into Work Planning and Execution, nor 952.223-72, Radiation Protection and Nuclear Criticality, 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) of this section, 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) of this section). When such a determination is made, the clause found at 952.223-72, Radiation Protection and Nuclear Criticality, shall be included in the contract or subcontract.

(d) In facilities not meeting the requirements of paragraph (b) or (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, Integration of Environment, Safety, and Health into Work Planning and Execution, nor 952.223-72, Radiation Protection and Nuclear Criticality, 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, Radiation Protection and Nuclear Criticality, shall be included in the contract. The Assistant Secretary for Health, Safety and Security (or designee) shall be con-

sulted to determine if a non-agreement 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, Integration of Environment, Safety, and Health into Work Planning and Execution, and 952.223-72, Radiation Protection and Nuclear Criticality, 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 970.1504-8(c), the contracting officer shall insert the clause at 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 952.204-2, Security Requirements, and the clause at 952.250-70, Nuclear Hazards Indemnity Agreement.

(g) Except as prescribed in 970.1504-8(c), the contracting officer shall insert the clause at 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 952.204-2, Security Requirements, but that do contain the clause at 952.250-70, Nuclear Hazards Indemnity Agreement.

[74 FR 36365, July 22, 2009]

PART 925—FOREIGN ACQUISITION

Subpart 925.1—Buy American Act—Supplies

Sec.
925.103 Exceptions.