

## 970.2303

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 Department'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.

EFFECTIVE DATE NOTE: At 75 FR 57695, Sept. 22, 2010, 970.2301-2 was added, effective October 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

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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 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,

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## 970.2304-2

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]

### 970.2304 Use of recovered materials and biobased products.

EFFECTIVE DATE NOTE: At 75 FR 57695, Sept. 22, 2010, 970.2304 was removed, effective October 22, 2010.

#### 970.2304-1 General.

The policy for the acquisition and use of EPA designated items, i.e., items with recovered/recycled content, is set forth at 48 CFR (FAR) 23.4—Use of Recovered Materials as supplemented by 48 CFR (DEAR) 923.405(e) and by 48 CFR (FAR) 23.704, Application to Government-owned or leased facilities, and 48 CFR (FAR) 23.705, Contract clause.

[68 FR 6359, Feb. 7, 2003]

EFFECTIVE DATE NOTE: At 75 FR 57695, Sept. 22, 2010, 970.2304-1 was removed, effective October 22, 2010.

#### 970.2304-2 Contract clause.

The contracting officer shall insert the clause at 48 CFR (FAR) 52.223-10, Waste Reduction Program, and the clause at 970.5223-2, Affirmative Procurement Program, in contracts for the management of DOE facilities, including national laboratories. If the contractor subcontracts a significant portion of the operation of the Government facility which includes the acquisition of items designated in EPA's Comprehensive Procurement Guidelines, the subcontract shall contain a clause substantially the same as that at 970.5223-2. The EPA Comprehensive Procurement Guidelines identify products which Federal agencies and their contractors are to procure with recycled content pursuant to 40 CFR part 247. Examples of such subcontracts would be operation of the facility supply function, construction or remodeling at the facility, or maintenance of the facility motor vehicle fleet. In situations in which the facility management contractor can reasonably determine the amount of products with recovered/recycled content to be acquired under the subcontract, the facility management contractor is not required to flow down the reporting requirement of the 970.5223-2 clause. Instead, the facility management contractor may include the subcontract quantities in its own report and include an agreement in the subcontract that such products will be acquired with recovered/recycled content and that the subcontractor will advise if it is unable to procure such products with recovered/recycled content because the product is not available—

(a) Competitively within a reasonable time;

(b) At a reasonable price; or,

(c) Within the performance requirements.

[68 FR 6359, Feb. 7, 2003, as amended at 74 FR 36372, July 22, 2009]

EFFECTIVE DATE NOTE: At 75 FR 57695, Sept. 22, 2010, 970.2304-2 was removed, effective October 22, 2010.