

publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(d)(3) The Contractor agrees not to assert copyright in computer software first produced in the performance of this contract without prior written permission of the DOE Patent Counsel assisting the contracting activity. When such permission is granted, the Patent Counsel shall specify appropriate terms, conditions, and submission requirements to assure utilization, dissemination, and commercialization of the data. The Contractor, when requested, shall promptly deliver to Patent Counsel a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled.

(2) However, rights in data in these specific situations will be treated as described, where the contract is—

(i) For the production of special works of the type set forth in FAR 27.405(a), but the clause at FAR 52.227-14, Rights in Data-General, shall be included in the contract and made applicable to data other than special works, as appropriate (See paragraph (i) of FAR 27.409);

(ii) For the acquisition of existing data works, as described in FAR 27.405(b) (See paragraph (j) of FAR 27.409);

(iii) To be performed outside the United States, its possessions, and Puerto Rico, in which case agencies may prescribe different clauses (See paragraph (n) of FAR 27.409);

(iv) For architect-engineer services or construction work, in which case contracting officers shall utilize the clause at FAR 52.227-17, Rights in Data-Special Works;

(v) A Small Business Innovation Research contract (See paragraph (l) of FAR 27.409);

(vi) For management and operation of a DOE facility (see 48 CFR 970.2704) or other contracts involving the production of data necessary for the management or operation of DOE facilities or a DOE site, after consultation with Patent Counsel (See 927.402-1(b)); or

(vii) Awarded pursuant to a statute expressly providing authority for the protection of data first produced thereunder from disclosure or dissemination. (See 927.404-70).

(h) The contracting officer shall insert the clause at FAR 52.227-16, Addi-

tional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be \$500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. See FAR 27.406(b). This clause may also be used in other contracts when considered appropriate.

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(s) Contracting officers shall incorporate the solicitation provision at FAR 52.227-23, Rights to Proposal Data (Technical), in all requests for proposals.

(t) Contracting officers shall include the solicitation provision at 952.227-84 in all solicitations involving research, developmental, or demonstration work.

[63 FR 10506, Mar. 4, 1998, as amended at 65 FR 81007, Dec. 22, 2000]

### Subpart 927.70 [Reserved]

## PART 928—BONDS AND INSURANCE

### Subpart 928.1—Bonds and Other Financial Protections

Sec.

928.101 Bid guarantees.

928.101-1 Policy on use.

928.103 Performance and payment bonds for other than construction contracts.

928.103-3 Payment bonds.

928.103-70 Review of performance and payment bonds for other than construction.

### Subpart 928.3—Insurance

928.301 Policy.

928.370 Service-type insurance policies.

AUTHORITY: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

SOURCE: 49 FR 12010, Mar. 28, 1984, unless otherwise noted.

### Subpart 928.1—Bonds and Other Financial Protections

SOURCE: 61 FR 41708, Aug. 9, 1996, unless otherwise noted.

## Department of Energy

931.102

### 928.101 Bid guarantees.

#### 928.101-1 Policy on use.

In addition to the restriction on use of bid guarantees in 48 CFR 28.101-1(a), a bid guarantee may be required only for fixed price or unit price contracts entered into as a result of sealed bidding. They may not be required for negotiated contracts.

[61 FR 41708, Aug. 9, 1996, as amended at 75 FR 29459, May 26, 2010]

### 928.103 Performance and payment bonds for other than construction contracts.

#### 928.103-3 Payment bonds.

A determination that is in the best interest of the Government to require payment bonds in connection with other than construction contracts may be made by the contracting officer on individual acquisitions.

### 928.103-70 Review of performance and payment bonds for other than construction.

A performance or payment bond, other than an annual bond, shall not antedate the contract to which it pertains.

## Subpart 928.3—Insurance

### 928.301 Policy.

The DOE policies and procedures for indemnification of DOE contractors are set forth in 48 CFR part 50 and part 950.

[61 FR 41708, Aug. 9, 1996, as amended at 74 FR 36366, July 22, 2009; 75 FR 29459, May 26, 2010]

### 928.370 Service-type insurance policies.

(a) Service-type insurance policies are cost-reimbursement type contracts or subcontracts in which the insurer provides claim and loss adjustment services on a cost reimbursement basis, which satisfies state and Federal insurance requirements.

(b) Service-type insurance policies may be used with contracting officer approval, when one or more of the following conditions are present—

(1) Pure risk commercial insurance is not available or, if available, cost is not considered reasonable;

(2) Inherent risks in the contract are new and a part of the process of commercialization;

(3) The service-type insurance is needed to implement jointly funded projects; or

(4) The service-type insurance arrangement is considered in the Government's best interest.

[61 FR 41708, Aug. 9, 1996, as amended at 74 FR 36366, July 22, 2009]

## PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES

### Subpart 931.1—Applicability

Sec.

931.102 Fixed-price contracts.

### Subpart 931.2—Contracts With Commercial Organizations

931.205 Selected costs.

931.205-18 Independent research and development (IR&D) and bid and proposal (B&P) costs.

931.205-19 Insurance and indemnification.

931.205-32 Pre-contract costs.

931.205-33 Professional and consultant service costs.

931.205-47 Costs related to legal and other proceedings.

AUTHORITY: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

### Subpart 931.1—Applicability

#### 931.102 Fixed-price contracts.

The intent of the first sentence of 48 CFR 31.102 is that applicable subparts of 48 CFR part 31 shall be used by the Government in—

(a) Pricing fixed-price prime contracts and modifications,

(b) Evaluating the reasonableness of a prime contractor's (or prospective prime contractor's) proposed subcontract (or subcontract modification) prices, and

(c) Determining the allowability of contractor payments to subcontractors in accordance with the provisions of 48 CFR 31.204(b).

[49 FR 12011, Mar. 28, 1984, as amended at 75 FR 29459, May 26, 2010]