4. On occasion.
5. Individuals or households.
6. 60,000 responses.
7. 30,000 hours.
8. Not applicable.

* * * * * *

1. Department of Veterans Benefits.
2. Transfer of (Scholastic) Credit (Schools).
3. VA Form 22–315.
4. On occasion.
5. Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
6. 1,600 responses.
7. 267 hours.
8. Not applicable.

Extensions

1. Department of Veterans Benefits.
2. Request to Lender for Status Loan Account—LCS.
3. VA Form 26–8778.
4. On occasion.
5. Small businesses or organizations.
6. 126,000 responses.
7. 21,600 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Electrical Systems Inspection Report (Manufactured Home).
3. VA Form 26–8731b.
4. On occasion.
5. Individuals or households, Businesses or other for-profit, Small businesses or organizations.
6. 1,000 responses.
7. 2,000 hours.
8. Not applicable.

* * * * *

1. Department of Veterans Benefits.
2. Statement of Dependency on Parent(s).
3. VA Form 21–509.
4. On occasion.
5. Individuals or households.
6. 55,000 responses.
7. 27,500 hours.
8. Not applicable.

[FR Doc. 84–8312 Filed 3–27–84; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 61
Wednesday, March 28, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Federal Reserve System	1
Federal Home Loan Mortgage Corporation	2
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1

FEDERAL RESERVE SYSTEM

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to **Federal Register** on March 16, 1984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 11:00 a.m., Monday, March 26, 1984, following a recess at the conclusion of the open meeting.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Proposed statement to the Senate Committee on Banking, Housing, and Urban Affairs, regarding S. 2181, the Financial Services Competitive Equity Act, and S. 2134, the Depository Institutions Holding Company Act Amendments of 1983.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

Dated: March 26, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84–8448 Filed 3–26–84; 4:02 pm]

BILLING CODE 6210–01–M

2

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: March 29, 1984, 1:30 p.m.

PLACE: 1776 G Street, NW., Washington, D.C., Conference Room 4–G.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Alan B. Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, D.C. 20013, (202) 789–4763.

MATTERS TO BE CONSIDERED:

Closed:
Minutes of January 31, 1984 Board of Directors' Meeting
Minute Entry
Closed:
President's Report
Closed:
Financial Report
Minute Entry

Date sent to **Federal Register:** March 26, 1984.

Maud Mater,

Corporate Secretary.

[FR Doc. 84–8422 Filed 3–26–84; 1:49 pm]

BILLING CODE 6720–01–M

3

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL (NORTHWEST POWER PLANNING COUNCIL)

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open. An executive session to discuss pending litigation and personnel matters will follow the meeting on April 12. This session will be closed to the public.

TIME AND DATE: April 11 and 12, 1984, 9:00 a.m.

PLACE: Red Lion Motor Inn/Riverside, 29th and Chinden Boulevard, Boise, Idaho.

MATTERS TO BE CONSIDERED:

- Prelimiary Council Decisions on Draft Amendment of the Columbia River Basin Fish and Wildlife Program
- Public Comment on Second Set of Issue Papers on Amendment of the Columbia River Basin Fish and Wildlife Program
- Presentation of Third Set of Issue Papers on Amendment of the Columbia River Basin Fish and Wildlife Program
- Staff Presentation of Bureau of Reclamation, Federal Energy Regulatory Commission, and Corps of Engineers FY 1985 Budget Proposals
- Council Decision on Proposed Amendment to the Council's Study of Large Thermal Plant Planning and Construction Schedules (Action 23.1)
- Staff Presentation on Death Spiral Issue Paper
- Staff Presentation on Northwest Power Planning Council Power Planning Division Workplan

FOR FURTHER INFORMATION CONTACT: Ms. Bess Wong (503) 222–5161

Edward Sheets,

Executive Director.

[FR Doc. 84–8383 Filed 3–26–84; 11:01 am]

BILLING CODE 0000–00–M

Federal Register

Wednesday
March 28, 1984

Part II

Department of Energy

48 CFR Ch. 9

Acquisition Regulations; Final Rule

DEPARTMENT OF ENERGY

48 CFR Ch. 9

Acquisition Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: This final rule completes the effort begun by the notice of proposed rulemaking published in the **Federal Register** on September 26, 1983 at 48 FR 43772. The purpose of the rule is to establish the Department of Energy Acquisition Regulation (DEAR). This regulation will be codified as Chapter 9 of Title 48 of the Code of Federal Regulations. Its purpose is to implement and supplement the Federal Acquisition Regulation (FAR) which has been separately promulgated by the General Services Administration, Department of Defense, and National Aeronautics and Space Administration as Chapter I of Title 48 of the Code of Federal Regulations. The FAR was published in the September 19, 1983 issue of the **Federal Register**. The FAR is being promulgated as the uniform, simplified, acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms.

The FAR will supersede the Defense Acquisition Regulation, the Federal Procurement Regulations, and the National Aeronautics and Space Administration Procurement Regulation. Civilian agency implementations of the Federal Procurement Regulations will generally become outdated as a result of the promulgation of the FAR. For this reason, the Department of Energy Procurement Regulations (DOE–PR), codified at Chapter 9 of Title 41 of the Code of Federal Regulations, will not be used, with one exception, for solicitations issued after the April 1, 1984 effective date of the FAR and DEAR. The exception to this however is that Part 9–9, "Patents, Data, and Copyrights," of the DOE–PR will remain in effect. However, the provisions of 41 CFR 9–9.107–1 through 9–9.107–6 and 9–9.109–6 shall apply only to contracts with other than small business firms and domestic nonprofit organizations which do not fall within the provisions of 35 U.S.C. 202(a)(i), (ii), or (iii). This will be an interim procedure pending finalization of FAR coverage in this area and a Departmental rulemaking. As a practical matter, both the Federal Procurement Regulations and the DOE–PR, 41 CFR Chapters 1 and 9, respectively, will continue to be applicable for the administration of contracts awarded prior to the effective date of the FAR and DEAR.

The intended effect of the FAR is to simplify the Federal procurement process by adopting a uniform regulation for all agencies. The uniform regulation will eliminate the confusion caused contractors by differing policies among the various Federal agencies. The intended effect of the DEAR is to implement the FAR where required and to supplement the FAR in areas where there is no FAR coverage of policies unique to DOE.

EFFECTIVE DATE: This regulation will be effective April 1, 1984.

FOR FURTHER INFORMATION CONTACT:

Richard Langston, Procurement Policy Branch, MA–421.1, Procurement and Assistance Management Directorate, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–8188

Robert Forst, Office of General Counsel, AGC for Procurement and Financial Incentives, GC–44, Department of Energy, Room 6B–158, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–1526

SUPPLEMENTARY INFORMATION:

I. Background

II. Statutory & Regulatory Requirements

A. Executive Order 12291

B. Regulatory Flexibility Act

C. Paperwork Reduction Act

III. Public Comments

I. Background

The policies and procedures of the Federal government regarding the procurement of supplies and services have been developed in a largely independent fashion by the various agencies. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies have traditionally developed their own contracting procedures with limited attention to uniformity among agencies. The result of this is a system of procurement policies which vary from agency to agency and cause confusion within the contracting community. As long ago as 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation to be known as the Federal Acquisition Regulation (FAR).

The FAR has been codified as Chapter 1 of Title 48 of the Code of Federal Regulations. The FAR was published in the September 19, 1983 edition of the **Federal Register** with an effective date of April 1, 1984.

Because of differing statutory authorities among Federal agencies and because as a practical matter the FAR cannot contain all the procedural details of how to implement a particular policy, the FAR authorizes the agencies to issue implementing regulations. For this reason, DOE issued a notice of proposed rulemaking on September 26, 1983 at 48 FR 43772 inviting the public to comment on the draft of its regulation to implement and supplement the FAR. A correction notice was issued on October 25, 1983 at 48 CFR 49315. The only significant aspect of the correction notice involved the addition of 917.7108–3 which provides for managing Government property under special research contacts in accordance with FAR 45 and 945 when title is to remain with the Government.

II. Statutory & Regulatory Requirements

A. Executive Order 12291

This Executive Order, entitled "Federal Regulation", requires that certain rules be reviewed by the Office of Management and Budget prior to promulgation. In accordance with the memorandum from the Director, Office of Management and Budget to the Administrators of the Office of Federal Procurment Policy and the Office of Information and Regulatory Affairs, dated December 15, 1983, this final rule is exempt from the provisions of Executive Order 12291, pursuant to section 8(b) of the Order, because it deals with management of the agency's procurement function.

B. Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Paperwork Reduction Act

The information collection and recordkeeping requirements that are imposed on the public by this proposed rulemaking have been cleared by the Office of Management and Budget (OMB) under various control numbers, in accordance with section 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 98–511, and OMB's implementing

regulations at 5 CFR Part 1320. These requirements and their corresponding control numbers appear at 901.105. Pursuant to the request for public comments, DOE received two comments regarding paperwork reduction considerations. These comments are addressed at section III.

III. Public Comments

The Department of Energy (DOE) published a notice of proposed rulemaking on September 26, 1983 to establish the Department of Energy Acquisition Regulation. The notice invited public comments for a 60 day period ending November 25, 1983. Comments were received from seven organizations. In addition to general comments, the DOE received two comments concerning items which involve approvals by the Office of Management and Budget (OMB) as part of the clearance process required by the Paperwork Reduction Act of 1980, Pub. L. 96–511 and OMB's implementing regulations of 5 CFR Part 1320. Actions taken with regard to the Paperwork Reduction Act of 1980 issues are the first issues discussed. Other public comments and suggestions pertinent to the notice of proposed rulemaking and actions taken in response thereto are summarized in the paragraphs that follow those comments.

Comments Regarding Paperwork Reduction Act

Comment: Two organizations objected to the Department's proposal, at 952.219–9, that requires a contractor to report the percent and dollar value of subcontracts awarded to women-owned small businesses. The proposal included language that this information be inserted at the "Remarks" section of Standard Forms 294 and 295. The commenter asked that 952.219–9 be removed from the final rule.

Response: The DOE's proposal was based on an interim "Phase I" copy of Part 19 of the FAR which contained a requirement for a women-owned small business subcontracting program clause. This clause was not contained in the final FAR. Based on the concerns of the respondent and the deletion of the earlier FAR requirement, the Department has removed the requirement for such subcontract reporting. Section 952.219–9 and references to it have not been deleted. Nonetheless as a result of additional internal review prompted by the comment, the Department did revise 952.219–9 and its general instructions for use at 919.708, as well as the internal reporting instructions at 904.601–70(b)(4). Subcontract reports are required pursuant to FAR 19.704 for contracts which contain the Small Business and Small Disadvantaged Business Subcontracting Plan clause. These reports are furnished by means of semi-annual submissions of Standard Form 294 and quarterly submissions of Standard Form 295. The Department has reviewed these forms as well as its own need for such information. It was determined that the Department can fulfill its information requirements and at the same time reduce the paperwork burden imposed on its contractors. The SF 294 contains all the information needed except for the amount of labor surplus area subcontracting. The final rule has been revised to provide that DOE contractors need only submit their reports through use of an SF 294 on a quarterly basis with an annotation to indicate the amount of labor surplus area subcontracting if such reports are required by the terms of the contract. This action decreases from 6 to 4 the number of subcontract reports which must be submitted annually and simplifies the process by using a single form rather than two separate forms.

Comment: One organization objected to Article B–XXVII, "Sensitive Foreign Nations Controls" at 917.7113. They objected to the ambiguity caused by the reference to an "Attachment ——" in the clause at 952.204–3 of the proposed rule which is incorporated in Article B–XXVII. The commenter expressed concern that the attachment would contain reporting and recordkeeping requirements.

Response: Upon review, the Department agrees the clause may not be clear regarding what is intended by the reference to "Attachment ——". However, 904.404 describes the use of the clause and what is to be enclosed as an attachment.

The "——" is for a reference number of the particular contract attachment. National security requirements necessitate control when unclassified materials or information on nuclear technology may be made available to Sensitive Foreign Nations. Generally, special research contracts will not require the clause. However, some SRC's may deal with nuclear technologies, therefore the clause has been retained at 952.204–71 to be used under the appropriate circumstance. It has been rewritten to identify what is to be attached. Instructions for use of the clause are revised at 917.7113, Article B–XXVII to say that the clause is applicable when nuclear technology is involved. These requirements are included in the DOE paperwork clearance.

Other Comments

Comment: Two commenters asked questions concerning 904.404 which specifies clauses to be used in contracts which involve or have the potential to involve classified information. One reviewer was confused by the numbering of the clauses and another asked the definition of the word "off-site" as used in the clause which appeared at 904.404(d)(4) in the proposed rule.

Response: The Department agrees there may be confusion in the series of clauses dealing with security. The several clauses in question were included in the proposed rule at 952.204–1; 952.204–2; 952.204–3; and 952.204–4. To clarify the differing security clauses that apply to DOE contracts, the clauses included in the final rule have been renumbered. This renumbering more clearly indicates that the clause entitled "Security" at 952.204–1 of the proposed rule, renumbered in the final rule as 952.204–2, is to be used in DOE contracts instead of the FAR clause of the same title. The other clauses are supplemental to the FAR and implement DOE requirements and have accordingly been numbered with "— 70" identifications. The purpose and intent of the clause at 952.204–72, of the final rule "Disclosure of Information" was clarified at this instruction for use as well as at 904.404(d)(4) by removing the words "off-site" and substituting a reference to the institutions own facilities.

Comment: Two respondents commended DOE for its efforts to reduce paperwork burden through use of the annual representations and certifications technique as proposed at 904.70. One of these commenters also suggested that the Department make these procedures mandatory rather than optional.

Response: The treatment of this subject is relocated to 915.406–5 in this final rule. Based on the comments received and further discussions within the Department, DOE has further expanded this topic. The coverage in the final rule being published today makes it possible to place a representations and certifications on record with a contracting activity for a period of 3 years. During that period, it will be possible to file a simplified certification attesting to the currency of the record copy and identifying any differences from the record copy that may exist for an individual bid or proposal. The DOE expects this simplified procedure to benefit organizations who submit frequent bids or proposals to the Department. It will contribute to the

Department's efforts to reduce such paperwork burdens. DOE expects all of its contracting activities to adopt these simplified procedures. Because the technique is new the Department has elected to provide for its use on an optional basis.

Comment: One commenter discussed 915.105, "Competition". The commenter suggested that there may be confusion as a result of recent legislation and regulation, both proposed and final. The commenter suggested that paragraph (b) of 915.105 be an unequivocal statement of the Department's policy. The commenter stated the belief that subparagraphs (b)(2) and (b)(6) of 915.105 of the proposed rule were correct and observed with regard to subparagraph (b)(2) that 41 U.S.C. 252(c)(5) authorizes the negotiation of any service to be rendered by any university and suggested that pending legislation. S. 338, will authorize noncompetitive procedures for "an essential research capability to be provided by an educational institution." Regarding subparagraph (b)(6) the commenter also stated that FPR Amendment 230 and FPR Temporary Regulation 75 encourage unsolicited proposals and stated that FPR 1–1003.2 provides that unique or innovative research proposals need not be synopsized in the *Commerce Business Daily* if doing so would disclose the originality of thought or innovativeness of the proposed research.

Response: The recent legislation and regulation mentioned by the commenter is presumed to be Pub. L. 98–72 and FPR Temporary Regulation 75. Pub. L. 98–72 amended the Small Business Act to improve small business access to Federal procurement information by making it harder for agencies to award sole source contracts. The commenter appears to be equating the exceptions listed at paragraph (b) of 915.105 as being exceptions to the new synopsis requirements of Pub. L. 98–72. This is not the case and the Department disagrees with the apparent conclusion. The exceptions listed at 915.105(b) are exceptions to the general requirement for competition in its traditional sense. They are different and apart from the exceptions to the requirement to synopsize acquisition solicitations in the Commerce Business Daily which were recently changed by FPR Temporary Regulation 75 as a result of Pub. L. 98–72. The DOE anticipates that a Federal Acquisition Circular will be issued prior to April 1 to assure that this recent legislation is reflected in the FAR. There is no need to change this section of the final rule at this time.

Comment: One commenter questioned the DOE's authority regarding the statement at 915.401 to the effect that subpart 15.4 of the FAR does not apply to special research contracts, program opportuntity notices, or program research and development notices. The reviewer asked whether the DOE had obtained a FAR deviation in this area or had separate statutory authority in this matter.

Response: The intent of the DEAR is recognition that the DOE has developed over an extended period of years several highly specialized types of solicitation and award mechanisms. The DOE has statutory authority to negotiation the Special Research Contract and the Program Opportunity Notice. These authorities include section 31(c) of the Atomic Energy Act of 1954 and section 302c(5) of the Federal Property and Administrative Services Act of 1949 for the Special Research Contract and the Federal Non-nuclear Energy Research and Development Act of 1974 for the Program Opportunity Notice. The Program Research and Development Announcement was developed as a result of experience gained from the Program Opportunity Notice and was first promulgated as part of the Energy Research and Development Administration Procurement Regulation in 1976. Later, it was promulgated, in the DOE–PR following public comment in June 1979. The DOE does not consider any of these special solicitation and contract types to represent a deviation from the FAR. They are supplemental to the FAR. For this reason, they were assigned "70" series numbers (917.71, 917.74, and 917.75 respectively) as described at 901.104–2.

Comment: One reviewer offered several observations concerning 909.5, "Organizational Conflicts of Interest." The reviewer suggested that DOE delete this topic and rely solely on the FAR coverage of this topic. The organization urged that organizational conflicts of interest (OCI) guidance in the FAR be utilized for DOE procurements in lieu of the guidance contained Subpart 909.5. In particular, the organization asserted that, upon completion of a DOE contract, all reports, technical data, etc., are essentially in the "public domain" thereby diminishing any unfair competitive advantage. The organization also noted that the Department's patent policy reduces the potential for OCI and that no fixed term/duration is indicated in the DOE OCI provision (thus imposing a serious and unmanageable restriction on DOE and its contractors).

Response: The OCI requirements contained at Subpart 909.5 reflect the Department's efforts to comply with statutory criteria contained in Pub. L. 95–39 and Pub. L. 95–70. Pursuant to these laws (made specifically applicable to DOE through Section 644 of Pub. L. 95–91), the Secretary of DOE was specifically required to promulgate regulations governing the avoidance of OCI in accordance with specific criteria contained within each of those statutes. Moreover, the OCI regulation that was finalized (44 FR 2556, January 11, 1979), in compliance with the statutory criteria of Pub. L. 95–39 and Pub. L. 95–70, reflected the opinions and recommendations expressed by interested parties commenting on the Department's proposed rule of March 27, 1978, (43 FR 12727).

The Department is not certain it fully understands the specific focus of the particular questions raised by the commenter. If the nature of the inquiries concerns OCI as it applies to research and development contracts, there is in general, little difference between the OCI coverage of the FAR and that of the proposed notice. Pursuant to 909.570–7, OCI disclosure or representation with respect to research and development contracts is specifically required only for research and development conducted pursuant to the Federal Energy Administration Act of 1974, as amended. A general OCI clause (DEAR 952.209–71) is included in contracts falling into that very limited category.

A degree of difference between the proposed rule and FAR OCI requirements does exist with respect to contracts for technical consulting and management support services. The Department has a special contract clause (DEAR 952.209–72) which is to be included in all contracts of that type. This clause does provide a fixed term/duration in its OCI restrictions with regard to information first provided to a particular contractor which will eventually be available to all. Although there are distinctions, as noted above, between the FAR and the DOE proposed OCI coverage depending on the type of contractual situation, in general, the OCI coverage in the FAR and the proposed rule are in agreement. The Department's OCI policy supplements and does not contradict the OCI policy set forth in the FAR. Both are based on the principle of avoiding bias and unfair competitive advantage (see DEAR 909.570–4 and FAR 9.505).

The FAR is not unlike the proposed rule in its recognition of the possible need to guard against OCI *after* contract completion. Again, the important thing

to remember is that the need for OCI coverage depends in large part on the particular *type* of contract. It may be that because of a particular contractual situation (e.g., technical consulting and management support services) more detailed OCI coverage will be necessary; and, depending on the particular factual situation, when OCI coverage is required, it may be necessary to impose OCI restraint (to avoid the circumstances of unfair competitive advantage or bias) that extends *beyond* contract completion. (With respect to technical consulting and management support contracts the fixed term/duration OCI restriction for access to and use of "Internal" data extends for six months after either completion of the contract or until such information is released or otherwise made available to the public (DEAR 952.209–72(b)(2)). Moreover, the FAR specifically implies that the period of restriction will vary (and could extend beyond contract completion) depending on the factual circumstances (see FAR 9.508–2).

In summary, while the circumstances that the commenter has mentioned (reports in the "public domain" reducing the potential for OCI, and patent ownership impacting on the issue of OCI) may affect OCI, the more important point is that need for OCI coverage must first be established; and this depends, in large part, on the type of contract involved. Once the need is established, the type of OCI coverage may very well be affected by factors such as reports being in the "public domain" and patent ownership rights, etc.

Finally, the commenter has also suggested that 909.570–3(a) be modified to remove proposed subcontractors and consultants from its definition in order that a prime not be held in default for an OCI at the subcontractor level. It should first be noted that Pub. L. 95–39 and Pub. L. 95–70 explicitly require that OCI coverage apply to subcontractors. It is for this reason that subcontractors and consultants have been included within the definition of OCI contained at 909.570–3(a). In carrying out these requirements, subcontractors and consultants are required to submit their own OCI disclosure or representation and this is evaluated by the contracting officer who is responsible for making an OCI assessment. The prime is not responsible for either evaluating OCI information or making an OCI assessment with respect to subcontractors or consultants.

The Department may, in certain situations (for example, with respect to technical consulting and management support services), terminate a contract for default in a so-called "breach" situation. This could, for example, be based on a post-award finding that a subcontractor did have an OCI. However, 909.570–10 requires that in these types of situations "every reasonable action to avoid or mitigate the effects of the conflict" be taken before terminating.

Comment: One commenter suggested that 915.501 represented a departure from the FAR definition of "unsolicited proposal." The same reviewer had previously suggested the same thing during the rulemaking which resulted in "Change 7" of the DOE PR promulgated on April 15, 1983 at 48 FR 16450. The reviewer also made reference to Pub. L. 98–72 which contains a definition of "unsolicited proposal" and to FPR Temporary Regulation 75.

Response: The Department had never intended that the statement at 915.501 be taken as a literal interpretation that there is some separate definition of unsolicited proposal with respect to special research contracts which are separately covered at 917.71. The Department's intent had been to highlight the separate treatment afforded unsolicited proposals received from educational institutes under the Department's special research contract provisions at 917.71. To avoid misconception of the Department's intent, the final rule being published today deletes the paragraph entitled "Unsolicited proposals" from 915.501. Additionally, the definition of research proposal at 917.7101(c) is changed by referencing the definition of unsolicited proposal at FAR 15.501.

Comment: One comment suggested that 917.70 regarding cost participation varied from guidance contained in OMB Circulars A–88 and A–124 and requested that universities be exempt from the policy.

Response: The reviewer did not explain how the guidance of 917.70 departed from OMB Circulars A–88 and A–124. The cost participation policy of DOE is general policy with emphasis on cost sharing for demonstration projects. This portion of the policy is necessitated by the Federal Non-nuclear Energy Research and Development Act of 1974, which requires consideration of cost sharing for such projects. Section 917.7001(a) explains when cost sharing is required and 917.7002(c) describes situations in which cost sharing is unlikely. The DOE agrees that a contract with a university for the performance of basic research is not a situation in which cost participation is expected. On the other hand, if a university were to propose a demonstration project then cost participation would be expected. The DOE finds no merit in the suggestion to exempt universities from 917.70. No change is made in the final rule published today.

Comment: One commenter stated that 917.7106–6 which concerns the selection of a field office for negotiation and award of special research contracts ignores the existence of DOE Order 4220.1 which sets forth policy and procedures concerning the cognizant office concept.

Response: DOE Order 4220.1 issued in 1979, concerned a cognizant office concept for contracting with educational institutions. The cognizant office for a particular educational institution is responsible for, among other things, negotiating basic agreements that would contain all the basic terms and conditions for subsequent contract awards by any DOE contracting activity. The order itself is undergoing internal review. If the review reveals a need to amend applicable acquisition regulations, that amendment will be handled through a future rulemaking.

Comment: One commenter observed that 917.71, Special Research Contracts, appears to be a reprint of 9–4.51 of the DOE–PR. The reviewer attached a copy of a letter previously submitted to the Department during the course of a rulemaking relating to Change 7 of the DOE–PR. The commenter suggested that the Department reconsider these earlier suggestions in the context of this rulemaking. The commenter went on to state that the provisions of paragraphs (b)(4), (d), and (e) of 917.7107–1 of the proposed rule, require an extraordinary amount of paperwork and administrative time.

Response: The commenter's observation is correct that 917.71 is merely a rearrangement of 9–4.51 of the DOE–PR. The Department previously considered the commenter's comments regarding Change 7 to the DOE–PR and published its response on April 15, 1983, at 48 FR 16450. The nature of the commenter's earlier comments would necessitate a fundamental reconsideration of the Special Research Contract. Such an action is beyond the scope of this rulemaking. The intent of this rulemaking is merely to implement and supplement the FAR not to establish new policy or make significant changes in previous policy. Due to a minor format change, to correctly include a section title inadvertently omitted in the proposed rule, 917.7107–1 has been renumbered and retitled as 917.7107–2 "Financial arrangements" in this final

rule. The requirements at 917.7107–2(b)(4), and (c) and (d) of this final rule all relate to situations in which the contractor shares in the cost of the project. They are instructional in nature and relate to completion of an Appendix A of the Special Research Contract format. To consider changes in this section would necessitate consideration of changes in other sections of the special research contract format. Such changes are beyond the scope of this rulemaking.

Comment: A commenter suggested that the requirements at 917.7108–1(c) for prior approval of the Contracting Officer to transfer title of equipment to a university contractor is contrary to FAR property provisions.

Response: The first sentence of paragraph (c)(4) of Alternate I of FAR 52.245–5 requires the prior approval of the Contracting Officer. Alternate I is for use when the contract is for the conduct of basic or applied research at nonprofit educational institutions or at nonprofit organizations whose primary purpose is the conduct of scientific research.

Comment: A commenter suggested that 917.7112–4 concerning prior approvals be compressed and simply make reference to portions of OMB Circular A–21 which contains guidance on prior approvals. The commenter also suggested that paragraphs (a) (5), (8), and (9) be deleted.

Response: The DOE prefers to provide the details included in the proposed rule. This prevents misunderstanding which might otherwise occur. For this same reason, the final rule retains paragraphs (a) (5), (8), and (9).

Comment: One commenter suggested that 917.7112–5 fails to recognize that OMB Circular A–88, which applies to Federal contracts as well as Federal grants, has established the concept of cognizant audit agencies. The commenter went on to state that OMB is considering extension to universities and nonprofit organizations of the single audit concept now prescribed by OMB Circular A–102 for awards to state and local governments.

Response: The Department agrees that OMB Circular A–88 involves the assignment of a single cognizant audit agency to individual educational institutions. The proposed rule does not conflict with this circular. If the DOE requires an audit of an educational institution for which another agency has cognizance, the Department will simply rely on the services of that cognizant agency. The Department is aware that OMB is considering such an extension of OMB Circular A–102. The Department will consider any future changes as may be required by the conclusion of OMB's consideration.

Comment: One commenter suggested that Article A–II of 917.7113 contains a different definition of "equipment" in paragraph (a)(2) than that contained in OMB Circular A–21 at paragraph J.13. The same reviewer also provided a general statement that paragraph (a)(5) (regarding indirect cost rates) should be consistent with A–21.

Response: The Department agrees on the issue of definition. The definition is based on a dollar value. The change is made in the final rule to include the $500 threshold currently cited in Circular A–21. The Department believes paragraph (a)(5) is consistent with A–21. However, for other reasons the term "predetermined" is being revised to "applicable" to reflect possible use with nonprofit organizations. No intent is changed. The applicable rates established by the cognizant negotiating agency will be used. They may be predetermined, fixed-carry forward, or other.

Comment: One commenter suggested that Article B–VIII at 917.7113 should be updated to include the more recent OMB Circular A–124 coverage of Patents.

Response: The Department agrees and the final rule includes appropriate updates.

Comment: One commenter suggested that Article B–XI, "Payments", at 917.7113 is inconsistent with the FAR.

Response: The Department's procedures are consistent with the FAR. The issue is clearer when reading 917.7112–3 and paragraph (c)(1) of Article B–XI. The FAR coverage is located at 32.406.

Comment: One commenter suggested that Article B–XIX, "Buy America Act", of 917.7113 is not appropriate to a special research contract providing for research services rather than the acquisition of supplies.

Response: The DOE agrees. Article B–XIX has been removed.

Comment: A commenter suggested that Article B–XXII, "Foreign Travel", of 917.7113 is redundant to paragraph (f) of Article B–XXX "Additional Approvals."

Response: The article is not considered by the Department to be redundant. Article B–XXII is a special provision alerting the contractor to this requirement which might otherwise be missed at Article B–XXX, a lengthy article.

Comment: One commenter suggested that the clause entitled "Preference for Privately Owned U.S. Flag Commercial Vessels" is not applicable to university contracts. The clause questioned is Article V–XXXVII of 917.7113.

Response: DOE agrees that ocean transportation of supplies is unlikely under a special research contract and has removed the clause.

Comment: One commenter suggested that 924.705 be revised to be consistent with OMB Circular A–124.

Response: The cited reference has been renumbered as 927.705 in the final rule. These provisions are not inconsistent with OMB Circular A–124. Pub. L. 96–517, provides small businesses and domestic nonprofit organizations the right to elect to retain title to subject inventions. DOE has separate statutory authority to grant patent waivers. The notice has been expanded to point this out and to explain that small businesses and domestic nonprofit organizations normally need not request a waiver since they have the right, pursuant to Pub. L. 96–517 and OMB Circular A–124, to elect to retain title to subject inventions.

Comment: One commenter suggested that Part 927, "Patents, Data and Copyrights" be reserved pending publication of such coverage in the FAR.

Response: The DOE has elected not to reserve Part 927. Pending FAR publication on this subject, DOE has chosen to provide that OMB Circular A–124 coverage be extended to small businesses and domestic nonprofit organizations. Patent coverage for other organizations will continue to be that found at 41 CFR Part 9–9. The final rule published today explains at 927.3 the Department's treatment of this topic. The DOE's statutory patent policy necessitates that the Department maintain this coverage in the final rule. When FAR coverage is available, the Department will make such adjustments as may be required.

Comment: One commenter pointed out that 931.205–18 restricts the allowability of independent research and development costs by requiring that the relevance of these costs to DOE be demonstrated. The commenter suggested that this section be deleted on the basis that the test of allowability should be uniform regardless of agency involved.

Response: DOE does not agree and follows a policy that funds authorized for payment of cost allocation for IR&D programs must be expended only for efforts relevant to the mission for which the appropriation was made.

Comment: One commenter stated that paragraph (a)(1) of 932.7104, "Payment Procedures," should be made inapplicable to research contracts with educational institutions. The commenter discussed OMB Circular A–125 (which

does not mandate inspection period) and suggested that delivery of a technical report did not equate to delivery of an end item susceptable to an inspection period. The commenter asked that the section be modified.

Response: It is assumed the commenter is addressing the procedures in 932.7104 requiring inclusion of inspection periods in research contracts. The Department does not agree that technical reports under research contracts are not receivables subject to oversight and review. Such reports are necessary before final payments and closeout of a contract can be accomplished. In the Department's view, the payment procedures presented at 932.7104 are applicable to all contracts except the exemptions at 932.7103. No change is made in the final rule.

Comment: One commenter suggested that 932.7107–1 did not take cognizance of the fact that university contracts are usually funded on an advance payment basis either through a letter of credit or by advance Treasury Check. The commenter went on to suggest that 932.7107–1(b) be revised to exclude university contracts and to add an additional sentence to provide that the "Advance Payment" clause at FAR 52.232–12 be included in university contracts.

Response: The Department cannot exclude university contracts from use of the "Allowable Cost and Payment" clause at FAR 52.216–7 as it is required by the FAR for cost reimbursement contracts. When advance payments are to be furnished, the FAR itself explains that the clause, "Advance Payments," at FAR 52.232–12 with its Alternate IV is to be used. It is not proper for the DEAR to restate FAR guidance.

Comment: One commenter suggested that the intent of the guidance at 936.603–72(b) "Evaluation of qualifications and performance data," would be enhanced by adding the phrase "unless no satisfactory response is received from any other compatible highly qualified firm" between the word "considered" and the words "and where size and simplicity."

Response: DOE agrees and has adopted the suggestion. Subsection 936.603–72(b) is found at 936.602–3(c)(1) of the final rule.

Comment: A commenter stated that the definition of "capital equipment" at 945.101 differed from that in OMB Circular A–21. The proposed rule spoke of an acquisition cost of $1000 or greater and a service life of 1 year or more while the OMB definition speaks of an acquisition cost of $500 or greater and a useful life of greater than 2 years.

Response: The DOE could not find a definiton of "capital equipment" in Circular A–21. That circular speaks to definitions of "Equipment" and "Capital Expenditures" which have different meanings. "Capital equipment" is equipment for which the "capital expenditure" was $1000 or more. This definition was established for accounting, reporting and control purposes. Circular A–21 deals with the allowability of certain cost reimbursements by the Government. Prior to the publication of this rule, DOE used a threshold of $500. The explanation for this is that DOE's previous, and earlier, definition was based on a definition at Subpart 12.5, "Property," of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies. That manual used the $500 threshold. More recently the General Accounting Office issued an opinion, B114365(2), April 4, 1980, that revised the threshold upward in light of inflation and in the interest of reducing administrative costs of managing low cost property items. The DOE definition reflects this more recent decision dealing with reporting and control. A–21 shall continue to apply for reimbursements of cost under a contract with an educational institution.

Comment: One commenter stated that no 945.608–2 could be found even though 945.608–5 refers to it.

Response: This was the result of an error in the **Federal Register.** The title line for this section was inadvertently omitted on page 43880, although the text was included and the section was listed in the Table of Contents at page 43874. The title line should have appeared below the third sentence of 945.607–2 and above the paragraph designated (b)(1).

Comment: A commenter noted that 952.215–18, "Order of Precedence," makes reference to a provision 952.215–1 which could not be found.

Response: The Department agrees and the reference in 952.215–18 has been removed as there is no provision at 952.215–1.

Comment: One commenter was critical of the Department's policy at 972 and implementing clauses at 952.272 concerning "Foreign Ownership, Control or Influence" (FOCI) as related to universities. The commenter considered the provisions to be unduly burdensome for universities which have numerous foreign involvements such as foreign students, exchange programs and cooperative research programs. The commenter asked that universities be exempt from these policies. Also, the commenter thought that including unclassified, sensitive information in the FOCI provisions was inappropriate.

Response: The Department has relocated the FOCI provisions to 904.70 in order to consolidate provisions of an administrative nature. The solicitation provision and contract clause have been moved to 952.204–73 and 952.204–74 respectively. In response to this commenter's and others' concern about including unclassified sensitive information in the FOCI provision, DOE has eliminated this information from the scope of this provision. Now, only contractors requiring access to classified information and special nuclear material must comply with the FOCI provision. In response to the commenter's more general concern, the Department points out there are few instances in which this subpart would be applicable to universities. Very few universities have contracts that require access to classified information or special nuclear material. DOE's primary concern is that the classified information or special nuclear material be protected from coming under FOCI. The DOE believes that universities, when seeking a DOE contract which requires access to classified information or special nuclear material, can answer the questions as completely as possible listing any qualifications. DOE cannot exempt universities from complying with the provisions of this subpart just as DOE has not, and will not, exempt universities from receiving, when necessary, facility security clearances or security clearances for individuals.

Comment: One commenter offered several comments regarding specific sections of Part 970 including a general observation that the proposed rule appears to mix together differing management concepts. The commenter also suggested the possibility of forming a task group to review this portion of the new regulation with the intent of clarifying it.

Response: The content of Part 970 has evolved over an extended period of years and can generally be traced to procurement regulations of the Atomic Energy Commission, the Energy Research and Development Administration, and the Department of Energy. The same provisions are, in general merely being promulgated as Part 970 of the Department of Energy Acquisition Regulations that implement the new Federal Acquisition Regulation. Establishment of a task group to review Part 970 is beyond the scope of this effort. The rulemaking, being finalized today (as was explained in the Preamble of the notice of the proposed rule) does not establish new policy. It is, in

general, a reformatting of the existing DOE–PR, with deletion of old portions which would duplicate new FAR coverage, and the insertion of necessary Departmental procedures at those places the FAR requires agency implementation. No action is being taken, at this time, on the commenter's specific comments relating to 970.22, "Application of Labor Policy;" 970.31, "Contract Cost Principles and Procedures, 970.44, "Contractor Procurement;" or 970.52, "Contract Clauses for Management and Operating Contracts." The Department is, however, making changes based on the two other comments made by this commenter. Concern was expressed that the proposed rule did not contain the provision previously found at DOE–PR 9–50.601–2(b) which authorized a contractor with an approved purchasing system to make determinations of nonavailability from domestic sources for individual acquisitions not exceeding $25,000. The commenter anticipated delays in obtaining approval to acquire items clearly not available from domestic sources. To alleviate this concern, a section 970.2501 has been added which references the list of excepted items found at FAR 25.108(d). The commenter also stated that 970.1508–408(a) did not discuss the exemptions normally available regarding submission and certification of cost or pricing data. Section 970.1508–408 has been corrected in the final rule to read 970.1508–1, "Cost or Pricing Data." A new paragraph (b)(3) has been added to this subsection to note that the exemptions at FAR 15.804–3 apply to subcontractors under management and operating contracts.

Comment: One commenter noted that 970.2270–4(e), "Conduct of employees and consultants of DOE Management and Operating certain other contractors," and contained an extraneous and misleading statement: "Therefore, there is no general prohibition against employees as other citizens." The commenter suggested it be deleted.

Response: The statement was the result of a typographical error. It has been deleted. The corrected section has been renumbered and relocated to 970.2272.

In addition to the changes resulting from public comments received pursuant to this rulemaking, the Department wishes to highlight four areas in this final rule. They involve Subpart 909.4, "Debarment, Suspension, and Ineligibility;" Part 950, "Extraordinary Contractual Actions," Part 972, "Foreign Ownership, Control or Influence Over Contractor;" and Part 953, "Forms."

As was mentioned in the notice of proposed rulemaking, DOE has been conducting a separate rulemaking concerning its procedures regarding the debarment or suspension of contractors and assistance recipients. The purpose of the separate rulemaking was to establish uniform procedural coverage of this topic for financial assistance recipients as well as contractors. These procedures have been placed at 10 CFR Part 1035. Completion of this separate rulemaking, published in the **Federal Register** on February 3, 1984, at 49 FR 4314 necessitated minor revision of 909.4. The coverage being included in the final rule published today directs readers to 10 CFR Part 1035 for guidance concerning debarment and suspension and advises that the FAR is the source for guidance concerning ineligibility. In addition to 909.4, 944.202–1, 944.202–2, 944.303, 944.305–2, 970.4403(f), and 970.5204–22 have also been amended.

At Part 950, "Extraordinary Contractual Action" of the final rule published today the Department has made the requirements of FAR Part 50 applicable to the processing of claims under Pub. L. 85–804. As such, the Department applies the requirements of FAR Part 50 to DOE without further implementation. Any future changes to Departmental policy and procedure in this area will be undertaken through a separate rulemaking.

The proposed rule contained Part 972, Foreign Ownership, Control or Influence Over Contractor. The FOCI provision in the rule being published today is being relocated from Part 972 to 904.70 because this provision is more appropriately placed in Part 904 which discusses administrative matters.

This subpart is intended to help DOE identify and prevent situations in which FOCI over contractors with access to classified information and special nuclear material may pose an undue risk to the common defense and security. The DOE has been developing this provision through a separate rulemaking as an amendment to the DOE Procurement Regulations (See notice of proposed rulemaking, 48 FR 34396, July 28, 1983). The final rule amending the DOE procurement regulation (See 49 FR 7374, February 29, 1984) addressed the public comments received and the specific changes made resulting from the comments. That discussion is not repeated here.

The final rule published today substantively contains the same language as the final rule on FOCI which was incorporated into the DOE procurement regulation. The following summarizes the significant changes that have been made to the FOCI provisions and that were discussed in the February 29 **Federal Register** rule mentioned above. Unclassified sensitive information which was previously included in the scope of the subpart is now excluded. In addition to focusing on the DOE's evaluation efforts, on potential threats to classified information and special nuclear material, this change allows for a simplified process that will enable DOE to monitor FOCI on a corporation-by-corporation basis, utilizing the existing security facility process, rather than on a contract-by-contract basis. The revised language also includes examples of types of plans that can be utilized to mitigate the foreign influence, if deemed necessary. Finally, a new subsection has been added describing when contract termination will be considered.

The Department has deleted Part 953, "Forms," in the final rule being published today. Part 53 of the FAR contains contract related forms for use by Government employees and those seeking or having Government contracts. The DOE has elected to utilize the FAR forms without introducing new forms of its own. Forms for use by DOE employees for internal administrative purposes will be developed and utilized in accordance with the DOE Directive related to forms. Such internal forms are not considered to be of interest to the general public and the DOE does not propose to publish such forms in the DEAR. If the Department does develop forms for use by the public, it will publish these through rulemaking and obtain such approvals as necessary.

In addition to the actions discussed above, numerous revisions, additions, edits, deletions and sequential repositionings are being made in the text published in the final rule today to correctly identify and align certain parts, subparts, sections, or subsections into a more logical or required location. Corrections to erroneous citations and cross references and paragraph number changes are being made to properly tract the numbering system of the FAR. Many of these revisions were suggested by the **Federal Register**. Syntax changes are also being made to some text that appeared in the proposed rule to more clearly and succinctly express its intent and meaning. In some cases, relatively minor substantive changes have been made. The revisions are summarized as follows:

(1) Subsection 901.104–70 of the proposed rule described a procedure by which the Department's regulation

would show certain parts or subparts as "Reserved" if there was no need to implement the FAR at such parts or subparts. Further discussion with the staff responsible for publication of the Code of Federal Regulations has indicated there is no need for such a practice. If the DEAR does not implement or supplement a particular FAR part or subpart, there will be nothing indicated and the reader will rely on the FAR only. This subsection of the proposed rule is deleted in the final rule.

(2) Subsection 901.603–72(b) was revised to delete the paragraph as unnecessary. As a result, paragraph (c) becomes paragraph (b).

(3) Section 902.1, "Definitions," was changed to delete the authority to ratify unauthorized contract and/or contract modification awards from the listing of authorities of the "Head of the Contracting Activity." This results from an earlier change in the DOE–PR at 47 FR 21539, May 19, 1982, which had not been noted in the proposed rule.

(4) Subsection 903.101–3 regarding "Standards of Conduct," was amended to add a requirement that contracting activities maintain a "Standards of Conduct Notebook for Acquisition and Assistance personnel" and that DOE acquisition and assistance personnel review it on an annual basis and certify their understanding of its contents.

(5) Section 904.403 was amended to delete the specific dates noted for each DOE Order cited therein. The most current order is always applicable.

(6) Subsection 904.601–70 was amended to delete the reference to Standard Form 295 from paragraph (b)(4) for reasons explained in the discussion of public comments of this preamble. The reference to Part 953 as the place where forms illustrations are found was also deleted by the omission of subparagraph (b)(5) of this section since there is no Part 953.

(7) Subsection 904.601–70 was revised at paragraph (b)(2) and (b)(3) to refer to "small purchase limit" rather than the proposed specific dollar limitation of $10,000.

(8) Subpart 904.70 in the proposed rule covered representations and certifications. This section was rewritten and moved to 915.406–5. Coverage on "Foreign Ownership, Control, or Influence over Contractors" was added as a new section under 904.70. This had been located at Part 972 in the proposed rule. Changes were made as was explained in the public comments section of this preamble.

(9) Section 905.403 was edited to add a new paragraph (b)(3) to provide that contracting officers advise the Office of Congressional Relations 48 hours prior to the time of contract execution for Special Research Contracts of $50,000 or greater.

(10) Section 907.102 was amended to delete reference to specific DOE Orders involving acquisition planning and in lieu thereof referenced the complete series of 5700 series of DOE Orders.

(11) Section 908.7119, regarding the acquisition of "gas masks and canisters" and was deleted as these items are no longer stockpiled by DOE.

(12) Section 908.7120, regarding acquisition "masking devices" was deleted as they are no longer stockpiled by DOE.

(13) Section 908.7121(c) was amended to add text, inadvertently omitted in the proposed rule, that lithum is available at no cost through the DOE, Oak Ridge Operations Office.

(14) Subsection 909.104–70 was amended to delete the "–70" reference and to reidentify the subsection as 909.104–1, "General Standards," to be the same as FAR. Paragraphs (a) and (c) were reidentified as paragraphs (b) and (g) respectively (the appropriate FAR paragraphs which the DOE text implements).

(15) Subsections 909.570–14 and –15 were created to include, as a separate section, the examples and format language included the proposed rule as Appendix A and B to 909.570. The **Federal Register** suggested the change.

(16) Section 910.004 was revised to identify the language in the proposed rule as paragraph (f) and give it a title, "Specifications for concrete using fly ash." It is now consistent with FAR. A new paragraph (g) was added to contain the language included in the proposed rule at 917.7200. The paragraph more directly deals with specification requirements.

(17) Section 915.105, "Competition" was revised at (a)(1) to raise the threshold for documenting noncompetitive small purchases from $500 to $1,000 in order to conform to FAR.

(18) Section 915.105(c)(2). Regarding the format for a "Justification for Noncompetitive Acquisition" has been removed. This is internal guidance adequately covered in the DOE Directive System.

(19) Subsection 915.106–1 was deleted as unnecessary. FAR coverage will suffice.

(20) Section 915.200 was amended to redesignate paragraph (1) as paragraph (b) and move paragraph (2) to new 915.201 as paragraph (a).

(21) Section 915.201 was added as a new section titled "National Emergency." The text at paragraph (2) of 915.200 was relocated as paragraph (a). The language in the proposed rule at 915.201(b) supports the FAR text at 915.201(a).

(22) Section 915.404 was deleted. The language in FAR 15.404 "Presolicitation Notices and Conferences," at paragraph (c), was deemed sufficient upon re-evaluation.

(23) Subpart 915.5 was revised to more closely follow the sections and subsections of the FAR. Separate "–70" DOE designations were not considered necessary on re-evaluation. Most of the revised language is additional implementation of FAR text. Only editorial changes were made in the text. Location was the major revision and is recapped as follows:

915.503: Added as a new section titled "General." Relocated paragraph (a) from 915.504–72 as complementary language to FAR paragraph (c)(5) of FAR 15.503. Added new language as a paragraph (f) to better explain that unsolicited proposals for the performance of support services are not acceptable.

915.504: Added as a new section. See 915.504–70.

915.504–70: Re-identified as 915.504 Advance Guidance except paragraph (e) which moved to a new subsection 915.506–2 "Evaluation." 915.504–70 deleted and last sentence of paragraph (b)(7) was deleted as being unclear.

915.504–71: Relocated as paragraph (g) of new subsection 915.506–2 since it deals with evaluating a contractor per Subpart 909.1 and FAR. No text change. 915.504–71 deleted.

915.504–72: Relocated paragraph (a) as paragraph (c)(5) of new 915.503 General. Pargraph (b) was reidentified as 915.505, Content of Unsolicited Proposals. Paragraph (b)(5) of FAR 15.505 deals with the thrust of this paragraph. A correct reference to subpart on Cost Participation was added. Paragraph (c) was relocated under the new subpart 915.506–2 Evaluation. 915.504–72 deleted.

915.505: A new section, "Content of unsolicited proposals" was added. See 915.504–72 Comment.

915.506: Re-positioned paragraph (a) to a new 915.509 Limited use of data, which was deemed a more appropriate location.

915.506–70: Paragraph (a) was relocated as paragraph (b) of a new 915.506–1, "Receipt and Initial Review." This language supported the text of FAR 15.506–(b) thus the new section believed more appropriate than a –70 DOE supplement. The remaining paragraphs of this section were

identified as more appropriate to FAR 15.506–2, thus repositioned a new 15.506–2.

915.506–1: Added as a new section titled "Receipt and Initial Review" in order to clearly implement FAR. Paragraph (a) of 915.506–70 relocated to this section as paragraph (b) which implements FAR 915.601–1(b).

915.506–2: Added as new section, "Evaluation". Paragraph (c) of 915.504–72 of the proposed rule repositioned to this section to support text of FAR 15.506–2.1.

915.507–70: Deleted "–70" Reference and re-identified as paragraph (d) under a new 915.507 Contracting Method. No need for a supplemental DOE paragraph.

915.509: Added as new section titled "Limited Use of Data." Paragraph (a) of 915.506 relocated to this section Text was appropriate to use of data.

915.570: Deleted as the text was placed at 943.170.

(24) 915.611(d) Moved, without change, to 915.612(g).

(25) Subsection 915.805–70 was edited to add a paragraph (e) which was inadvertently omitted from **Federal Register** issuance. The paragraph permits contracting officers to waive the requirement for audit.

(26) Subsection 915.971–2 was edited to delete the last sentence included in the proposed rule. Internal coordination of this language indicated it was being misunderstood and was not clear. The idea was added back as a new paragraph (h) of 915.971–4.

(27) Subsection 915.971–4 was revised to add (in addition to paragraph (h) referenced above) a new paragraph (g) to reflect increases to fee schedules that may be necessary if a fixed price contract is negotiated. The curves are based on a cost reimbursement type contract.

(28) Subsection 915.971–5 was revised. Paragraph (a) was rewritten and subdivided into additional paragraphs to provide a better understanding of what was intended and the applicability of the additional paragraphs in the subsection. Language was added to include specific adjustment factors if fixed price contracts are negotiated or the contractor furnishes its own financing. These were overlooked in the proposed rule.

(29) Section 915.971–6 was amended at (a)(10) to add language to identify the term "equipment" to be that which becomes Government-owned. Paragraph (a)(10) was amended to state equipment addressed at this section does not include "special equipment."

(30) Section 917.7007 was added to provide guidance on in-kind contributions. This guidance was omitted from the proposed rule due to an administrative oversight. The provision was in the DOE–PR 9–4.5907 as a result of rulemaking completed on July 22, 1983, at 48 FR 33642.

(31) Subsection 917.7106–2 was amended at paragraph (g) to add a new subparagraph (1) to indicate that field offices are responsible for the cost/price analysis of a SRC proposal.

(32) Section 917.7107; and Subsection 917.7107–1 were amended to correct format errors. Section 917.7107 was retitled "Contract Content," Section 917.7107, "General," in the proposed rule was reidentified as subsection 917.7107–1 "General," in the final rule. Subsection 917.7107–1 of the proposed rule was reidentified as 917.7107–2, "Financial requirements," in the final rule. Minor text edits made and the paragraphs were subdivided for easier reading.

(33) Section 917.7113 was amended by adding "or other nonprofit institutions" to the title line so that it now reads "Format for Special Research Contracts with educational institutions or other nonprofit institutions." This corrects an error as Special Research Contracts have previously been available to both educational institutions and other nonprofit institutions.

(34) Subpart 917.72 was relocated in paragraph (g) of 910.004 with minor edits to fit a single paragraph format.

(35) Subpart 917.73 was relocated as a paragraph at 945.303–1 with minor edits to fit a single paragraph format.

(36) Subpart 917.74 was amended to reidentify this subpart as 917.72 and to renumber all sections and subsections accordingly. Additionally, the text of 917.7401 (proposed rule) was added to subpart 917.7400 (proposed rule) "Scope of part," and 917.7401 (proposed rule) was deleted.

(37) Subpart 917.75 was amended to renumber the subpart as 917.73.

(38) Subpart 917.76 was amended to renumber the subpart as 917.74.

(39) Subpart 917.77 was amended to renumber the subpart as 917.75.

(40) Subsection 917.7502–2(b)(2) was reidentified as 917.7301–2(b)(2) and was amended to add a requirement that concurrence be obtained from the Procurement Director of the office assigned to issue a Program Research and Development Announcement before that solicitation technique is chosen.

(41) Section 919.102 of the proposed rule has been deleted because the final FAR includes this information.

(42) Subsection 919.502–2 was added to emphasize that architect-engineer acquisition procedures must conform to the Brooks Act, (Pub. L. 92–582) as implemented at FAR Part 36.

(43) Subsection 919.705–5 was added and titled "Awards involving subcontracting plans." A paragraph (b) was added to implement the FAR.

(44) Subsection 919.705–6 was added and titled "Postaward responsibilities of the contracting officer." A requirement was added to require the contracting officer to submit a copy of the information given to SBA, as a result of FAR 19.705–6, to the Office of Small and Disadvantaged Business Utilization, DOE HQ.

(45) Section 920.302 was deleted. This section limited the usage of certain clauses in DOE Construction contracts.

(46) Subsection 922.403–70, "General," was changed to become 922.470 "Applicability." The unnumbered paragraphs of the proposed rule were numbered (a) and (b) respectively. Subpart 922.4 of the FAR was reserved. Subpart 922.4 had anticipated a FAR subpart. Since FAR 22.4 was in essence, reserved, subpart 922.4 (proposed rule number) has been renumbered with minor reformating to more properly reflect the content to be that of the DOE.

(47) Subsection 922.403–71, "Noncoverage (Davis-Bacon and Copeland Acts)," was amended to move the paragraph cited therein to other sections. Paragraphs (a) (1), (2), (3), (4), (5), (6), (7), and (8) were repositioned as subparagraphs of paragraph (c) of the new section 922.470 "Applicability," discussed in note (46). Paragraphs (b) and (c) were moved to be paragraphs (d) and (e) of the new 922.470.

(48) Subsection 922.403–72, "Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities," was relocated to Part 970 as 970.2273 since the subject matter dealt with operating contracts it was considered more appropriate to Part 970, "DOE Management and Operating Contracts."

(49) Subsection 922.403–7301 contained unnecessary language and was deleted.

(50) Subsection 922.403–7302, "Specific examples," Was renumbered as 922.471 and titled, "Decisions and other guides in difficult areas." The text of this renumbered section was unchanged except for paragraph (h) "Experimental Installations," which was moved to become paragraph (c) of the 970.2273 established in part 970. The text of this paragraph dealt with work in DOE owned facilities by operating contractors.

(51) Section 922.404, "Wage Determinations," included no text in the proposed rule. This section was renumbered as 922.472 and the paragraphs at 922.404–2 and 922.404–70

were added to it and renumbered accordingly.

(52) Section 922.405, "Administration and enforcement," was renumbered as 922.473. Paragraphs (a) and (b) of 922.405–70, "Responsibilities," were relocated to this section.

(53) Subsection 922.405–70, "Responsibilities," was deleted. Paragraphs (a) and (b) were relocated to 922.473 as (a) and (b).

(54) Section 922.470, "Applicability," was added. See Note (46).

(55) Section 922.471, "Decisions and other guides in difficult areas," was added. See note (49).

(56) Section 922.472 "Wage determinations," was added. See note (51).

(57) Section 922.473, "Administration and enforcement," was added. See Note (52).

(58) Subpart 922.70 was added as a new subpart as a result of repositioning the text previously contained in the proposed rule at 970.2270–1.

(59) Section 922.803 was amended to delete paragraph (c) regarding "referral lists." Such referral lists are not maintained for the purposes cited in (c).

(60) Section 923.7001 was amended to delete the second paragraph as it involved management and operating contracts which are separately covered at Part 970.

(61) Section 932.7103 was amended to add a paragraph (e) to clarify that the interest penalties do not apply to contracts awarded prior to October 1, 1982, unless provided for by a contract clause.

(62) Subpart 924.70 was relocated to 927.70 in the final rule. Narrative material in this subpart that duplicated material appearing at 927.402–4 of the proposed rule has been deleted from the final rule as relocated at 927.70. Solicitation and contract provisions that duplicated provisions contained in 952.227 of the proposed rule have been deleted from the material relocated at 927.70.

(63) Subsection 924.702 was amended to delete the text at paragraph (c). It duplicated language at 952.227–76 and was unnecessary.

(64) Section 924.703 of the proposed rule has been deleted with an instruction added at 927.7003 to use the notice at FAR 15.413–2(e) for solicited proposals and FAR 15.509(d) for unsolicited proposals in its stead.

(65) Subsection 925.902–70 was deleted in the final rule.

(66) Section 925.903 was added to require submission of determinations and reports required therein to the Procurement Review Office Hqs.

(67) Subsection 927.402–4 dealing with the treatment of data under management and operating contracts was moved to 970.2702 so that Part 970 will be a single repository, to the extent possible, of regulations governing such contracts.

(68) Subpart 927.70. See item (62) above.

(69) Section 927.7000(c) which appeared in the proposed rule at 924.7000(c) and 952.227–74.4, has been restyled as a representation by the external evaluator to require their signature.

(70) Section 927.7002, in the final rule which appeared at 927.702 in the proposed rule was amended to direct the use by proposers of the proprietary data marking legend at FAR 52.215–12 for solicited proposals and FAR 15.509 for unsolicited proposals. This is in lieu of the single DOE Notice that appeared in the proposed rule at 927.702(c). Conforming changes have been made elsewhere.

(71) Subsection 928.101–70; 928.102–70; and 928.103–70 were added as new subsections covering review requirements for the different types of bonds. These subsections resulted from clarifying the intent of 928.106–70 of the proposed rule which was then deleted. The intent of the change was to align the DOE review requirements with the applicable bond type.

(72) Subsection 928.106–70 was deleted. See Note (71).

(73) Part 930 was deleted in its entirety. The FAR is adding the same language in its first revision. The DOE language appears unnecessary and would be a duplication.

(74) Subsection 934.005–2 was moved in its entirety to become a section in 970 as its content on mission-oriented solicitations addressed contractors subject to 970 of this regulation. It has been designated 970.70.

(75) Section 935.014 was added and titled, "Government property," to implement the FAR provision that agencies can establish different thresholds for vesting title of property in the contractor. FAR stated $5,000; DOE prefers $1,000. This involves property under research contracts with educational and nonprofit institutions.

(76) Section 935.070 entitled, "Contract Clauses," was added to include a requirement for a "Key Personnel" clause. The clause was added at 952.235–70. The clause, previously found at FPR 1–7.404–6, appears to have been inadvertently omitted from FAR. The clause is needed for research contracts.

(77) Section 936.202 was added and titled "Specifications" by deleting the "–70," "–71," and "–72" designations from 936.202–70, –72 respectively. No text changes; only minor edits to accommodate new structure.

(78) Subsection 936.202–72 of the proposed rule was revised to increase dollar limits. The suffix "–72" was also removed as per previous comment. Paragraph (a) includes a provision that allows DOE to charge the full cost of specification and drawing packages for construction solicitations up to a maximum of $100. The actual cost of reproducing packages has sometimes exceeded $100 per set. The limit has been increased to $500 per set.

(79) Subsection 936.602–2, "Evaluation Boards," was added to reidentify text in the proposed rule as an implementation of the FAR text rather than supplemental text. This section includes the information in the proposed rule at 936.603–71(a).

(80) Subsection 936.602–3, "Evaluation board functions," was added to better implement the FAR. It includes the information in the proposed rule at 936.603–72 (a) and (c); 936.603–73; 936.603–74, and 936.603–77.

(81) Subsection 936.602–4, "Selection authority," was added. The text was taken from 936.603.75 and was designated (b) in the new location.

(82) Subsection 936.603–70 was renumbered in the final rule as 936.602–70.

(83) Subsection 936.603–71 was corrected. The identification should have properly read 936.602–3, "Evaluation board functions." The Department has repositioned the first half of paragraph (a) into a new 936.602–2, "Evaluation boards," and renumbered paragraphs accordingly in both the "–2" and "–3" subsections.

(84) Subsection 936.603–72 was deleted. The text was relocated under a new 936.602–3, "Evaluation Board Functions." Paragraph (a) became (a)(2), (b) became c(1) and (c) became (c)(2).

(85) Subsection 936.603–73 was deleted. The language was relocated as paragraph (c)(3) of 936.602–3 to correspond with FAR.

(86) Subsection 936.603–74 was deleted. The text of paragraph (a) became (a)(1) of 936.602–3. Paragraphs (b) and (c) became (c)(4) of 936.602–3.

(87) Subsection 936.603–75 was relocated to 936.602–4, "Selection authority" and the text designated as paragraph (b) to correspond to FAR 36.602–4.

(88) Subsection 936.603–76 was deleted and the text was moved to become part of the existing text at 936.601 "Policy" as it addresses policy and procedure issues.

(89) Subsection 936.603–77, was amended to move text to become

paragraph (c)(5) of 936.602–3 to correspond with the FAR.

(90) Subsections 936.606–70, –71, –72, –73 were renumbered to delete the dash references. Their text becomes part of 936.606, "Negotiations," which addresses price proposals, contract prices and fees.

(91) Subsection 936.606–74 was deleted as unnecessary.

(92) Section 936.670 was deleted as unnecessary.

(93) Subsection 936.609–3, "Work oversight in architect-engineer contracts," was added to provide instruction on and requirements for an inspection clause in architect-engineer contracts. The clause was relocated at 952.236–71.

(94) Section 936.702, "Forms for use in contracting for architect services" was added to furnish instructions for use of the clause at 952.236–70.

(95) Section 936.7200 was deemed to be inappropriate as a separate part on negotiation. Paragraph (a) text was deleted as duplicating 936.605. The text of (a)(1) through b(1)(vii) was properly numbered and moved to be part of 936.605. The remainder of 936.7200 text was retitled as "Acquisition of special equipment," and arranged into appropriate paragraphs 936.7200, "Scope of Part"; 936.7201 "Definitions;" and 936.7202, "Description of Services."

(96) Section 936.7302 "Outline of agreement for rental of third party owned construction equipment" was added to move into Part 936, the third party agreement format published in the proposed rule at 970.3604.

(97) Section 942.000 was rewritten to better define the policy, responsibilities and structure of contract administration in the DOE as compared to the Department of Defense. Sections 942.001, 942.002 were added to establish and describe this relationship and contract administration policies of the DOE.

(98) Section 942.803 was revised at paragraph (c) to more clearly identify the actions of the contracting officer in dealing with questioned cost in auditor reports.

(99) Section 943.170 was added as a result of revisions to 917.7111. The issue deals with modifying a contract to extend it. It was proposed at 917 because the text addresses contracts resulting from unsolicited proposals. Since the issue deals with modifyng a contract to extend the performance period, it was relocated to Part 943.170 as a unique DOE modification requirement. It has been titled "Extension of contracts resulting from unsolicited proposals."

(100) Section 944.101 was amended to delete the first two sentences as being confusing and misleading.

(101) Subsection 944.202–1, "Responsibilities," was added to be more specific in the responsibilities of the contracting officer in consenting to subcontract awards.

(102) Subsection 944.202–2, "Considerations," was added to include a requirement to refer to the DOE Consolidated List of Debarred, Suspended, Ineligible or Voluntarily Excluded Awardees.

(103) Section 944.302–70 was amended to delete the"–70" suffix. Paragraph (a) was edited to clarify the intent of the language in the proposed rule. FAR paragraph (a) allows agencies to establish lower thresholds than the $10,000,000 in FAR if such are considered appropriate for contractor procurement system reviews. The proposed rule imposed a DOE requirement of $5,000,000 in Government sales for DOE cognizant contractors. The final rule amends this to $5,000,000 of sales to the DOE and only in those instances where there is sufficient subcontracting to support a review. Due to the changes in paragraph (a) some of the text in (b) was included in (a) to conform with FAR 44.302(a). Paragraph (c) of the proposed rule was reidentified as paragraph (b) and (c) to be compatible with FAR paragraphs. The last sentence of 944.305–71 was relocated as paragraph (d) of this section.

(104) Section 944.305 was determined to be a duplication of FAR language and was deleted.

(105) Subsection 944.305–1.70 was considered to apply to contracts covered by Part 970. Appropriate language was included in 970.44 and 944.305–70 was deleted.

(106) Subsection 944.305–1.71 was deleted as not applicable as a separate DOE subsection. The text of (a) and (b) was located as paragraph (b) of 944.302 and paragraph (c) was added to 944.302–70 as a separate paragraph (d).

(107) Subsection 944.305–1.72 was reidentified as 944.305–1, "Responsibilities," since FAR 44.305–1 addresses review requirements.

(108) Subsection 944.305–2 was deleted as being duplicative language of paragraph (c) at FAR 305–2 Notification.

(109) Subsection 944.305–3 was deleted. Paragraph (b) was considered to be duplicative of FAR. Paragraph (c) was relocated to 944.307, "Reports."

(110) Section 944.307 "reports," was added to include a portion of the language of old 944.305–3 since it amplifies the current language of FAR 44.307 Reports.

(111) Section 945.000 "Scope of part," was created to clarify the applicability of the DOE rules cited in the Part 45 and FAR 45 to DOE management and operating contractors and restated in a different way, the applicability of special test equipment and special tooling requirements of the FAR previously stated at 945.102–72 of the proposed rule.

(112) Section 945.101 was revised to delete the inclusion of special test equipment and special tooling, which was incorrectly stated.

(113) Subsection 945.102–72 was deleted since the subject was addressed in a new 945.000.

(114) Subsection 945.303–1 was added to state DOE policies concerning furnishing of special nuclear materials to contractors. This represented a repositioning of material in the proposed rule at 971.73.

(115) Subsection 945.502–71, was amended at paragraph (b) to provide for physical inventories once each year. The paragraph discusses the inventory and control of sensitive items.

(116) Subsection 945.505–14 was revised to indicate new dates for submission of the semiannual reports required by this section.

(117) Subsection 945.570–5 was revised at paragraph (d) to add a reference which establishes mileage standards for specific types of vehicles. A statement was also added concerning the standard against which vehicle use must be measured.

(118) Subsection 945.570–8 was revised to delete the last sentence on contracting officer guidance in preparation and submission of the motor vehicle reports.

(119) Subsection 945.603–71, "Disposal procedures for radioactively contaminated personal property," was added to reference 41 CFR 109–45.50 regarding procedures for disposal of radioactively contaminated property.

(120) Subsection 945.607–2 was amended to move paragraph (b) into a new 945.608–2, "Standard Screening." Paragraph (b) and (e) were rewritten into a single paragraph (b). There was no change in content.

(121) Subsection 945.608–70 was deleted as it duplicated 945.607–2.

(122) Subsection 945.608–2 was added and titled, "Standard screening." The text of paragraph (b) of 945.607–2 was relocated to a paragraph b(1). The text covered standard screening which was the subject of FAR 45.607.

(123) Section 947.506 was added at the request of Maritime Administration. The title is "Procedures," and covers ocean transportation by U.S. Flag Vessels. The

added text requires copies of contract awards involving foreign suppliers, which will require ocean transportation, be forwarded to the Maritime Administration.

(124) Section 952.100 was amended to use the term "contract clauses" in lieu of the term "general provisions." The FAR uniform contract format references inclusion of "clauses" and not "provisions." The term "provisions" is assigned for use in solicitations.

(125) Subsection 952.212–72, "Uniform Reporting System Clause," of the proposed rule was deleted from the final rule.

(126) Subsection 952.215–18, "Order of Precedence." of the proposed rule was revised to follow the correct section topics of the uniform contract format and to reflect post award situations. The final sentence of this subsection, which referred to 952.215–1, was deleted as this was an erroneous reference mistakenly left in from a preliminary draft of the notice of proposed rulemaking.

(127) Subsection 952.215–70 was added as a new solicitation provision entitled "Required Subcontractor Representations and Certifications." The purpose of the provision is to alert contractors to the need to obtain certain certifications from their subcontractors if their own contracts include certain clauses listed therein.

(128) Subsections 952.222–70 and 952.222–71, both dealing with clauses for determinations, were deleted. The clauses were considered superfluous and DOE will rely only on the FAR coverage in this area.

(129) Subsection 952.227–74.2 "Rights to Proposal Data" of the proposed rule has been relocated to 952.227–82.

(130) Subsection 952.227–80 was added to include a new solicitation provision entitled "Technical Data Certification." It's purpose is to assure that DOE does not pay monies to acquire technical data which it or another Government agency may have already acquired or has the right to acquire. The provision also requires the offeror or proposer to identify any proprietary data it intends to withhold pursuant to the "Rights in Technical Data" clause at 952.227–75. It has been included because many DOE contracting activities have as a practical mater been using such a certification in their solicitations. The second portion of this certification implements the requirements of the solicitation provision at 952.227–83.

(131) Subsection 952.227–81 was added to include a new solicitation provision entitled "Royalty Payments Certifications." The purpose of the clause is to assure that the DOE does not include royalty payments in a contract price if it or another Government agency has previously paid for such rights. Several DOE contracting activities had been using this provision in their solicitations. This certification implements the requirements of 41 CFR 9–9.111, as incorporated by 927.300 of this regulation.

(132) Subsection 952.227–82, "Rights to proposal data" was added. See comment (129).

(133) Subsection 952.227–83, "Rights in Technical Data Solicitation Instruction" was added to relocate the language which appeared in the proposed rule at 924.704–2 and 952.227–74.5 dealing with identification of proprietary data.

(134) Subsection 952.227–84, which appeared in the proposed rule at 924.705 and 952.227–74.6, describing the right to of proposers to request patent waivers has been revised to point out that small businesses and domestic nonprofit organizations may retain title to subject inventions; pursuant to OMB Circular A–124 and Pub. L. 96–517.

(135) Subsection 952.231–70 was added to include a clause entitled "Date of Incurrence of Costs." The clause was previously used by DOE, when appropriate, and its original source is FPR 1–7.204–3. Its use is appropriate, in cost-reimbursement type contracts when the parties wish to record in the contract their advance agreement on certain items of cost. The nature of DOE's mission is such that it has a high proportion of cost-reimbursement type contracts and it has chosen to continue use of this clause by placing it in the Department's implementing regulation.

(136) Subsection 952.232–70 was amended to clarify its intent. The language in the proposed rule at paragraph (c) required the contracting officer to insert the number of calendar days after receipt or completion of work to establish when "constructive acceptance" would be deemed to occur. The intent was to esablish that constructive acceptance would occur on the last day of the stated inspection period. To preclude potential misinterpretations, the second sentence of paragraph (c) was appropriately revised.

(137) Subsection 952.232–71 was amended to add a new provision at paragraph (d) establishing that a payment will be considered to have been made on the date the Government check was dated or an electronic transfer of funds transfer payment. This change pursuant to guidance contained in Federal Procurement Regulations—Temporary Regulation 66, Supplement 1. Proposed paragraph (d) renumbered as (e).

(138) Subsection 952.232–73 amended to add new provision (d) requiring for contractors to identify the contractor's authorized official for providing the required payment data. This change based on guidance contained in the Federal Procurement Regulations—Temporary Regulation 66, Supplement 1. Proposed paragraph (d) renumbered as (e).

(139) Subsection 952.235–70: See Note (76) above.

(140) Subsection 952.236–71 was added to include the text of a clause prescribed for inclusion in architect-engineer contracts as 609–3. The text is relocated from 936.

(141) Subsection 952.250–1, "Nuclear Hazards Indemnity" was edited to change the term "article" as stated in the clause at this section to read "clause." The term "article" is no longer used in the FAR system. The term "clause" is preferred. The "–1" reference was also changed to a "–70" reference to indicate it is a DOE supplemental clause.

(142) Subsection 952.250–2, "Nuclear Hazards Indemnity—Product Liability" was edited. See comment for 952.250–1 for description of change. The "–2" reference also changed to "–71" to indicate it is a DOE clause.

(143) Subsection 952.250–70 was added by renumbering 952.250–1.

(144) Subsection 952.250–71 was added by renumbering 952.250–2.

(145) Section 970.0404, "Safeguarding Classified Information," was established in the final rule to remind a contracting activity awarding a management and operating contract that there may be security requirements that must be included therein. Appropriate locations of the required clauses were cited. Four subsections were established. They basically are a restatement of the same language in the proposed rule at 904.4. Edits were made to be consistent with the part 970 format. No new language was added.

(146) Subpart 970.08, "Required Sources of Supplies and Services" was added by moving text which had been at Subpart 970.51 of the proposed rule.

(147) Subpart 970.10, "Specifications, Standards, and other Statement of Work Descriptions" was established in order to relocate the text in the proposed rule at 970.5204–37 from the clauses section. The text states that clause language should be created. (It is not actual clause language as are the other subsections of subpart 970.52.) The text is more properly placed in the subpart that contains the direction that a statement of work is necessary under management and operating contracts.

970–5204–37 was amended to refer to 970.10.

(148) Section 970.1509–1 was amended at paragraph (e) to add language to clarify that approval of the Procurement Executive is necessary if maximum fee amounts are exceeded.

(149) Section 970.1509–4 was amended to paragraph (d) to clarify when the approval of Procurement Executive is necessary.

(150) Section 970.1509–6 was amended to identify situations when the fee schedules may not reflect adequate compensation.

(151) Section 970.1901 was amended at paragraph (a) adding a reference to "52.219–9 as modified by 952.219–9." This addition is intended to clarify that management and operating contracts and their subcontracts will contain the FAR clause on "Small and Disadvantaged Business Subcontracting Plan."

(152) Section 970.1901(d), regarding use of small business concerns, was changed such that all acquisitions of construction by Management and Operating contractors are set aside for small business concerns rather than just those between $10,000 and $3,000,000. As a practical matter, Management and Operating contractors have been setting aside small purchases for small business concerns.

(153) Section 970.2205 was deleted. The language not applicable to management and operating contracts.

(154) Section 970.2207 was deleted. See note for comment (153).

(155) Section 970.2208 was amended to simplify the language. Much of the text included in the proposed rule did not directly address management and operating contractors. The title was also changed to the same as FAR 22.8, "Equal Employment Opportunity."

(156) Subsection 970.2270–1 was moved, as written to Section 922.7001, "Responsibilities." The text is more applicable to prime construction contracts.

(157) Subsection 970.2273 was added and titled "Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities." This subsection was created by repositioning the text located in the proposed rule at 922.403–72 under the same title.

(158) Subpart 970.23 was established to identify, in appropriate text sections of the final rule, DOE requirements for "Environmental Conservation and Occupational Safety Programs." The language is basically a repeat of what was in the proposed rule at 923.7001 and 923.7002 but edited to appropriate language for Part 970. Paragraphs (b), (c) and (d) of Part 970.2303–2, "Clauses," was included in the final rule to provide the instruction language for applicable clauses. The same as that which preceded the clauses at 970.5204–2(b); 970.5204–26 and 952.233–75 of the proposed rule. To be consistent it was deemed appropriate to move the instruction language into the subpart establishing the need for the respective clause.

(159) Section 970.2701 was amended to add a new paragraph (a) to affirm that in patent related matters, the provisions of 41 CFR 9–9:1 apply to management and operating contracts.

(160) Subpart 970.28 was amended to add a new 970.2870 to include language discussing the applicability of indemnification to operating and management contracts and identifying the contract clause required for management and operating contracts. No new language was developed. It was a restatement of subpart 950.70 of the proposed rule.

(161) Subsection 970.3100–1 was revised to delete references to contract types which were already defined elsewhere and actually had no direct applicability to Management and Operating contracts. Additional examples were added to the definition of direct on-site costs.

(162) Subsection 970.3100–2(a) and (b) were edited to delete an unnecessary and confusing sentence on allocating cost dealing with the same purpose, in like circumstances, and being both direct and indirect. The term final cost objective was also deleted as being misleading under a Management and Operating contract. Unnecessary language relating to overhead expense and its allocation basis was also deleted from paragraph (b). This language was not considered to be directly associated with Management and Operating contractors. The last sentence (b)(4) was deleted as non-applicable since the DOE establishes the accounting period for Management and Operating contracts.

(163) Section 970.3201 was edited to add language to identify the Controller as having involvement in the financing of management and operating contracts.

(164) Section 970.3202(c) was edited to add necessary language to clarify that changes in the specified requirements for special bank account agreements shall not be considered a deviation to the DEAR. Text was added to provide that any additional requirements required by the Treasury Department should be included.

(165) Section 970.3271 was created to reposition the "Special Bank Account Agreement" in the proposed rule at 970.5204–17 to the main text of the Part. This text is an agreement which is a contract itself. It is not a clause. It has been moved to stress its importance to the Financing of Management and Operating contracts. The location is now consistent with other outlines and suggested formats included in the final rule.

(166) Section 970.3604 dealing with a format for rental of construction equipment was moved and repositioned in 936.7302.

(167) Section 970.3607 "Architect-Engineer/Construction Services," was rewritten for clarity at paragraph (a).

(168) Subpart 970.51 was edited to move certain sections into Subpart 970.8 whose title was corrected to read: Required Sources of Supplies and Services by adding "and services." Without text changes 970.5102 became 970.0801; 970.5104 became 970.0811; 970.5105 became 970.0870; 970.5106 became 970.0871; 970.5107 became 970.0872; 970.5103 renumbered 970.5102.

(169) Subsection 970.5204–19 regarding printing was rewritten for clarity.

(170) Subsection 970.5204–48 was deleted as it is judged duplicative of a provision at 970.1901(a).

(171) Part 971 was modified to rearrange the contents into a more logical sequence and to improve the language on review requirements. Additions were added to identify the data required to be furnished by DOE field offices to be furnished to Headquarters for review and approvals.

(172) Other edits or title changes being made in the final rule published today are as follows:

901: Part title change to same as FAR: "Federal Acquisition Regulation System."

902.100: Revised definition to delete reference to delegation from Procurement Executive.

903.302–70: Deleted the "–70" which should have been excluded in the proposed rule.

904.601–70: Retitled to read: "Procurement and Assistance Data Systems" (PADS).

904.702: The title in paragraph (b) deleted as unnecessary.

905.403–70: Deleted the "–70" which should have been excluded in the proposed rule.

909.404: The reference in proposed rule, 10 CFR 1035.13(J) changed to read 10 CFR 1035.15.

905.404–1: The term "application" added in paragraph (a) to be consistent with FAR.

905.502: The term "Newspaper" was added to paragraph (a) to be consistent with FAR.

908.800–70: Retitled as 908.82 "Policy." The same as FAR. The "–70" designation not necessary.
913: Part title changed to same as FAR: "Small Purchase and Other Simplified Purchase Procedures."
914.407–8: Revised the stated protest receipt times to be consistent with GAO Manual requirements.
914.502–70: Deleted the "–70" and identified the text as paragraph (a).
915.307–70: Deleted the "–70" and retitled to be consistent with FAR. No separate DOE designation was considered necessary.
915.305–70: Paragraphs (a) and (b) were switched to give a better introduction. The remainder of the subsection was divided into paragraphs to provide better reading.
915.405–1: Renumbered as 915.405 and retitled "General."
915.612: Edited to delete references to "SEB Handbook" as "Regulations Handbook No. 1."
915.970.3: Correction to the proper form identification.
915.1002–70: Deleted the "–70" which should have been excluded in the proposed rule.
916.603–70: This subsection was determined to be part of 916.603–2 "Application:" Its contents amplified 916.603–2(f).
917.604–71 & 917–605–70: "–70" titles deleted as the language is not DOE unique but implements and clarifies the FAR.
917.74, 75, 76, 77: All sections and subsections were renumbered and edited to be identified as 917.72; 917.74; 917.75; respectively. Minor syntax edits made and 917.7404 (as reidentified) corrected to read solicitations as its subject matter and not competition.
922.202(2): Correctly identified as 922.202 "Policy."
922.608–3: Correctly identified as "Protest against Eligibility."
949.111–70: Correctly identified as 949.111 "Review of Proposed Settlements."
949.111–71: Subsection title was deleted and the two paragraphs assigned to 949.111 as paragraphs (c) and (d).
949.505–70: Deleted the –70 reference and identified subsection as 949.505. Other termination clauses. This is consistent with FAR format. The text of the clause was repositioned to clause section at 952.249–70.
951.102–70 and –71: Deleted the " –70/71" reference and identified the text paragraphs under 951.102. This move consistent with FAR format.
970: All titles in the table of contents and text were edited to be same as or closer to the titles of the FAR. Several had to be different of necessity. Changes made in: 970.8; 970.803; 970.1508; 970.1901; 970.2001; 970.2213; 970.27; 970.2701; 970.46; 470.4601; 970.49; 970.51.
970: The term "Management and Operating" was added in front of the term Contractor in several locations in Part 970—since 970 applies to Management and Operating contracts.
970–0803–7: Title deleted. Text became applicable to 970.0803 which was retitled "Acquisition of Utility Services" as paragraph (c).
970.0803–70: "–70" title deleted. Text became applicable as paragraph (d) of 970.0830.
970.1508–3: Reidentified as 970.1508 Price Negotiation.
970.1508–408: Reidentified as 970.1508–5.
970.1508–4: Deleted title only. Text positioned as—1508.
970.1509: Properly identified as "Fees for management and operating contracts."
970.2201: Unnecessary language in opening sentence deleted.
970.2204: Language not necessary deleted and a single paragraph added.
Subsection 970.2270–2 was renumbered as 970.2270.
Subsection 970.2270–3 was renumbered as 970.2271.
Subsection 970.2270–4 was renumbered as 970.2272.
970.2903: Titles deleted from paragraphs.
970.3100: Minor edits made to clarify intent.
970.3103–3: Language of (a)(2) simplified.

The Department of Energy appreciates the comments and suggestions received from the public as well as its own employees, and has made the corresponding changes discussed above. Because of the need to have a regulation in place as of the effective date of the FAR, the rule being published today is effective April 1, 1984. However, in view of the size of the Department's Acquisition Regulation and the overall number of changes made, additional comments will be taken for a period of sixty days after the April 1st effective date. The Department will consider all comments received as part of an ongoing process to amend its Acquisition Regulation as discussed at 901.301–72.

List of Subjects in 48 CFR Chapter 9

Government procurement, DOE acquisition regulation.

Authority: Section 161 of the Atomic Energy Act of 1954, 42 U.S.C. 2201 and Section 644 of the Department of Energy Organization Act, 42 U.S.C. 7254. For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C. March 15, 1984.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

Title 48 of the CFR is amended by establishing chapter 9 to read as follows:

CHAPTER 9—DEPARTMENT OF ENERGY

Part and Title

SUBCHAPTER A—GENERAL

901—Federal Acquisition Regulations System
902—Definitions of words and terms
903—Improper business practices and personal conflicts of interest
904—Administrative matters
905—Publicizing contract actions

SUBCHAPTER B—ACQUISITION PLANNING

907—Acquisition planning
908—Required sources of supplies and services
909—Contracting qualifications
910—Specifications, standards, and other purchase descriptions
912—Contract delivery or performance

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

913—Small purchase and other simplified purchase procedures
914—Formal advertising
915—Contracting by negotiation
916—Types of contracts
917—Special contracting methods

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

919—Small business and small disadvantaged business concerns
920—Labor surplus area concerns
922—Application of labor laws to Government acquisitions
923—Environment, conservation, and occupational safety
924—Protection of privacy and freedom of information
925—Foreign acquisition

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

927—Patents, data, and copyrights
928—Bonds and insurance
931—Contract cost principles and procedures
932—Contract financing
933—Disputes and appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

935—Research and development contracting
936—Construction and architect-engineer contracts
937—Service contracting

SUBCHAPTER G—CONTRACT MANAGEMENT

942—Contract administration
943—Contract modifications
944—Subcontracting policies and procedures
945—Government property
947—Transportation
949—Termination of contract
950—Extraordinary contractual actions
951—Use of government sources by contractors

SUBCHAPTER H—CLAUSES AND FORMS

952—Solicitation provisions and contract clauses

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

970—DOE management and operating contracts
971—Headquarter's review and approval of contract actions

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

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901.603–72 Responsibility of other government personnel.
901.603–73 Contracting officer's representatives.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

Subpart 901.1—Purpose, Authority, Issuance

901.101 Purpose.

(a) This subpart establishes Chapter 9, the Department of Energy Acquisition Regulation, within Title 48, the Federal Acquisition Regulation System, of the Code of Federal Regulations. The short title of this regulation shall be DEAR.

(b) The purpose of the DEAR is to implement the Federal Acquisition Regulations (FAR) where further implementation is needed, and to supplement the FAR when coverage is needed for subject matter not covered in the FAR. The DEAR is not, by itself, a complete document as it must be used in conjunction with the FAR. When a FAR Part or Subpart is adequate for use without further DOE implementation, no mention is cited in the DEAR. Therefore the order of use is (1) FAR; (2) DEAR.

901.102 Authority.

The DEAR and amendments thereto are issued by the Procurement Executive pursuant to a delegation from the Secretary in accordance with the authority of section 644 of the Department of Energy Organization Act of 1977 (Pub. L. 95–91), the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252), as amended, and other applicable law.

901.103 Applicability.

The FAR and DEAR apply to all DOE acquisitions of supplies and services which obligate appropriated funds unless otherwise specified in this regulation. These regulations shall be used as guides to the extent practicable for acquisitions using non-appropriated funds.

901.103–70 Exclusions.

Certain DOE policies and procedures which might otherwise come within the scope of this regulation may be excluded from the DEAR where there is appropriate justification, such as:

(a) Subject matter which bears a security classification (See FAR 4.402).

(b) Subject matter which deals with assistance programs where the award instruments are other than acquisition contracts and purchase orders. The DOE financial assistance policies are codified separately at Part 600 of Title 10 of the Code of Federal Regulations.

(c) Subject matter which deals with the Department's sales programs. These matters are codified separately at various parts of Title 10 of the Code of Federal Regulations.

(d) Subject matter which is procedural in nature and which is internal to the operation of the Department. These matters are contained in the DOE Directives System.

(e) Instructional or training material that more fully explains matters covered in the FAR and DEAR.

901.104 Issuance.

901.104–1 Publication and code arrangement.

(a) The DEAR and its subsequent changes are published in (1) daily issues of the **Federal Register**, (2) cumulative form of the Code of Federal Regulations, and (3) a separate loose-leaf edition.

(b) The DEAR is issued as Chapter 9 of Title 48 of the Code of Federal Regulations.

901.104–2 Arrangement of regulations.

(a) *General.* The DEAR is divided into the same parts, subparts, sections, subsections and paragraphs as is the FAR. However, when the FAR coverage is adequate by itself, there will be no corresponding DEAR part, subpart, etc.

(b) *Numbering.* Where the DEAR implements the FAR, the implementing part, subpart, section or subsection of the DEAR will be numbered and captioned, to the extent feasible, the same as the FAR part, subpart, section or subsection being implemented except that the implementation will be preceded with a 9 or a 90 such that there will always be three numbers to the left of the decimal. For example, the DEAR implementation of FAR 1.104–1 is shown as 901.104–1 and the DEAR implementation of FAR 24.1 is shown as 924.1. Material which supplements the FAR will be assigned the numbers 70 and up. For example, by statute, DOE requires a more comprehensive organizational conflicts of interest review than is contemplated by FAR 9.5. This supplementary material is identified as 909.570.

(c) *References and citations.* (2) This regulation may be referred to as the Department of Energy Acquisition Regulation or the DEAR.

(3) References to FAR materials within this regulation will include FAR and the identifying number, for example, FAR 1.104–2(c)(3). References to DEAR materials within this regulation will simply cite the identifying number, for example, 901.104–2(c)(3).

901.104–3 Copies.

(a) Copies of the DEAR published in the **Federal Register** or Code of Federal

Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Requests should reference the DEAR as Chapter 9 of Title 48. The Code of Federal Regulations is printed in paperback edition and updated annually. Requests for the CFR version of the DEAR should reference Chapter 9 of Title 48.

(b) Loose-leaf copies of the DEAR are distributed within DOE in accordance with a distribution list maintained by the Policy Office in the Procurement and Assistance Management Directorate, Headquarters.

901.105 OMB control numbers.

The Paperwork Reduction Act of 1980, Pub. L. 98–511, and the Office of Management and Budget's implementing regulations at 5 CFR Part 1320, require that reporting and recordkeeping requirements affecting 10 or more members of the public be cleared by that Office. Shown below are DEAR citations containing such requirements and their control numbers.

DEAR	Title	Control No.
913.505-2	Agency order form in lieu of Optional Forms 347 and 348.	1910-3000
915.406-5	Offeror representations and certifications.	1910-3100
917.72	Program opportunity notice for commercial demonstrations.	1910-3200
917.73	Program research and development (R&D) announcement.	1910-3200
919.708	Small business report	1910-3300
922-804-2(b)(2).	Affirmative action compliance requirements for construction.	1910-3400
927.402-3	Technical data certification	1910-3500
928-103-3	Payment bond	1910-3600
928.170	Fidelity bond	1910-3600
936.7301	Outline of agreement for rental of contractor-owned equipment.	1910-3700
945.508	Physical inventory	1910-3800
945.607-2	Recovering precious metals	1910-3800
945.608-2	Agency screening	1910-3800
949.505	Other termination clauses	1910-3900
952.204-2	Security requirements	1910-1800
952.204-70	Classification	1910-1800
952.204-71	Sensitive Foreign nations controls.	1910-1800
952.204-72	Disclosure of information	1910-1800
952.204-73	Foreign ownership, control, or influence over contractor (Representation).	1910-1800
952.204-74	Foreign ownership, control, or influence over contractor.	1910-1800
952.209-70	Organizational conflicts of interest—disclosure or representation.	1910-0800
952.209-71	Organizational conflicts of interest—general.	1910-0800
952.209-72	Organizational conflicts of interest—special clause.	1910-0800
952.212-71	Priorities, allocations and allotments for DOE atomic energy programs.	1910-4000
952.212-73	Cost and schedule control systems criteria.	1910-1400
952.215-70	Required subcontractor representations and certifications.	1910-4000
952.217-70	Acquisition of real property	1910-4000
952.219-9	Small business and small disadvantage business subcontracting plan.	1910-4000
952.223-71	Safety and health (Government-owned or leased facility).	1910-0300
952.223-72	Radiation protection and nuclear criticality.	1910-0300
952.223-74	Nuclear facility safety applicability.	1910-0300
952.223-75	Preservation of individual occupational radiation exposure records.	1910-0300
952.227-71	Patent rights—small business firms or nonprofit organizations.	1910-4000
952.227-71(h).	Utilization of subcontractor inventions report.	1910-4000
952.227-80	Technical data certification	1910-4000
952.227-81	Royalty payments certification	1910-4000
952.227-83	Identification of proprietary data	1910-4000
952.227-84	Notice of right to request patent waiver.	1910-0800
952.235-70	Key personnel	1910-4000
952.245-2	Government property (fixed-price contracts).	1910-4000
952.245-5	Government property (cost-reimbursement, time and material, or labor hour contracts).	1910-4000
952.247-70	Foreign travel	1910-2100
952.249-70	Termination clause for cost reimbursement architect-engineer contracts.	1910-4000
970.5203-2	Examination of records by comptroller general.	1910-4100
970.5204-1	Security	1910-1800
970.5204-2	Safety and health (Government-owned or leased.	1910-0300
970.5204-9	Accounts, records, and inspection.	1910-1700
970.5204-10	Foreign ownership, control, or influence over contractors.	1910-1800
970.5204-11	Changes	1910-4100
970.5204-12	Contractor's organization	1910-4100
970.5204-13	Allowable costs and fixed-fees (CPFF management and operating contracts).	1910-4100
970.5204-14	Allowable costs and fixed-fees (support contracts).	1910-4100
970.5204-19	Printing	1910-1300
970.5204-21	Property	1910-4100
970.5204-22	Contractor procurement	1910-4100
970.5204-23	State and local taxes	1910-4100
970.5204-24	Subcontractor's certificate of current cost or pricing data.	1910-4100
970.5204-26	Nuclear safety	1910-0300
970.5204-27	Consultant or other comparable employment services of contractor employees.	1910-4100
970.5204-29	Permits and licenses	1910-4100
970.5204-30	Notice of labor disputes	1910-4100
970.5204-31	Litigation and claims	1910-4100
970.5204-32	Requirement bonds and insurance—exclusive of Government property (cost-type contracts).	1910-4100
970.5204-33	Priorities, allocations and allotments.	1910-4100
970.5204-34	Sensitive foreign nations control.	1910-1800
970.5204-38	Special clause for procurement of construction.	1910-4100
970.5204-41	Preservation of individual occupational radiation exposure records.	1910-0300
970.5204-42	Key personnel	1910-4100
970.5204-45	Termination	1910-4100
970.5204-50	Cost and schedule control systems.	1910-1400

Subpart 901.2—Administration

901.201-1 The two councils.

(b) The DOE representative to the Civilian Agency Acquisition Council will be a staff member of the Policy Office, Procurement and Assistance Management Directorate, Headquarters, appointed for that purpose by the Procurement Executive.

(d) The Policy Office will be responsible for coordination with all interested Departmental elements regarding proposed FAR revisions and advocating revisions sought by DOE.

Subpart 901.3—Agency Acquisition Regulations

901.301 Policy.

(a) Acquisition policies and procedures will be issued in the DEAR by the Procurement Executive after appropriate coordination with other officials.

(b) Implementing procedures, instructions, and guides which are necessary to clarify or to implement the DEAR within DOE may be issued by the Heads of the Contracting Activities. Contracting activities have the authority to establish the review and approval levels for various acquisition actions, within their respective organizations, up to the dollar authority level delegated to that organization by the Procurement Executive provided the implementing procedures, instructions and guides:

(1) Are consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time;

(2) Follow the format, arrangement, and numbering system of this regulation; to the extent practicable, and

(3) Contain no material which duplicates, paraphrases, or is inconsistent with the contents of this regulation.

901.301-70 Acquisition letters.

From time to time the Procurement Executive may, after coordination with the General Counsel, issue advisory Acquisition Letters to furnish interim guidance to contracting activities.

901.301-71 Amendment of regulation.

This regulation may be amended from time to time by the Procurement Executive with appropriate concurrences from other officials (e.g, Counsel, and any other appropriate Headquarters offices) in accordance with 901.570.

901.301-72 Other issuances related to acquisition.

In addition to the FAR and DEAR, there are other issuances which deal with acquisition. Among these are the Federal Property Management Regulations, the DOE Property Management Regulations, and DOE Directives.

(a) The Federal Property Management Regulations, FPMR, are published by the General Services Administration to guide and govern the Federal agencies in matters pertaining to the management of property and records and other programs and activities of the type

administered by GSA. The FPMRs are codified as Chapter 101 of Title 41 of the Code of Federal Regulations.

(b) The DOE Property Management Regulations, DOE–PMR, implement and supplement the FPMR regarding the utilization, management and disposition of personal property. The DOE–PMRs are codified as Chapter 109 of Title 41 of the Code of Federal Regulations.

(c) The DOE Directives System contains the policies and procedures governing the internal operation of the Department. Because of the need to involve the public through the rulemaking process of the Administrative Procedure Act, as explained at 901.5, such policies and procedures as may directly affect contractors or the general public will be published in the DEAR following the rulemaking procedures established by the Administrative Procedure Act and the DOE Organization Act, Pub. L. 95–91. Policies and procedures which are generally of interest to or used only by DOE personnel will be published in the DOE Directives System.

901.303 Codification and public participation.

(a) The DEAR is codified as Chapter 9 of Title 48 of the Code of Federal Regulations.

(b) Procedures for public participation are described at 901.5.

Subpart 901.4—Deviations From the FAR

901.402 Policy.

(a) Requests for authority to deviate from the provisions of the FAR or the DEAR shall be submitted in writing as far in advance as the exigencies of the situation will permit. Each request for deviation shall contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or DEAR;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

901.403 Individual deviations.

In individual cases, deviations from either the FAR or the DEAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make such deviations clearly in the best interest of the Government. Heads of Contracting Activities (HCAs) or designees are authorized to approve deviations from the DEAR, except for cost principles, in individual cases within their delegated dollar authority, after coordination with Counsel and such other DOE personnel as required. No deviations from the FAR may be authorized at the local level. A copy of each deviation and its supporting documentation shall be provided to the Procurement Executive. Deviations, either in excess of an HCA's delegated dollar authority or involving the cost principles contained in Part 931, or any FAR deviation, shall not be made unless such action is authorized by the Procurement Executive after consultation with General Counsel and any other appropriate Headquarters office, on the basis of a written justification stating clearly the special circumstances involved. For deviations from policies and procedures or clauses involving patents, data and copyrights, the concurrence of the Assistant General Counsel for Patents shall be obtained as provided in Part 927.

901.404 Class deviations.

Where deviations from the FAR, or DEAR in classes of contracts, are considered necessary, requests for authority to deviate shall be submitted in writing to the Procurement Executive who will, after appropriate coordination with other officials (e.g., Counsel, and such other DOE personnel as required), consider the submission, and in the case of FAR deviations, consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council as appropriate. Class deviations to the FAR or the DEAR involving patents, data, and copyrights shall be forwarded to the Procurement Executive, Headquarters, via the Assistant General Counsel for Patents. Where circumstances preclude obtaining prior concurrence of the Chairperson of the Civilian Agency Acquisition Council, the Procurement Executive may authorize the deviation and subsequently inform the Chairperson of the Civilian Agency Acquisition Council of the deviation including the circumstances under which it was required.

Subpart 901.5—Agency and Public Participation

901.570 Rulemaking.

(a) Section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553), provides an exception from the standard public rulemaking procedures to the extent that the rule involves a matter related to agency management or personnel or to public property, loans, grants, benefits or contracts. OFPP Policy Letter 83–2 requires rulemaking for substantive acquisition rules but allows significant discretion in the matter. However, notwithstanding either of these, section 501(b)(3) of the Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565 (42 U.S.C. 7191(b)(3)), provides that the exception shall not be available with respect to public property, loans, grants, or contracts within DOE. Accordingly, DEAR has been promulgated and may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedure Act and the DOE Organization Act. This procedure generally involves issuing a notice of proposed rulemaking inviting public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes actions taken as a result of the comments.

(b) All acquisition rulemakings will be done either by or with the concurrence of the Policy Office, Procurement and Assistance Management Directorate, Headquarters and authorized for issuance by the Procurement Executive or his or her Deputy.

Subpart 901.6—Contracting Authority and Responsibilities

901.601 General.

Contracting authority vests in the Secretary of Energy. The Secretary has delegated this authority to the Procurement Executive. The Procurement Executive has redelegated this authority to the Heads of the Contracting Activities. These delegations are formal written delegations containing dollar limitations and conditions. Each HCA in turn makes formal contracting officer appointments within the contracting activity.

901.601–70 Responsibility of the Head of the Contracting Activity.

The Head of the Contracting Activity, as defined at FAR 2.1 as supplemented by 902.100 of this regulation, is responsible for the conduct of an effective and efficient acquisition

program. Adequate controls shall be established to assure compliance with applicable laws, regulations, procedures, and the dictates of good management practices. Periodic reviews shall be conducted by qualified personnel, preferably assigned to positions other than in the particular acquisition office or portion thereof being reviewed, to determine the extent of adherence to prescribed policies, regulations, and good management practices, and to identify any needs for improvement, guidance and/or training.

901.603 Selection, appointment and termination of appointment.

901.603-1 General.

The DOE system for the selection, appointment, and termination of appointment of contracting officers is established in DOE Order 4200.4, Selection, Appointment, and Termination of Contracting Officers.

901.603-70 Modification of appointment.

To modify a contracting officer's authority, the present appointment shall be revoked and a new certificate issued.

901.603-71 Ratification of unauthorized contract awards.

(a) The Government is not generally bound by agreements or contractual commitments made to contractors or prospective contractors by persons to whom acquisition authority has not been delegated. Such unauthorized acts may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the DEAR, and good acquisition practice; e.g., certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met, such as certification of the availability of funds, determinations and findings, competition of sources, determination of contractor responsibility, price/cost analysis, administrative approvals, negotiation of appropriate contract clauses, etc.

(b) Unauthorized commitments shall not be ratified unless it would have been otherwise proper to enter into a contract prior to the commitment. As used herein, the phrase "otherwise proper" means that a ratification of an unauthorized commitment can be made only if there occurred no violation of any substantive legal requirements; (e.g., there can be no ratification unless a sole source can be justified; a determination made that the contractor is not debarred or otherwise ineligible for award; the organizational conflicts of interest reviews and determinations, if required, are completed; and where all other substantive legal requirements have been met.) Whenever it is discovered that any person is performing work as a result of an unauthorized commitment, that person shall be advised that such work is being performed at their own risk pending establishment of valid contractual coverage. The HCA shall then be notified of the circumstances. If the HCA agrees that the work appears to be without valid authorization, the HCA will take appropriate steps to resolve the matter if within his or her area of cognizance. If outside the HCA's normal area of cognizance, the Procurement Executive and Senior Program Official will be notified by the HCA. If they determine that an unauthorized commitment exists, they will arrange for valid contractual coverage if appropriate. The contracting officer shall direct the disposition of all products and deliverables received by the Government as a result of an unauthorized commitment.

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority shall be processed as follows:

(1) The individual who made the unauthorized contractual commitment shall be required to furnish the contracting officer all records and documents concerning the committment and a complete, written statement of facts, including, but not limited to, a statement as to why the acquisition office was not used, why the proposed contractor was selected and a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed upon contract price, citation of appropriation available, and a statement as to whether the contractor has commenced performance. Under exceptional circumstances, such as when the person who made the unauthorized commitment is no longer available to attest to the circumstances of the unauthorized commitment, the Procurement Executive may waive the requirement that the responsible employee initiate and document the request; *provided,* the cognizant Assistant Secretary or the Head of the Contracting Activity determines in writing that the commitment was in fact made by an employee who shall be identified in the determination.

(2) The request for ratification, an approved justification for non-competitive acquisition, and the information required by (c)(1) above must be forwarded to the cognizant program Assistant Secretary, or HCA, based on the source of funds for the proposed contract, for that person's concurrence, together with recommended corrective actions to preclude recurrence.

(3) If the Assistant Secretary, or HCA concurs with the request for ratification, the request and concurrence shall be forwarded to the Procurement Executive. The Procurement Executive will review the request, the justification for Non-Competitive Acquisition, any comments or information submitted by the contracting officer which should be considered in evaluation of the request, and the information submitted in accordance with (c)(2) above. Based upon this review and advice from the Office of General Counsel, the Procurement Executive, will proceed as follows:

(i) If the request submitted does not appear to be justified, it will be returned to the concurring Assistant Secretary or equivalent official without approval with an explanation of the decision not to ratify.

(ii) If the request and the recommended corrective actions appear justified and adequate, the Procurement Executive may ratify the action, return the file to the contracting officer for action, and monitor the implementation of the corrective action plan.

(iii) A detailed record of the review shall be maintained for audit purposes.

901.603-72 Responsibility of other Government personnel.

(a) Responsibility for the decision of what to buy and when to buy rests with program and certain staff offices and the head of the agency or designee. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the contracting activity, the contracting officer in particular.

(b) Personnel not delegated contracting authority may not commit the Government, formally or informally, to any type of contractual obligation. However, program personnel who must use the contracting process to accomplish their programs, must support the contracting officer in ensuring that:

(1) Requirements are clearly defined and specified;

(2) Competitive sources are solicited, evaluated, and selected;

(3) Quality standards are prescribed and met;

(4) Performance or delivery is timely;

(5) Prices, estimated costs, and fees are reasonable; and

(6) Files are documented to substantiate the judgments, decisions, and actions taken.

901.603-73 Contracting officer's representatives.

(a) A contracting officer may designate other Government personnel to act as authorized representatives for such functions as technical monitoring, inspection, approval of shop drawings, testing, approval of samples, and other functions of a technical natural not involving a change in the scope, price, terms or conditions of the contract or order. Such designation shall be in writing and shall contain specific instructions as to extent to which the representative may take action for the contacting officer, but will hot contain authority to sign contract documents. The responsibilities and limitations of the contracting officer's representatives may be set forth in the contract or in a separate letter, a copy of which shall be furnished to the contractor.

(b) A person assigned to and performing primary duty within a contracting office, and who is under the supervision of a contracting officer, does not require designation as a representative to perform assigned duties. The contracting officer cannot authorize subordinates to sign any contract document or letter where the signature of a contracting officer is required.

PART 902—DEFINITIONS OF WORDS AND TERMS

Subpart 902.1—Definitions

Sec.
902.100 Definitions.

Subpart 902.2—Definitions Clause

902.200 Definitions clause.

Authority: Section 644 of the Department of Energy (Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 902.1—Definitions

902.100 Definitions.

The following definitions are in addition to those stated in FAR 2.1.

"Acquisition Executive," as that term is defined in OMB Circular A-109, means the Assistant Secretary, Management and Administration. The Acquisition Executive, as contrasted to the Procurement Executive, is involved in monitoring the development of major systems and the review of their progress as they evolve through the major systems acquisition process. Details regarding internal major system acquisition procedures may be found in the DOE Directives.

"Contracting Activity" means a DOE organizational element which has authority to award contracts.

"Head of the Agency" means the Secretary, Deputy Secretary, or Under Secretary.

"Head of the Contracting Activity (HCA)" means, in addition to the element specified in the FAR, a DOE Official who has met the following requirements: first, has been delegated authority to award contracts and appoint contracting officers by the Procurement Executive; and second, has been designated as an HCA. A partial listing of the durties specifically reserved to the HCA or designee includes:

(a) Authority to establish review and approval levels for contract actions within the organization, up to the dollar level delegated.

(b) Authority to approve deviations from the DEAR in accordance with 901.403.

(c) Authority to appoint contracting officers.

(d) Authority to make administrative determinations regarding withdrawals of bids before award in mistake-in-bid cases.

"Procurement Executive" means the individual appointed as such by the Head of the Agency pursuant to Executive Order 12352. The Director, Procurement and Assistance Management Directorate, has been appointed as the DOE Procurement Executive. Duties of the Procurement Executive include:

(a) Prescribe and publish agency acquisition policies, regulations and procedures;

(b) Enter into, make determinations and decisions and take other actions, consistent with appropriate policies, regulations and procedures with respect to purchases, contracts, leases, sales agreements and other transactions, except those required by law or regulation to be made by other authority;

(c) Designate contracting officers and representatives thereof;

(d) Establish clear lines of contracting authority;

(e) Exercise priorities authority on behalf of the agency, in accordance with the provisions of the Defense Production Act of 1950 (50 U.S.C. App. 2071, et seq.), Department of Defense Delegation of Priorities Authority, dated October 21, 1958, and applicable policies and regulations; and the Energy Conservation and Policy Act, Pub. L. 94-164;

(f) Evaluate and monitor the agency's acquisition system performance;

(g) Manage and enhance career development of the acquisition work force;

(h) Examine, in coordination with the OFPP, the acquisition system to determine specific areas where Government-wide performance standards should be established and applied and participate in the development of Government-wide acquisition policies, regulations and standards;

(i) Determine areas for agency unique standards and develop unique agency-wide standards;

(j) Be the advocate for competition; and

(k) Certify to the agency head that the acquisition system meets approved standards.

"Senior Program Official" means the Assistant Secretaries; Administrators of Administrations; Chairman, Federal Energy Regulatory Commission; Director, Office of Energy Research; and heads of DOE Headquarters staff offices.

Subpart 902.2—Definitions Clause

902.200 Definitions clause.

As prescribed by FAR 2.2, insert the clause at FAR 52.202-1, Definitions, but modify it to limit the definition, at paragraph (a) of the clause, to encompass only the Secretary, Deputy Secretary, and Under Secretary of the Department of Energy. The contracting officer shall also add a paragraph (d) (or (c) in case Alternate I is used), which defines "DOE" as meaning the United States Department of Energy.

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 903.1—Safeguards

Sec.
903.101 Standards of conduct.
903.101-3 Agency regulations.

Subpart 903.2—Contractor Gratuities to Government Personnel

903.203 Reporting suspected violations of the Gratuities clause.
903.204 Treatment of violations.

Subpart 903.3—Reports of Identical Bids and Suspected Antitrust Violations

903.302-2 Reporting requirements.

Subpart 903.4—Contingent Fees

903.406-1 Responsibilities.

Subpart 903.5—Other Improper Business Practices

903.502 Subcontractor kickbacks.

Subpart 903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

903.603 Responsibilities of the contracting officer.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 903.1—Safeguards

903.101 Standards of conduct.

903.101-3 Agency regulations.

Detailed rules applicable to the conduct of DOE employees are set forth in 10 CFR Part 1010. To ensure that contracting personnel are informed of the high standards to be met and that they maintain current knowledge of the standards of conduct, all contracting activities shall maintain a "Standards of Conduct Notebook for Acquisition and Assistance Personnel." The notebook will contain a copy of 10 CFR Part 1010 and any other DOE or local directives on standards of conduct. All contracting personnel and their supporting personnel shall certify they have read and understand the contents of the notebook by signing a certificate to that effect. This shall be done at least annually.

Subpart 903.2—Contractor Gratuities to Government Personnel

903.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations of the Gratuities clause shall be reported to the Head of the Contracting Activity (HCA) in writing detailing the circumstances. The HCA will evaluate the report and if the allegations appear to support a violation the matter will be referred to the Procurement Executive for disposition.

903.204 Treatment of violations.

Apparent violations will be processed in accordance with the debarment and suspension rules set forth at Title 10, Part 1035, of the Code of Federal Regulations.

Subpart 903.3—Reports of Identical Bids and Suspected Antitrust Violations

903.302-2 Reporting requirements.

(a) Executive Order 12430 of July 6, 1983, revoked the requirement of Executive Order 10936 of April 24, 1961, to submit a report to the Attorney General on identical bids.

(b) Potential anti-competitive practices, such as described in FAR 3.301, and antitrust law violations as described in FAR 3.303, evidenced in bids or proposals shall be reported to the Office of General Counsel through the Head of the Contracting Activity with a copy to the Procurement Executive. The Office of General Counsel will provide reports to the Attorney General as appropriate.

Subpart 903.4—Contingent Fees

903.408-1 Responsibilities.

(b) Each Standard Form 119 completed in connection with a DOE contract, together with other relevant information, shall be reviewed by Counsel prior to the initiation of appropriate action.

Subpart 903.5—Other Improper Business Practices

903.502 Subcontractor kickbacks.

(b) Contracting officers shall report suspected violations of the Anti-Kickback Act through the Head of the Contracting Activity, or designee, to the Office of General Counsel.

Subpart 903.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

903.603 Responsibilities of the contracting officer.

(a) When the needs of the Government cannot be reasonably supplied by sources other than employees of the Government or sources which are substantially owned or controlled by Government employees, the contracting officer shall submit, through the HCA, a request to the Procurement Executive, with appropriate justification, for approval of an exception to the prohibitions contained in FAR 3.601.

PART 904—ADMINISTRATIVE MATTERS

Subpart 904.4—Safeguarding Classified Information Within Industry

Sec.
904.401 Definitions.
904.402 General.
904.403 Responsibilities of contracting officers.
904.404 Contract clauses.

Subpart 904.6—Contract Reporting

904.601 Federal procurement data system.
904.601-70 Procurement and Assistance Data System (PADS).

Subpart 904.7—Contractor Records Retention

904.702 Applicability.

Subpart 904.8—Contract Files

904.803 Contents of contract files.
904.804-1 Close out by the office administering the contract.
904.805 Disposal of contract files.

Subpart 904.70—Foreign Ownership, Control, or Influence Over Contractors

904.7000 Purpose.
904.7001 Applicability.
904.7002 Definitions.
904.7003 Disclosure of foreign ownership, control, or influence.
904.7004 Findings, determination, and contract award or termination.
904.7005 Solicitation provision and contract clause.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 904.4—Safeguarding Classified Information Within Industry

904.401 Definitions.

"Classified Information" means any information or material that is owned by, produced by or for, or is under the control of the United States Government, and determined pursuant to provisions of Executive Order 12356, April 2, 1982 (47 FR 14874, April 6, 1982), or prior orders, or as authorized under the Atomic Energy Act of 1954, as amended, to require protection against unauthorized disclosure, and is so designated.

"Restricted Data" means data which is defined in section II, of the Atomic Energy Act of 1954, as amended, as "all data concerning: (1) Design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142."

904.402 General.

(a) The basis of DOE's security requirements is the Atomic Energy Act of 1954, as amended.

(b) *DOE security regulations.* DOE regulations concerning national security information are codified at 10 CFR Part 1045. Supplemental material is found in the DOE Directives. Foreign ownership, control, or influence over contractors as it relates to security is discussed at 904.70.

(c) *Special requirements regarding foreign release.* Statutory requirements to be observed in connection with the release of Restricted Data to foreign governments are contained in the Atomic Energy Act of 1954, Sections 141 and 144.

(d) *Prohibition against the dissemination of certain unclassified information.* Section 148 of the Atomic Energy Act (42 U.S.C. 2168) prohibits the

unauthorized dissemination of unclassified nuclear information with respect to the atomic energy defense programs pertaining to:

(1) The design of production facilities or utilization facilities;

(2) Security measures (including security plans, procedures, and equipment) for the physical protection of: (i) Production or utilization facilities, (ii) nuclear material contained in such facilities, or (iii) nuclear material in transit; or

(3) The design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act.

(k) Further information on this subject may be found at 10 CFR Part 710.

904.403 Responsibilities of contracting officers.

(a) *Presolicitation Phase.* If access to Restricted Data may be required, security clearances shall be obtained as noted in DOE Order 5631.2.

(c) *Award Phase.* Contracts which may require the processing or storage of Restricted Data or Special Nuclear Material require application of the provisions of DOE Orders 5634.1; 5635.1; and 5632.2. DOE regulations relating to the protection of Restricted Data may also be found under 10 CFR Part 1016.

9004.404 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 under section 31 (research assistance) or 41 (ownership and operation of production facilities) of the Atomic Energy Act of 1954, as amended, and in other contracts and subcontracts, the performance of which involves or is likely to involve classified information. The DOE system is separate from that of the Department of Defense and the DEAR clause shall be used instead of that at FAR 52.204–2.

(2) *Classification, 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 contract specialist shall consult the local security office for a listing of nations involved. (The attachment referred to in the clause should 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 should 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.

Subpart 904.6—Contract Reporting

904.601 Federal procurement data system.

(c) DOE's data collection point is the Office of Procurement Support, Headquarters.

904.601–70 Procurement and Assistance Data System (PADS).

(a) The Procurement and Assistance Data System (PADS) is the Department of Energy's system for collection of Federal Procurement Data System (FPDS) data.

(b) DOE Order 1331.1A, entitled "Requirements and Procedures for the Procurement and Assistance Data System," requires that all data be entered into PADS within five (5) working days after the award in the following manner:

(1) Contracting activities shall report the information required by this subpart for new awards and modifications.

(2) For each prime contract action over the small purchase limit, contracting officers shall complete an Individual Procurement Action Report (IPAR), DOE F 4200.40, and submit it to their data entry point for input to the PADS system. Detailed information on completing IPAR forms is contained in the publication entitled "Handbook for Preparation of Individual Procurement Action Reports." A copy of each completed IPAR form shall be inserted in the pertinent contract file.

(3) Prime contract awards below the small purchase limit shall be reported either:

(i) Individually, by completion and submission of an IPAR; or

(ii) On a summary basis, by completion and submission of a DOE F 4200.31, Award Action Quarterly Report. Summary reports shall be submitted within 15 calendar days after the end of each Federal fiscal quarter.

(4) Contracting officers shall assure that contractors whose contracts include the Small and Small Disadvantaged Business Subcontracting Plan clause, FAR 52.219–9, submit the required reports on Standard Forms 294.

Subpart 904.7—Contractor Records Retention

904.702 Applicability.

(b) Contracts containing the Safety and Health clause at 952.223–71, the Radiation Protection and Nuclear Criticality clause at 952.223–72, or the Nuclear Safety clause at 952.223–74 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 Chapter V of DOE Order 1324.2, and any pertinent superseding provisions, rather than those found at FAR 4.7. These schedules are required by DOE, pursuant to an agreement with the General Accounting Office, in situations where prudence dictates longer retention periods for records involving employee health matters.

Subpart 904.8—Contract Files

904.803 Contents of contract files.

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

904.804–1 Closeout by the office administering the contract.

(a) The Head of the Contracting Activity shall ensure that necessary procedures and milestone schedules are established to meet the requirements of FAR 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 942.708.

904.805 Disposal of contract files.

Contract files shall be disposed of in accordance with applicable DOE Order 1324.2.

Subpart 904.70—Foreign Ownership, Control, or Influence Over Contractors

904.7000 Purpose.

This subpart sets forth the Department of Energy policies and procedures regarding foreign ownership, control, or influence (FOCI) over contractors. The procedures are designed to protect against an undue risk to the common defense and security which may result if classified information or special nuclear material is made available to DOE contractors or

subcontractors who are owned, controlled, or influenced by foreign governments, individuals, or organizations. The procedures require certain offerors/ bidders and contractors/subcontractors to submit information which will help DOE to determine whether award of a contract to a firm, or continued performance of a contract by a firm, may pose an undue risk to the common defense and security because of FOCI over the offeror/bidder or contractor/subcontractor.

904.7001 Applicability.

The provisions of this subpart shall apply to all offerors/bidders, contractors, and subcontractors who will or do have access to classified information or a significant quantity of special nuclear material as defined in 10 CFR Part 710. In this subpart, the term "contractor" shall also mean subcontractor at any tier, the term "contract" shall also mean subcontract at any tier, and the term "special nuclear material" shall also mean significant quantity of special nuclear material as defined in 10 CFR Part 710.

904.7002 Definitions.

"Foreign interest" means any of the following:

(1) Foreign government or foreign government agency or instrumentality thereof;

(2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;

(3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S. which is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person, or

(4) Any person who is not a U.S. citizen.

"Foreign ownership, control, or influence" means the situation where the degree of ownership, control, or influence over an offeror/bidder or a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may possibly result.

"Contracting Officer" means the DOE contracting officer.

904.7003 Disclosure of foreign ownership, control, or influence.

(a) If a contract requires a contractor to have access to classified information or a significant quantity of special nuclear material, the DOE must determine whether access to the information or material by a contractor who is or may be subject to FOCI may pose an undue risk to the common defense and security before a contract can be awarded.

(b) If during the performance of a contract, the contractor comes under FOCI, then the DOE must determine whether any further access to the classified information or special nuclear material may pose an undue risk to the common defense and security through the possible compromise of that information or material. If the DOE determines that such a threat or potential threat exists, the contracting officer shall consider the alternatives of negotiating an acceptable method of isolating the foreign interest which owns, controls, or influences the contractor or terminating the contract.

(c) It is essential for the DOE to obtain information about FOCI which is sufficient to help the Department determine whether award of a contract to a person or firm, or the continued performance of a contract by a person or firm, may pose undue risk to the common defense and security. Therefore, the provision specified at 952.204–73 shall be included in solicitations that involve offerors/ bidders or contractors that are subject to 904.7001.

(d) The contracting officer shall not award or extend any contract subject to this subpart, exercise any options under a contract, modify any contracts subject to this subpart, or approve or consent to a subcontract subject to this subpart unless: (1) The contractor provides the information required by the solicitation provision at 952.204–73, or (2) the contractor certifies that it has previously submitted the information requested in 952.204–73 as part of a facility security clearance and that this information is accurate, complete, and current, and (3) the contracting officer has made a positive determination in accordance with 904.7004.

904.7004 Findings, determination, and contract award or termination.

(a) Based on the information disclosed by the offeror/bidder or contractor, and after consulting with the DOE Office of Safeguards and Security, the contracting officer must determine that award of a contract to an offeror/bidder or continued performance of a contract by a contractor will not pose an undue risk to the common defense and security. The contracting officer need not prepare a separate finding and determination addressing FOCI; however, the memorandum of negotiation shall include a discussion of the applicability of this subpart and the resulting determination.

(b) In those cases where FOCI does exist, and the DOE determines that an undue risk to the common defense and security may exist, the offeror/bidder or contractor shall be requested to propose within a prescribed period of time a plan of action to avoid or mitigate the foreign influences by isolation of the foreign interest.

(c) The types of plans that a contractor can propose are: measures which provide for physical or organizational separation of the facility or organizational component containing the classified information or special nuclear material; modification or termination of agreements with foreign interests; diversification or reduction of foreign source income; assignment of specific security duties and responsibilities to board members or special executive level committees; or any other actions to negate or reduce FOCI to acceptable levels. The plan of action may vary with the type of foreign interest involved, degree of ownership, and information involved so that each plan must be negotiated on a case by case basis. If the offeror/bidder or contractor and the DOE cannot negotiate a plan of action that isolates the offeror/bidder or contractor from FOCI satisfactory to the DOE, then the offeror/bidder shall not be considered for contract award and affected existing contracts with a contractor shall be terminated.

904.7005 Solicitation provision and contract clause.

(a) The contracting officer shall insert the representation at 952.204–73, Foreign Ownership, Control, or Influence Over Contractor, in all solicitations for contracts subject to 904.7001.

(b) The contracting officer shall insert the clause at 952.204–74, Foreign Ownership, Control, or Influence Over Contractor, in new contracts and contract modifications to existing contracts subject to 904.7001.

PART 905—PUBLICIZING CONTRACT ACTIONS

Subpart 905.2—Synopses of Proposed Contracts

Sec.
905.205 Special situations.

Subpart 905.4—Release of Information

905.403 Requests from Members of Congress.
905.404–1 Release procedures.

Subpart 905.5—Paid Advertisements

905.502 Authority.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic

Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 905.2—Synopses of Proposed Contracts

905.205 Special situations.

(a) *Research and development (R&D) advance notices.* If, a result of an R&D Sources-Sought Synopsis, a subsequent synopsis is issued, the latter synopsis shall contain information regarding the earlier synopsis, and identify the special qualifications, expertise, experience, or facilities deemed necessary to perform the work satisfactorily. The purpose of this added notice is to alert potential sources that their proposal preparation effort as well as the Government evaluation effort will be unnecessarily expended if they do not possess these special qualifications.

Subpart 905.4—Release of Information

905.403 Requests from Members of Congress.

(a) *Individual requests.* In addition to having access to the information available to the general public, Members of Congress shall, upon their request, be given full and detailed information regarding any particular Departmental acquisition. The information provided shall be fully responsive to the member's request unless such a response would disclose classified matter, information not to be released pursuant to law, business confidential information or information which would be prejudicial to the competitive process. The contracting officer shall promptly consult with appropriate specialists such as security analysts or legal counsel and the Office of Congressional Affairs to determine whether circumstances exist which will allow the release of additional information. In such instances, the Congressional requestor shall be provided an interim reply furnishing the information which is readily releasable. The interim reply shall set forth the reasons which preclude release of any requested material and describe generally what steps, if any, are being taken to make such information available.

(b) *Required notices of award.* The Office of Congressional Affairs, Headquarters, is responsible for advising Members of Congress regarding Departmental activities likely to have an impact on their constituents. To facilitate this advice, contracting officers shall notify the Office of Congressional Affairs regarding pending awards for significant new starts or modifications significantly expanding the previous scope of a contract. The transmittal of such notices to the Office of Congressional Affairs shall be as follows:

(1) Notice of awards of $500,000 or greater, but less than $1,000,000 shall be forwarded 48 hours prior to the time of contract execution.

(2) Notice of source selection for a contemplated award of $1,000,000 or greater shall be forwarded 48 hours prior to the public announcement of the source selection. Such notices need not be duplicated at time of award.

(3) Notice of awards of $50,000 or greater, under Special Research Contracts as described at 917.71, shall be forwarded 48 hours prior to the time of contract execution.

905.404-1 Release procedures.

(a) *Application.* Offices contemplating the release of long range acquisition planning estimates shall coordinate with the Office of Procurement Support, Procurement and Assistance Management Directorate, Headquarters, in advance of the release of such planning estimates.

Subpart 905.5—Paid Advertisements

905.502 Authority.

(a) *Newspapers.* When it is deemed necessary to use paid advertisements in newspapers and trade journals, written authority for such publication shall be obtained from the Head of the Contracting Activity or designee.

PART 907—ACQUISITION PLANNING

Subpart 907.1—Acquisition Plans

Sec.
907.102 Policy.

Subpart 907.3—Contractor Versus Government Performance

907.307 Appeals.

Subpart 907.4—Equipment Lease or Purchase

907.401 Acquisition considerations.
907.402–70 Purchase versus lease comparison.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 907.1—Acquisition Plans

907.102 Policy.

Acquisition plans are required as an element of project management plans which are required for major system acquisitions and major projects. The 5700 Series of DOE Directives establish the project management system which controls the planning and administration of major projects. This project management system calls for the preparation of project management plans which have as an annex the advance acquisition plan. Acquisition plans will be developed for other acquisitions when the potential benefit justifies their development.

Subpart 907.3—Contractor Versus Government Performance

907.307 Appeals.

An appeal of a decision to convert to contract or to continue in-house performance may be made by an affected party. Appeals shall be made in writing, be based only on specific alleged material deviation (or deviations),from OMB Circular A–76, and be supported by appropriate documentation. Appeals must be delivered within 15 working days of the announced decision, to the contracting officer. The contracting officer shall process any such appeal in accordance with internal Departmental procedures.

Subpart 907.4—Equipment Lease or Purchase

907.401 Acquisition considerations.

(c) The factors in FAR 7.401 (a) and (b), the guidelines prescribed in FPMR 101–25.5 and 907.402–70 of this chapter for making purchase or lease determinations shall be applied to the acquisition of all types of equipment. These factors and guidelines shall be used in making purchase versus lease determinations at time of original acquisition, when lease renewals are being considered, or at other times as circumstances warrant.

(d) Contracting officers shall assure the use of applicable purchase versus lease factors and guidelines in all acquisition and supply operations under their jurisdiction.

(e) Excess lists shall be consulted prior to leasing equipment in both original and renewal leasing actions. Also, leased equipment shall be offered for utilization by other DOE offices and DOE contractors prior to release whenever an accumulated credit toward purchase of the equipment will be lost.

(f) Unavailability of funds is not adequate justification for a decision to lease when purchase is indicated by a purchase versus lease comparison to be the more economical course of action. In such circumstances, it it essential that every effort be made to follow the purchase course of action. This is true both with respect to those studies made at the time leases are renewed or when other circumstancs warrant.

907.402-70 Purchase versus lease comparison.

(a) A comparative cost analysis of the alternative methods of acquisition (i.e., purchase, lease, or lease with option to purchase or any other legally acceptable method) shall be performed to determine which method shall provide the Government with the lowest overall cost (price and other factors considered), over the life of the equipment. The method chosen shall be that which offers the greatest advantage to the Government under the circumstances which pertain to each situation.

(b) Responsibilities of acquisition officials, head of program offices, and controller and finance divisions are as follows:

(1) *Acquisition officials:*

(i) Contracting officers shall assure the use of applicable purchase versus lease guidelines in all acquisition and supply operations under their jurisdiction.

(ii) Maintain all purchase versus lease analyses and studies, and other pertinent data used to support administrative actions taken.

(2) *Heads of Program Offices:* Prepare comparative cost analyses for alternative methods of equipment acquisition and submit to the contracting officer.

(3) *Controller and Finance Divisions:* Provide financial policy guidance and assistance to the program offices in preparing comparative cost analyses.

(c) A purchase or lease determination supported by a comparative cost analysis is essential to the equipment acquisition process. To develop a comparative cost analysis properly, it is necessary to bring together "overall costs" of the equipment over the stated life of the equipment. Overall costs shall include, but not be limited to, cost elements as purchase cost, rental cost, lease cost, maintenance cost for purchased equipment, site preparation cost and installation cost. In performing a comparative cost analysis of the alternative methods of acquisition, it is necessary to give consideration to equipment life and residual value.

(1) The cost of equipment for the stated equipment life should be calculated for each acquisition method offered. Examples of plans are:

(i) *Purchase*—Outright purchase after installation and acceptance of equipment.

(ii) *Lease with Purchase Option*—Lease with option to purchase at predetermined intervals of time. The purchase price is usually reduced by subtracting rental credits as set forth in the offeror's proposal.

(iii) *Long Term Lease*—Such plans may provide multi-year leasing at determinable prices where the agency exercises a renewal option at the end of each fiscal year.

(iv) *Lease-to-Ownership Plan or Lease with Title Tranfer Plan*—A plan whereby title transfers after payment of *n* months of rental, but usually with no obligation, or less obligation, to continue to lease than in the installment purchase plan described below.

(v) *Installment Purchase Plan*—A plan whereby the Government exercises an option to purchase the equipment upon payment of *n* months of payments. It is frequently offered as a fixed term installment plan usually for 36 or 60 months in which the Government either is granted title immediately, or title is passed at the end of the contract.

(2) Equipment life, which is a forecast or projection of the period of time which begins with the installation of the equipment and ends when the requirement for the equipment is terminated, is based upon requirements which should be stipulated in the solicitation document. Equipment life is not synonymous with the actual life of the equipment.

(3) Usually, at the end of the stated equipment life, the equipment still has some residual value to the Government. This value may reflect the fact that the initial using activity may well keep the equipment longer than planned or some other Government activity may reutilize the equipment. The future lease payments saved, as well as the resale value of the equipment at the end of the stated equipment life, affect residual value. The residual value varies with each component (item) of equipment and its activity. However, it is generally expected that after a five-year equipment life the equipment should still be worth approximately 20–30% of the purchase price and after eight years, about 10%. The "purchase price" is the lowest evaluated purchase price offered by a responsible and responsive offeror. Instead of the straight purchase price, the sum of all invoice payments to be made to the Contractor may be used as the basis for this calculation. Any procurement option (e.g., Purchase, Lease-to-Ownership, etc.) that results in the Government owning the system(s) will have the residual value deducted from the systems life cost for evaluation purposes.

(4) Care should be taken during negotiations to ensure that the Government retains accrued credits and/or equity under any lease or installment purchase plan should the agency requirement cease or funds no longer be available. It is desirable to negotiate for the transfer of accrued credits to GSA should this case arise, so that GSA can find another user and retain the equity and any purchase option credits. At least a 90 day transfer plan should be available. The negotiator also has to be careful that equipment discontinuance is not hampered by restrictions on when the equipment can be dropped from the plan, or restrictions on the adding of new equipment. Ideally, the contract should contain no penalities for cancellation at the end of each fiscal year. It is imperative, however, that statutory "anti-deficiency" restraints be considered before entering into any multi-year lease or installment plan contracts.

(5) Particular caution should be exercised in entering into a lease-to-ownership or installment purchase plan because often the problems of ownership such as risk of loss or damage, taxes and insurance immediately fall on the Government and hence are avoided by the contractor. These plans offer real profit advantages to a contractor when they can pass the costs and risks on to the Government. Accordingly, since the offeror does not have to include such contingencies in his pricing, commensurate price reductions must be a part of the negotiation objectives under these conditions.

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 908.8—Acquisition of Printing and Related Supplies

Sec.
908.802 Policy.

Subpart 908.11—Leasing of Motor Vehicles

908.1100 Scope of subpart.
908.1102 Presolicitation requirements.
908.1104 Contract clauses.
908.1170 Leasing of fuel-efficient vehicles.

Subpart 908.70—Use of Excess Materials From GSA Inventories

908.7001 Use of excess materials from General Services Administrative inventories.

Subpart 908.71—Acquisition of Special Items

908.7100 Scope of subpart.
908.7101 Motor vehicles.
908.7101-1 Scope of section.
908.7101-2 Consolidated acquisition of new vehicles by General Services Administration.
908.7101-3 Direct acquisition.
908.7101-4 Replacement of motor vehicles.
908.7101-5 Used vehicles.
908.7101-6 Acquisition of fuel-efficient vehicles.
908.7101-7 Government license tags.
908.7102 Aircraft.

908.7103 Office machines.
908.7104 Office furniture and furnishings.
908.7105 Filing cabinets.
908.7106 Security cabinets.
908.7107 Alcohol.
908.7108 Helium.
908.7109 Fuels and packaged petroleum products.
908.7110 Coal.
908.7111 Arms and ammunition.
908.7112 Materials handling equipment replacement standards.
908.7113 Calibration services.
908.7114 Wiretapping and eavesdropping equipment.
908.7115 Forms.
908.7116 Electronic data processing tape.
908.7117 Tabulating machine cards.
908.7118 Rental of post office boxes.
908.7119 [Reserved]
908.7120 [Reserved]
908.7121 Special materials.

Subpart 908.72—Use of Acquisition and Supply Management Support Services at the Nevada Test Site

908.7200 Scope of subpart.
908.7201 Policy.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 908.8—Acquisition of Printing and Related Supplies

908.802 Policy.

(b) The Joint Committee on Printing, Congress of the United States periodically publishes "Government Printing and Binding Regulations" These regulations and DOE Order 1340.1A, Chapter VI, "Printing and Related Activities," govern the acquisition, use, and disposal of printing. Inclusion of printing requirements (limited exceptions are set forth in paragraphs 35–2 through 35–4 of the Government Printing and Binding Regulations) in contracts for supplies and services is prohibited unless specifically approved by the Director, Office of Administrative Services, Headquarters. Contracting officers shall insert the clause at 952.208–70.

Subpart 908.11—Leasing of Motor Vehicles

908.1100 Scope of subpart.

This subpart prescribes procedures for the leasing, from commercial concerns, by DOE offices and its authorized contractors, of motor vehicles that comply with Federal Motor Vehicle Safety Standards and applicable State motor vehicle safety regulations. It does not apply to motor vehicles leased outside the United States. Motor vehicle acquisition policies are at 908.7101.

908.1102 Presolicitation requirements.

(a)(4) Commercial vehicle lease sources may be used only when the General Services Administration (GSA) has advised that it cannot furnish the vehicle(s) through the Interagency Motor Pool System and it has been determined that the vehicle(s) are not available through the GSA Consolidated Leasing Program.

908.1104 Contract clauses.

(e) The clause at 952.208–7, Tagging of Leased Vehicles, shall be inserted whenever a vehicle(s) is to be leased over 60 days, except for those vehicles exempted by FPMR 41 CFR 101–38.6.

908.1170 Leasing of fuel-efficient vehicles.

(a) All sedans and station wagons and certain types of light trucks, as specified by GSA, that are acquired by lease for 60 continuous days or more for official use by DOE or its authorized contractors, are subject to the requirements of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163 and of Executive Order 12003 and subsequent implementing regulations. Accordingly, the Director of Administration and Heads of Contracting Activities shall submit annually to the Director, Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters, for approval, a forecast of plans for the lease of such vehicles during the fiscal year. Such forecast shall be submitted so as to arrive at Headquarters on or before November 1 of each year.

(b) Two copies of each proposal/request to commercially lease such vehicles shall also be forwarded to the Director, Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters, for review and certification/approval prior to submission to GSA under the Consolidated Lease Program or execution of commercial lease agreements. All such documentation will be reviewed by this official and a determination made as to conformance with applicable annual forecasts and pertinent public laws and their implementations. (See DOE–PMR 41 CFR 109–38.13.)

(c) Leased vehicles will meet the miles-per-gallon criteria of, and be incorporated in, the approved plan of the fiscal year in which leases are initiated, reviewed, extended, or increased in scope. Vehicle leases will specify the vehicle model type to be provided.

Subpart 908.70—Use of Excess Materials From GSA Inventories

908.7001 Use of excess materials from General Services Administration inventories.

(a) It is the policy of DOE to comply with the provisions of the Federal Property Management Regulations 41 CFR Part 101–14, National Defense Stockpile, as supplemented from time to time by FPMR Bulletins.

(b) Section 328.2 of Defense Mobilization Order II provides that "Under such policies and procedures as the Administrator of General Services may prescribe, Government agencies which directly or indirectly use strategic and critical materials shall fulfill their requirements through the use of materials in Government inventories that are excess to the needs thereof."

(c) DOE offices shall fulfill their requirements for strategic and critical materials through use of the excess strategic and critical materials in the GSA inventories.

(d) General Services Administration (DS), Washington, D.C. 20406, should be contacted directly for any detailed information concerning specifications, prices, and methods of placing the order.

Subpart 908.71—Acquisition of Special Items

908.7100 Scope of subpart.

This subpart sets forth requirements and procedures for the acquisition of special items by DOE and contractors authorized to use special sources of supply to the extent indicated herein.

908.7101 Motor vehicles.

908.7101–1 Scope of section.

Acquisitions by purchase of motor vehicles shall be in accordance with this section.

908.7101–2 Consolidated acquisition of new vehicles by General Services Administration.

(a) New vehicles shall be procured in accordance with FPMR 41 CFR 101–25.304, 101–26.501, and 101–38.13, and DOE-PMR 41 CFR 109–25.304, 109–38.13, and 109–39.51.

(b) Orders for all motor vehicles shall be submitted on GSA Form 1781, Motor Vehicle Requisition—Delivery Order—Invoice, in accordance with FPMR 41 CFR 101–26.501. Requisitions for sedans, station wagons, and certain light trucks as specified by GSA, should contain a certification that the acquisition is in conformance with Pub. L. 94–163, and Executive Order 12003 and 12375 and subsequent implementations.

(c) The schedule of dates for submission of orders is contained in FPMR 41 CFR 101–26.501–4. Heads of Contracting Activities shall consolidate and submit their requirements for passenger automobiles early in the fiscal year. Requisitions for sedans, station wagons and certain types of light trucks shall be submitted through Headquarters as outlined in 908.7101–6. Requisitions for all other types of vehicles shall be submitted directly to GSA.

908.7101–3 Direct acquisition.

Vehicles may be acquired by DOE activities directly rather than through GSA when a waiver has been granted by GSA. A copy of the activity's request to GSA for a waiver shall be forwarded to the Director, Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters. In those cases involving general purpose vehicles where GSA refuses to grant a waiver and where it is believe that acquisition through GSA would adversely affect or otherwise impair the program, authority for direct acquisition shall be obtained from the above-mentioned Headquarters official, prior to acquisition. In the acquisition of special purpose vehicles for use by DOE and its authorized contractors, the Head of the Contracting Activity may authorize direct purchases. The purchase price for sedans and station wagons, shall not exceed any statutory limitation in effect at the time the acquisition is made. (See DOE–PMR 41 CFR 109–38.5101–4).

908.7101–4 Replacement of motor vehicles.

(a) The replacement of motor vehicles shall be in accordance with the replacement standards prescribed in FPMR 41 CFR 101–38.9 and DOE–PMR 41 CFR 109–38.9.

(b) Heads of Contracting Activities may arrange to sell, as exchange sales, used motor vehicles being replaced and to apply the proceeds to the purchase of similar new vehicles. However, in the event personnel are not available to make such sales, or it is in the best interest of the DOE office, GSA may be requested to sell the used vehicles.

908.7101–5 Used vehicles.

Normally, DOE does not purchase or authorize contractors to purchase used vehicles. However, Heads of Contracting Activities may authorize the purchase of used vehicles where justified by special circumstances; e.g., when new vehicles are in short supply, the vehicles are to be used for experimental or test purposes, or the vehicles are acquired from exchange sale. In accordance with DOE–PMR 41 CFR 109–38.5101–5, the statutory passenger vehicle allocation requirements for DOE shall apply to any purchase of used vehicles except in the case of vehicles to be used exclusively for experimental or test purposes.

908.7101–6 Acquisition of fuel-efficient vehicles.

(a) All purchases of sedans and station wagons, and certain types of light trucks as specified by GSA, are subject to the requirements of the Energy Policy and Conservation Act of 1975 (EPCA), Pub. L. 94–163, and of Executive Orders 12003 and 12375 and subsequent implementing regulations. Accordingly, the Director of Administration and Heads of Contracting Activities will submit annually to the Director, Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters for approval, a forecast of plans for the purchase of such vehicles during the fiscal year. Such forecast shall be submitted so as to arrive at Headquarters on or before November 1 of each year. Additionally, the original and 2 copies of requisitions (GSA form 1781) for purchase of such vehicles shall also be forwarded to the above official for review and certification/approval prior to submission to GSA. All such documentation will be reviewed by this official and a determination made as to conformance with applicable annual forecasts and pertinent public laws and their implementations. (See DOE–PMR 41 CFR 109–38.13.)

(b) Sedans, station wagons, and light trucks requisitioned according to an approved forecast, but not contracted for by GSA until the subsequent fiscal year, will be included in the acquisition plan for the miles-per-gallon criteria of the year in which GSA signs the purchase contract along with the new vehicles planned for acquisition that year.

908.7101–7 Government license tags.

(a) Government license tags shall be procured and assignments recorded by DOE offices in accordance with FPMR 41 CFR 101–38.303.

(b) The letter "E" has been designated as the prefix symbol for all DOE official license tags. Assignments of specific "blocks" of tag numbers and the maintenance of tag assignment records, is performed by the Director, Property and Equipment Management Division, Office of Policy, Procurement and Assistance Management Directorate, Headquarters. Assignments of additional "blocks" of tag number will be made upon receipt of written requests from field offices.

(c) Special license tags for security purposes shall be purchased in accordance with state and local laws, regulations, and procedures.

(d) In the District of Columbia, official Government tags shall be obtained from the Department of Transportation, Motor Vehicles Services Branch, District of Columbia, for all motor vehicles (except vehicles exempt for security purposes) based or housed in the District.

(e) See DOE–PMR 41 CFR 109–38.3 and 109–38.6 for additional guidance.

908.7102 Aircraft.

Acquisition of aircraft shall be in accordance with DOE–PMR 41 CFR 109–38.5205.

908.7103 Office machines.

Acquisitions of office machines by DOE offices and its authorized contractors shall be in accordance with FPMR 41 CFR 101–25.104, 101–25.302, 101–25.302–3, 101–25.302–4, and 101–25.302–6, and 101–25.403, and DOE–PMR 41 CFR 109–25.302, 109–25.302–3, and 109–25.4.

908.7104 Office furniture and furnishings.

Acquisitions of office furniture and furnishings by DOE offices shall be in accordance with FPMR 41 CFR 101–25.104, 101–25.302, 101–25.302–1, 101–25.302–5, 101–25.302–7, and 101–25.302–8, 101–25.404 and 101–26.505, and DOE–PMR 41 CFR 109–25.302, 109–25.302–1, and 109–25.350.

908.7105 Filing cabinets.

Acquisitions of filing cabinets shall be in accordance with FPMR 41 CFR 101–26.308 and 101–25.302–2 and DOE–PMR 41 CFR 109–25.302–2.50.

908.7106 Security cabinets.

(a) Acquisitions of security cabinets shall be in accordance with FPMR 41 CFR 101–26.507 and the "prerequisites to ordering" criteria contained in FPMR 41 CFR 101–25.302–2 and DOE–PMR 41 CFR 109–25.302–2.50.

(b) Fixed-price prime contractors and lower tier subcontractors may use GSA acquisition sources for security cabinets in accordance with FPMR 41 CFR 101–26.407 and FAR 51.

908.7107 Alcohol.

(a) This section covers (1) Bureau of Alcohol, Tobacco and Firearms, (ATF), Treasury Department, alcohol regulations applicable to DOE, (2) delegations of authority to submit

applications to purchase tax-free alcohol or specially denatured alcohol, and (3) purchases of alcohol by DOE or authorized contractors. To the fullest extent practicable, alcohol for use by DOE or its cost-type contractors shall be procured on a tax-free basis.

(b) ATF regulations relating to the acquisition and use of alcohol free of tax, by Government agencies, are set forth in 26 CFR 213.141–213.146. Copies of excerpts from these regulations may be secured from the Bureau of Alcohol, Tobacco and Firearms, Department of Treasury, Washington, D.C. 20226. These regulations shall be followed in the acquisition of alcohol.

(c) ATF Form 1444/1486, "Tax Free Spirits or Specially Denatured Spirits for Use of United States," shall be used for acquisitions of specially denatured alcohol and ethyl alcohol. Section I of the form is the application for permission to acquire and Section II is the permit. If acquisition from more than one warehouse is desirable, separate applications must be made for withdrawal from each warehouse. When permits are no longer required, they should be forwarded to the Bureau of Alcohol, Tobacco and Firearms for cancellation. Alcohol procured by use of the ATF form referred to in this subsection shall be used exclusively on DOE work.

(d) The Procurement Executive has been authorized to sign and delegate to others authority to sign applications under Bureau of Alcohol, Tobacco and Firearms regulations relating to the acquisition and use of alcohol free of tax. Specific DOE personnel have been delegated authority to execute Part I of Form 1444/1486 by letters to the Director, Bureau of Alcohol, Tobacco and Firearms without power of redelegation. Copies of such letters have been furnished to field offices. Only the individuals so authorized shall execute Section I of these forms. Requests by field offices for new authorizations or changes to existing authorizations shall be submitted by letter to the Procurement Executive.

(e) Applications on the ATF Form 1444/1486 shall be executed in duplicate by an authorized DOE official and mailed directly to the address on the application. Only one permit will be provided to each field organization. Due to the numerous locations managed by field operations offices, the exact shipping address need not be shown in block 3 of the form. Shipments, however, must be addressed to the "Department of Energy at various locations within the United States". The ATF will assign the application a permit number and return it to the requestor. Distribution of certified copies shall be controlled and each holder of a certified copy recorded.

(f) Annually, the Bureau of Alcohol, Tobacco and Firearms publishes printed lists of Distilled Spirits Plants, Bonded Warehouses and Denaturing Plants Authorized to Operate. Copies of these lists and supplies of Form 1444/1486 may be secured by written request to the Director, Bureau of Alcohol, Tobacco and Firearms, Special Operations Branch, Washington, DC 20226.

(g) A signed copy of the permit shall accompany the original purchase order issued to the plant or warehouse, where it shall be retained or returned with the shipment. Subsequent orders shall refer to the permit on file in the plant or warehouse if it was retained.

(h) When alcohol is shipped, the shipper prepares the required form as specified by Bureau of Alcohol, Tobacco and Firearms regulations and forwards them to the consignee. Upon receipt of the receiving report covering the shipment, the officer who signed the purchase order shall execute the certificate of receipt and forward it to the appropriate Regional Director, Bureau of Alcohol, Tobacco and Firearms. The carrier transporting the alcohol shall also be given a receipt as specified by Bureau of Alcohol, Tobacco and Firearms regulations.

(i) Abandoned and forfeited alcohol which has come into the custody or control of a Federal agency may be obtained by following the procedure set forth in FPMR 41 CFR 101–43.4.

908.7108 Helium.

(a) Acquisitions of helium by DOE and its authorized contractors shall be in accordance with this section.

(b) The helium act (Pub. L. 86–777, as amended (50 U.S.C. 167(d)) provides that, to the extent that supplies are readily available, whether in gaseous or liquid form, DOE shall purchase all major requirements of helium from the Secretary of Interior, Bureau of Mines, or from the Bureau of Mines distribution contractors eligible to sell Bureau of Mines helium to Federal agencies and their users in accordance with 30 CFR Part 602.

(c)(1) Purchases may be made directly from the Bureau of Mines by forwarding a purchase order in duplicate to: Bureau of Mines, Division of Helium Operations, 1100 South Fillmore Street, Amarillo, Texas 79101.

(2) Purchases may be made from those commercial firms listed in the Bureau of Mines as eligible to sell helium to Federal users.

(i) The purchase document shall contain the following statement: "Helium furnished under this contract shall be Bureau of Mines Helium."

(ii) A copy of each acquisition document shall be furnished to the address in paragraph (c)(1) of this section.

908.7109 Fuels and packaged petroleum products.

Acquisitions of fuel and packaged petroleum products by DOE offices shall be in accordance with FPMR 41 CFR 101–26.602. When contractors are authorized, consistent with 951, to acquire such products from Defense sources, they shall do so in accordance with FPMR 41 CFR 101–26.602.

908.7110 Coal.

DOE offices and authorized contractors may participate in the Defense Fuel Supply Center (DFSC) coal contracting program for carload or larger lots. If participation is desired, estimates shall be submitted to DFSC in accordance with FPMR 41 CFR 101–26.602.

908.7111 Arms and ammunition.

Pursuant to 10 U.S.C. 4655, the Secretary of the Army is authorized to furnish arms, suitable accouterments for use therewith, and ammunition for the protection of public money and property.

908.7112 Materials handling equipment replacement standards.

Materials handling equipment shall be purchased for replacement purposes in accordance with the standards in FPMR 41 CFR 101–25.405 and DOE–PMR 41 CFR 109–25.4. Heads of Contracting Activities are authorized to replace an item earlier than the date specified in such standards under unusual circumstances. A written justification shall be placed in the purchase file.

908.7113 Calibration services.

Orders for calibration services may be placed with the National Bureau of Standards, Washington, D.C. 20234, by either DOE acquisition offices or its authorized contractors. Copies of the letters authorizing contractors to order calibration services on behalf of DOE shall be sent to the Bureau of Standards, Attention: "Administrative Services Division."

908.7114 Wiretapping and eavesdropping equipment.

Acquisition by DOE offices and contractors of devices primarily designed to be used surreptitiously to overhear or record conversations is prohibited.

908.7115 Forms.

(a) DOE forms shall be obtained by DOE offices in accordance with DOE Order 1322.2A, "Forms Management." Cost-type contractors shall obtain DOE forms through the DOE contracting officer.

(b) Standard, optional, and certain other agency forms as listed in the GSA Supply Catalog will be obtained by DOE offices in accordance with FPMR 41 CFR 101–26.302.

(c) Marginally punched continuous forms shall be obtained in accordance with FPMR 41 CFR 101–26.703.

908.7116 Electronic data processing tape.

(a) Acquisitions of electronic data processing tape by DOE offices shall be in accordance with FPMR 41 CFR 101–26.508.

(b) Acquisitions of electronic data processing tape by authorized contractors shall be in accordance with FPMR 41 CFR 101–26.508–1. However, if adequate justification exists, Heads of Contracting Activities may authorize contractors to obtain their tape from other sources. When such an authorization is granted, a copy of the authorization and justification shall be retained in the contract file.

908.7117 Tabulating machine cards.

DOE offices shall acquire tabulating machine cards in accordance with FPMR 41 CFR 101–26.509.

908.7118 Rental of post office boxes.

DOE offices and authorized contractors may rent post office boxes on an annual basis, or for shorter periods by quarters, where necessary. Payments for annual rentals are to be made in advance at the beginning of the fiscal year, and for periods of less than a year, either in advance for the whole period or at the beginning of each quarter in which the box is to be used.

908.7119 [Reserved]

908.7120 [Reserved]

908.7121 Special materials.

This section covers the purchase of materials peculiar to the DOE program. While purchases of these materials are unclassified, quantities, destination or use may be classified. See appropriate sections of the Classification Guide. Contracting activities shall require authorized contractors to obtain the special materials identified in the following subsections in accordance with the procedures stated therein.

(a) *Heavy water.* The Senior Program Official or designee controls the acquisition and production of heavy water for a given program. Orders shall be placed directly with the cognizant Senior Program Official or designee.

(b) *Precious metals.* The Oak Ridge Operations Office is responsible for maintaining the DOE supply of precious metals. These metals are platinum, palladium, iridium, osmium, rhodium, ruthenium, gold and silver. Oak Ridge Operations Office has assigned management of these metals to NLO, Inc., P.O. Box 39158, Cincinnati, Ohio 45239. DOE offices and authorized contractors shall coordinate with NLO, Inc., regarding the availability of the above metals prior to the purchase of these metals on the open market.

(c) *Lithium.* Lithium is available at no cost other than normal packing, handling, and shipping charges. The excess quantities at Oak Ridge are to be considered as the first source of supply, prior to procurement of lithium or lithium compounds from any other source.

Subpart 908.72—Use of Acquisition and Supply Management Support Services at the Nevada Test Site

908.7200 Scope of subpart.

This subpart sets forth DOE policy for the use of the acquisition and supply management support services at the Nevada Test Site (NTS). The provisions of this subpart shall be applied to contractors carrying out authorized projects at the NTS.

908.7201 Policy.

As an integral part of its responsibility for furnishing project-related materials, equipment, and technical services, the Nevada Operations Office shall, except in special cases, provide to the fullest practicable extent, the necessary acquisition and supply management support services required to support the technical efforts of all organizations sponsoring experiments or participating in the scientific aspects of experiments conducted at the NTS. Furthermore, all organizations that are carrying out projects or performing work at the NTS will make the fullest practicable use of these facilities and services to prevent unnecessary duplication and to assure maximum efficiency and economy.

PART 909—CONTRACTOR QUALIFICATIONS

Subpart 909.1—Responsible Prospective Contractors

Sec.

909.104–1 General standards.

Subpart 909.4—Debarment, Suspension, and Ineligibility

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909.404 Consolidated lists of debarred, suspended, and ineligible contractors.
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Subpart 909.5—Organizational Conflicts of Interest

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909.570–15 Disclosure format.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 909.1—Responsible Prospective Contractors

909.104–1 General standards.

A prospective contractor, in order to be determined as responsible, in the opinion of the contracting officer, must meet the following standards as they relate to the particular acquisition under consideration:

(b) Have an established system of accounting and financial controls which the contracting officer determines will permit the effective administration of the type of contract proposed, particularly if under its terms, the costs incurred are a factor in determining the amount payable under the contract, or if advance or progress payments are requested.

(g) If a bid or proposal for a construction contract qualifies any major equal opportunity requirement included or referenced in a solicitation, the qualification shall constitute grounds for a determination that the offeror is not eligible for award. In the case of construction acquisition actions by DOE prime contractors, this determination shall be made only with the approval of the DOE contracting officer.

Subpart 909.4—Debarment, Suspension, and Ineligibility

909.402 Policy.

DOE debarment and suspension regulations are contained in 10 CFR Part 1035. Ineligibility regulations are contained in the FAR.

909.404 Consolidated lists of debarred, suspended, and ineligible contractors.

The GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors (GSA List) and the DOE Consolidated List of Debarred, Suspended, Ineligible and Voluntarily Excluded Awardees (DOE List) shall be reviewed in accordance with 10 CFR 1035.15.

909.406 Debarment.

909.406-3 Procedures.

(a) Information of possible fraud, waste, abuse, or other forms of wrongdoing which may constitute or contribute to grounds for debarment or suspension shall be reported in accordance with 10 CFR 1035.5(c).

909.407 Suspension.

909.407-3 Procedures.

(a) See 909.406-3.

Subpart 909.5—Organizational Conflicts of Interest

909.500 Scope of subpart.

DOE acquisitions will be processed in accordance with 909.570 below rather than as provided at FAR subpart 9.5 with respect to organizational conflicts of interest.

909.570 DOE organizational conflicts of interest.

909.570-1 Scope of section.

This section sets forth Department of Energy policies and procedures regarding organizational conflicts of interest (OCI) and is issued pursuant to section 644 of the Department of Energy Organization Act (Pub. L. 95-91) to implement the requirements of the Federal Nonnuclear Energy Research and Development Act of 1974 (Pub. L. 93-577), as amended, and the Federal Energy Administration Act of 1974 (Pub. L. 93-275), as amended.

909.570-2 Policy.

It is the policy of the DOE to identify and avoid or mitigate organizational conflicts of interest before entering into contracts, agreements, and other arrangements.

909.570-3 Definitions.

"Affiliates" means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

"Architect-engineering services" means the work or effort of a professional nature associated with the study, test, design, supervision, and construction, alteration, or repair of real property including utilities and appurtenances thereto. Such services embrace conceptual design and Title I, Title II, and Title III work, as defined in 936.605(c).

"Contract" for purposes of implementing policy on organizational conflicts of interest, means any contract, agreement or other arrangement with the Department.

"Contractor" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliates thereof, which is a party to a contract with the Department.

"Evaluation services or activities" means any work or effort, the principal purpose of which involves the independent study of technology, process, product, or policy.

"Offeror" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliates thereof, submitting a bid or proposal, solicited or unsolicited, to the Department to obtain a contract or modification thereof.

"Organizational conflicts of interest" means that a relationship or situation exists whereby an offeror or a contractor (including chief executives and directors, to the extent that they will or do become involved in the performance of the contract, and proposed consultants or subcontractors where they may be performing services similar to the services provided by the prime) has past, present, or currently planned interests that either directly or indirectly, through a client relationship relate to the work to be performed under a Department contract and which (1) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (2) may result in it being given an unfair competitive advantage. It does not include the normal flow of benefits from the performance of the contract.

"Research and development" means any work or effort, the principal purpose of which involves (1) theoretical analysis, exploration, or experimentation; or (2) extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

"Subcontractor" means any subcontractor of any tier which performs work under a contract.

"Technical consulting and management support services" means any work or effort, the principal purpose of which is to provide internal assistance to any program element or other organizational component of the Department in the formulation or administration of its programs, projects, or policies, which requires the contractor to be given access to internal or proprietary data. Such services typically include assistance in the preparation of program plans; evaluation, monitoring or review of contractors' activities or proposals submitted by prospective contractors; preparation of preliminary designs, specifications, or statements of work.

909.570-4 Criteria for recognizing organizational conflicts of interest.

(a) *General.* Two questions should generally be asked in determining whether organizational conflicts of interest exist: (1) Are there conflicting roles which might bias a contractor's judgment in relation to its work for the Department? (2) Is the contractor being given an unfair competitive advantage based on the performance of the contract? The ultimate determination as to whether organizational conflicts of interest exist should be made in the light of common sense and good business judgment based upon the relevant facts and the work to be performed. While it is difficult to identify, and to prescribe in advance, a specific method for avoiding all the various situations or relationships which might involve potential organizational conflicts of interests, Department personnel must pay particular attention to proposed contractual requirements which call for the rendering of advice, or consultation or evaluation services, or similar activities that lay direct groundwork for the Department's decisions on future acquisitions, research and development programs, production and regulatory activities.

(b) *Situations or relationships involving organizational conflicts of interest.* The following general examples (which are not all-inclusive) illustrate situations or relationships where potential organizational conflicts of interest frequently arise. Specific examples are set forth at 909.570-14.

(1) Contract performance involving the preparation and furnishing of complete or essentially complete specifications which are to be used in

competitive acquisition for the furnishing of products or services.

(2) Contract performance involving the preparation and furnishing of a detailed plan for specific approaches or methodologies that are to be incorporated in a competitive acquisition.

(3) Contract performance involving access to internal information not available to the public concerning Departmental plans or programs and related opinions, clarifications, interpretations, and positions.

(4) Contract performance involving access to proprietary information which cannot lawfully be used for purposes other than those authorized by the owners.

(5) Contract performance involving evaluation of the contractor's products or services, or the products or services of another party, where the contractor is or has been substantially involved in their development or marketing.

(6) Contract performance involving the preparation and furnishing of advice to the Department in a technical area where the contractor is also providing consulting assistance in the same area to any other organization.

(7) Contract performance involving the preparation and furnishing of advice to the Department on a regulatory matter where the contractor is also providing assistance on the same or similar matter to any organization regulated by the Department.

(c) *Other considerations.* An organizational conflict of interest may exist or arise:

(1) Even though no follow-on acquisition is anticipated;

(2) Even though a hardware exclusion clause may not be appropriate; and

(3) When a contract is awarded on a noncompetitive or a sole source basis.

(d) An organizational conflict of interest is more likely to be disclosed if a contract is competitive. Accordingly, greater care shall be exercised in the absence of competition.

909.570–5 Disclosure of organizational conflicts of interest.

(a) When submitting solicitations and unsolicited proposals for (1) evaluation services or activities; (2) technical consulting and management support services and professional services; (3) research and development conducted pursuant to the authority of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended; and (4) other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and included in the resulting contract, offerors shall be required to disclose relevant information bearing on the possible existence of any organizational conflicts of interest or complete the representation required by 909.570–7. This requirement shall also apply to all modifications of contracts of the types noted above except those issued under the Changes clause. Where, however, a disclosure statement of the type required by the Organizational Conflicts of Interest Disclosure or Representation provision has previously been submitted with regard to the contract being modified, only an updating of such statement shall be required. Information submitted by offerors pursuant to the disclosure requirement shall be treated by the Department, to the extent permitted by law, as confidential information to be used solely for OCI purposes.

(b) When the Government finds that an organizational conflict of interest exists or may exist with respect to an offeror or contractor, no contract or contract modification award covered by 909.570–7 shall be made until the organizational conflict of interest has been adequately avoided or mitigated, except as provided in 909.570–9.

909.570–6 Notices and representations: Action required of contracting officers.

The disclosure or representation required by 909.570–7 is designed to alert the contracting officer to situations or relationships which may constitute either present or anticipated organizational conflicts of interest with respect to a particular offeror or contractor. However, this disclosure or representation may not identify a potential organizational conflict of interest involving a successful offeror that could affect the offeror's participation in subsequent acquisitions arising out of or related to work performed under a contract that results from the solicitation currently under consideration. Accordingly, whenever such potential conflicts are foreseeable by the Government, a special notice also shall be included in the solicitation informing offerors of the fact that such a potential conflict is foreseen and that a special contract clause designed to avoid or mitigate such conflict will be included in any resultant contract as required by 909.570–7. Such notice shall specify the proposed extent and duration of restrictions to be imposed with respect to participation in subsequent acquisitions. A fixed term of reasonable duration is measured by the time required to eliminate what would otherwise constitute an unfair competitive advantage. This is a variable; and in no event shall an exclusion be stated which is not related to specific expiration date or an event certain. In the event a contractor, having performed on one contract, later seeks work that stems or may be deemed to stem directly from prior performance, such contractor shall not be precluded from proposing on follow-on work unless the prior contract contained an appropriate follow-on restriction.

909.570–7 Disclosure or representation.

The disclosure or representation provision at 952.209–70 shall be included in all solicitations, scope modifications, and unsolicited proposals for (a) evaluation services or activities; (b) technical consulting and management support services and professional services; (c) research and development conducted pursuant to the authority of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended; and (d) other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and included in the resulting contract. 909.570–15 contains a suggested outline for the disclosure submission.

909.570–8 Contract clauses.

(a) *General contract clause.* Except where a special clause has been determined to be appropriate, all contracts subject to the disclosure or representation requirement of 909.570–7 shall include the clause set forth at 952.209–71.

(b) *Special contract clauses.* (1) If it is determined from the nature of the proposed contract that a potential organizational conflict of interest may exist, the Contracting Officer may determine that such conflict can be avoided through the use of an appropriate special contract clause. Examples of the types of clauses which may be employed include, but are not limited to, the following:

(i) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related nonproduction contract previously performed by the contractor;

(ii) Software exclusion clauses;

(iii) Clauses which require the contractor (and/or certain of its key personnel) to avoid certain organizational conflicts of interest;

(iv) Clauses which provide for the protection of the confidentiality of data and guard against its unauthorized use; and

(v) Clauses that prohibit other segments or divisions of the contractor from becoming involved in the performance of the contract work or

being in a position to influence such work.

If deemed appropriate, the prospective contractor may be given the opportunity to negotiate the terms and conditions of the clause and its application including the extent and time period of any restrictions.

(2) Contracts for technical consulting and management support services, as defined in 909.570–3, are particularly susceptible to organizational conflicts of interest. Therefore, the clause set forth at 952.209–72 shall be included in all contracts for technical consulting and management support services. This clause, after any appropriate modification, may also be included in any contract for professional services and evaluation services and activities.

909.570–9 Evaluation, findings, and contract award.

(a) The contracting officer or selection official, as appropriate, shall evalute all relevant facts submitted by an offeror pursuant to the requirements of 909.570–6 and such other relevant information as may be available concerning possible organizational conflicts of interest. After evaluation all such information in accordance with the criteria of 909.570–4 and prior to any award, a finding shall be made by the contracting officer whether possible organizational conflict of interest exist with respect to a particular offeror or whether there is little or no likelihood that such conflicts exist. When formal Source Evaluation Board procedures are applicable, the finding shall be made by the Source Selection Official. If the finding indicates that such conflicts exist, then the contracting officer shall:

(1) Disqualify the offeror from award; or

(2) Avoid such conflicts by the inclusion of appropriate conditions in the resulting contract; or

(3) If such conflicts cannot be avoided by an appropriate contract clause, and the Secretary or the Secretary's designee has nevertheless determined that award of the contract to the offeror is in the best interest of the United States, the contract may be awarded. Where such a public interest determination is made, an appropriate written finding and determination shall be published in the Federal Register and an appropriate clause included in the contract to mitigate the conflict, to the extent feasible, prior to any award.

(b) Examples of circumstances justifying the determination permitted by 909.570–9(a)(3) include, but are not limited to:

(1) Situations where the public exigency will not otherwise permit; and

(2) Situations where the work or services cannot otherwise be obtained.

909.570–10 Action in lieu of termination.

If, after award, a possible organizational conflict of interest is identified by the contractor or other sources and the contracting officer determines that such a conflict does in fact exist and that it would not be in the best interest of the Government to terminate the contract as provided in the clauses required by 909.570–8, the contracting officer shall take every reasonable action to avoid or mitigate the effects of the conflict.

909.570–11 Architect-engineering and construction contracts.

(a) The award of related architect-engineering services and construction contracts or subcontracts to the same contractor can result in self-inspection of construction work and permit the contractor to render biased decisions. Such contract awards shall not be permitted unless a waiver is obtained prior to award from the Department's Procurement Executive.

(b) The award of architect-engineering services contracts, the principal purpose of which is to provide evaluation services and activities or technical consulting and management support services, shall be subject to the requirements of 909.570–7 and 909.570–8(b)(2).

909.570–12 Subcontractors and consultants.

The contracting officer shall require offerors and contractors to obtain for the Department a disclosure or representation in accordance with 909.570–7 from subcontractors and consultants who may be performing services similar to the services provided by the prime, except that subcontractors shall not normally be required to submit the disclosure or representation if such subcontract is for supplies. Such disclosure or representation may be submitted by the subcontractors and consultants directly to the contracting officer and they shall be treated by the Department, to the extent permitted by law, as confidential information to be used solely for OCI purposes. The contracting officer shall assure that contract clauses in accordance with 909.570–8 are included in subcontracts or consultant agreements involving peformance of work under a prime contract covered by this subpart.

909.570–13 Remedies.

In addition to such other remedies as may be permitted by law or contract, for a breach of any of the restrictions in this subpart or for nondisclosure or misrepresentation of any relevant facts required to be disclosed by this subpart, the Department may disqualify the contractor for subsequent Department contracts. Contractors and offerors may also be subject to the criminal penalties expressed in 18 U.S.C. 1001 for such violations.

909.570–14 Examples.

(a) In development work it is normal to select firms which have done the most advanced work in the field. It is to be expected that these firms will design and develop around their own prior knowledge. Development contractors can frequently start production earlier and more knowledgeably than can firms which did not participate in the development, and this affects the time and quality of production, both of which are important to the Government. In many instances, the Government may have financed such development. Thus, the development contractor may have an unavoidable competitive advantage which is not considered unfair and no prohibition should be imposed.

(b) The following examples illustrate types of situations and relationships where organizational conflict of interest questions frequently arise, but they are not all-inclusive.

(1) Contractor A, in connection with the performance of a study contract, is given information by the Department regarding Department plans for future acquisitions. This information is not available to interested industrial firms. *Guidance.* Normally this would constitute an OCI and the contractor should not be permitted to compete with such firms for work relating to such plans.

(2) Company A, in response to a requests for proposals (RFP), proposes to undertake certain analyses of an energy savings device as called for in the RFP. The company is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, A advises that it is currently performing similar analyses for the manufacturer of the device. *Guidance.* Normally this would constitute an OCI and a contract for that particular work would not be awarded to Company A because it would be placed in a position in which its judgment could be biased in relationship to its work for the Department. Since there are other well qualified companies available, there would be no reason for granting a waiver of the policy.

(3) Accounting Firm A, in response to a requests for proposals (RFP), proposes to undertake an analysis of the profitability of one segment of the

energy industry. The firm is one of several firms considered to be technically well qualified. In response to the inquiry in the RFP, A advises that it derives a substantial portion of its income from the industry to be studied. *Guidance.* Normally this would constitute an OCI and a contract would not be awarded to Firm A because it would be placed in a position in which its judgment could be biased in relationship it its work for the Department.

(4) Company A prepares updated Government specifications for a standard refrigerator to be procured competitively. *Guidance.* Normally this would constitute an OCI and Company A shall not be allowed for a reasonable period of time to compete for supply of the refrigerator.

(5) Company A designs or develops new electronics equipment and, as a result of the design or development, prepares specifications. *Guidance.* Normally this would not constitute an OCI and the company may supply the electronics equipment.

(6) A tool company and/or a machinery company representing the American Tool Institute works under the supervision and control of Government representatives to refine specifications or to clarify the requirements of a specific acquisition. *Guidance.* Normally this would constitute an OCI and these companies may supply the item.

(7) Prior to acquisition of Automatic Data Processing (ADP) Equipment, Company A is awarded a contract to develop software to automate a DOE function. Since the software can be written to favor a particular vendor's commercial ADP hardware, a potential conflict of interest exists. *Guidance.* Normally this would constitute an OCI and Company A should be barred from at least the initial follow-on ADP hardware acquisition using the software developed under its development contract.

(8) Company A receives a contract to define the detailed performance characteristics a Government agency will require for the purchase of rocket fuels. A has not developed the particular fuels. At the time the contract is awarded, it is clear to both parties that the performance characteristics arrived at will be used by the Government agency to choose competitively a contractor to develop or produce the fuels. *Guidance.* Normally this would constitute an OCI and Company A shall not be permitted to bid on this acquisition.

(9) Company A receives a contract to prepare a detailed plan for the acquisition of services aimed at the advanced scientific and engineering training of the Department's personnel. It suggests a curriculum which the agency endorses and incorporates in requests for proposals to various institutions to establish and conduct such training. *Guidance.* Normally this would constitute an OCI and Company A shall not be permitted to bid on this acquisition.

(10) Consulting Firm A, in response to an RFP, proposes to undertake an evaluation of the environmental impacts of coal-fired powered plants as called for in the RFP. The company is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, A advices that it derives a substantial portion of its income from companies which manufacture nuclear power plants. *Guidance.* Normally this would constitute an OCI and a contract for that particular work would not be awarded to Firm A because it would be placed in a position in which its judgment could be biased in relationship to its work for the Department.

(11) Consulting Firm A derives a substantial portion of its income from Company B in connection with the study of natural gas production. Company B is also heavily involved with motor gasoline marketing. A discloses these facts in response to an RFP for a study of motor gasoline marketing. *Guidance.* Normally this would constitute an OCI and a contract for the study of motor gasoline marketing plants would not be awarded to Firm A because it would be placed in a position in which its judgment could be biased in relation to its work for the Department.

(12) Firm A, because of its unique technical expertise, has been requested to assist the Department in the evaluation of proposals which will result from a competitive solicitation. Firm A also plans to submit a proposal in response to this game solicitation. *Guidance.* Normally this would constitute a conflict and Firm A should be precluded from participating in the solicitation. In a particular case, it may be desirable (e.g., when the competitive field in narrow) to allow a separate division or affiliate of Firm A to submit a proposal; but in such a case, of course, Firm A would not itself participate in the evaluation of this proposal, which would be undertaken by DOE personnel or another firm.

909.570-15 Disclosure format.

(a) With respect to past, present, and currently planned interests (financial, contractual, organizational, or otherwise), the offeror should furnish a list of past, present, and currently planned activities (including contracts) which relate to the work to be performed under the solicitation.

(b) The list may be in columnar format showing:

(1) The company (or agency) for which the work is being, has been, or will be performed;

(2) Nature of the work (a brief description);

(3) Period of performance for the work;

(4) Dollar value of the work; and

(5) Sales and marketing activity.

(c) Similar information to (b) above should be provided by the covered subcontractors and consultants relating to the work to be performed by them under the solicitation.

PART 910—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

910.004 Selecting specifications or descriptions for use.

(f) *Specification for concrete using fly ash.* Pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6962, the Environmental Protection Agency has promulgated rules at Part 249 of Title 40 of the Code of Federal Regulations regarding the use of certain waste byproducts as generally acceptable substitutes for energy intensive raw materials. When cement or concrete is being acquired, specifications should include provisions to allow for the use of (as an optional or alternate material) cement or concrete which contains fly ash. However, specifications should not be revised to allow the use of fly ash if it can be determined that for a particular project or application reasonable performance requirements for the cement or concrete will not be met, or that the use of fly ash would be inappropriate for technical reasons. Architect-engineer contracts should include provisions assuring that the provisions of 40 CFR Part 249 are considered in developing specifications.

(g) *Measurement principles for sources and special nuclear material transfers.*

(1) Certain principles regarding the resolution of measurement differences have been developed which should be used as guides in the preparation of contracts or other agreements by DOE in which monetary payments or credits depend on quantity and quality of source and special nuclear material. The provisions providing for the resolution of measurement differences must be such that resolution is always accomplished while at the same time

minimizing any advantage one party might have over the other.

(2) Each contract, lease or agreement should contain a:

(i) Clause describing material to be transferred;

(ii) Clause specifying the method by which the quantity and quality are to be measured and reported;

(iii) Clause specifying the procedures to be used in resolving any differences arising as a result of such measurements;

(iv) Clause providing for the use of an umpire to settle unresolved differences in the analytical samples; and

(v) Clause specifying in detail which party shall bear the costs of revolving a difference and what constitutes such costs.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

PART 912—CONTRACT DELIVERY OR PERFORMANCE

Subpart 912.3—Priorities, Allocations, and Allotments

Sec.
912.300 Scope of subpart.
912.302 General.
912.304 Solicitation provision and contract clause.

Subpart 912.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

912.503 Stop-work orders.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 912.3—Priorities, Allocations, and Allotments

912.300 Scope of subpart.

This subpart implements and supplements FAR Subpart 12.3—Priorities, Allocations, and Allotments, and implements the regulations and procedures of the Defense Materials System (DMS) and the Defense Priorities System (DPS) in solicitations and contracts in support of authorized national defense and those energy programs which maximize domestic energy supplies. (See 15 CFR Parts 330-354).

912.302 General.

(d) Programs which maximize domestic energy supplies are eligible for priorities and allocations support depending on an executive decision made on a case-by-case basis. Eligibility is pursuant to section 104(a) of the Energy Conservation and Policy Act, Pub. L. 94-163, which added a new section 101(c) to the Defense Production Act. Guidance is provided by 10 CFR Part 216 and Department of Energy publication DOE/PR-0042, "Priorities and Allocations Support for Energy: Keeping Energy Orders on Schedule," dated August 1980. Rated orders and ACM orders placed in support of authorized energy programs are equivalent to orders placed in support of authorized defense programs under DMS/DPS and receive the same preferential treatment throughout the industrial supply chain.

(e) Heads of Contracting Activities shall ensure that members of their staff and contractors under their jurisdiction are advised of the provisions of the DMS and DPS regulations and that the related procedures are followed to ensure training and adherence to the regulations and procedures throughout the industrial supply chain. Under DMS and DPS, it is mandatory that the priority rating be extended through the industrial chain from supplier to supplier.

912.304 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 952.212-70, Rated or Authorized Controlled Material Orders (Atomic Energy) in solicitations that will result in the placement of rated orders or ACM orders for authorized DOE atomic energy programs.

(b) The contracting officer shall insert the clause at 952.212-71, Priorities, Allocations, and Allotments for DOE Atomic Energy Programs, in contracts that are placed in support of authorized DOE atomic energy programs.

(c) The use of the provisions at 952.212-70 and the clause at 952.212-71 is optional for industrial delivery orders of $2,500 or less.

(d) The contracting officer shall insert the provision at 952.212-70 (Alternate I) Rated or Authorized Controlled Material Orders (Domestic Energy Supplies), in solicitations that may result in the placement of rated orders or ACM orders for authorized energy programs.

(e) The contracting officer shall insert the clause at 952.212-71 (Alternate I) Priorities, Allocations, and Allotments-Special E.P.C.A. clause if it is believed the contract involves a program the purpose of which is to maximize domestic energy supplies.

Subpart 912.5—Suspension of Work, Stop-Work Orders, and Government Delay of Work

912.503 Stop-work orders.

(b) Approval before issuance of a stop-work order shall be obtained at one organizational level above the contracting officer or at such higher level as the Head of the Contracting Activity may require.

PART 913—SMALL PURCHASES AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 913.3—Fast Payment Procedure

Sec.
913.301 General.

Subpart 913.4—Imprest Fund

913.403 Agency responsibilities.

Subpart 913.5—Purchase Orders

913.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 913.3—Fast Payment Procedure

913.301 General.

The fast payment procedure delineated in FAR Subpart 13.3 is not to be utilized by DOE.

Subpart 913.4—Imprest Funds

913.403 Agency responsibilities.

(d) If imprest funds are to be used, the HCA shall issue detailed procedures for the control of such funds.

Subpart 913.5—Purchase Orders

913.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

The combination purchase request/order/receipt form may be used in lieu of the Optional Form 347 for small purchases.

PART 914—FORMAL ADVERTISING

Subpart 914.2—Solicitation of Bids

Sec.
914.201-5 Part IV Representations and instructions.
914.201-7 Contract clauses.
914.201-70 Preparation of invitations for bids.

Subpart 914.4—Opening of Bids and Award of Contract

914.401 Receipt and safeguarding of bids.
914.402-1 Unclassified bids.
914.406 Mistakes in bids.

914.406–3 Other mistakes disclosed before award.
914.406–4 Mistakes after award.
914.407–8 Protests against award.
914.407–70 Protest authorities.
914.408–2 Award of classified contracts.

Subpart 914.5—Two-Step Formal Advertising

914.502 Conditions for use.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 914.2—Solicitation of Bids

914.201–5 Part IV—Representations and instructions.

(a) *Section K, Representations, certifications, and other statements of bidders.*

(1) DOE contracting activities may elect to adopt the simplified representations and certifications technique, described at 915.406–5, in their formally advertised acquisitions.

(b) Include the solicitation provision at 952.215–70 if the resulting contract will contain any of the clauses referenced therein.

914.201–7 Contract clauses.

(b)(1) When contracting by formal advertising, the contracting officer shall insert the clause at FAR 52.214–27, Price Reduction for Defective Cost or Pricing Data—Modifications-Formal Advertising, in all solicitations and contracts.

914.201–70 Preparation of invitations for bids.

When an option is to be employed, the option quantity should be for an amount which bears a reasonable relationship to the initial firm quantity amount. For procedures to be used in setting the option quantity, see FAR 17.2.

Subpart 914.4—Opening of Bids and Award of Contract

914.401 Receipt and safeguarding of bids.

(c) Envelopes, or other outer covering, containing identified bids shall be time-stamped (indicating the place, date, and time of receipt) upon receipt, either in a mail room or other receiving point at the address specified in the invitation.

914.402–1 Unclassified bids.

(d) At the bid opening, the relative merits of any bid shall not be discussed by the person opening the bids or the contracting officer, with the bidders, their representatives, or with casual observers. No statements shall be issued by the bid opener or the contracting officer at a bid opening bearing on the award, the possibility of a readvertisement, mistakes in bids, etc.

914.406 Mistakes in bids.

914.406–3 Other mistakes disclosed before award.

(e) Pursuant to FAR 14.406–3(e), the Procurement Executive, has been delegated authority by the Secretary to make the determinations under FAR 14.406–3. In the case of mistakes in bids alleged after opening of bids and before award, the Procurement Executive has redelegated this authority to Heads of Contracting Activities without power of redelegation and to make administrative determinations regarding withdrawal of bids as provided for in paragraphs (a) and (c) of FAR 14.406–3, providing that each such determination shall be approved by Legal Counsel.

914.406–4 Mistakes after award.

The Procurement Executive has been delegated authority to make the determinations under FAR 14.406–4. Mistakes in bids after award, together with the data set forth in FAR 14.406–4(e), shall be submitted to the Procurement Executive for decision.

914.407–8 Protests against award.

(a) *General.* Protests must be received within ten working days after the basis for protest is known or should have been known *except that* protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals.

(b) Protests before award.

(3) The Head of the Contracting Activity or designee shall obtain, through the Office of Procurement Review, Headquarters, approval of the Procurement Executive to make an award where a protest has been submitted to either the DOE or to the Comptroller General.

914.407–70 Protest authorities.

(a) The Procurement Executive has the authority and responsibility for processing, reviewing, and providing to the General Accounting Office (GAO) all information relevant to a protest filed with GAO and otherwise representing DOE in all matters relating to such protests. In the case of protests filed with DOE Headquarters, the Procurement Executive shall decide such protests. The authorities and responsibilities concerning GAO protests have been delegated to the Director, Business Clearance Division, Office of Procurement Review, Headquarters.

(b) The Head of the Contracting Activity (HCA) shall decide all agency protests made to the contracting activity, with the following exceptions:

(1) The HCA is the signatory contracting officer; or

(2) Prior to making final disposition of the protest, the action is protested to GAO or DOE Headquarters; or

(3) The HCA finds that the issues raised have the potential for significant impact on DOE acquisition policy or the accomplishment of programmatic requirements.

(c) If a protest is filed with the Contracting Activity, and a decision is made by the Head of Contracting Activity, the agency will not entertain a protest to the Procurement Executive.

914.408–2 Award of classified contracts.

DOE regulations regarding the safeguarding of restricted data and procedures for its destruction are contained at 10 CFR Part 795.

Subpart 914.5—Two-Step Formal Advertising

914.502 Conditions for use.

(c) Use of the two-step formal advertising method shall be approved by the Head of Contracting Activity. The contracting officer shall submit a written request for approval justifying its use in accordance with FAR 14.502.

PART 915—CONTRACTING BY NEGOTIATION

Subpart 915.1—General Requirements for Negotiation

Sec.
915.105 Competition.

Subpart 915.2—Negotiation Authorities

915.200 Scope of subpart.
915.201 National emergency.
915.204 Personal or professional services.
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Subpart 915.3—Determinations and Findings to Justify Negotiation

915.307 Signatory authority.

Subpart 915.4—Solicitation and Receipt of Proposals and Quotations

915.401 Applicability.
915.405–1 General.
915.406–5 Part IV Representations and instructions.
915.413 Disclosure and use of information before award.
915.413–2 Alternate II.

Subpart 915.5—Unsolicited Proposals

915.501 Definitions.
915.502 Policy.
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915.504 Advance guidance.
915.505 Content of unsolicited proposals.
915.506 Agency procedures.
915.506-1 Receipt and initial review.
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915.507 Contracting methods.
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Subpart 915.6—Source Selection

915.610 Written or oral discussions.
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Subpart 915.8—Price Negotiation

915.801 Definitions.
915.804-2 Requiring certified cost or pricing data.
915.804-3 Exemptions from or waiver of submission of certified cost or pricing data.
915.804-6 Procedural requirements.
915.804-8 Contract clauses.
915.804-70 Uncertified cost or pricing data.
915.805-5 Field pricing support.
915.805-70 Audit as an aid in proposal analysis.
915.808 Price negotiation memorandum.

Subpart 915.9—Profit

915.903 Contracting officer responsibilities.
915.905 Profit-analysis factors.
915.970 DOE structured profit and fee system.
915.970-1 General.
915.970-2 Weighted guidelines system.
915.970-3 Documentation.
915.970-4 Exceptions.
915.970-5 Special considerations—contracts with nonprofit organizations (other than educational institutions).
915.970-6 Contracts with educational institutions.
915.970-7 Alternative techniques.
915.970-8 Weighted guidelines application considerations.
915.971 Profit and fee-system for construction and construction management contracts.
915.971-1 General.
915.971-2 Limitations.
915.971-3 Factors for determining fees.
915.971-4 Considerations affecting fee amounts.
915.971-5 Fee schedules.
915.971-6 Fee base.
915.972 Special consideration for cost-plus-award-fee contracts.

Subpart 915.10—Preaward and Postaward Notifications, Protests, and Mistakes

915.1002 Debriefing of unsuccessful offerors.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 915.1—General Requirements for Negotiation

915.105 Competition.

(a)(1) Negotiated acquisition shall be on a competitive basis to the maximum practical extent (FAR 15.105) and reasonable competition shall be obtained in making small purchases in excess of $1,000 (FAR 13.106). There are, however, circumstances where one source (or group of sources) has exclusive capability to perform the work within the time required and at reasonable prices; e.g., by reason of experience, specialized facilities, or technical competence. In such circumstances, the initiating program office may conclude that only one source (or group of sources) is qualified to perform the work and, therefore, may recommend that a contract be negotiated only with that source or group. (In the case of a "group sole source" situation, a justification is required for limiting competition to that group and for the allocation of work among members of the group.) The recommendation, in writing, shall be contained in a separate document entitled, "Justification for Noncompetitive Acquisition," and shall examine the reasons for the acquisition being noncompetitive in accordance with paragraph (c) below.

(2) For a noncompetitive acquisition, a recommended justification shall be attached to the acquisition request when the request is sent to a contracting officer for action.

(3) A justification for noncompetitive acquisition is also required where "new" acquisitions (i.e., outside the contractual scope of work) are initiated through modifications to existing contracts.

(4) If a noncompetitive acquisition has been justified and approved, in accordance with this section, as part of an annual acquisition plan and such plan has been reviewed and approved, it will not be necessary to resubmit the justification for approval at the time each individual acquisition action is processed. Such justifications shall be made a part of the permanent contract file (see subpart 904.8 and FAR subpart 4.8).

(b) The provisions of this regulation do not apply to:

(1) Acquisitions of electric power or energy, gas (natural or manufactured), water or other utility services;

(2) Acquisitions of educational services from nonprofit institutions;

(3) Acquisitions resulting from program opportunity notices, or program research and development announcements (which are forms of competitive solicitations);

(4) Acquisitions from or through other Government agencies;

(5) Contracts which are subject to separate justification for recompetition or extension;

(6) Contracts resulting from unsolicited proposals (because they are subject to the approval procedures for justifications for unsolicited proposals);

(7) Special Research Contracts with educational institutions and extensions thereof (because they are subject to the separate process for SRCs); and

(8) Subscriptions to periodicals (within the small purchase limitations).

(c)(1) The justification for noncompetitive acquisition shall examine the reasons for the acquisition being noncompetitive and shall contain, in the first sentence of the document, an appropriate recommendation (e.g., "I recommend that negotiations be conducted only with (name of entity) for the supplies and services described herein.") For small purchases the justification for noncompetitive acquisitions should be in accordance with small purchase procedures.

(2) Each justification shall set forth enough facts and circumstances to clearly and convincingly establish that competition would not have been feasible or practicable. Procedural guidance is provided in DOE Order 4200.1.

Subpart 915.2—Negotiation Authorities

915.200 Scope of subpart.

(b) Section 302(c) of the Federal Property and Administrative Services Act of 1949, as amended, authorizes the negotiation of contracts, and is applicable to AEC (now DOE) acquisitions. Section 302(c)(15) of the Federal Property and Administrative Services Act of 1949, as amended, permits negotiation when otherwise authorized by law, provided, that in such event the requirements of that Act shall apply. Accordingly, when the Federal Property and Administrative Services Act of 1949, as amended, or the Atomic Energy Act of 1954, as amended, or other law is used as the basis for negotiation, the requirements of section 304 of the Federal Property and Administration Services Act of 1949, as amended, are applicable, except as provided in these regulations.

915.201 National emergency.

(a) Contracts to support industrial mobilization plans may be negotiated under section 302(c)(1) of the Federal Property and Administrative Services Act of 1949, as amended, or section 302(c)(15) of that Act and the Atomic Energy Act of 1954, as amended, if the requisite circumstances exist and the required findings and determinations can be made.

915.204 Personal or professional services.

(d) Formal advertising procedures shall not be used for contracts for architect-engineer or other professional engineering services. Such contracts may be negotiated under section 302(c)(4) of the Federal Property and Administrative Services Act of 1949, as amended, or section 302(c)(15) of that Act and the Atomic Energy Act of 1954, as amended. However, the exemption provided for in 915.903(d)(1)(ii) does not apply to contracts negotiated under section 302(c)(4) of the Federal Property and Administrative Services Act of 1949, as amended. Professional architect-engineer services shall be negotiated in accordance with Subpart 936.6 and FAR Subpart 36.6.

(e) Surveying, mapping, and field or laboratory tests of construction workmanship and materials and equipment should be classified as professional services when they clearly require planning, direction, supervision, and interpretation by professional engineers as a condition of performance, or when the contractor will be required to assume responsibility for the professional adequacy and accuracy of results. Depending upon the nature and requirements of a particular contract professional engineering services may involve activities such as the following:

(1) Overall direction of the technical work;

(2) Supervision of work performed by technicians, sub-professionals, or nonprofessional employees;

(3) Determination of the methods or procedures for accomplishing the requirements of the contract;

(4) Interpretation of the methods or procedures for accomplishing the requirements of the contract; and

(5) Direct performance of required professional services.

(f) When the services are such that the planning and execution can be performed by personnel having only a practical knowledge of the use of instruments and techniques, such as routine aerial photographing and testing, and do not require any professional engineering competence or judgment, the "personal or professional services" exception to the formal advertising requirement is not applicable.

(g) In 1959, the American Society of Civil Engineers (ASCE) adopted a policy statement that land surveying, engineering surveying, geodetic surveying, and cartographic surveying, commonly designated as surveying and mapping, are a part of the civil engineering profession. The report of the ASCE Task Committee on Status of Surveying and Mapping may be used for guidance in determining which positions should be considered as professional and which should be considered subprofessional.

915.213 Technical equipment requiring standardization and interchangeability of parts.

If section 302(c)(13) of the Federal Property and Administrative Services Act of 1949, as amended, and the Atomic Energy Act of 1954, as amended, are used as the basis of negotiation, determinations and findings shall state the authority for negotiations.

915.215 Otherwise authorized by law.

(a)(3) The Atomic Energy Act of 1954, as amended, and the Atomic Energy Community Act of 1955, as amended, contain various exemptions from section 3709 of the Revised Statutes, as amended. Pursuant to section 310 of the Federal Property and Administrative Services Act of 1949, as amended, these references to section 3709 shall be construed to authorize acquisition pursuant to section 302(c)(15) of the Federal Property and Administrative Service Act of 1949, as amended, without regard to the advertising requirements of section 302(c) and 303 of the Act. The situations enumerated in FAR 15.201 through 15.215 are illustrative of situations which could support a determination and finding under the Atomic Energy Act of 1954, as amended, that advertising is not reasonably practicable or, as appropriate, that negotiation is necessary in the interest of common defense and security.

(4) The Atomic Energy Act of 1954, as amended, also provides in section 162 that the President may, in advance, exempt any specific action of the Department of Energy in a particular matter carried out under the authority of the Atomic Energy Act of 1954, as amended, from the provisions of law relating to contracts whenever he determines that such action is essential in the interest of common defense and security.

(5) Every contract negotiated under the authority of section 302(c)(15) of the Federal Property and Administrative Services Act of 1949, as amended, and the Atomic Energy Act of 1954, as amended, shall be supported by a determination and finding justifying use of such authority.

Subpart 915.3—Determinations and Findings to Justify Negotiation

915.307 Signatory Authority.

Determinations and findings supporting negotiation under the authority of the Federal Property and Administrative Services Act of 1949, section 302(c)(11) (FAR 15.211), with respect to contracts which will not require the expenditure of more than $25,000 may be executed by the Procurement Executive. Determinations and findings for contracts in excess of $25,000 negotiated pursuant to section 302(c)(11), and in support of all contracts negotiated pursuant to sections 302(c)(12) and 302(c)(13) of the Federal Property and Administrative Services Act of 1949, as amended (FAR 15.211, 15.212 and 15.213) shall be executed by the Head of the Agency.

Subpart 915.4—Solicitation and Receipt of Proposals and Quotations

915.401 Applicability.

In addition to the exclusions included at FAR 15.401, FAR 15.4 is not applicable to Special Research Contracts (See 917.71), Program Opportunity Notices (See 917.72), or Program Research and Development Announcements (See 917.73).

915.405-1 General.

Approval for the use of solicitation for information or planning purposes shall be obtained from the Head of the Contracting Activity.

915.406-5 Part IV Representations and instructions.

(a) Section K, Representations, certifications and other statements of offerors or quoters. (1) To minimize the paperwork burden imposed by the repetitious submission of contract representations and certifications with each bid or proposal submitted, DOE contracting activities may permit a repetitious bidder or offeror the optional use of simplified representations and certifications, provided acceptable comprehensive representations and certifications have been sumitted to the DOE contracting activity within three years of the anticipated contract award date and are currently on file with the awarding activity. Bidders and offerors shall, through use of the simplified representations and certifications only be asked to furnish with each bid or proposal a certification that the previously filed record copy remains current, or indicate any change relative to the individual submission, along with certain minimal information such as type of organization and whether the bidder or offeror is a small, small/disadvantaged, or women-owned small business concern and whether the work will be performed in a labor surplus area. Select additional representations and certifications may also be required depending on the nature of the individual acquisition. These additional

representations and certifications, such as "Organizational Conflicts of Interest Disclosure or Representation" and "Cost Accounting Standards Notices and Certification" shall be separately identified in Section K of the uniform contract format when they are required. (also see (a)(5) below)

(2) Use of the optional simplified representations and certifications is predicated upon the single submission of an acceptable comprehensive representations and certifications rather than the repetitive submission of these items with each bid or proposal. It is required, therefore, that any comprehensive representations and certifications submitted by a potential contractor in anticipation of using the simplified approach be evaluated by the contracting activity based upon the statutory and/or regulatory requirements which mandate the various representations and certifications. The submitter also should be advised of the submissions acceptability, thus permitting use of the simplified representations and certifications. When utilizing the optional simplified representations and certifications, bidders or offerors shall be advised of the need to identify any individual items that may differ from their comprehensive representations and certifications which are on record. Obvious, unintentional errors should be treated as minor informalities whenever possible. Each contracting activity permitting use of the simplified approach shall establish internal procedures to maintain control of comprehensive submittals submitted by an offeror or bidder in support of the simplified approach and to assure notification to the submitter or their acceptance or rejection.

(3) The following format illustrates a simplified representations and certifications approach which may be used if the contracting activity permits use of simplified representations and certifications.

Representations and Certifications

(1) The bidder/offeror certifies:

(a) It is ( ) a Corporation, incorporated in the state of ———; ( ) an individual; ( ) a partnership; ( ) a nonprofit or educational institution; ( ) a state or local government; and,

(b) It is ( ), is not ( ), a small business ( ), a small and disadvantaged business ( ), a women-owned small business ( ), a labor surplus area concern ( ).

(c) Its Data Universal Numbering System (DUNS) establishment number is:

(2) The offeror/bidder represents that the following persons are authorized to communicate on its behalf with the Government in connection with this solicitation: list names and telephone numbers of appropriate personnel.

Phone ———
Name ———

(3) The offer/bidder (check (i) or (iii)):

(i) ( ) Certifies that the comprehensive representations and certifications submitted to the DOE *(insert appropriate DOD contracting activity)* on *(insert date)* remain current and accurate with respect to this bid or proposal submitted in response to solicitation *(insert number)* dated *(insert date)* except as amended hereby.

(ii) ( ) certifies the following specific representations and certifications differ from the disclosures previously filed: *(list any differences);* and revised representation and certification are therefor submitted.

(iii) ( ) acknowledges a comprehensive representations and certifications has not previously been placed on record with the contracting activity and such a comprehensive representations and certifications data package is completed and being submitted with respect to this bid or proposal in response to solicitation no. ——— dated ———.

(4) By signing below, the bidder/offeror certifies that the representations and certifications are accurate, current and complete. The bidder/offeror further certifies that it will notify the contracting activity of any changes affecting a comprehensive representations and certifications if one has been placed on records.

Solicitation Number ———
Signature ———
Date ———
Type Name ———
Title and ———
Address ———

(4) The following is a comprehensive listing by topic with source citation of the representations and certifications which are required to be submitted with individual bids or proposals and which must be filed with an accepted by the DOE contracting activity to allow use of the simplified representations and certifications described at 915.406-5(a)(3).

Comprehensive Representations and Certifications

(i) Certificate of Independent Price Determination FAR 52.203-2

(ii) Contingent Fee Representation and Agreement FAR 52.203-4

(iii) Type of Business Organization-Formal Advertising (Negotiation) FAR 52.214-2 (FAR 52.215-6)

(iv) Parent Company and Identifying Data FAR 52.214-8

(v) Place of Performance-Formal Advertising (Negotiation) FAR 52.214-14 (FAR 52.215-20)

(vi) Small Business Concern Representation FAR 52.219-1

(vii) Small Disadvantaged Business Concern Representation FAR 52.219-2

(viii) Women-Owned Small Business Concern Representation FAR 52.219-3

(ix) Walsh-Healey Public Contracts Act Representation FAR 52.222-19 (need be completed only for contracts for the manufacture or furnishing of supplies to be performed in the United States and which exceed $10,000).

(x) Certification of Nonsegregated Facilities FAR 52.222-21

(xi) Previous Contracts and Compliance Reports FAR 52.222-22.

(xii) Affirmative Action Compliance FAR 52.222-25 (not applicable to construction contracts)

(xiii) Clean Air and Water Certification FAR 52.223-1

(xiv) Buy American Certificate FAR 52.225-1

(5) Additional representations and certifications which may be required, depending on the nature of the acquisition, are listed by topic and source below. Although they may be included in the single comprehensive submission, they may also be required for the simplified submission since they are unique to an instant solicitation.

(i) Foreign Ownership, Control, or Influence-Representation.

(ii) Jewel Bearings and Related Items Certificate FAR 52.208-2.

(iii) Organizational Conflicts of Interest Disclosure Representation 952.209-70

(iv) Preference for Labor Surplus Area Concerns FAR 52.220-1

(v) Recovered Material Certification FAR 52.223-4

(vi) Balance of Payments Program Certificate FAR 52.225-6

(vii) Cost Accounting Standards Notices and Certification FAR 52.230-1, or FAR 52.230-2

(viii) Permits, Authorities and Franchises FAR 52.247-2

(ix) Technical Data Certification 952.227-80

(x) Royalty Payments Certification 952.227-81

(b) *Section L Instructions, Conditions and Notices to offerors and quoters.* A proposal may include technical data and other data, including trade secrets and privileged or confidential commercial or financial information, which the proposer does not want disclosed to the public or used by the Government for any purposes other than proposal evaluation. Procedures for handling and protecting such data and information are discussed at 927.402-3(d)(2).

(d) Insert the notice at 952.215-70 in solicitations if the resulting contract will contain any of the clauses referenced therein.

915.413 Disclosure and use of information before award.

915.413-2 Alternate II.

The procedures discussed at FAR 15.413-2 may be used if approved at a level above the contracting officer. See also 927.70.

Subpart 915.5—Unsolicited Proposals

915.501 Definitions.

"Notice of program interest" means a method by which broad general technical problem areas needing investigation are published in order to stimulate the flow of unsolicited proposals. The notice describes problems, not desired solutions.

"Project officer" means the individual designated by the responsible official, or designee, having responsibility for the unsolicited proposal.

"Receiving office" means the office designated as the central control point for the receipt, distribution, accountability, and status reporting of unsolicited proposal.

"Responsible official" means the Senior Program Official or the head of the staff office within whose area of responsibility the work contemplated by the unsolicited proposal falls.

915.502 Policy.

(a) Present and future needs demand the involvement of all resources in exploring alternative energy sources and technologies. To achieve this objective, it is DOE policy to encourage external sources of unique innovative methods, approaches, and ideas by stressing submission of unsolicited proposals for government support. In furtherance of this policy and to ensure the integrity of the acquisition process through application of reasonable controls, the DOE:

(i) Disseminates information on areas of broad technical concern whose solutions are considered relevant to the accomplishment of DOE's assigned mission areas;

(ii) Encourages potential proposers to consult with program personnel before expending resources in the development of written unsolicited proposals;

(iii) Endeavors to distribute unsolicited proposals to all interested organizations within DOE;

(iv) Processes unsolicited proposals in an expeditous manner and, where practicable, keep proposers advised as discrete decisions are made;

(v) Assures that each proposal is evaluated in a fair and objective manner; and,

(vi) Assures that each proposal will be used only for its intended purpose and the information contained therein will not be divulged without prior permission of the proposer.

(b) Extensions of contract work resulting from unsolicited proposals shall be processed in accordance with the procedures at 943.107.

915.503 General.

(c)(5) When the DOE receives a document for a commercial demonstration which might otherwise qualify as an unsolicited proposal, but its substance is generally known and may be obtained without restriction by formal competitive solicitation or program opportunity notice, or its substance closely resembles that of a pending formal competitive solicitation or program opportunity notice, the DOE's policy of obtaining competition applies.

(f) Unsolicited proposals for the performance of support services are, except as discussed in this paragraph, unacceptable as the performance of such services is unlikely to necessitate innovative or unique concepts. There may be rare instances in which an unsolicited proposal offers an innovative or unique approach to the accomplishment of a support service. If such a proposal offers a previously unknown or an alternative approach to generally recognized techniques for the accomplishment of a specific service(s) and such approach will provide significantly greater economy or enhanced quality, it may be considered for acceptance. Such acceptance shall, however, require approval of the acquisition of support services in accordance with applicable DOE Directives and be processed as a deviation to the prohibition herein in accordance with Subpart 901.4.

915.504 Advance guidance.

(b)(6) A notice of program interest can be used to provide notification of areas of DOE interest and to stimulate the flow of unsolicited proposals. Each program office should publish periodically a listing of broad, general, technical problems and areas needing investigation using the following guidelines.

(i) The notice shall be coordinated in advance with the head of the contracting office that will be expected to award any contracts which may result from the notice, so that advance preparations can be made for processing proposals in accordance 915.506 and to assure that some form of competitive solicitation, e.g. a program research and development or request for proposal, is not possible.

(ii) Concurrence shall be obtained from the appropriate procurement Advisor in the Office of Procurement Support, Headquarters when it is not possible to identify which contracting office(s) will make possible award(s).

(iii) The notice should contain, but need not be limited to, the following information:

(A) A number assigned by the program office for control and reference purposes;

(B) A brief description of the board, general, technical program or areas needing investigation (generally 50 words or less).

(C) Restrictions, if any, as to who may submit proposals.

(D) A contact (name and telephone number) within the program office or divisions, where additional information may be obtained.

(E) An expiration date, as needed. An expiration date for a Notice of Program Interest is not to be considered a formal due date or common cut-off date for the submission or receipt of unsolicited proposals as is associated with formal solicitations. Rather the expiration date is an approximation of the time after which program interests or directions may be expected to change less the necessary administrative time that will be needed for the evaluation and possible award of contracts resulting from the notice.

(F) A statement that DOE reserves the right to support or not to support any or all proposals in whole or in part.

(G) A statement that DOE assumes no responsibility for any costs associated with specific proposal preparation.

(H) The number of proposal copies required and address of the receiving office to which proposals should be mailed.

(I) A reference that detailed information concerning contracting policy and procedures is contained in the DEAR, copies of which are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(iv) The notice content should be consolidated at the responsible office level and should be in the format that best reflects the needs of that specific office; e.g., letter, booklet, bulletin, or related documents and coordinated in advance with the Unsolicited Proposal Management Officer identified at 915.506(b).

(v) The notice should be given wide distribution including mailings to industry associations, including small business associations, schools, colleges and universities, appropriate professional and scientific journals, other DOE offices, as well as individuals

and organizations that request copies on a one-time basis.

(vi) Copies of the notice shall be given to the Unsolicited Proposal Management Officer identified at 915.506(b).

915.505 Content of unsolicited proposals.

(b)(5) Unsolicited proposals for nonnuclear energy demonstration activities not covered by existing formal competitive solicitations or program opportunity notices should contain information along the lines of the information requirements at 917.7201–5. They may include a request for federal assistance or participation, and shall be subject to the cost sharing provisions of 917.70.

915.506 Agency procedures.

(b) Unless otherwise specified in a notice of program interest, all unsolicited proposals should be submitted to the Procurement and Assistance Management Directorate, U.S. DOE, Attn: Unsolicited Proposals Management Officer, MA432, Washington, D.C. 20585. If the proposer has ascertained the cognizant program office through preliminary contacts with program staff, the proposal may be submitted directly to that office. In such instances, the proposer should separately send a copy of the proposal cover letter to the Unsolicited Proposal Management Officer to assure that the proposal is logged in the Department's automated tracking system for unsolicited proposals.

915.506–1 Receipt and initial review.

(b) The DOE receiving office shall acknowledge receipt of an unsolicited proposal, complete a preliminary review, and establish accountability. It will send copies of the unsolicited proposal to the responsible official(s). Each unsolicited proposal that is circulated for a comprehensive evaluation shall have an agency control number and legend attached or imprinted on it by the receiving office identifying it as an unsolicited proposal and stating that it shall be used only for purposes of evaluation.

915.506–2 Evaluation.

(a) The responsible official is responsible for assigment of a project officer and such personnel as may be necessary to evaluate the proposal fairly and objectively. In some instances the responsible official may find it advantageous to subject the proposal to external rather than internal evaluation. In such cases, the prior written permission of the proposer shall be obtained. Proposals for demonstration projects will be evaluated in accordance with the Federal support criteria set forth in 917.7203.3 (a) through (h) and the evaluation criteria set forth in 917.7204(c).

(1) The submission of innovative methods, approaches, or ideas is not restricted to those problems or technical areas published in a DOE notice of program interest.

(c) If, after evaluation, it is decided that a proposal will not be supported, it is the responsibility of:

(1) The project officer to prepare a written statement setting forth the basis for rejection of the unsolicited proposal, submit one copy to the responsible official and retain one copy in the permanent file.

(2) The responsible official to prepare a letter to the proposer with copies to the receiving office and the project officer.

(d) If the decision is to support a proposal, a written justification is required which shall address each of the evaluation factors contained in FAR 15.506–2. The justification shall be appended to the procurement request.

(e) Unsolicited proposal justificiations shall contain a recommedation, concurrence (when needed), and approval as follows: (In the case of cost shared contracts, review levels shall be based on the sum of the contractor and Government shares.)

(1) The recommendation shall be prepared and reviewed within the initiating office at such levels as are deemed appropriate by the Senior Program Offical for acquisitions initiated by the Headquarters or by the Head of the Contracting Activity for field initiated acquisitions. In establishing levels for the review of such recommendations, the Senior Program Official or Head of the Contracting Activity shall assure that the recommendation is reviewed at a senior organizational level in order to assure that competition is sought when appropriate. See FAR 15.507 and 15.508.

(2) The more complex and costly transactions will benefit from early coordination with counsel. Justifications exceeding $1,000,000, or such lower level as counsel may determine, shall be submitted by the initiator to counsel, at the Headquarters or field location of the initiator, for concurrence prior to forwarding to the contracting officer.

(3) The justification, following review of the recommendation and concurrence of counsel (if required or considered appropriate), shall be forwarded to the cognizant contracting officer for approval. If the justification is acceptable to the cognizant contracting officer, final approval shall be sought at such level as the Head of the Contracting Activity may require. In specifying the level for final approval, the Head of the Contracting Activity shall require final approval at a level above contracting officer as required by FAR 15.105(c). The Head of the Contracting Activity shall further assure that the official designated as the reviewing official is a contracting officer.

(g) Notwithstanding the decision to accept an unsolicited proposal, organizations and individuals are subject to the policies concerning the responsibility of prospective contractors set forth in 909.1 and FAR 9.1.

915.507 Contracting methods.

(d) Subpart 917.70, which outlines DOE's cost participation policy, shall be followed in determining the extent to which the DOE will participate in the cost for the proposed effort.

915.509 Limited use of data.

(a) An unsolicited proposal may include technical data and other data, including trade secrets and privileged or confidential commercial or financial information, which the proposer does not want disclosed to the public or used by the Government for any purpose other than proposal evaluation. Procedures for handling and protecting such data and information are set forth at 927.402–3(d)(3).

Subpart 915.6—Source Selection

915.610 Written or oral discussions.

(c) The contracting officer shall point out to each offeror within the competitive range any ambiguities or uncertainties in its proposal. For research, development, and demonstration contracts, the discussions are intended to assist the Source Evaluation Board (SEB) in understanding fully the proposals and their strengths and weaknesses based upon the individual efforts of each proposer, in assuring that the meanings and points of emphasis of solicitation provisions have been adequately conveyed to the offerors so that all offerors are competing equally on the basis intended by the Government, and in evaluating the qualifications of the personnel proposed by each firm. Where the proposed award is not for research, development, or demonstration, (e.g., supplies and services) the contracting officer should point out instances in which aspects of a proposal contain a weakness in relation to the Government's requirements.

915.612 Formal source selection.

(a) Negotiated competitive acquisitions of $5 million or less are not subject to the SEB Handbook unless specifically required by the Procurement Executive. For acquisitions under $5 million, less formal procedures are used. For acquisitions under $5 million, but more than $1 million, source evaluation panels may be established. These panels may follow the policies and procedures set forth in the SEB Handbook as a guide. For acquisitions under $1 million, less formal source evaluation and selection procedures shall be used.

(b) The contracting officer may form teams to evaluate the technical, business and management, and cost aspects of proposals. When teams are used, each will function independently of the other and report its findings to the contracting officer. The contracting officer will discuss those findings with the teams (or representatives thereof) separately or together, as may be more helpful. The contracting officer will negotiate and execute the contractual instrument, using, in many cases, some of the same specialists who participated in earlier evaluations and discussions. Part 971 sets forth administrative requirements for the review and approval of certain contract actions.

(c) In selections other than where price is the determining factor, the evaluation procedures set forth in (c) (1), (2), and (3) below should be considered.

(1) *Technical evaluation.* Generally, the contracting officer must rely on scientific and engineering personnel for assistance in reviewing proposals from a technical point of view. It is imperative, therefore, that technical evaluations and findings be fully documented and reviewed by responsible personnel. The report shall reflect the scoring and ranking of the proposals. The report shall also include a narrative evaluation specifying the strengths and weaknesses of each proposal, and any reservations or qualifications that might bear upon the selection of sources for negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any proposal shall be included. After evaluation and preparation of written and signed evaluation findings by the technical evaluators, such evaluations and proposals shall be returned to the contracting officer or authorized representative, and maintained as a permanent record in the contract file.

(2) *Business and management evaluation.* Management capabilities of the offeror to perform the required work in a timely manner must be appraised. In making this appraisal, the following factors, as appropriate, and as stated in the solicitation must be considered: the company's management organization; past performance; reputation for reliability; availability of required facilities; cost controls; ability to control, maintain, and account for any property provided by the Government; the offeror's willingness to devote its resources to the proposed work with appropriate diligence; and other pertinent administrative and business information that may have been requested in the solicitation, such as certifications and representations.

(3) *Price/cost determinations.* Each proposal requires some form of price/cost analysis. The evaluation should consider items such as categories and amounts of labor, indirect costs, materials, travel, computer time, as well as information with regard to the contractor's past cost performance, including contracts or subcontracts for like services or supplies. The contracting officer must exercise judgment in determining the extent of analysis in each case and any desire to obtain assistance from personnel trained in this discipline.

(d) Personnel from the DOE, other Government agencies, consultants, and contractors including those who operate or manage Government-owned facilities may be used in the evaluation process as advisors when their services are necessary and available. When personnel outside the Government, including those of contractors who operate or manage Government-owned facilities, are used as advisors, approval and disclosure procedures as required by 927.7003 shall be followed. In all instances, such personnel will be required to comply with DOE conflict of interest regulations and nondisclosure of information requirements.

(e) The SEB procedures are intended to provide the Source Selection Official with sufficient information to select an offeror for negotiation on the basis of its proposal. However, it is within the discretion of the Source Selection Official to select multiple offerors from those within the competitive range for negotiation and to direct that discussions be reopened with those offerors and that best and final offers be obtained on the basis of fully definitized contract documents executed by the offerors. The contracting officer should seek correction of each offeror's correctable weaknesses using only technical and other information which the Government is entitled to use for this purpose. At the conclusion of discussions, a final common cut-off date which allows a reasonable opportunity for submission of best and final offers shall be established and all participants notified.

(q) Except as provided in 915.612(e), revised proposals are evaluated, selection is made, and negotiations may be conducted with the selected offeror but only to definitize a final agreement on price, terms, and conditions, etc. (No factor which could have had any effect on the selection process may be changed after the common cut-off date for discussions).

915.613 Alternative source selection procedures.

Source Evaluation Board (SEB) procedures shall be used for all negotiated competitive prime acquisitions expected to exceed $5 million, excepting acquisitions for architect-engineer services, and acquisitions specifically waived by the Procurement Executive. Guidance regarding the designation and operation of the SEB are set forth in the SEB Handbook.

Subpart 915.8—Price Negotiation

915.801 Definitions.

"Field Pricing Support" is synonymous with "pricing support" and within the Department of Energy means the advice provided the contracting officer by auditors, price or cost analysts, quality assurance personnel, engineers, program office personnel, small business, legal, financial or other specialists based on their review and analysis of a contractor's proposal notwithstanding their organizational location.

915.804-2 Requiring certified cost or pricing data.

(a) The certification requirements of FAR 15.804–2 need not be applied to cost-reimbursement contracts placed with educational institutions subject to the cost principles at FAR Subpart 31.3, or State, local or Federally recognized Indian Tribal governments subject to the cost principles at FAR Subpart 31.6.

915.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(b)(2)(iii) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may approve the finding required by FAR 15.804–3(b)(2)(iii) that the lowest price received is unreasonable.

(c)(8) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may approve the finding required by FAR 15.804–3(c)(8) that the price is unreasonable even though it is a catalog or market price.

(g) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, authorize individual or class exemptions for exceptional cases in accordance with FAR 15.804–3(g).

(i) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, waive the requirements for cost or pricing data under the circumstances set forth in FAR 15.804–3(i) provided that any such waivers are promptly reported to the Procurement Executive.

915.804–6 Procedural requirements.

(e) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, waive the requirements for cost or pricing data under the circumstances set forth in FAR 15.804–6(e) provided that any such waivers are promptly reported to the Procurement Executive.

(i) Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, waive the requirements for subcontractor cost or pricing data under the circumstances set forth in FAR 15.804–6(i), provided that any such waivers are promptly reported to the Procurement Executive.

915.804–8 Contract clauses.

(a) The clause prescribed at FAR 52.215–22, Price Reduction For Defective Cost or Pricing Data, shall only be included in negotiated contracts where a Certificate of Current Cost or Pricing Data was obtained.

(b) The contracting officer shall, insert the clause at FAR 52.215–23, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (a) above has not been included, unless the contractor will otherwise not be required to submit certified data pursuant to 915.804–2(a).

915.804–70 Uncertified cost or pricing data.

Anytime an offeror or contractor is not required to submit certified cost or pricing data (proposals of $500,000 or less) the contracting officer may require the offeror or contractor to submit uncertified cost or pricing data. The amount of data required to be submitted should be limited to that data necessary to allow the contracting officer to determine the reasonableness of the price.

915.805–5 Field pricing support.

(a)(1) Field pricing reports as prescribed in FAR 15.805–5(a)(1) are not required for the negotiation of DOE contract prices or modifications thereof. The term "field pricing report" refers to the Department of Defense (DOD) system for obtaining a price and/or cost analysis report from a cognizant DOD field level contract management office wherein requests for the review of a proposal submitted by an offeror are initiated and the recommendations made by the various specialists of the management office are consolidated into a single report that is forwarded to the office making the contract award for use in conducting negotiations. In the DOE, such review activities, except for reviews performed by professional auditors, are expected to be accomplished by pricing support personnel located in DOE Contracting Activities. The DOE contracting officer shall formally request the assistance of appropriate pricing support personnel, other than auditors, for the review of any proposal that exceeds $500,000, unless the contracting officer has sufficient data to determine the reasonableness of the proposed cost or price. Such pricing support may be requested for proposals below $500,000, if considered necessary for the establishment of a reasonable pricing arrangement. Contracting officers, however, are not precluded by this section from requesting pricing assistance from a cognizant DOD contract management office, provided an appropriate cross-servicing arrangement for pricing support services exists between the DOE and the servicing agency.

(c)(1) When an audit is required pursuant to 915.805–70, "Audit as an aid in proposal analysis", the request for audit shall be sent directly to the Federal audit office assigned cognizance of the offeror or prospective contractor. A copy of each such request for audit, without enclosures, shall be forwarded to the Director, Audit Management Division, Office of Inspector General, Washington, D.C. When the cognizant agency is other than the Defense Contract Audit Agency or the Department of Health and Human Services, and an appropriate cross-servicing agreement has not been established, the need for audit assistance shall be coordinated with the Directorate of Procurement and Assistance Management, Office of Policy, Policy and Procedures Division.

(2) The request for audit shall establish the due date for receipt of the auditor's report and in so doing shall allow as much time as possible for the auditor's review.

(e)(6) Copies of technical analysis reports prepared by DOE technical or other pricing support personnel shall not normally be provided to the auditor. The contracting officer or the supporting price, cost, or financial analyst at the contracting activity shall determine the monetary impact of the technical findings.

915.805–70 Audit as an aid in proposal analysis.

(a) Auditors are professional accountants who, although organizationally independent, are the principal advisors to contracting officers on contractor accounting and cost matters.

(b) Audit as an aid in the negotiation of price or cost arrangements in DOE contract awards shall be utilized as provided by this subsection.

(c) Preaward audit services include:

(1) The submission of an auditor's report which sets forth the results of the review and analysis of cost data submitted by offerors as part of their pricing proposals, reviews of contractor's accounting systems, recorded contract costs, and financial condition other related matters; and

(2) Personal consultation and advice regarding the use of the auditor's report in the negotiation and award of a contractual instrument.

(d) When a contract price will be based on cost or pricing data (FAR 15.804) submitted by the offerors, the DOE contracting officer or authorized representative shall request a review by the cognizant Federal audit activity prior to the negotiation of any contract or modification including modifications under advertised contracts in excess of:

(1) $500,000 for a firm fixed-price contract or a fixed-price contract with economic price adjustment provisions; or

(2) $1,000,000 for all other contract types, including initial prices, estimated costs of cost-reimbursement contracts, interim and final price redeterminations, and target and settlement of incentive contracts.

(e) The requirement for auditor reviews of proposals which exceed the thresholds specified in paragraph (d) above may be waived at a level above the contracting officer when the reasonableness of the negotiated contract price can be determined from information already available. The contract file shall be documented to reflect the reason for any such waiver, provided, however, that independent Government estimates of cost or price

shall not be used as the sole justification for any such waiver.

(f) Ordinarily, preaward reviews by an auditor should not be requested for actions below the thresholds specified in paragraph (d) of this section. Before requesting such audits, the contracting officer should consider using recent audit reports, price negotiation memorandums, or other pertinent information regarding the offeror to establish the reasonableness of proposed price. However, auditor reviews should be considered for proposals below the specified thresholds when the contracting officer determines that:

(1) The available data is inadequate for determining the reasonableness of the contractor's cost proposal;

(2) The contractor's estimating, accounting, or purchasing methods are not reliable; or

(3) The best interest of the Government will be served by an audit review, after giving consideration to the cost of the audit, type of audit and value of the proposed contract amount.

915.808 Price negotiation memorandum.

(b) Whenever an audit review was requested and a report was obtained, the contracting officer shall inform the cognizant audit activity of the disposition of each audit finding and recommendation by either forwarding a copy of the price negotiation memorandum to the auditor; or by advising the auditor, in writing, if an award was cancelled or not made to the audited entity; whichever is applicable.

Subpart 915.9—Profit

915.903 Contracting officer responsibilities.

(d)(1)(ii) The statutory limitations on profit and fees as set forth in FAR 15.903(d)(1) (i), (ii) and (iii) shall be followed, except as exempted for DOE architect-engineer contracts covering Atomic Energy Commission (AEC) and Bonneville Power Administration (BPA) functions. Pursuant to section 602(d) (13) and (20) of the Federal Property and Administration Services Act of 1949, as amended, those former AEC functions, as well as those of the BPA, now being performed by DOE are exempt from the 10 and 6 per centum cost and fee restrictions on contracts for architect-engineer services.

(d)(2) Waivers to apply the maximum cost-plus-award-fee percentage in 915.972(a)(3) in those situations that shall result in potential fees exceeding the limitations cited in FAR 15.903(d)(1) (i), (ii), and (iii) shall be forwarded to the Procurement Executive.

(f) In cases where a change or modification calls for substantially different work than the basic contract, the contractor's effort may be radically changed and a detailed analysis of the profit factors would be a necessity. Also, if the dollar amount of the change or contract modification is very significant in comparision to the contract dollar amount, a detailed analysis should be made.

(g) The estimated costs on which the maximum fee is computed pursuant to the statutory limitations set forth in FAR 15.903(d)(1) shall include facilities capital cost of money when this cost is included in cost estimates.

915.905 Profit-analysis factors.

A profit/fee analysis technique designed for a systematic application of the profit factors in FAR 15.905–1 provides contracting officers with an approach that will ensure consistent consideration of the relative value of the various factors in the establishment of a profit objective and the conduct of negotiations for a contract award. It also provides a basis for documentation of this objective, including an explanation of any significant departure from it in reaching a final agreement. The contracting officer's analysis of these prescribed factors is based on information available prior to negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys and the like.

915.970 DOE structured profit and fee system.

This section implements FAR 15.902 and 15.905.

915.970–1 General.

(a) *Objective.* It is the intent of DOE to remunerate contractors for financial and other risks which they may assume, resources they use, and organization, performance and management capabilities they employ. Profit or fee shall be negotiated for this purpose; however, when profit or fee is determined as a separate element of the contract price, the aim of negotiation should be to fit it to the acquisition, giving due weight to effort, risk, facilities investment, and special factors as set forth in this subpart.

(b) *Commercial (profit) organization.* Profit or fee prenegotiation objectives for contracts with commercial (profit) organizations shall be determined as provided in this subpart.

(c) *Nonprofit organizations.* It is DOE's general policy to pay fees in contracts with nonprofit organizations other than educational institutions and governmental bodies; however, it is a matter of negotiation whether a fee will be paid in a given case. In making this decision, the DOE negotiating official should consider whether the contractor is ordinarily paid fees for the type of work involved. The profit objective should be reasonable in relation to the task to be performed and the requirements placed on the contractor.

(d) *Educational institutions.* It is DOE policy not to pay fees under contracts with educational institutions.

(e) *State, local and Indian tribal governments.* Profit or fee shall not be paid under contracts with State, local, and Indian tribal Governments.

915.970–2 Weighted guidelines system.

(a) To properly reflect differences among contracts and the circumstances relating thereto and to select an appropriate relative profit/fee in consideration of these differences and circumstances, weightings have been developed for application by the contracting officer to standard measurement bases representative of the prescribed profit factors cited in FAR 15.905 and paragraph (d) of this section. This is a structured system, referred to as weighted guidelines. Each profit factor or subfactor, or component thereof, has been assigned weights relative to their value to the contract's overall effort. The range of weights to be applied to each profit factor is also set forth in paragraph (d) of this section. Guidance on how to apply the weighted guidelines is set forth in 915.970–8.

(b) Except as set forth in 915.970–4, the weighted guidelines shall be used in establishing the profit objective for negotiation of contracts where cost analysis is performed.

(c) The negotiation process does not contemplate or require agreement on either estimated cost elements or profit elements. Accordingly, although the details of analysis and evaluation may be discussed in the fact-finding phase of the negotiation process in order to develop a mutual understanding of the logic of the respective positions, specific agreement on the exact weights of values of the individual profit factors is not required and need not be attempted.

(d) The factors set forth below are to be used in determining DOE profit objectives. The factors and weight ranges for each factor shall be used in all instances where the weighted guidelines are applied.

Profit factors	Weight ranges (percent)
I. Contractor Effort (Weights applied to cost):	
A. Material acquisitions:	
1. Purchased parts	1 to 3.
2. Subcontracted items	1 to 4.
3. Other materials	1 to 3.
B. Labor skills:	
1. Technical and managerial:	
a. Scientific	10 to 20.
b. Project management/administration	8 to 20.
c. Engineering	8 to 14.
2. Manufacturing	4 to 8.
3. Support services	4 to 14.
C. Overhead:	
1. Technical and managerial	5 to 8.
2. Manufacturing	3 to 6.
3. Support services	3 to 7.
D. Other direct costs	3 to 8.
E. G&A (General Management) expenses	5 to 7.
II. Contract Risk (type of contract—weights applied to total cost of items IA thru E).	0 to 8.
III. Capital Investment (Weights applied to the net book value of allocable facilities).	5 to 20.
IV. Independent Research and Development:	
A. Investment in IR&D program (Weights applied to allocable IR&D costs).	5 to 7.
B. Developed items employed (Weights applied to total of profit $ for items IA thru E).	0 to 20.
V. Special Program Participation (Weights applied to total of Profit $ for items IA thru E).	−5 to +5.
VI. Other Considerations (Weights applied to total of Profits $ for items 1A thru E).	−5 to +5.
VII. Productivity/Performance (special computation).	(N/A)

915.970-3 Documentation.

Determination of the profit or fee objective, in accordance with this subpart shall be fully documented. A worksheet, DOE Form F 4220.23 has been developed to assist the contracting officer in this effort. Since the profit objective is the contracting officer's pre-negotiation evaluation of a total profit allowance for the proposed contract, the amounts developed for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated amounts will probably vary from the objective and from the pre-negotiation detailed application of the weighted guidelines technique to each element of the contractor's input to total performance. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the pre-negotiation profit objective, as a result of changes to the contractor's input to total performance, need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained in the price negotiation memorandum prepared in accordance with FAR 15.808.

915.970-4 Exceptions.

(a) For contracts not expected to exceed $500,000, the weighted guidelines need not be used; however, the contracting officer may use the weighted guidelines for contracts below this amount if he or she elects to do so.

(b) For the following classes of contracts, the weighted guidelines shall not be used:

(1) Commercialization and demonstration type contracts;

(2) Management and operating contracts;

(3) Construction contracts;

(4) Construction management contracts;

(5) Contracts primarily requiring delivery of material supplied by subcontractors;

(6) Termination settlements; and

(7) Contracts with educational institutions.

(c) In addition to paragraphs (a) and (b) above, the contracting officer need not use the weighted guidelines in unusual pricing situations where the weighted guidelines method has been determined by the DOE negotiating official to be unsuitable. Such exceptions shall be justified in writing and shall be authorized by the Head of the Contracting Activity. The contract file shall include this doucmentation and any other information that may support the exception.

(d) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth above, other methods for establishing the profit objective may be used. For contracts other than those subject to Subpart 917.6, the selected method shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objective determination. It is intended that the methods will result in profit objectives for noncapital intensive contracts that are below those generally developed for capital intensive contracts.

915.970-5 Special considerations—contracts with nonprofit organizations (other than educational institutions).

(a) For purposes of identification, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

(b) In computing the amount of profit or fee to be paid, the DOE negotiating official shall take into account the tax benefits received by a nonprofit organization. While it is difficult to establish the degree to which a remuneration under any given contract contributes to an organization's overall net profit, the DOE negotiating official should assume that there is an element of profit in any amount to be paid.

(c) In order to assure consideration of the tax posture of nonprofit organizations during a profit or fee negotiation, the DOE negotiating official shall calculate the fee as for a contract with a commercial concern and then reduce it at least 25 percent. However, depending on the circumstances, the contracting officer may pay profit or fees somewhere between this amount and the appropriate profit or fee as if it were a commercial concern. When this is the case, the contract file shall be documented to specifically state the reason or reasons.

(d) Where a contract with a nonprofit organization is for the operation of Government-owned facilities, the fee should be calculated using the procedures and schedules applicable to operating contracts as set forth in Part 970.

915.970-6 Contracts with educational institutions.

In certain situations the DOE may contract with a university to manage or operate Government-owned laboratories. These efforts are generally apart from, and not in conjunction with, their other activities, and the complexity and magnitude of the work are not normally found in standard university research or study contracts. Such operating contracts are subject to the applicable provisions set forth in Part 970.

915.970-7 Alternative techniques.

(a) Profit or fees to be paid on construction contracts and construction management contracts shall be determined in accordance with the applicable profit/fee technique for such contracts set forth in 915.971.

(b) Profit and fee to be paid on contracts under $500,000, not using the weighted guidelines, shall be judgmentally developed by the contracting officer by assigning individual dollar amounts to the factors appropriate to DOE profit considerations discussed in 915.970-2(d).

(c) Contracts which require only delivery or furnishing of goods or services supplied by subcontractors shall include a fee or profit which, in the

best judgment of the contracting officer, is appropriate. It would be expected that there would be a declining relationship of profit/fee dollars in relation to total costs. The higher the cost of subcontracts, for example, the lower the profit/fee ratio to these costs.

(d) Profit/Fee considerations in termination settlements are often a question of equity. They are a matter of negotiation. They should not, however, exceed what would have otherwise been payable under weighted guidelines had the termination not occurred.

915.970-8 Weighted guidelines application considerations.

(a) *General.* (1) 915.970-2(d) lists those DOE factors which are given consideration for profit/fee determination in all cases in which profit is to be specifically negotiated. This section discusses these factors and provides guidance on how they should be evaluated.

(2) The profit/fee elements (factors or subfactors) relating to Contractor Effort, as shown 915.970-2(d), item I, are similar to those cost elements contained in most contract pricing proposals. Often, individual proposals will be in a different format, but, since these factors and subfactors are broad and basic, they provide sufficient guidance to evaluate all items of cost generally found in proposals.

(3) In making a judgment of the value of each factor, the contracting officer should recognize the definition, description, and purpose of the factors, together with consideration for evaluating them as set forth herein.

(4) The effect of the Facilities Capital Cost of Money cost principle (FAR 31.205-10) has been recognized in the weights assigned for arriving at profit and fee objectives; consequently, no offset is necessary or will be made to the prenegotiation profit objectives for cost of money recognized as a cost.

(b) *Contractor effort.* (1) This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is apart from the contractor's basic responsibility for contract performance, takes into account what resources are necessary, and what the contractor must do, to accomplish a in the contract. This factor recognizes that, within a given performance output or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and, that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. The evaluation of this factor requires an analysis of the cost content of the proposed contract, as discussed in paragraphs (b) (2) through (4) of this section. *Not to be included as part of the cost base (for purposes of computing profit) is any amount calculated for the cost of money for facilities capital computed in accordance with Cost Accounting Standard 414.*

(2) The following comprise the base elements for measuring contractor effort:

(i) *Material acquisition.* Analysis of material acquisition cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required purchased parts, subcontracted items or services, and other materials, including consideration of the number of orders and supplies and whether established sources are available or new sources must be developed. In reviewing this element:

(A) The contracting officer shall determine whether the contractor will obtain the material and tooling by routine orders from readily available suppliers (particularly orders of substantial value in relation to the total contract cost) or by subcontracts, and shall consider the extent to which the prime contractor will be required to develop complex specifications involving creative design or close tolerance manufacturing requirements.

(B) Consideration shall be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts and select subcontractors, including efforts to break out sole source subcontractors through the introduction of competition. These determinations and considerations shall be made for purchases of raw materials or basic commodities, purchases of processed material, including all types of components of standard or near standard characteristics, and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In the application of this criterion, it should be recognized that the contribution of the prime contractor to his purchasing program may be substantial. This may apply in the management of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor's representative.

(C) Recognized costs proposed as direct material costs, or proposed as material overhead costs, such as scrap charges, shall be treated and evaluated as material costs for profit evaluation.

(D) Intracompany transfers which are accepted at price, in accordance with FAR 31.205-2(e), shall be evaluated as material. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead.

(ii) *Labor (technical and managerial, manufacturing, and support services).* Analyses of the labor cost content of the contract shall include evaluation of the comparative quality and level of the talents, skills, and experience of those personnel to be employed for contract performance. In reviewing this element:

(A) Technical and managerial labor shall be evaluated, for the purpose of assigning profit dollars, by giving consideration to the amount of notable scientific, unusual or scarce engineering, and top management talent needed in contrast to journeyman engineering effort, professional staff, or closely related supporting personnel. The diversity, or lack thereof, of scientific, engineering and managerial specialties required for contract performance and the corresponding need for related supervision and coordination shall be evaluated. By way of definition, project management and administration labor falling within this category includes senior project management personnel who oversee and direct the work, and usually consist of the project managers, project engineers, and comparable management personnel who form the project management team that plans, directs, and takes responsibility for the execution of the program or project assignment. The cost element for project management and administration labor usually applies to architect-engineer (A-E) contracts. The weight assigned will take into consideration the dollar amount of the project supervised.

(B) Manufacturing labor shall be evaluated by giving consideration to the variety and range of required manufacturing labor skills (i.e., department heads, supervisors, skilled and unskilled labor) and the contractor's manpower resources for meeting these requirements.

(C) Support services labor shall be evaluated in a manner similar to the above by assigning higher weights to professional-type skills and lower weights to semi-professional or other type skills required for contract performance. Support services labor represents those classifications of direct labor whose efforts are not identifiable with the descriptions of labor in paragraph (b)(2)(ii)(A) and (b)(2)(ii)(B) of this subsection and may include labor classifications assigned exclusively for contract performance, such as on-site

A–E firm employees performing project activities related to accounting, contract administration (including reporting), cost engineering, secretarial, clerical and the like. Care should be taken that direct charges of this nature are appropriately classified as direct rather than indirect, and that like activities are not allocated indirectly either to this contract or to the contractor's other work assignments. A weighting in excess of 9 percent for support service contract labor normally will be justified only when the quality, skill, and experience of the support labor warrants a weighting corresponding to category (A), above.

(iii) *General management (overhead and general and administrative (G&A) but exclusive of IR&D costs).* In reviewing this element:

(A) Analysis of overhead and G&A expenses includes evaluation of the makeup of these expenses and how much they contribute to contract performance. This analysis shall include a determination of the amount of labor within the expense pools and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements shall be given the same profit consideration that they would receive if they were treated as direct labor. The other elements of these expense pools shall be evaluated to determine whether they are routine expenses (such as utilities, supplies, and maintenance) and hence given lesser profit consideration, or whether they contribute significantly to contract performance. Depreciation expenses on facilities capital will be excluded from consideration since the profit reward for facilities capital investment is separately weighted as discussed in 915.970–8(d). The composite of the individual determinations in relation to the elements of the expense pools will be the profit consideration given the pools as a whole. The procedure for assigning relative values to such expenses differs from the method used in assigning values for the direct labor. The upper and lower limits assignable to the direct labor are absolute. In the case of overhead expenses, individual expenses may be assigned values outside the range as long as the composite ratio is within the range.

(B) It is not necessary that the contractor's accounting system break down the overhead expenses within the classification of technical and managerial (or engineering) overhead, manufacturing overhead, and general and administrative expenses, unless dictated otherwise by Cost Accounting Standards (CAS). The contractor whose accounting system only reflects one overhead rate on all direct labor need not make changes to reflect more detail data (if CAS exempt) to correspond with the above classifications. In evaluating such a contractor's overhead rate, the negotiating official can break out the applicable sections of the composite rate which can be classified as technical, managerial, or engineering overhead, manufacturing overhead, and general and administrative expenses and follow the appropriate evaluation technique.

(C) There is a critical factor to consider in the determination of profit in this area. Management problems surface in various degrees and the management expertise exercised to solve them shall be considered as an element of profit. For example, a new program for an item that is on the cutting edge of the state of the art will cause more problems and require more managerial time and abilities of a higher order than a follow-on contract. If new contracts create more problems and require a higher profit consideration, follow-ons shall be adjusted downward as many of the problems may have been solved. In any event, an evaluation shall be made of the underlying managerial effort involved on a case-by-case basis.

(D) It may not be necessary for the negotiating official to make a separate profit evaluation of overhead expenses with each acquisition of substantially the same circumstance or service with the same contractor. Where an analysis of the profit weight to be assigned to the overhead pool has been made, the weight to be assigned may be used for future contracts with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances, or until the factors discussed in paragraph (C) above are relevant.

(iv) *Other direct costs (exclusive of CAS 414, Facilities Capital Cost of Money).* In evaluating this element, it should be remembered:

(A) Proposals, particularly for research and development, often list as direct costs the kinds of expenses usually treated as indirect for other contracts. Examples are travel and subsistence, consultants, telephone, computer costs and reports reproduction. The accounting treatment of a cost category does not change the weight appropriate to the cost being evaluated.

(B) The weight ranges in the format cover the broad categories of direct material, labor, and G&A expenses. Although cost submissions may vary from the way shown in the format, all cost categories contained in submissions will fall under one of the broad groupings shown in the format. Because other direct costs are not direct material or direct labor, it follows that they will be considered as indirect costs for weighting purposes.

(C) *Contract risk.* (1) This factor reflects the policy of the Department of Energy that contractors bear an equitable share of cost risk, and to compensate them for the assumption of that risk. A contractor's risk associated with costs to perform under a Government contract is usually minimal under cost-reimbursement-type contracts. In developing a prenegotiation profit or fee objective, the negotiating official will need to consider the type of contract to be negotiated and the anticipated contractor cost risk. This consideration is one of the most important factors in arriving at a prenegotiation profit or fee objective.

(2) Profit/Fee allowances for contractor assumption of cost risk require a determination of the degree of cost responsibility the contractor assumes, and the reliability of the cost estimates in relation to the task assumed. This factor is specifically limited to the risk of costs of contract performance, including unallowable cost elements. Thus, such risks on the part of the contractor as reputation, losing a commercial market, losing potential profits in other fields, or any risk on the part of the contracting activity, such as the risk of not acquiring an effective product or service, are not within the scope of this factor.

(3) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of performance cost by the Government and the contractor through the selection of contract type. The extremes are a cost-plus-fixed-fee contract, requiring only that the contractor use his best efforts to perform a task, and a firm-fixed-price contract. A cost-plus-fixed-fee contract reflects a minimum assumption of cost responsibility, whereas a firm-fixed-price contract reflects a complete assumption of cost responsibility.

(4) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates which, among other things, take the difficulty of the task into consideration. Prior production experience assists the contractor in preparing reliable cost estimates on new contracts for similar items.

(5) Contractors are likely to assume greater cost risk when confident that contracting officers analyze the risk incident to proposed contracts and show they are willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract will not justify a reward for risk in excess of 0.5 percent, nor will a firm-fixed-price contract justify a reward of less than the minimum on the following weighted guidelines. Where proper contract-type selection has been made, the reward for risk, by contract type, will usually fall into the following percentage ranges which are applied to total recognized contract costs, exclusive of facilities capital cost of money:

(i) Type of contract and percentage ranges for profit objectives developed for equipment and supply contracts:

Cost-Plus-Fixed-Fee—0 to 0.5%
Cost-Plus-Incentive-Fee:
With Cost Incentives Only—1 to 2%
With Multiple Incentives—1.5 to 3%
Fixed-Price-Incentive:
With Cost Incentives Only—3 to 5%
With Multiple Incentives—4 to 6%
Prospective-Price-Redeterminable—4 to 6%
Firm-Fixed-Price—6 to 8%

(ii) Type of contract and percentage ranges for profit objectives developed for research and development contracts:

Cost-Plus-Fixed-Fee—0 to 0.5%
Cost-Plus-Incentive-Fee:
With Cost Incentives Only—1 to 2%
With Multiple Incentives—1.5 to 3%
Fixed-Price-Incentive:
With Cost Incentives Only—2 to 4%
With Multiple Incentives—3 to 5%
Prospective-Price-Redeterminable—3 to 5%
Firm-Fixed-Price—5 to 7%

(iii) Type of contract and percentage ranges for profit objectives developed for contracts for services.

Cost-Plus-Fixed-Fee—0 to 0.5%
Cost-Plus-Incentive-Fee—1 to 2%
Fixed-Price-Incentive—2 to 3%
Firm-Fixed-Price—3 to 4%

(6) In assessing the selection and application of a weighting factor, the DOE negotiating official should remember:

(i) These ranges may not be appropriate for all acquisitions. For instance, a fixed-price-incentive contract that is closely priced with a low ceiling price and high incentive share may be tantamount to a firm fixed price contract. In this situation, the contracting officer may determine that a basis exists for high confidence in the reasonableness of the estimate and that little opportunity exists for cost reduction without extraordinary efforts. On the other hand, a contract with a high ceiling and low incentive formula can be considered to contain cost-plus-incentive-fee contract features. In this situation, the contracting officer may determine that the Government is retaining much of the contract responsibility and that the risk assumed by the contractor is minimal. Similarly, if a cost-plus-incentive-fee contract includes an unlimited downward (negative) fee adjustment on cost control, it could be comparable to a fixed-price-incentive-contract. In such a pricing environment, the negotiating official may determine that the Government has transferred a greater amount of cost responsibility to the contractor than is typical under a normal cost-plus-incentive-fee contract.

(ii) The acquisition may not obviously fit a specific category shown. For example, effort under a particular A–E contract may better fall into the category of R&D, rather than services. Judgment is required, therefore, in establishing the category and weights to be applied in each case.

(iii) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a contract form. It can cause risk to increase or decrease in terms of both cost and performance. This consideration shall be a part of the contracting officer's overall evaluation in selecting a factor to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation, as a result, may be below the range that would otherwise apply for the contract type being proposed. This situation will be found to exist only in a few extraordinary situations under circumstances of (A) a follow-on production contract, in which a substantial portion of the total contract costs represents a single subcontract or a few subcontracts, and (B) the fullest incentive reward and penalty feature on cost performance having been passed by the prime contractor to the subcontractor. In an acquisition in which all of these circumstances are found to exist, a lower than usual profit weight may be applied to the aggregate of all recognized costs, including the subcontract portion. The contract risk evaluation should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontract costs (when there is no substantial transfer of the contractor's risk) since such action eventually can result in an undue or undesirable lessening of the amount of work let on subcontracts.

(iv) In making a contract cost risk evaluation in an acquisition that involves executing a definitive contract for a letter contract, unpriced change orders, and unpriced orders under basic ordering agreements, the effect on total contract cost risk as a result of having partial performance before a definitive contract is executed should be considered. Under some circumstances it may be concluded that the amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk remained substantially unchanged. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration of all attendant circumstances and not be just the portion of costs incurred, or percentage of work completed, prior to the execution of a definitive contract.

(v) Time and material, labor hour, and overhaul contracts priced on a time and material basis shall be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit weight in the evaluation of the contractor's assumption of contract cost risk.

(d) *Capital investment (facilities).* (1) This element relates to the consideration to be given in the profit objective in recognition of the investment risk associated with the facilities employed by the contractor. Measurement of the amount of facilities capital employed is discussed in 930.7001–4 and 930.7001–8. Five to twenty percent of the net book value of facilities capital allocated to the contract is the normal range of weight for this profit factor. The key factors that the negotiating official shall consider in evaluating this factor are:

(i) The overall cost effectiveness of the facilities employed;

(ii) Whether the facilities are general purpose or special purpose items;

(iii) The age of the facilities;

(iv) The relationship of the remaining writeoff life of the investment and the length of the program(s) or contract(s) on which the facilities are employed; and

(v) Special contract provisions that reduce the contractor's risk of recovery of facilities capital investment (termination-protection clauses, multiyear cancellation ceilings, etc.).

(2) To assist in evaluating new investment, the contracting officer should request the contractor to submit reasonable evidence that the new facilities are part of an approved investment plan and that achievable benefits to the Government will result from the investment. New industrial facilities and equipment shall receive maximum weight when they—

(i) Are to be acquired by the contractor primarily for Government and energy related business and effort;

(ii) Have a long service life;

(iii) Have a limited economic life due to limited alternative uses; and

(iv) Reduce the total life cycle cost of the products produced for, or services to, the Department of Energy.

To the extent that the new investment represents routine replacement of existing assets, a lesser weight shall be assigned.

(e) *Independent research and development.* This factor rewards contractors in two ways:

(1) As a reward for the contractor's investment in a viable independent research and development program; considering, among other things, the program's quality, scope, and resources employed. The normal weight range for this factor is from 5 to 7 percent of allowable IR&D costs allocable to the prospective contract.

(2) As a reward for contractors who assume the extra risk of developing items with energy program applications on their own initiative with no direct Government assistance and little or no indirect Government assistance. Profit weights in the range of 0 to 20 percent of the basic profit dollars (total of profit dollars for items I.A. through I.E., 915.970–2(d)) are normal for this factor. The weight selection is to be based on the amount of assistance provided by the Government through independent research and/or development expense allowance under previous Government contracts and the extent the contractor already has been compensated for independent development through prior sales of the identical item to the Government.

(f) *Participation in special programs.* (1) A composite percentage weight within the range of −5 percent to +5 percent of the basic profit objective (total of profit dollars for items I.A. through I.E., 915.970–2(d)) may be assigned for this profit objective. This profit factor, which may apply to special circumstances as well as a particular acquisition, relates to rewards of outstanding achievement in contractor participation in the Government's small business, small disadvantaged business, women-owned small business concerns, labor surplus, energy conservation and other special programs. Participation that is rated as merely satisfactory shall be assigned a weight of zero, generally. Evidence of effective support may justify a plus weight and poor support a negative weight.

(2) In assessing this factor, the negotiating official shall:

(i) Give favorable consideration to the contractor's policies and procedures that effectively support Government small business and small disadvantaged business subcontracting programs. Any unusual effort that the contractor displays in subcontracting with these concerns, particularly for development-type work likely to result in later production opportunities, and the overall effectiveness of the contractor in subcontracting with, and furnishing assistance to, such concerns shall be considered. Conversely, failure or unwillingness on the part of the contractor to support these Government policies shall be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(ii) Make a similar review and evaluation of the contractor's policies and procedures supporting the Government's labor surplus area program. In particular, favorable consideration shall be given to a contractor who (A) makes a significant effort to help find jobs and provide training for the hardcore unemployed, or (B) promotes maximum subcontractor utilization of certified eligible concerns.

(iii) Give favorable consideration to the contractor's initiatives and accomplishments in the conservation of energy and in carrying out any other special Government programs.

(g) *Other considerations.* (1) Particular situations may justify consideration of a profit allowance in addition to those specifically identified elsewhere in the guidelines. These situations shall be identified and the reason(s) for their use documented in the price negotiation memorandum. An assigned weight of −5 to +5 percent of the basic profit objective is the normal range for this profit factor depending on the circumstances of the particular acquisition. A zero weight designates a satisfactory or average effort.

(2) Examples of "other considerations" are described in the following subparagraphs.

(i) *Cost-control and other past accomplishments.* This factor allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration should be given to (A) measures taken by the prospective contractor that result in productivity improvements and (B) other cost-reduction accomplishments that will benefit Government contracts. Among other things, consideration should be given to the contractor's efforts to explore additional production opportunities or to improve or develop new product, manufacturing or performance technologies to reduce production cost.

(ii) *Complexity of R&D or services assignment.* A weighting for the complexity of the R&D or services assignment will be considered when a contract, such as an A–E contract, relates to a DOE project facility. The following complexity categories are to be used for the purpose of establishing the appropriate fee weight:

(A) *Class A*—Manufacturing plants involving continuous closed processes or other complicated operations requiring a high degree of design particle accelerators; complex laboratories or industrial units especially designed for processing, testing or handling highly radioactive materials; facilities to be used for research, development, experimental or demonstration purposes which involve advance or unique design considerations that are peculiar to the purposes for which the facility is built.

(B) *Class B*—Normal manufacturing processes and assembly operations such as ore dressing, metal working plants and simple processing plants; power plants and accessory switching and transformer stations; water treatment plants; sewage disposal plants; hospitals and ordinary laboratories.

(C) *Class C*—Permanent administrative and general service buildings, permanent housing, roads, railroads, grading, sewers, storm drains and water and power distribution systems.

(D) *Class D*—Construction camps and facilities and other construction of a temporary nature.

(iii) *Operating capital.* This factor includes consideration of the level of the contractor's operating or working capital investment required for effective contract performance. This level will vary, depending on such circumstances as (A) the nature of the work and duration of the contract, (B) contract type and dollar magnitude, (C) the reimbursement or progress payment rate, (D) the contractor's financial management practices, and (E) the frequency of and time lag between billings and Government payments. Such circumstances should be taken into account in determining what profit adjustment, if any, is appropriate under this subfactor. When the contractor will invest relatively few dollars for operating capital purposes (because of cost reimbursement and progress payment rates, or when an advance payment method (such as a letter of credit) is used to finance the contractor), a negative adjustment may be appropriate.

(h) *Productivity/Performance adjustment for follow-on contracts.* (1) One of the objectives of the DOE profit policy is to reduce costs needed to achieve national energy goals by encouraging contractor investment in modern cost-reducing facilities and other improvements in efficiency and performance. To the extent that costs serve as the basis for pricing (both cost and profit), success in reducing costs can serve in turn to reduce the magnitude of prospective profit dollars on follow-on contracts. For example, a cost-plus-award-fee contract may be awarda as the first of two or more contracts required for a major energy program. The incentive to increase productivity or performance and reduce cost under the first contract works against the contractor on any follow-on contracts because the reduced level of costs becomes a part of the basis for pricing subsequent contracts. In order to mitigate the relative loss of prospective profit dollars on a follow-on contract that occurs when costs are reduced under the predecessor contract or contracts due to productivity or performance gains, a special "Productivity/Performance Reward" may be included in the prenegotiation profit objective of a pending follow-on acquisition under certain circumstances.

(2) The "Productivity/Performance Reward" may be applied when all of the following criteria are met:

(i) The pending acquisition is for a follow-on contract.

(ii) Reliable actual cost data relating to the predecessor contract or contracts is available to establish a fair and reasonable cost baseline.

(iii) Changes made in the configuration of the item being acquired or in the technical aspects of the services being performed are not likely to invalidate price comparability.

(3) The amount of productivity or performance reward for a given follow-on contract is based on the estimated cost reduction on the predecessor contract or contracts that can be attributed to productivity or performance gains. Set forth below are principles and procedures that apply to estimating cost reductions and calculating the productivity or performance reward:

(i) The contractor shall prepare and support the cost reduction estimate.

(ii) The overall contract cost decrease shall be based on estimated decreases measured at the unit cost level, or equivalent.

(iii) The lowest average unit cost or its equivalent (exclusive of profit) for a preceding performance period or production run shall serve as the unit cost baseline.

(iv) A technique shall be employed to determine that portion of the cost decrease attributable to productivity or performance gains as opposed to other factors such as the effects of quality differences between the base contract and the pending acquisition.

(v) When the parties agree that the estimated overall contract cost decrease is materially affected by price level differences between the base period and the current point in time, an economic price adjustment may be applied to the estimate.

(vi) The reward shall be calculated by multiplying the contract cost decrease due to productivity/performance gains by the base profit objective rate.

(vii) The degree of review and validation of the data supporting the reward calculation shall be commensurate with the materiality of this profit element in relation to the overall price objective.

(4) There may be several methods advanced, by both contracting officers and contractors, to quantify productivity/performance gains. Any technique may be acceptable, provided it equitably takes into account the principles and procedures listed above.

915.971 Profit and fee-system for construction and construction management contracts.

915.971-1 General.

(a) Business concerns awarded a DOE construction or construction management contract shall be paid a profit or fee if requested or solicited. The profit or fee objective for a construction or construction management contract shall be an amount appropriate for the type of effort contained therein. It is the intent of DOE to (1) reward contractors based on the complexity of work, (2) reward contractors who demonstrate and establish excellent records of performance and (3) reward contractors who contribute their own resources, including facilities and investment of capital.

(b) Standard fees or across-the-board agreements will not be used or made. Profit or fee objectives are to be determined for each contract according to the effort or task contracted for thereunder.

(c) Profit or fee payable on fixed-price and cost-reimbursable construction or construction management contracts shall be established in accordance with the appropriate procedures and schedules set forth in this subpart.

915.971-2 Limitations.

Amounts payable under construction and construction management contracts shall not exceed amounts derived from the schedules established for this purpose. Requests to pay fees in excess of these levels shall be forwarded to the Procurement Executive for review and approval.

915.971-3 Factors for determining fees.

(a) The profit policy stated in 915.971-1(a) reflects, in a broad sense, recognition that profit is compensation to contractors for the entrepreneurial function of organizing and managing resources (including capital resources), and the assumption of risk that all costs of performance (operating and capital) may not be reimbursable.

(b) The best approach calls for a structure that allows judgmental evaluation and determination of fee dollars for prescribed factors which impact the need for, and the rewards associated with, fee or profit, as follows.

(i) Management risk relating to performance, including the (A) quality and diversity of principal work tasks required to do the job, (B) labor intensity of the job, (C) special control problems, and (D) advance planning, forecasting and other such requirements;

(ii) The presence or absence of financial risk, including the type and terms of the contract;

(iii) The relative difficulty of work, including consideration of technical and administrative knowledge, skill, experience and clarity of technical specifications;

(iv) Degree and amount of contract work required to be performed by and with the contractor's own resources, including the extent to which the contractor contributes plant, equipment, computers, or working capital (labor, etc.);

(v) Duration of project;

(vi) Size of operation;

(vii) Benefits which may accrue to the contractor from gaining experience and know-how, from establishing or enhancing a reputation, or from being enabled to hold or expand a staff whose loyalties are primarily to the contractor; and

(viii) Other special considerations, including support of Government programs such as those relating to small and small disadvantaged business in subcontracting, energy conservation, etc.

(c) The total fee objective and amount for a particular negotiation is established by judgmental considerations of the above factors, assigning fee values as deemed

appropriate for each factor and totaling the resulting amounts.

(d) In recognition of the complexities of this process, and to assist in promoting a reasonable degree of consistency and uniformity in its application, fee schedules have been developed which set forth maximum fee amounts that contracting activities are allowed to negotiate for a particular transaction without obtaining prior approval of the Procurement Executive. In addition, the fee negotiation objective established in accordance with 915.971-3(a), (b), and (c) shall not exceed the applicable fee schedule amounts without prior approval of the Procurement Executive. To facilitate application to a contract, the fee amounts are related to the total cost base which is defined as total operating and capital costs.

915.971-4 Considerations affecting fee amounts.

(a) In selecting final fee amounts for the various factors in 915.971-3 of this section, the DOE negotiating official will have to make several judgments as discussed in this subsection.

(b) Complexity of a construction project shall be considered by analysis of its major parts. For a project which includes items of work of different degrees of complexity, a single average classification should be considered, or the work should be divided into separate classifications. The following class identifications are appropriate for proper fee determinations.

(1) *Class A*—Manufacturing plants involving continuous closed processes or other complicated operations requiring a high degree of design layout or process control; nuclear reactors; atomic particle accelerators; complex laboratories or industrial units especially designed for handling radioactive materials.

(2) *Class B*—Normal manufacturing processes and assembly operations such as ore dressing, metal working plant and simple processing plants; power plants and accessory switching and transformer stations; water treatment plants; sewage disposal plants; hospitals; and ordinary laboratories.

(3) *Class C*—Permanent administrative and general service buildings, permanent housing, roads, railroads, grading, sewers, storm drains, and water and power distribution systems.

(4) *Class D*—Construction camps and facilities and other construction of a temporary nature.

(c) Normal management elements of principal tasks relating to a construction contract cover several categories of tasks with differing rates of application throughout the construction period. The principal elements of management effort are outlined in this paragraph. Although each project has a total management value equal to 100% for all elements, the distribution of effort among the various elements will be different for each project due to differences in project character or size. The basic management elements and the normal range of efforts expected to apply for a normal sized project are as follows. When the normally expected effort will not be performed by a contractor, this fact should be considered in arriving at appropriate fee amounts.

Management elements	Effort range	
	Minimum	Maximum
I. *Broad project planning.*—Overall project planning and scheduling, establishment of key project organization and consultation with the A-E and DOE. Performed by highest level of contractor's officers, technical personnel and project manager	15	25
II. *Field planning.*—Mobilization and demobilization of top field organization from the contractor's existing organization and from other sources as necessary. Detailed project planning and scheduling for construction of facilities. Performed by the project manager and top field professional staff	18	28
III. *Labor supervision.*—Direct supervision of manual employees. Performed by contractor's subprofessional staff, such as superintendents and foremen (some salaried and some hourly rate). This includes the contractor's personnel to coordinate and expedite the work of subcontractors	12	16
IV. *Acquisition and subcontracting.*—Acquisition of other than special equipment. Selection of subcontractors and execution and administration of subcontracts. Performed by contractor's staff under supervision and direction of elements I and II	12	16
V. *Labor relations and recruitment (manual).*—Performed by the contractor's staff under supervision and direction of elements I, II and III. This includes demobilization of work forces	7	11
VI. *Recruitment of supervisory staff.*—Staffing required to supplement the organization under elements I and II, and demobilization during completion of the project. Performed by contractor's permanent staff and recruitment personnel under supervision and direction of management elements I and II	4	6
VII. *Expediting.*—Expediting contracting performed by contractor's staff and by subcontractors. Performed by contractor's staff under supervision and direction of elements I and II	4	6
VIII. *Construction equipment operations.*—This includes mobilization and demobilization. Performed by contractor's staff under supervision, direction and coordination of elements I, II, and IV.	4	6
IX. *Other services.*—Timekeeping, cost accounting, estimating, reporting, security, etc., by the contractor's staff under supervision and direction of elements I and II	4	6

(d) Fee considerations dealing with the duration of a project are usually provided by the consideration given to the degree of complexity and magnitude of the work. In only very unusual circumstances should it be necessary to separately weight, positively or negatively, for the period of services or length of time involved in the project when determining fee levels.

(e) The size of the operation is to a considerable degree a continuation of the complexity factor, and the degree and amount of work required to be performed by and with the contractor's own resources. Generally, no separate weighting, positively or negatively, is required for consideration of those factors.

(f) The degree and amount of work required to be performed by and with the contractor's own resources affect the level of fees. Reasonable fees should be based on expectations of complete construction services normally associated with a construction or construction management contract. In the case of a construction contract, reduced services can be in the form of excessive subcontracting or supporting acquisition actions and labor relation interfaces being made by the government. If an unusual amount of such work is performed by other than the contractor, it will be necessary to make downward adjustments in the fee levels to provide for the reduction in services required.

(g) The type of contract to be negotiated and the anticipated contractor cost risk shall be considered in establishing the appropriate fee objective for the contract.

(h) When a contract calls for the contractor to use its own resources, including facilities and equipment, and to make its own cost investment (i.e., when there is no letter-of-credit financing), a postive impact on the fee amount shall be reflected.

915.971-5 Fee schedules.

(a) The schedules included in this paragraph, adjusted in accordance with provisions stated herein and 915.971-6, provide maximum fee levels for construction and construction management contracts. The fees are related to the estimated cost (fee base) for the construction work and services to be performed. The schedule in paragraph (d) sets forth the basic fee schedule for construction contracts. The schedule in paragraph (f) sets forth the basic fee schedule for construction management contracts. A separate schedule in paragraph (h) has been developed (i) for determining the fee applicable to special equipment purchases and (ii) to reflect a differing level of fee consideration associated with the subcontractor effort under construction management contracts. (See 915.971-6(c) and 915.971-6(d)).

(b) The schedules cited in paragraph (a) above provides the maximum fee amount for a CPFF contract arrangement. If a fixed-price type contract is to be awarded, the fee amount set forth in the fee schedules shall be increased by an amount not to exceed 4 percent of the fee base.

(c) The fee schedule shown in paragraphs (d) and (f) assumes a letter of credit financing arrangement. If a contract provides for or requires the contractor to make their own cost investment for contract performance (i.e., when there is no letter-of-credit financing), the fee amounts set forth in the fee schedules shall be increased by an amount equal to 5 percent of the fee amount as determined from the schedules.

(d) The following schedules sets forth the base for construction contracts.

CONSTRUCTION CONTRACTS SCHEDULE

Fee base	Fee	Fee percent	Increment percent
$100,000	$5,400	5.40	5.25
$300,000	15,900	5.30	5.00
$500,000	25,900	5.18	4.72
$1,000,000	49,500	4.95	3.33
$3,000,000	116,100	3.87	2.82
$5,000,000	172,500	3.45	2.53
$10,000,000	299,000	2.99	2.18
$15,000,000	408,000	2.72	1.90
$25,000,000	598,000	2.39	1.68
$40,000,000	850,000	2.13	1.46
$60,000,000	1,142,000	1.90	1.28
$80,000,000	1,398,000	1.75	1.24
$100,000,000	1,646,000	1.65	1.03
$150,000,000	2,161,000	1.44	.80
$200,000,000	2,561,000	1.28	.65
$300,000,000	3,211,000	1.07	.50
$400,000,000	3,711,000	.93	.35
$500,000,000	4,061,000	.81	
Over $500 million	4,061,000		[1].35

[1] 0.35 percent excess over $500 million.

(e) When using the Construction Contracts Schedule for establishing maximum payable basic fees, the following adjustments shall be made to the Schedule fee amounts for (1) complexity levels, (2) excessive subcontracting, (3) normal contractor services performed by the government or another contractor:

(i) The target fee amounts, set forth in the fee schedule, shall not be adjusted for a Class A project, which is maximum complexity. A Class B project requires a 10 percent reduction in amounts. Class C and D projects require a 20 percent and 30 percent reduction, respectively. The various classes are defined in 915.971–4(b).

(ii) The target fee schedule provides for 45 percent of the contract work to be subcontracted for such things as electrical and other specialties. Excessive subcontracting results when such efforts exceed 45 percent of the total contract work. To establish appropriate fee reductions for excessive subcontracting, the negotiating official should first determine the amount of subcontracting as a percentage of the total contract work. Next, the negotiating official should determine a percentage by which the prime contractor's normal requirement (based on a requirement for doing work with its own forces) is reduced due to the excessive subcontracting and, finally, multiply the two percentages to determine a fee reduction factor.

(iii) If acquisition or other services normally expected of the contractor (see 915.971–4(c)) are performed by the government, or another DOE prime or operating contractor, a fee reduction may also be required. The negotiating official should first determine what percentage of the total procurement or other required services is performed by others. Then the negotiating official should apply this percentage reduction to the normally assigned weightings for the management services or effort as discussed in 915.971–4(c) to arrive at the appropriate reduction factor.

(f) The following schedule sets forth the base fee for construction management contracts:

CONSTRUCTION MANAGEMENT CONTRACTS SCHEDULE

Fee base	Fee	Fee, percent	Increment, percent
$100,000	$5,400	5.40	5.25
$300,000	15,900	5.30	5.00
$500,000	25,900	5.18	4.72
$1,000,000	49,500	4.95	3.33
$3,000,000	116,100	3.87	2.82
$5,000,000	172,500	3.45	2.53
$10,000,000	299,000	2.99	2.18
$15,000,000	408,000	2.72	1.90
$25,000,000	596,000	2.39	1.68
$40,000,000	850,000	2.13	1.46
$60,000,000	1,142,000	1.90	1.28
$80,000,000	1,398,000	1.75	1.24
$100,000,000	1,646,000	1.65	1.03
Over $100 million	1,646,000		[1]1.03

[1] 1.03 percent over $100 million.

(g) When applying the basic Construction Management Contracts Schedule for determining maximum payable fees, no adjustments are necessary to such payable fees for contractor Force account labor used for work which should otherwise be subcontracted until such Force account work exceeds, in the aggregate, 20 percent of the base. Excessive use of Force account work results when such effort exceeds 20 percent of the fee base; and, when this occurs, appropriate fee reductions for such excessive Force account labor shall be computed as follows:

(1) Determine the percentage amount of Force account work to total contractor effort.

(2) Determine the percentage amount of subcontract work reduced due to the use of Force account work.

(3) Multiply the two percentages to determine the fee reduction factor. It is not expected that reductions in the Construction Management Contracts Schedule fee amounts will be made for complexity, reduced requirements and similar adjustments as made for construction contracts.

(h) The schedule of fees for consideration of special equipment purchases and for considerations of the subcontract program under a construction management contract is as follows:

SPECIAL EQUIPMENT PURCHASES/ SUBCONTRACT WORK SCHEDULE

Fee base	Fee	Fee, percent	Increment, percent
$100,000	$1,500	1.50	1.50
$200,000	3,000	1.50	1.47
$400,000	5,940	1.48	1.39
$600,000	8,720	1.45	1.29
$800,000	11,300	1.41	1.15
$1,000,000	13,600	1.36	1.00
$2,000,000	23,600	1.18	.80
$4,000,000	39,600	.99	.62
$6,000,000	52,000	.87	.62
$8,000,000	64,400	.81	.57
$10,000,000	75,800	.76	.53
$15,000,000	102,300	.68	.45
$25,000,000	147,300	.59	.42
$40,000,000	210,300	.53	.36
$60,000,000	282,300	.47	.33
$80,000,000	348,300	.44	.28
$100,000,000	404,800	.41	.22
$150,000,000	514,300	.34	.15
$200,000,000	589,300	.29	.09
$300,000,000	679,300	.23	
Over $300 million	679,300		[1] .09

[1] 0.09 percent excess over $300 million.

915.971–6 Fee base.

(a) The fee base shown in the Construction Contracts Schedule and Construction Management Contracts Schedule represents that estimate of cost to which a percentage factor is applied to determine maximum fee allowances. The fee base is the estimated necessary allowable cost of the construction work or other services which are to be performed. It shall include the estimated cost for, but is not limited to, the following as they may apply in the case of a construction or construction management contract:

(1) Site preparation and utilities.

(2) Construction (labor-materials-supplies) of buildings and auxiliary facilities.

(3) Construction (labor-materials-supplies) to complete/construct temporary buildings.

(4) Design services to support the foregoing.

(5) General management and job planning cost.

(6) Labor supervision.
(7) Procurement and acquisition administration.
(8) Construction performed by subcontractors.
(9) Installation of government furnished or contractor acquired special equipment and other equipment.
(10) Equipment (other than special equipment) which is to become Government property (including a component of Government property).

(b) The fee base for the basic fee determination for a construction contract and construction management contract shall include all necessary and allowable costs cited in paragraph (f)(2) as appropriate to the type of contract; except, any home office G&A expense paid as a contract cost per cost principle guidance and procedures shall be excluded from the fee base. The fee base shall exclude:
(1) Cost of land.
(2) Cost of engineering (A&E work).
(3) Contingency estimate.
(4) Equipment rentals or use charges. (See 936.70.)
(5) Cost of government furnished equipment or materials.
(6) Special equipment as defined in 936.7200(b)(4).

(c) A separate fee base shall be established for special equipment for use in applying the Special Equipment Purchases or Subcontract Work Schedule (see 915.971-5(f)). The fee base for determination of applicable fees on special equipment shall be based on the estimated purchase price of the equipment.

(d) The fee base under the Construction Management Contracts Schedule for a maximum basic fee determination for a construction management contract shall be comprised of only the costs of the construction manager's own efforts. However, it is recognized that in the case of construction management contracts, the actual construction work will be performed by subcontractors. In most cases the subcontract awards for the construction work will be made by the construction management contractor. Occasionally the contract may involve management of construction performed under a contract awarded by the Department or by one of the Department's operating contractors. In these cases, the actual cost of the subcontracted construction work shall be excluded from the fee base used to determine the maximum basic fee (under the Construction Management Contracts Schedule) applicable to a construction management contract. A separate fee base for additional allowances (using the Special Equipment Purchases or Subcontract Work Schedule) shall be established, which shall be comprised of those subcontract construction costs, special equipment purchases, and other items' costs that are contracted for or purchased by the construction manager.

915.972 Special considerations for cost-plus-award-fee contracts.

(a) When a contract is to be awarded on cost-plus-award-fee basis in accordance with 916.404-2, several special considerations are appropriate.

(1) The base fee portion of the fee objective of an award fee contract may range from 0% up to the 50% level of the fee amount for a Cost-Plus-Fixed-Fee (CPFF) contract, arrived at by using the weighted guidelines or other techniques (such as those provided in 915.971 for construction and construction management contracts). However, the base amount should not normally exceed 50% of the otherwise applicable fixed fee. In the event this 50% limit is exceeded, appropriate documentation shall be entered into the contract file. In no event shall the base fee exceed 60% of the fixed fee amount.

(2) The base fee plus the amount included in the award fee pool should normally not exceed the fixed fee (as subjectively determined or as developed from the fee schedule) by more than 50%. However, in the event the base fee is to be less than 50% of the fixed fee, the maximum potential award fee may be increased proportionately with the decreases in base fee amounts.

(3) The following maximum potential award fees shall apply in award fee contracts: (percent is stated as percent of fee schedule amounts).

Base fee percent	Award fee percent	Maximum total percentage
50	100	150
40	120	160
30	140	170
20	160	180
10	180	190
0	200	200

(b) Prior approval of the Procurement Executive, is required for total fee (base plus award fee pool) exceeding the guidelines in 915.972(a)(3). Additionally, in the event use of the award fee guidelines exceeds the statutory limitations discussed in FAR 15.903(d)(1)(i), (ii) and (iii), prior approval of the Procurement Executive shall also be required.

Subpart 915.10—Preaward and Postaward Notifications, Protests, and Mistakes

915.1002 Debriefings of unsuccessful offerors.

(a) Debriefings must be requested within 10 working days of receipt of notification of elimination from consideration or announcement of selection. Contracting officers shall advise unsuccessful offerors of this limitation in such notification letter(s). Debriefings will be provided at the earliest feasible time, which normally shall be after announcement of the selection decision and prior to award of the contract. However, when the exigency of the situation will not permit delaying the award in order to debrief unsuccessful offerors, such debriefing may be conducted after award of the contract. The contracting officer, may if it is decided the facts justifies such action, receive and act upon request received at a later date. Also see 924.202(b).

PART 916—TYPES OF CONTRACTS

Subpart 916.2—Fixed-Price Contracts

Sec.
916.203 Fixed-price contracts with economic price adjustment.
916.203-4 Contract clauses.
916.206 Fixed-ceiling-price contracts with retroactive price redetermination.
916.206-3 Limitations.
916.207 Firm-fixed-price, level-of-effort term contracts.
916.207-3 Limitations.

Subpart 916.3—Cost-Reimbursement Contracts

916.301-3 Limitations.
916.303 Cost-sharing contracts.
916.306 Cost-plus-fixed-fee contracts.
916.307 Contract clauses.

Subpart 916.4—Incentive Contracts

916.404-2 Cost-plus-award-fee contracts.
916.405 Contract clauses.

Subpart 916.6—Time-And-Materials, Labor-Hour, and Letter Contracts

916.603 Letter contracts.
916.603-2 Application.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

Subpart 916.2—Fixed-Price Contracts

916.203 Fixed-price contracts with economic price adjustments.

916.203-4 Contract clauses.

(d)(2) The Head of the Contracting Activity, or designee, for contracts estimated to be within the limits of their delegated authority, may approve the

use of an economic price adjustment clause when appropriate in accordance with FAR 16.203-4(d)(1).

916.206 Fixed-ceiling-price contracts with retroactive price redetermination.

916.206-3 Limitations.

(d) The Head of the Contracting Activity, or designee, for contracts estimated to be within the limits of delegated authority, may approve the use of a fixed-ceiling-price contract with retroactive price redetermination.

916.207 Firm-fixed-price, level-of-effort term contracts.

916.207-3 Limitations.

(d) The Head of the Contracting Activity, or designee, for contracts estimated to be within the limits of their delegated authority, may approve the use of a firm-fixed-price, level-of-effort term contract in excess of $100,000.

Subpart 916.3—Cost-Reimbursement Contracts

916.301-3 Limitations.

(c) The determination and findings required by FAR 16.301-3(c) may be approved at a level above the contracting officer. Such determination and findings shall be prepared using the following format:

Department of Energy

Determination and Findings

Authority To Use Cost-Reimbursement Type Contract

I hereby find that:

(1) The Department of Energy proposes to contract with (name of proposed contractor) for (describe work, service, or product) (identify program or project). The estimated cost is ($——) (if contract is CPFF type, insert, "plus a fixed fee of ($——) which is —— percent of the estimated cost exclusive of fee").

(2) (Set forth facts and circumstances that show why it is impracticable to secure property or services of the kind or quantity required without the use of the proposed type of contract or why the proposed method of contracting is likely to be less costly than other methods.)

I hereby determine that:

On the basis of the above findings it is impracticable to secure the property or services of the kind or quality required without the use of a (insert contract type————) type of contract, or the (insert contract type ————) method of contracting is likely to be less costly than any other method.

Date ————————————

(Signature) ————————————

916.303 Cost-sharing contracts.

(b) DOE cost participation policies and application are at Subpart 917.70, Cost Participation.

916.306 Cost-plus-fixed-fee contracts.

(c)(2) The head of the Contracting Activity, or designee, for contracts estimated to be within their delegated authority, may approve (sign) the determination and findings establishing the basis for application of the statutory price or fee limitations.

916.307 Contract clauses.

(j) The contracting officer shall insert the clause at FAR 52.216-15, Predetermined Indirect Cost Rates, modified as specified in 952.216-15 in solicitations and contracts when a cost-reimbursement research and development contract with a State or local government is contemplated and predetermined indirect cost rates are to be used.

Subpart 916.4—Incentive Contracts

916.404-2 Cost-plus-award-fee contracts.

(d) *Fee Determination Plans.*—Award fee arrangements limited to technical performance considerations are prohibited because they may increase cost disproportionately to any benefits gained. Instead, the award fee arrangement shall include both technical performance (including scheduling as appropriate) and business management considerations tailored to the needs of the particular situation. In addition, in a situation where cost estimating reliability and other factors are such that the negotiation of a separate predetermined incentive sharing arrangement applicable to cost performance is detemined both feasible and advantageous, cost incentives may be added. The resulting contract would then be identified as a cost-plus-incentive-fee/award-fee combination type. The goals and evaluation criteria should be results-oriented. The award fee should be concentrated on the end product of the contract, that is, output, be it hardware, research and development, demonstration or services, together with business management considerations. However, input criteria such as equal employment opportunity, small business programs, functional management areas, such as safety, security, etc., should not be disregarded and may be appropriate criteria upon which to base some part of the award fee. Specific goals or objectives shall be established in relation to each performance evaluation criterion against which contractor performance is measured.

916.405 Contract clauses.

(e) Award fee contracts should include in the contract schedule the ARTICLES shown below. The Articles may be modified to meet individual situations and any ARTICLE or specified requirement therein should be deleted when it is not applicable to a given contract. If substantial changes are believed appropriate, consultation with the Director, Office of Policy, Headquarters, is advisable.

ARTICLE (Insert Article Number)—ESTIMATED COST, BASE FEE, AND AWARD FEE

The estimated cost of this contract is $ (Insert Amount). A base fee of $ (Insert Amount) is payable in accordance with the ARTICLE entitled "Payment of Base and Award Fee." In addition, a maximum Award Fee of $ (Insert Amount) is available for payment in accordance with the ARTICLE entitled "Payment of Base and Award Fee."

ARTICLE (Insert Article Number)—PAYMENT OF BASE AND AWARD FEE

Base Fee. The government will make payment of the base fee in (Insert Number) increments. The amount payable shall be based on the progress as determined by the Contracting Officer and shall be subject to any withholdings as may be provided for elsewhere in this contract.

Award Fee. The government will promptly make payment of any Award Fee upon the submission, by the contractor to the Contracting Officer or his authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment shall be made without the need for a contract modification.

ARTICLE (Insert Article Number)—DETERMINATION OF AWARD FEE EARNED

A. The government shall at the conclusion of each specified evaluation period(s) evaluate the contractor's performance for a determination of award fee earned. The contractor agrees that the determination as to the amount of award fee earned will be made by the government Fee Determination Official (FDO) and such determination concerning the amount of award fee earned is binding on both parties and shall not be subject to appeal under the "Disputes" clause or to any other appeal clause.

B. It is agreed that the evaluation of contractor performance shall be in accordance with the Performance Evaluation Plan referenced in the ARTICLE entitled "Performance Evaluation Plan" and that the contractor shall be promptly advised in writing of the determination, and the reasons why it was or was not earned. It is further agreed that the contractor may submit a self-evaluation of performance for each period under consideration. While it is recognized that the basis for determination of the fee shall be the evaluation by the government, any self-evaluation which is received within (Insert Number) days after the end of the period being evaluated, may be given such consideration, if any, as the FDO shall find appropriate.

C. The FDO may, in his sole discretion, specify in any fee determination that fee not earned during the period evaluated may be

accumulated and be available for allocation and/or "Distribution of Award Fee" shall be adjusted to reflect such allocations.

ARTICLE (Insert Article Number)—PERFORMANCE EVALUATION PLAN

A. A contractor Performance Evaluation Plan upon which the determination of award fee shall be based, including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area, will be unilaterally established by the government. A copy of the plan shall be provided to the contractor (Insert Number) calendar days prior to the start of the first evaluation period.

B. The Performance Evaluation Plan shall set forth the criteria upon which the contractor will be evaluated for performance relating to any (1) Technical including Schedule requirements if appropriate, (2) Management, and (3) Cost Functions selected for evaluation.

C. The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the government at any time during the period of performance. Notification of such changes shall be provided to the contractor (Insert Number) calendar days prior to the start of the evaluation period to which the change will apply.

ARTICLE (Insert Article Number)—DISTRIBUTION OF AWARD FEE

A. The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period ——————————
Available Award Fee ——————————

B. In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official.

The contract clauses required for cost reimbursement contracts should be modified for use under award fee contracts as cited below:

(i) The words "base fee and award fee" should be substituted for the term "fixed-fee" where it appears in the clause at FAR 52.243–2, Changes.

(ii) The words "base fee" should be substituted for the word "fee" where it appears in the clauses at FAR 52.232–20, Limitation of Costs, and FAR 52.232–22, Limitation of Funds.

(iii) The words "base fee, if any, and such additional fee as may be awarded as provided for in the schedule" should be substituted for the term "fee" wherever it appears in the clause at FAR 52.216–7, Allowable Cost and Payment.

Subpart 916.6—Time-And-Materials, Labor-Hour, and Letter Contracts

916.603 Letter contracts.

916.603–2 Application.

(c) In accordance with FAR 16.603–2(c), a letter contract shall provide for definitization of the contract not more than 180 days after the date of award or after completion of 40 percent of the work to be performed, whichever occurs first, unless approved in advance by the Procurement Executive.

(d) In accordance with FAR 16.603–2(d), the amount of funds obligated under a letter contract shall not exceed 50 percent of the estimated cost of the definitive contract unless approved in advance by the Procurement Executive.

(f) Letter contract awards should be reported in the Procurement and Assistance Data System as soon after award as possible. Should it be necessary to modify a letter contract prior to its definitization, such actions shall be handled and reported as formal modifications as they occur. The actual definitization of the letter contract in turn, shall be accomplished by formal modification and be reported as such.

PART 917—SPECIAL CONTRACTING METHODS

Subpart 917.5—Interagency Acquisition Under the Economy Act

Sec.
917.502 General.
917.504 Ordering procedures.
917.505–70 Methods of financing employed by DOE.
917.505–71 Cost-reimbursement standards.

Subpart 917.6—Management and Operating Contracts

917.600 Scope of subpart.
917.604 Identifying management and operating contracts.
917.605 Award, renewal, and extension.

Subpart 917.70—Cost Participation

917.7000 Scope of subpart.
917.7001 Policy.
917.7002 Application.
917.7003 Amount of cost participation.
917.7004 Disposition of property and equipment furnished or acquired.
917.7005 Records.
917.7006 Payments under contracts with third party cost contributions.
917.7007 In-kind contributions.

Subpart 917.71—Special Research Contracts With Educational Institutions

917.7100 Scope of subpart.
917.7101 Definitions.
917.7102 General.
917.7103 Research program objectives.
917.7104 Other objectives.
917.7105 Unsolicited research proposals.
917.7106 Selection, preparation, and award.
917.7106–1 General.
917.7106–2 Responsibilities.
917.7106–3 Review of research proposals.
917.7106–4 Compensation for personal services of professional staff.
917.7106–5 Notice of selection or rejection.
917.7106–6 Selection of field office.
917.7106–7 Information to be furnished to field office.
917.7106–8 Changes in scope and level.
917.7106–9 Notification of contract execution.
917.7107 Contract content.
917.7107–1 General.
917.7107–2 Financial requirements.
917.7108 Personal property.
917.7108–1 Transfer of title to equipment to nonprofit educational or research institutions.
917.7108–2 Acquisition of excess Government personal property.
917.7108–3 Management of Government-owned equipment.
917.7108–4 Reports.
917.7109 Reporting requirements.
917.7109–1 Purpose of reports.
917.7109–2 Notice of Energy R&D Project.
917.7109–3 Progress reports.
917.7109–4 Technical reports.
917.7109–5 Special reports.
917.7109–6 Final report.
917.7109–7 Summary and distribution of reports.
917.7110 Dissemination of results.
917.7110–1 Prompt dissemination.
917.7110–2 Publication.
917.7111 Extension of contracts.
917.7111–1 Renewal proposals.
917.7111–2 Evaluation of requests for renewals.
917.7111–3 Authorization to renew.
917.7112 Administration.
917.7112–1 Responsibilities of program offices.
917.7112–2 Responsibilities of field offices.
917.7112–3 Payments under special research contracts.
917.7112–4 Approval of deviations in performance and other specified actions.
917.7112–5 Auditing.
917.7112–6 Security.
917.7113 Format for Special Research Contracts (SRC) with educational institutions or other nonprofit institutions.

Subpart 917.72—Program Opportunity Notices for Commercial Demonstrations

917.7200 Scope of subpart.
917.7201 Policy.
917.7201–1 General.
917.7201–2 Determination to use and approval of content.
917.7201–3 Federal support criteria.
917.7201–4 Information to be included in program opportunity notices.
917.7201–5 Information to be provided in proposals offered pursuant to program opportunity notices.
917.7202–1 Forms of assistance and participation.
917.7202–2 Cost participation.
917.7203 Method and criteria for evaluation and selection.
917.7204 Award or support.
917.7205 Unsolicited proposals for commercial demonstrations.
917.7206 Optional two-step method.

Subpart 917.73—Program Research and Development Announcements

917.7300 Scope of subpart.
917.7301 Policy and prerequisites.
917.7301–1 General.
917.7301–2 Determination to use and approval of content.

917.7301-3 Information to be included.
917.7301-4 Information to be provided in proposals.
917.7302 Cost participation.
917.7303 Method and criteria for evaluation and selection.
917.7304 Award or support.

Subpart 917.74—Acquisition, Use, and Disposal of Real Estate

917.7400 Scope of subpart.
917.7401 General.
917.7402 Policy.
917.7403 Application.
917.7404 Competition.

Subpart 917.75—Multiple Awards—Phased Acquisitions

917.7500 Scope of subpart.
917.7501 RFP provisions.
917.7502 Evaluation.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 917.5—Interagency Acquisition Under the Economy Act

917.502 General.

The Head of the Contracting Activity shall make the determination prescribed in FAR 17.502.

917.504 Ordering procedures.

(b) In addition to the items noted at FAR 17.504(b), agreements shall include:

(1) The parties to the interagency agreement.

(2) Agreement number, or modification number, if any as appropriate.

(3) Period covered by interagency agreement and/or duration of the work.

(4) Cost estimate of the project and the amount of funds to be provided by the DOE including (i) the total estimated cost of the work for the period of time specified in the agreement; (ii) the capital equipment, if any, approved for acquisition under the agreement; and (iii) limitations, if any, on the reimbursement of costs by DOE which are not set forth in the agreement. If DOE participates with another agency or agencies in sponsoring a work project, the amount of contribution to be made by each agency and the basis for distributing the costs incurred shall be specified.

(5) Method of financing to be used.

(6) Standard clauses, and reporting requirements as appropriate.

917.505-70 Methods of financing employed by DOE.

(a) Except as specified in (b) and (c) below DOE prefers to finance work done by servicing agencies by reimbursement on the basis of current billings for progress payments.

(b) A consolidated working fund advance shall be used to finance small or medium construction projects buy or the acquisition of goods or services of lesser value from the servicing agency within the same fiscal year in which the advance is made, only after a determination has been made that the reimbursement basis is not to be used.

(c) An appropriation transfer shall be used to finance larger construction projects buy or the acquisition of more costly goods or services from the servicing agency where the work will extend beyond the fiscal year in which the transfer is made, only after a determination has been made that the reimbursement basis is not to be used.

917.505-71 Cost-reimbursement standards.

(a) Incurred cost necessary or incident to the performance of the work of servicing agencies are to be considered allowable for cost-reimbursement purposes. Such costs include direct and, where applicable, indirect costs:

(b) Direct costs are the costs that can be directly identified with work under the agreement. Examples of such costs are salaries and wages, technical services, materials, travel and transportation, communications, and any facilities and equipment expressly approved for purchase under the interagency agreement.

(c) Indirect costs shall be limited to the properly allocable portion of costs that are not charged directly to the work but which can be shown as mutually benefiting the work covered by the interagency agreement as well as other work of the servicing agency. Justification for any such charges shall be required, and the basis of allocation must be reasonable. Where agreements are entered into under authority of section 601 of the Economy Act of 1932, the servicing agency's charge for any indirect costs may include appropriately allocable charges for "general administration" or "central agency overhead," as provided in Comptroller General Decision, 56 Comp. Gen. 275 (1977) as modified by 57 Comp. Gen. 674 (1978). However, general administrative or central agency overhead is chargeable only to the extent specified in the interagency agreement.

Subpart 917.6—Management and Operating Contracts

917.600 Scope of subpart.

This subpart implements FAR Subpart 17.6, Management and Operating Contracts. DOE implementing procedures and requirements to be followed in the selection, award, and administration of Management and Operating Contracts are at Part 970.

917.604 Identifying management and operating contracts.

(a) Single purpose contracts for the operation of process development units, pilot plants, and demonstration plants where the purpose is to demonstrate the viability of processes toward the goal of commercialization are not considered to be included, unless designated operating contracts in accordance with FAR 17.602.

917.605 Award, renewal, and extension.

(b) The decision to extend or compete management and operating contracts requires advance Headquarters' approval. The Head of the Contracting Activity will submit a memorandum that recommends either extending or not extending a management and operating contract. This memorandum of recommended action, together with attachments supporting it, will be submitted at least 18 months prior to expiration of the contract. The attachments shall include the following information:

(1) A full and complete justification of the recommendation that is made; i.e., either to obtain competition or to extend the contract without obtaining competition. This justification must address the policy stated in FAR 17.605.

(2) A statement of the present contractor's overall performance since award of the contract, or if previously extended, since Headquarters' last authorized extension of the contract. This should be supported by a detailed summary of the most recent appraisal of the contractor's performance.

(i) The technical appraisal shall include data which indicates the contractor's success or failure in meeting established program goals and objectives during the appraisal period. It is recognized that in some cases, the contracting office will not have the technical staffing necessary to perform an appraisal of the scientific and technical work under the contracts they are administering, as in the case with the contracts for the operation of DOE's national laboratories. When this is the situation, the contracting office shall obtain the necessary technical appraisal information from the appropriate Headquarters' program division(s) for incorporation into the overall management appraisal.

(ii) The cost appraisal shall include data that indicates the contractor's success or failure in controlling both direct and indirect costs.

(iii) Where the contract is a cost-plus-award-fee (CPAF) or similar arrangement, include a discussion of award fee experience since the date that the contract was last extended, showing the base fee, award fee pool, award fee appraisals, and award fee earned.

(iv) A separate appraisal shall be made of the contractor's performance in assuring consideration of environmental, safety, health, energy conservation and security in operating the facility and development of products.

(3) The justification for use of the contract type contemplated, including discussion of consideration given to use of the CPAF type contract.

(4) Summary description of scope of work and brief listing of some of the important projects which have been performed under this contract. A list of any important projects planned for assignment in the future should be included as well as the current institutional planning documents if applicable or other documents that indicate the area of work to be performed during the contract period.

(5) The actual cost expenditures and fee or management allowance over the past contract period and expected costs in the future.

(6) While a copy of the proposed contract document should not be submitted with the recommendation, Headquarters should be advised of the following:

(i) Any special or unique features (with brief supporting rationale) in the existing contract expected to be continued in either the extension of the existing contract or in the replacement contract. This shall include any provisions which deviate from standard clauses.

(ii) An outline of the principal issues to be negotiated if the contract is extended, with arguments pro and con, and with a recommended position. This should include the identification of any anticipated problem areas for which Headquarters guidance is needed and should also include a justification for any clauses which deviate from standard clauses and continued use of deviations granted in the past.

(d) If Headquarters makes the decision to extend the existing contract without obtaining competition, the contracting officer will be authorized by the Head of the Agency to negotiate an extension to the contract. The contracting officer shall submit the negotiated contract to Headquarters for the approval of the Procurement Executive prior to execution. The proposed contract document shall be accompanied by the following:

(1) A complete justification as required above;

(2) A summary of the major clauses of the proposed contract with particular attention to indemnity, patents, and conduct of work (including clauses concerning control over work and termination). Any deviations from current FAR and DEAR policies or standard contract clauses should be identified with the reasons therefore;

(3) A listing of any significant changes from the existing contract.

Subpart 917.70—Cost Participation

917.7000 Scope of subpart.

(a) This subpart sets forth the DOE policy on cost participation by organizations performing research, development, and demonstration projects under DOE prime contracts. This subpart does not cover efforts and projects performed for DOE by other Federal agencies.

(b) Cost participation is a generic term denoting any situation where the Government does not fully reimburse the performer for all allowable costs necessary to accomplish the project or effort under the contract. The term encompasses cost sharing, cost matching, cost limitation (direct or indirect), participation in kind, and similar concepts.

917.7001 Policy.

(a) When DOE supports performer research, development, and demonstration efforts, where the principal purpose is ultimate commercialization and utilization of the technologies by the private sector, and when there are reasonable expectations that the performer will receive present or future economic benefits beyond the instant contract as a result of performance of the effort, it is DOE policy to obtain cost participation. Full funding may be provided for early phases of development programs when the technological problems are still great.

(b) In making the determination to obtain cost participation, and evaluating present and future economic benefits to the performer, DOE will consider the technical feasibility, projected economic viability, societal and political acceptability of commercial application, as well as possible effects of other DOE-supported projects in competing technologies.

(c) The propriety, manner, and amount of cost participation must be decided case-by-case.

(d) Cost participation is required for demonstration projects unless exempted by the Under Secretary. Demonstration projects, pursuant to this subpart, include demonstrations by technological advances and field demonstrations of new methods and procedures, and demonstrations of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of energy resources.

917.7002 Application.

(a) The DOE cost participation policy set forth in 917.7001 applies to all prime contracts to the extent stated therein.

(b) Cost participation is not contemplated in contracts for the operation of Government-owned or leased, contractor-operated facilities or continuing cost-reimbursement type contracts for mission-oriented, large-scale research programs performed, using equipment or facilities which are either partially or wholly Government-owned.

(c) Potential benefits to a performer is less likely where basic research is involved and therefore cost participation, if any, is expected to be less than in circumstances where a product is being developed. As projects or proposed efforts reach stages approaching commercial viability, cost participation should be based on the overall project risk.

(d) Except for demonstration projects, the requirement for a cost participation contract in accordance with 917.7001 may be waived by the cognizant Program Assistant Secretary where it is determined that payment of the full allowable cost of the contractual effort is in the best interests of the Government.

(e) The performer's cost participation may be provided by other companies or associations with which it has contractual arrangements to perform the project. The fact that a project is jointly funded, e.g., where DOE and an industry association fund a third party performer, does not preclude cost participation by the performer.

917.7003 Amount of cost participation.

(a) Cost participation may be in various forms or combinations, which includes but is not limited to cash outlays, real property, or interest therein, needed for the project, personal property or services, cost matching, foregone fee, or other in-kind participation. Cost participation may include the value of contributions of other non-Federal sources, provided the contributions were not previously obtained free of charge from Federal sources. The value of any noncash contribution shall be established by

DOE after consultation with the performer. Cost participation may be accomplished by a contribution to either direct or indirect costs provided such costs are otherwise allowable in accordance with the cost principles of the contract. Allowable costs which are absorbed by the performer as its share of cost participation may not be charged directly or indirectly to the Federal Government under other contracts, agreements, or grants.

(b) Organizations should contribute a reasonable amount of the total project cost covered under the contract. The ratio of cost participation should correlate to the apparent advantages available to performers and the proximity of implementing commercialization. In setting the levels of cost participation by the performer, the contracting officer, in consultation with the program office, should consider such factors as:

(1) The availability of the technology to the performer's competitors;

(2) The risks involved in achieving commercial success;

(3) The length of time before the project is likely to be comnmercially successful;

(4) Improvements in the performer's future commercial competitive position;

(5) Disposition of property at project's end;

(6) Whether the potential benefits will be lessened if the performer lacks production or other capabilities with which to capitalize the results of the project. However, if the results of the project are transferable to commercial organizations with production capabilities, and the performing organization would obtain patent of other property rights which could be sold or licensed, this should be considered; and

(7) Whether the performing organization lacks adequate non-Federal sources of funds from which to make cost participation.

(c) The manner of cost participation and how it is to be accomplished shall be set forth in the contract.

(d) The handling of any return from sale of products from the project shall be set forth in the contract.

(e) The solicitation document shall state whether any cost participation is required and may set forth a target level of cost participation. Though technical considerations are normally most important the degree of cost participation will be considered when cost to the Government is to be a major factor in a selection decision.

(f) Unsolicited proposals will be considered on a case-by-case basis by the program office, in consultation with contracting officer, as to the appropriateness of cost participation. If cost participation is considered to be appropriate, guidance for determining an appropriate level may be included in the procurement authorization package. The extent and type of cost participation is subject to negotiation, however.

(g) The extent to which a performing organization contributes to the cost of a project will be taken into consideration in the allocation of patent rights under DOE's waiver policy.

(h) Fee or profit will not be paid the performer under a cost participation contract. Foregone fee or profit will be considered in establishing the degree of cost participation.

(i) Where cost participation is appropriate, fee or profit will not be paid to any member of the proposing team having a substantial and direct interest in the project. Competitive subcontracts placed with the prior written consent of the contracting officer and subcontracts for routine supplies and services are not covered by this prohibition.

917.7004 Disposition of property and equipment furnished or acquired.

Disposition instructions for any property and equipment furnished or acquired using Federal funds during performance shall be set forth in the contract.

917.7005 Records.

Contracts which provide for cost participation shall require the contractor to maintain records adequate to reflect the nature and extent of their cost contribution as well as those costs charged to DOE. Such records shall be subject to audit by DOE.

917.7006 Payments under contract with third party cost contributions.

Arrangements between DOE and non-Government organizations for jointly sharing the cost of projects performed by third party contractors shall provide that each party to the cost sharing agreement shall pay its share of program costs directly to the performing contractor. Any alternative arrangement must be approved in advance by the Controller or designee.

917.7007 In-kind contributions.

(a) In-kind contributions represent noncash contributions provided by the performing contractor or a non-Federal third party who is participating with DOE in a co-sponsored project or contract. In-kind contributions may be in the form of personal property (equipment and supplies), real property (land and buildings) or services which are directly beneficial, specifically identifiable and necessary to performance of the project or program.

(b) In-kind contributions proposed to the DOE as part of a performer's cost participation must meet all of the following criteria before acceptance:

(1) Be verifiable from the performer's books and records, if performer donated;

(2) Not be included as contributions for any other Federal program;

(3) Be necessary to effective and efficient accomplishment of project objectives;

(4) Provide for types of charges that would otherwise be allowable under applicable Federal cost principles appropriate to the contractor's organization; and

(5) Not be paid for by the Federal Government under any contract, agreement or grant, unless specifically authorized by legislation.

(c) In-kind contributions accepted from a performer will be valued as set forth below provided the established values do not otherwise exceed fair market values.

(1) Where the Government receives title to donated land, buildings, equipment or supplies and the property is not fully consumed during performance of the co-sponsored project, the property's in-kind value should be established based on the performer's booked cost (i.e., acquisition cost less depreciation, if any) at the time of donation. In the event the booked costs reflect totally unrealistic values when compared to current market conditions, another appropriate value may be established if supported by an independent appraisal of the fair market value of the donated property or property in similar condition and circumstance.

(2) The value of any services or the use of personal or real property donated by a performer should be established, when necessary to do so, in accordance with generally accepted accounting policies and the appropriate Federal cost principles applicable to the performer's organization.

(d) Values established for in-kind contributions accepted from a non-Federal third party should be reasonable and shall not exceed the fair market value of the item at the time of donation. Specific requirements for selected in-kind items involving third party donors are as follows:

(1) *Donated Employee Services.* Employee services donated by a non-Federal third party shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs) provided the donated services require use of the same skills for which

the employee is normally paid. Otherwise, the rate of pay, for valuation purposes, shall be consistent with the rates paid for similar work in the labor market in which the performer competes for such skills.

(2) *Volunteer Services.* Rates used to value volunteered personal services of professional, clerical, or other individuals should be consistent with those regular rates paid by the performer for similar work and be established in accordance with the procedures specified in subparagraph (1) above.

(3) *Property.* Values for personal or real property, or the use thereof, donated by a non-Federal third party shall be established, dependent upon the donor's intended disposition of the property upon project completion, as follows:

(i) When title is donated at no cost to the Government or the property will be fully consumed during project performance, a reasonable value not in excess of the fair market value of the donated property, or comparable property in similar condition, shall be established provided the fair market value of land or buildings is established by an independent appraisal.

(ii) When title is retained by the donor or acquired by the performer, reasonable usage values not in excess of the fair rental value of the donated property or comparable property shall be established provided the fair rental value of donated space is established by an independent appraisal.

Subpart 917.71—Special Research Contracts With Educational Institutions

917.7100 Scope of subpart.

This subpart sets forth policies and procedures applicable to the negotiation and administration of Headquarters-designated special research contracts for basic research with educational or other nonprofit institutions. These policies and procedures should also be followed for Headquarters-designated contracts for applied research with educational institutions and for educational and training activities with educational or other nonprofit institutions. The policy of reimbursing only DOE's share of actual costs up to a ceiling should be reflected in all contracts with educational institutions. The procedures in this subpart regarding acceptance of unsolicited proposals from educational institutions and use of the special research contracts may be used only when the annual DOE support does not exceed $1,000,000. If the annual DOE support exceeds $1,000,000, or a determination is made under the provisions of Pub. L. 95-224 that a grant or cooperative agreement is to be used as the instrument for providing support regardless of the dollar amount, then a special research contract may not be used. If the annual DOE support exceeds $1,000,000, and a contract is determined to be the instrument to provide such support, an appropriate type contract will be used in accordance with FAR 16, with clauses as prescribed in 952 and FAR 52 and the coverage of 917.7108.

917.7101 Definitions.

"Headquarters-designated contract" means a special research contract which results from an authorization to a field office from a Headquarters office to enter into or continue such a contract on the basis of an approved research proposal.

"Contractor" means the educational or nonprofit research organization which enters into a contract with DOE for the performance of specified research.

"Research proposal" means a request by or an unsolicited proposal as defined in FAR 15.501 from an institution for support of a research project, together with a detailed description of the project and its relationship to DOE's program, and detailed information as to background and experience of principal investigators, facilities, and environment of the institution, and cost and cost-sharing arrangements, if any.

917.7102 General.

The DOE, by statute, is permitted to participate in research programs that are related to atomic and other forms of energy.

917.7103 Research program objectives.

(a) Under sections 31 and 31a of the Atomic Energy Act of 1954, as amended, DOE is directed to exercise its powers in such manner as to ensure the continued conduct of research and training activities and to assist in the acquisition of an ever-expanding fund of theoretical and practical knowledge in the following fields:

(1) Nuclear processes;

(2) The theory and production of atomic energy, including processes, material, and devices related to such production;

(3) Utilization of special nuclear material and radioactive material for medical, biological, agricultural, health, or military purposes;

(4) Utilization of special nuclear materials, radioactive material, and processes entailed in the utilization or production of atomic energy or such material for all other purposes, including industrial and commercial uses, the generation of usable energy and the demonstration of advances in the commercial or industrial application of atomic energy;

(5) The protection of health and the promotion of safety during research and production activities; and

(6) the preservation and enhancement of a viable environment by devleoping more efficient methods to meet the nation's energy needs.

917.7104 Other objectives.

(a) Headquarters-designated special research contracts are entered into by negotiation under the authority of section 31c of the Atomic Energy Act of 1954 and section 302(c)(5) of the Federal Property and Administrative Services Act of 1949. In planning, negotiating, and administering such contracts, the objectives are to:

(1) Assure a continuing flow of new knowledge in fields related to the responsibilities of DOE;

(2) Respect the traditions of the contracting institution and encourage the quest for new knowledge without restrictions or scientific initiative, to the extent compatible with the laws and the protection of the public interest;

(3) Provide reasonable levels of support which will increase the national capability in energy fields and enable the contracting institution to strengthen its research programs in areas of interest to DOE; and

(4) Maintain effective contact with the scientific community so that:

(i) Scientists and students will be encouraged to expand their interests in fields of importance to DOE;

(ii) The scientific strength of the country can be brought to bear more effectively on DOE problems;

(iii) The DOE will be continuously aware of developments of value to its activities in the academic communities; and

(iv) An adequate supply of suitably trained scientists will be available for employment to meet energy program needs.

(b) The contractor is responsible for conducting the research and is expected to carry out the project or projects in a manner consistent with the agreed-upon objectives and requirements. These include the obligation to comply with applicable laws and regulations. The contractor is generally expected to follow its normal business practices and to use its existing accounting system.

917.7105 Unsolicited research proposals.

Unsolicited proposals for DOE assistance may be initiated by scientists

interested in doing research. Prior to submitting proposals, the interested scientists, at his or her initiative may discuss the project informally with DOE.

Following such discussions, the proposal should be submitted in accordance with FAR Subpart 15.5 and 915.506 of this Chapter. If the DOE desires to solicit proposals, the procedures in 917.73 or other existing solicitation procedures will be used.

917.7106 Selection, preparation, and award.

917.7106-1 General.

In order to maintain a comprehensive and well-integrated research program, evaluation of research proposals and selection of educational institutions to conduct scientific research is centralized in Headquarters program office. However, field offices may be assigned responsibility for handling the final arrangements and nontechnical administration of such contracts.

917.7106-2 Responsibilities.

(a) The program office interested in particular research is responsible for evaluating the technical aspects of the proposals. The program office must determine that the proposal has sufficient technical merits and program value in comparison to other available proposals to justify providing support. This includes judgments as to the merit of the proposed research objectives, the probability of achieving the objective(s), the capabilities of the researchers, and how the proposals will specifically promote the objectives in 917.7103 and 917.7104. The program office also reviews the proposer's requested cost and other estimates to determine the reasonableness, the propriety, and the advisability of proceeding with the project. Specifically, Senior Program Officials or their designees at Headquarters are responsible for:

(1) Selecting and approving research proposals and determining the amount to be funded;

(2) Documenting the rationale for funding in accordance with (a) above;

(3) assuring that the statement of work is clear and complete;

(4) Providing a copy of the documents prepared in (a)(2) and (3) to the field office;

(5) Reviewing the items in the proposal budget or itemized account of the proposed work, and, if necessary, requesting the assistance of the appropriate field office;

(6) Determining the ownership of property;

(7) Reviewing and following the technical progress of the work;

(8) Providing contractors with the technical guidance and direction as may be required to meet broad program objectives; and

(9) Keeping the field offices fully informed of technical correspondence and discussions with contractors that may have contractual or non-technical administrative implications.

(b) Field offices are responsible for the consummation of contracts with the institution in accordance with directives from the program office, and for administering and making payments under such contracts. Specifically, field offices are responsible for:

(1) Performing any necessary cost or price analysis, obtaining audit service when needed, and negotiation of budget and contract terms;

(2) Finalizing and executing the contract (where necessary, obtaining further instructions from the program office);

(3) Administering the contract in accordance with its terms and conditions and making payments thereunder; and

(4) Providing technical and administrative assistance requested by program officials.

917.7106-3 Review of research proposals.

(a) If, in the judgment of the program office, an appraisal from representatives of the scientific community is required, reviewers may be selected on the basis of their familiarity with either the field of research or the competence of the investigator. See also 924.70.

(b) Occasionally, the program office may find it necessary to obtain additional information from the research institution or to visit the site. In some cases, the comments, assistance, or participation of staff members of the appropriate field office will be requested.

(c) At the time it reviews a research proposal, the sponsoring program office shall review the prospective contractor's budget or itemized account of the proposed work and activities and the materials, equipment, and facilities involved, for the purpose of reaching mutual understanding of the estimated cost of the research and the other major aspects of the contemplated contract. Questions about the cost elements that required further investigation may be referred to the appropriate field office when the contract is authorized.

(d) When reviews are conducted by representatives who are not Government employees, the policies for avoidance of organizational conflicts of interest in 909.5 shall be followed.

917.7106-4 Compensation for personal services of professional staff.

Compensation for personal services of professional staff must be in accordance with Office of Management and Budget Circular A-21, revised. The certification required by Appendix C of 917.7113 fulfills the certification requirement of section K of OMB Circular A-21 for the special research contract.

917.7106-5 Notice of selection or rejection.

The program office shall notify the proposer of the decision to fund or reject the proposal. In the event of a decision to fund, this notification shall advise: (a) that the proposal has been selected for funding subject to completion of a satisfactory contract; (b) which field office will negotiate and execute the contract; and (c) that DOE assumes no obligation until a contract has been executed. A copy of the notice of acceptance or rejection shall be sent to the field office concerned. The notice shall indicate the basis for rejection and shall constitute DOE's record of action for the files. If the proposal is accepted, a justification shall be prepared in accordance with 917.7106-2.

917.7106-6 Selection of field office.

(a) When the program office has determined that a proposal shall be funded, a field office shall be requested to make the final arrangements with the institution concerned. Usually the field office geographically nearest to the research institution will be selected, but occasionally other factors such as existing contractual relationships and location of the research project will make the selection of some other field office desirable.

(b) Traineeship agreements under the nuclear science and engineering traineeship program are exempt from the policy in (a) and shall continue to be assigned to the Oak Ridge Operations Office. Research contracts with foreign educational institutions shall be assigned to the Chicago Operations Office.

(c) Any transfers of assignments between field offices will be accomplished when the particular contract is next renewed or otherwise modified.

917.7106-7 Information to be furnished to field office.

The sponsoring program office shall provide the Contracting Activity with an authorizing directive early enough (generally 60 days) to permit timely completion of the contract award before the work is scheduled to start. The following shall be furnished:

(a) A copy of the detailed proposal and any modifications;

(b) Copies of correspondence with the research institution that are pertinent to the completion of the negotiation or that have some specific significance as to the preliminary review of arrangements made with the institution; and

(c) An authorizing directive which:

(1) Authorizes the execution of a special research of contract for a specified term, with DOE support limited to a specified amount or a specified percentage of costs up to a specified support ceiling;

(2) Summarizes the background of the proposal and any pertinent discussion not reflected in the papers attached to the memorandum;

(3) Indicates the extent to which the scope of the work proposed has been approved;

(4) Indicates the principal investigator and other necessary details;

(5) Determines the availability of legal authority to transfer title to property and indicates the total estimated cost of the research and other major aspects of the contract, by reference to the proposal or otherwise;

(6) Indicates whether title to property to be acquired under the contract is to be vested in DOE or the contractor;

(7) Indicates whether restricted data or other classified information is likely to be used or developed in the course of the work and such classification and security determination as may be appropriate;

(8) Indicates directions for special reports, if any;

(9) Gives such additional information as may assist the field office in negotiating the contract; and

(10) Designates the appropriate organizational unit and individual in the program office that will have technical cognizance over the work under the contract.

917.7106-8 Changes in scope and level.

After a contract has been authorized by the program office but prior to execution, the field office shall not approve any significant change in technical scope, funding, specified result, performance, principal investigator, or other major aspects of the work without prior approval of the program office.

917.7106-9 Notification of contract execution.

Promptly after execution of a contract, the program office shall be notified of such action.

917.7107 Contract content.

917.7107-1 General.

A standard outline (format) for a special research contract for research performed in facilities owned and controlled by the contractor (as distinguished from Government-owned or Government-controlled facilities), is set forth in 917.7113. This document is intended to provide a vehicle by which research tasks can be accomplished with a minimum of administrative effort. It is, therefore, important that such contracts be written so as to assure the complete understanding of the parties as to the job to be performed and the financial and administrative details connected therewith. Of special consideration is the nature of research contracting as contrasted to the acquisition of supplies and activities of a production nature. Wide latitude in the conduct of research by the institutions is generally desirable and the standard contract forms are designed to permit such latitude in the establishment of the rights and obligations of the parties.

917.7107-2 Financial requirements.

(a) The special research contract outlined in 917.7113, is generally used for basic research with educational institutions when the annual DOE support under the contract does not exceed $1,000,000. It provides that DOE's monetary obligations will be a specified amount, which is referred to as the support ceiling, or a lower adjusted amount (referred to as the cumulative support cost) if actual costs chargeable to DOE during the total period of the contract are less than expected. The ceiling on DOE's monetary support shall be determined and established as a support ceiling at the outset of the initial contract period.

(1) The total contract period of performance should be established based upon the estimated period of performance necessary to accomplish the research effort. If available funding is less than that needed to fully fund the effort, the available funding will be provided as the cumulative Government cost as defined at Article A–III(b) of 917.7113 with the remainder of the funding subject to the availability of funds.

(2) In such circumstances the standard Special Research Contract format provided at 917.7113 shall be revised at Article II, The Period for Performance, to indicate the period of time for which the available funding is estimated to suffice and at Article A–III to show the additional funding to be provided subject to the availability of funds.

(b) If the parties agree to extend the contract for an additional period or periods of performance, the ceiling on the DOE's funding (Government ceiling) shall be increased to reflect any increased support by reason of the extended period or periods. The costs chargeable to the DOE (Government cost) will be reported for each pertinent period of the contract specified in Appendix A (generally an annual period) in accordance with paragraphs (b), (c), and (d) of this section, and the Government cost determined for each such period will be accumulated for all periods of performance, as will the Government ceiling.

(1) The monetary obligation to the contractor will not exceed the cumulative Government cost or the accumulated Government ceiling, whichever is less.

(2) Upon termination, or expiration of the total period of performance, the contractor must refund to DOE, or make such other disposition as the contracting officer may direct, any funds advanced in excess of the cumulative Government cost incurred under the contract. Payment shall be made in consideration of the contractor's performance of research activities described in the contract and in accordance with the provisions of the contract.

(3) The contractor shall have the right to discontinue performance of research under the contract, upon written notice to the contracting officer, at any time when or after the total costs chargeable to DOE equal or exceed the cumulative Government cost or the Government ceiling whichever is less.

(4) Certain deviations in performance and other actions require the contracting officer's approval as stated in 917.7113. Among other approval requirements, the contractor must obtain the contracting officer's approval to incur costs for items set forth in Article A–II(a), during the pertinent period stated in Appendix A, in excess of 110 percent of the total estimated cost specified in Article A–III for the specific period. In those cases in which there is to be proportionate sharing of costs, the percent of the cost to be borne by DOE will be set forth in Article A–III of the agreement (see paragraph (d) of this section).

(c) The contractor shall be required to furnish a certified statement (within three months after the expiration of the pertinent contract period set forth in 917.7113, Appendix A and at the termination of or expiration of the contract), signed by an authorized official, showing the total cost, Government cost, and contractor's contribution, if any, for the prior

contract period. The format for this report is found in 917.7113, Appendix C.

(d)(1) It is expected that in many cases the contractor will propose to contribute to the cost of the research work. Such contribution shall be set forth in Appendix A of the contract, either as items under (b) or (c) of Article A–II which will be contributed solely by the contractor without charge to DOE, or as a proportionate cost-sharing agreement in Article A–III which will provide that the contractor will charge DOE only a specified percentage of the actual cost incurred from items under (a) of Article A–II.

(2) Proposed contractor contributions should ordinarily be listed under (b)(1) of Article A–II when: (i) The contribution is that of the principal investigator or other senior personnel who are likely to be involved in the research work to the same extent whether their cost is included in or excluded from proportionate cost sharing; (ii) the proposed contribution to the work is being paid for by a third party; e.g., personnel or equipment, the cost of which is being reimbursed under another contract or grant from public or private sources; and (iii) the proposed contribution does not involve any cash expenditure by the contractor.

(3) Only those items, the cost of which is to be charged to DOE or proportionately shared by the parties, should be listed under Article A–II(a). Proportionate sharing of the cost of items under Article A–II(a) should be provided for only when the contractor agrees to pay a specified percentage of the cost of all such items, and when such sharing is expected to be of financial benefit to DOE.

(4) In those cases in which there is to be proportionate cost-sharing, the contractor should generally be encouraged to continue the same sharing ratio througout the life of the contract so as to provide for ease of administration and to avoid difficulties in determining proper charges to DOE. It should be understood that the DOE will pay only the specified percentage of the actual cost of items under Article A–II(a) incurred during the pertinent period specified in Appendix A, up to a maximum of 110 percent of the estimated Government cost set forth in Article A–III for the pertinent period unless otherwise specifically approved by DOE and subject to the Government ceiling set forth in Article III.

(e)(1) If the contractor proposes to contribute the cost of the principal investigator(s) on the project and requests that the contribution be excluded from A–II(b), the contributed time or effort should be shown in A–II(d). The contractor shall not be required to maintain records regarding the amount of effort contributed by the principal investigator, and the contractor shall not be required to certify, in accordance with Appendix C of the contract, the amount of effort contributed by the principal investigator.

(2) The principal investigator may be included in Article A–II(a) for purposes of obtaining reimbursement of costs during the summer months, and excluded from Article A–II(a) for academic year if the contractor proposes to contribute the costs for that period. The contract generally will not require the contractor's commitment that any particular amount of time or effort by the principal investigator(s) or other personnel will be devoted to the work.

(3) In the event a proposed contractor contribution is included in Article A–II(b)(1), the contract should reflect the nature and extent of the contractor's intent to contribute the item, and the contractor shall maintain records adequate to permit DOE to determine the extent of the contribution. The contractor must certify, in accordance with Appendix C of the contract, the extent to which the item or items under Article A–II(b)(1) have been contributed.

(4) Government-owned property to be procured, fabricated, or furnished under Article IV or Article B–IX of the contract and other Government-furnished equipment, supplies, materials, or services should be excluded from Article A–II(a) and listed under Article A–II(b)(2).

(f) When the special research contract outlined at 917.7113 is used for nonprofit organizations other than educational institutions:

(1) Article B–XXIX, Determination of Support Cost, should be revised to provide that the nonprofit cost principles (Subpart 931.7) will be used in determining actual cost, or

(2) Revised at the direction of the cognizant Headquarters office to provide for a lump-sum payment to the contractor in consideration for its performance of particular research at a specified level of effort.

(g) The special research contract outlined in 917.7113 may also be used to fund research at educational institutions in foreign countries; when so used:

(1) The outline of 917.7113 may be revised at the discretion of the cognizant Headquarters or field office, to provide for a lump-sum payment to the foreign institution in consideration of its performance of particular research at a specified level of effort.

(2) Approval requirements shall be limited to those consistent with the nature of the support to the foreign institution.

(3) All such contracts with foreign institutions shall provide that any unused funds available to the foreign institutions at the end of the contract shall be used in a renewal period, returned to the DOE, or otherwise disposed of, in accordance with instructions from the contracting officer.

917.7108 Personal property.

917.7108–1 Transfer of title to equipment to nonprofit educational or research institutions.

(a) In accordance with Pub. L. 95–224, DOE has discretionary authority, where it is deemed to be in furtherance of the objectives of DOE to vest in nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research, without further obligation to the Government or on such other terms and conditions as may be appropriate, title to equipment purchased or fabricated with contract funds.

(b) It is deemed to be in the furtherance of the objectives of DOE, pursuant to Pub. L. 95–224, to vest in those educational and nonprofit institutions title to equipment purchased or fabricated with contract funds for research. This will promote the progress of scientific research, reduce the amount of expense and unnecessary labor due to the necessity for maintaining records, transporting, or storing such property which is often unsuitable for any other use. Contracting officers (coordinating with program officials) shall impose such terms or conditions as they determine to be appropriate in individual cases.

(c) The vesting of title to equipment, fabricated or purchased for work to support a SRC shall be as follows:

(1) Contracts with nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research, shall provide that title to equipment having an acquisition cost of less than $1,000 and purchased or fabricated with contract funds available for the conduct of basic and applied research rest in the contractor at acquisition, provided prior approval of the purchase is obtained from the contracting officer. This prior approval may be in the form of an approved budget which calls out the equipment to be acquired, either on a line-item basis or for clearly defined classes of items, or by other means, as long as the contracting officer can determine that the proposed acquisition is essential to the performance of the contract. Title to

such equipment shall vest in the contractor upon acquisition or as soon thereafter as feasible.

(2) Contracts with those institutions cited in (1) above shall provide that title to equipment having an acquisition cost of $1,000 or more, and purchased with contract funds available for the conduct of basic and applied research, shall vest in the institution upon acquisition or as soon thereafter as feasible without further obligation to the Government, unless it is determined not to be in furtherance of the objectives of DOE and is provided for in the contract. The contract may reserve the right of the Government to transfer title of equipment costing $1,000 or more per unit to the Government or to a third party named by the Government, at any time prior to final payment under the contract.

(d) When title to equipment is vested in the institution as provided in this subsection, the institution shall not be reimbursed for any depreciation, amortization, or use charges with respect to such equipment under any Government contract, cooperative agreement, grant or any subcontract under a Government contract.

(e) The determination to vest title in the institution under this subsection will be provided by the cognizant program office on the procurement request, or other appropriate document.

(f) In addition to the authority referred to in paragraph (a) of this subsection, the Atomic Energy Act of 1954, as amended, authorized DOE to vest title to items of equipment and other personal property in a contractor when the transfer serves a nuclear programmatic purpose. When applicable programmatic determination to transfer title to the institution will be provided by the cognizant program office and made a part of the official contract file.

917.7108-2 Acquisition of excess Government personal property.

(a) The utilization of certain items of excess Government personal property by educational institutions is encouraged in the interest of conserving funds otherwise designated for similar items of property in existing research contracts or agreements with such institutions. Excess Government personal property includes all types of equipment and materials, used or new, which are owned by the Federal Government and are no longer needed by the holding Federal agency, but have additional useful life.

(b) Consistent with GSA regulations, excess personal property may be furnished to a contractor (with or without transfer of title) upon authorization by DOE, provided a determination is made that acquisition will result in a reduction in the cost to the Government of the contract. This procedure will not normally be used for the acquisition of general purpose equipment (e.g., desks, typewriters, air conditioners).

(c) Contractors shall be advised they may obtain information concerning the availability of certain kinds of equipment or materials by requesting the contracting officer to include them on the GSA mailing list for excess property catalogs. When an item of equipment or material is selected, the contractor should reserve it by notifying the cognizant GSA office and confirming the reservation in writing. Availability is usually on a first-come, first-serve basis, but GSA will give preference in a competing situation to those agencies which do not vest title to property in the contractor. The contractor should then submit a Standard Form 122, Transfer Order Excess Personal Property, to the cognizant DOE office, accompanied by a written justification of need, including the estimated cost of acquisition (e.g., packing, shipping, installation, rehabilitation, etc.), signed by the principal investigator and an authorized administration official. The written justification shall contain a statement as to whether or not the contractor desires title to the property under the authority of the Atomic Energy Act and 917.7108-1(g). If the acquisition is approved, the DOE office shall forward the SF-122 to the appropriate GSA office with a notation as to whether or not DOE intends to vest title to the property in the contractor. A copy of the approved SF-122 with the notation regarding the vesting of title shall be returned to the contractor. When the property is received, the contractor shall forward to the DOE office a receipted copy of the SF-122 which lists the items of property.

(d) In those instances where the contractor's acquisition of title has been approved by DOE, title to the property shall pass to the contractor when the receipted SF-122 is received by the DOE office, pursuant to Article B-IX(b), Property Items, of 917.7113. Contract funds may be used to pay for necessary costs of packing, transportation, installation, rehabilitation, and maintenance, if required.

(e) In those instances where the contractor did not desire title or where the cognizant DOE office has determined that title to the excess property should remain in the Government, the property will be handled as Government property in accordance with Article B-IX of 917.7113.

917.7108-3 Management of Government-owned equipment.

When title to equipment is retained by the Government, the institution shall be required to establish and maintain a program for the utilization, maintenance, repair, protection, preservation, and reporting of Government property in accordance with sound business practice and the provisions of FAR Subpart 45.5 and 945.5 of this Chapter.

917.7108-4 Reports.

Excess property acquired from other Government agencies or from GSA and provided to institutions under the authority of 917.7108-2, above, will be included in the report required by FPMR 41 CFR 101-43.4701(c).

917.7109 Reporting requirements.

917.7109-1 Purpose of reports.

Research reports from contractors are necessary to show the progress achieved under projects receiving DOE funding. In many instances, the research reports are of value in making information available to scientists working on closely allied problems.

917.7109-2 Notice of Energy R&D Project.

Immediately after a special research contract is negotiated, a Notice of Energy R&D Project, DOE Form 538, which summarizes the purpose and scope of the project should be prepared by the contractor and sent to the contracting officer, the program manager, and the technical information officer. Annual updates are required.

917.7109-3 Progress reports.

Progress reports are required which should briefly describe the scope of investigations undertaken and the significant results obtained. They should also explain any significant differences between the actual level of activity (expressed in the various categories of labor-months, facilities acquired, travel performed, etc.) and that contemplated in the contract.

917.7109-4 Technical reports.

Technical reports, reprints, and articles prepared for publication during the period covered by the contract shall be required to be listed with bibliographic references. Reprints of all such material not previously submitted to the DOE shall be required to be appended and material contained in them need not be duplicated in the report.

917.7109-5 Special reports.

Special reports or additional progress, status, or topical reports shall be

requested as required by program officials or submitted as deemed necessary by the contractor. For example, brief status reports shall be requested when developments are of immediate interest or when a significant point in the investigation has been reached. The value relative to the costs incurred in providing special reports must be considered when requesting any additional reports.

917.7109-6 Final report.

A final report summarizing the entire investigation shall be required from the contractor upon expiration of each contract. Satisfactory completion of a contract will be contingent upon the receipt of this report. The final report should follow the outline agreed upon for progress reports, or when a project has extended over a long period of time, the final report may refer to previously submitted technical reports for details and may be a synopsis of the entire project. Manuscripts prepared for publication should be appended.

917.7109-7 Summary and distribution of reports.

(a) A table summarizing the various types of reports, time for submission, number of copies and distribution is set forth below. The distribution and schedule of reports shall be as prescribed in this table, unless the authorizing program office specifies otherwise. Frequently, an annual progress report and a 200-word summary are sufficient for fundamental research, but additional reporting may be required in many cases. All reports shall be prepared by the contractor and submitted to the appropriate field office for distribution. The field office shall transmit these reports with a cover memorandum indicating: (1) The other DOE offices receiving the documents; (2) the name of the contractor; and (3) the contract number. Each copy of the documents shall bear the contract number.

DISTRIBUTION AND SCHEDULE OF DOCUMENTS

Type	When due	Number of copies for			
		Field office	HQ program office	TIC Oak Ridge	HQ patents OGC
1. Summary: 200 words on scope and purpose (S.I.E. Form)	At start of initial contract and period	1	3	1	
2. Renewal proposal	Not later than 4 months nor earlier than 6 months before contract expires.	2	4		
3. Annual progress reports	With renewal proposal, but bound separately	2	4	2	
4. Other progress reports, brief topical reports, etc. (Desired when significant results developed or when work has direct programmatic impact).	As deemed necessary by investigator or as specifically requested by appropriate Hq. office.	2	4	2	
5. Conference papers	Same as 4 above	2	4	2	
6. Final report	Three months after completion of the work	2	2	2	2

(b) The DOE contracting officer shall inform the contractor which types of documents are to be transmitted to TIC. For each document so identified, the contractor shall send an additional copy to the contracting officer for transmittal to TIC, accompanied by one copy of DOE Form 427..

(c) The research effort shall be prefaced by an informative abstract of no more than 200 words.

(d) A listing of technical reports, articles, and reprints and the appendage of reports not previously submitted are required.

917.7110 Dissemination of results.

917.7110-1 Prompt dissemination.

Prompt dissemination of research results to the scientific community is encouraged. Publication in open literature is recognized as the normal and most desirable means for reporting the findings of unclassified fundamental research. Although DOE reserves the right to utilize, and have others utilize, to the extent it deems appropriate, the reports resulting from research contracts, DOE will attempt, to the maximum extent practicable and consistent with the Government's best interest, to permit the institutions and the authors to effect their own publication in established technical journals.

917.7110-2 Publication.

(a) Contractors should be urged to publish results through normal publication channels. As a further inducement, page charges or other printing assessments for publishing articles in recognized scientific journals, or any additional costs incurred in obtaining a limited supply of reprints of articles, shall be considered an appropriate budget item under contracts receiving DOE support where:

(1) The document reports work funded by the Government;

(2) The charges are levied impartially on all research papers published by the journal, whether by non-Government or by Government authors;

(3) Payment of such charges is in no sense a condition for acceptance of manuscripts by the journal;

(4) The journals involved are not operated for profit; and

(5) The author does not receive an emolument for the research paper.

(b) A credit line shall be included in any such publication to indicate that the research has been funded, in whole or in part, by DOE. A patent check shall be made in advance of release to the public of any material prepared for publication.

(c) The contractor or principal investigator may publish contract data as approved by DOE in accordance with the provisions of the Patent Rights clause.

917.7111 Extension of contracts.

917.7111-1 Renewal proposals.

(a) Where additional time, beyond the current expiration date, is required to continue or complete the work under a special research contract, the contractor shall be requested to submit six copies of its renewal proposal to the contracting officer not later than four months nor earlier than six months before the date of expiration of the contract. If a renewal proposal has not been received four months prior to the contract expiration date, the contracting officer shall determine if a renewal proposal is to be submitted and take necessary action for contract close-out or processing the renewal proposal as appropriate.

(b) The renewal proposal shall outline and justify a program and budget for the succeeding year, showing in detail the estimated cost of the project, together with an indication of the items for which the contractor is requesting reimbursement or proportionate cost-sharing, the percentage of any such costs to be shared by the contractor, and

any items to be contributed solely by the contractor. It should include the same type of information as that required for initial proposals, or reference this information to the extent contained in earlier proposals. Any contemplated change in program or scope for the ensuing period should be justified and explained clearly, and the cost estimates and other items should be based upon past experience. Any deviation from the contract which has not received DOE approval should be explained in detail.

(c) The renewal proposal should include a financial statement of the work under the current contract including:

(1) Total project costs for the current period to date, indicating the amount chargeable to DOE;

(2) An estimate of the total costs to be incurred during the remainder of the current contract period, indicating the amount chargeable to DOE;

(3) The anticipated difference, if any, between the accumulated support cost at the end of the current contract period and the cumulative Government ceiling; and

(4) A footnote to show the estimated amount of outstanding commitments for property at the end of the current contract period.

917.7111-2 Evaluation of requests for renewals.

(a) Requests for renewals are required to be evaluated by the appropriate program office in the light of:

(1) Progress reports submitted by the contractor;

(2) Research results published in scientific media;

(3) Field visits to the research site by technical personnel;

(4) Contractor's performance and progress;

(5) Continued relevance to DOE's mission;

(6) Scientific and technical merit of the research and a comparison of the relative importance of the project in relation to other research proposals, proposed and ongoing; and

(7) Availability of funds.

(b) Requests for renewals generally follow the same process of review and evaluation of technical aspects, funding, and preparation, and execution of the contract, and administration as a new project, although less use would normally be made of outside consultants.

(c) Contracts authorized by program offices shall not be extended for a new term or on an interim basis or modified in scope without specific prior authorization from the appropriate program office except as provided at 917.7111-3(c).

917.7111-3 Authorization to renew.

(a) When a determination has been made to extend a special research contract, the sponsoring program office is required to provide the contracting officer with notification 60 days in advance of expiration to permit an orderly completion of the extension before the expiration date. The authorizing directive generally should include the same type of information provided in the authorization of a new contract, including pertinent information concerning any changes in scope of work, level of funding, scheduled dates for completion of certain phases of work, target dates for submission of report, etc. The directive will describe the results of the prior funding period and what is expected to be accomplished in the new funding period.

(b) An authorization to renew a special research contract shall state the estimated total cost of items to be included under Article A-II(a) of Appendix A for the renewal period, the percentage of such costs to be reimbursed by DOE, and the amount of new funds authorized to increase the Government ceiling.

(c) The field office that has administrative jurisdiction of an existing contract may extend the term of an existing contract without authorization from the cognizant program office, provided that:

(1) Any such extension does not provide for an increase in DOE's monetary obligation under the contract;

(2) The scope of work is not revised by such extension;

(3) Such extension is necessary to permit completion of the scope of work authorized by Headquarters, including preparation of required reports; and

(4) Any such extension will not be for a period in excess of 90 days.

917.7112 Administration.

917.7112-1 Responsibilities of program offices.

(a) Technical representatives of program offices will make, to the extent practicable, periodic site visits. A written summary of the results of all visits will be prepared and filed promptly. Copies of such reports shall be forwarded to the contracting officer whenever they contain information of administrative interest or other information pertinent to the assigned responsibilities of the Contracting Activity. These visits are for the purpose of:

(1) Determining that the research is being performed in accordance with the contract;

(2) Ascertaining that schedules are being met to ensure timely submission of interim and final reports;

(3) Determining whether the project has adequate facilities, equipment, and scientific, technical, and other personnel for the specified research;

(4) Ascertaining that any equipment requested for purchase is not reasonably available within the institution;

(5) Assisting the principal investigator to clarify specific technical aspects as work progresses;

(6) Exploring future budget requirements, but without making any commitments as to future funding level; and

(7) Obtaining information regarding the status of work for administrative and technical purposes of the program sponsor.

(b) Program offices will provide guidance to the contracting offices in connection with:

(1) Any contractor requests for approval of proposed deviations or other actions requiring DOE approval which are brought to their attention by Contracting Activity, or which have been brought to their attention through site visits, progress reports, or other agreements or contacts with the contractor;

(2) Increasing the obligational authority under any special research contracts;

(3) Whether or not required contractor reports are satisfactory; and

(4) The renewal or close-out of contracts. Instructions should be provided at least four weeks prior to the expiration date of a contract.

917.7112-2 Responsibilities of field offices.

Field offices are responsible for the following:

(a) Assisting Headquarters program offices, as requested, in carrying out the functions set forth in 917.7112-1;

(b) Performing the necessary administrative functions required by the terms of the contract, and making payments in accordance with the contract;

(c) Bringing to the attention of the appropriate Headquarters offices:

(1) Any contractor requests for approval which are required by the contract;

(2) The upcoming expiration date of a contract whenever required instructions on renewal or close-out have not been received on a timely basis;

(3) Any request by a contractor to revise an established stipulated salary support amount, and any notification by a contractor that is reducing the charges under the stipulated salary support procedure (see 917.7106–4(c)); and

(d) Determining whether to use Pub. L. 95–224 or the Atomic Energy Act of 1954, as amended, as the authority for vesting title to personal property in the contractor when authorized to do so pursuant at 917.7106–7(c)(6). Pub. L. 95–224 shall be used to the maximum extent consistent with the authority contained therein.

917.7112–3 Payments under special research contracts.

(a) Payments will be made to contractors under a special research contract in accordance with its provisions (see Article B–XI of 917.7113). The letter-of-credit procedures, as provided for in Treasury Fiscal Requirements Manual, Part 6, Chapter 2000, shall be used to the maximum extent feasible when the total of DOE contracts and agreements with advance financing to an institution provides for a continuing annual level of support of $120,000 or more. When the total DOE contracts and agreements with advance financing provide for a continuing annual level of support of less than $120,000, DOE shall make advance payments covering the first 90 percent of the amount of the new funds as set forth in Article A–III(b) of the contract. The contracting officer may revise Article B–XI of 917.7113, regarding the timing and amounts of advance payments, in accordance with the following provisions.

(1) The advance payments may be made at times and in amounts determined appropriate provided that no single payment will exceed 45 percent of the new funds as set forth in Article A–III(b) of the contract for the pertinent period except on the basis of a request from the contractor evidencing that a specified amount is required in connection with expenditures or commitments made under the contract.

(2) The timing and amounts of payments should be determined on the basis of limiting the amount of advances to the extent feasible, consistent with effective and efficient administration and performance of the research, for the purpose of slowing the rate of cash withdrawals from the Treasury and thereby decreasing the financing costs to the Federal Government.

(3) In determining the timing and amounts of payments, consideration should be given to funds already available to the contractor, the expected expenditures under the contract, any information from the contractor regarding the need for funds, and the administrative cost of additional payments.

(b) If the contract is to be extended for an additional period of performance with additional funding, there may be paid at the time of execution of the extension, the amount withheld from the expiring period which, when added to the payments already made, does not exceed the new funds set forth in Article A–III(b) for the expiring period. The final payment under both of the procedures referred to in paragraph (a) of this section shall be made on the basis of determinations by the contracting officer that: (1) The required reports are satisfactory; (2) the research was performed in accordance with the provisions of the contract; (3) an additional payment is required to reimburse for all costs chargeable to DOE; and (4) an appropriate patent clearance has been obtained. If necessary in making these determinations, the contracting officer should obtain advice from technical personnel. It is expected that the annual progress and final reports and the contractor's certified cost statements will provide an adequate basis for making the required determinations. If the determinations cannot be made on the basis of the reports, visits to and other contacts with the research project during the contract period, and the contractor's certified statements, and the contracting officer determines that the contractor has not satisfied the contractual undertakings, appropriate steps shall be taken to protect the Government's interest.

917.7112–4 Approval of deviations in performance and other specified actions.

(a) Contractors should be advised to inform the contracting officer as soon as possible of contemplated deviations and other proposed actions which require DOE approval. Specific deviations and approval actions include the following:

(1) A change of the principal investigator, co-investigator, or other key people as might be named in the contract, or continuation of the research work for any period in excess of three months without direction by an approved principal investigator. The principal investigator may increase or decrease the amount of effort which he devotes to the project without obtaining the contracting officer's approval; however, a representative of the institution shall consult with the appropriate Headquarters program representative if the principal investigator plans to, or becomes aware that he will, devote substantially less effort to the work than anticipated in Article A–I. The purpose of such consultation will be to determine what effect, if any, the anticipated change will have on the research work and what modification to the contract, if any, may be appropriate.

(2) A change in the phenomenon or phenomena under study (i.e., broad category of the research under the contract) requires the specific written approval of the contracting officer; ordinarily such changes, if approved by the contracting officer, will be accomplished through a new contract or modification. The contractor may change the specific objectives in the research work described in the contract, provided it gives the contracting officer prompt notification of such changes; and the contractor may continue to follow the new objectives while DOE determines whether it wishes to continue the program under the changed approach. Significant changes in methods or procedures employed in performing the research should be reported in the first technical progress report issued subsequent to the changes.

(3) Acquisition of an item of equipment not itemized in the contract, the cost of which is $1,000 of more. Approval is not required if the equipment is merely a different model of an item listed in the contract. If plant and capital equipment funds are provided for the acquisition of equipment, with title to be vested in the Government, the total cost of such equipment shall not exceed the amount provided for such equipment unless prior approval has been obtained.

(4) Purchase of any general-purpose equipment, such as office equipment or furniture, air conditioning, etc., not specifically provided for in 917.7113, Appendix A of the contract will require prior approval.

(5) Incurring costs for items set forth in Article A–II(a), during the pertinent contract period stated in 917.7113, in Appendix A, in excess of 110 percent of the total estimated cost specified in Article A–III. Charges to DOE for any such costs incurred with approval of the contracting officer shall also be subject to the limitations of Article III.

(6) Any proposed foreign travel (defined as any travel outside of Canada and the United States and its territories and possessions) if requires prior approval.

(7) Expenditures for domestic travel if such expenditures exceed the amount shown in Article–II(a) for such travel by $500 or by 25 percent, whichever is greater, requires prior approval.

(8) Acquisition of excess personal property.

(9) Such other items as, in the judgment of the program office or the contracting officer, in specific cases need to be separately identified in the contract. (When plant and capital equipment funds are provided for the acquisition of Government property, the program offices shall require that such funds be used only for acquiring the equipment designated in the contract, unless prior approval has been obtained.)

(b) The contracting officer will present (in any manner considered appropriate) all such requests for approval to the cognizant program office for consideration, and will issue such authorizations and modifications under the contract as are necessary and appropriate.

(c) Contractors should be required to provide such statements of the project's financial and program status as are believed necessary for considering requests for approval.

917.7112-5 Auditing.

(a) As a part of the management of the research program accomplished through special research contracts, auditing of participating institutions shall be initiated by the contracting officers administering the contracts. The prupose of this audit program is to corroborate that the participating institutions are properly using the funds and personal property provided by the contracts, and to identify any changes needed in the arrangement or in related administrative requirements in order to further the effectiveness of the contracts in accomplishing their intended programmatic research purposes. In addition to these general objectives, the principal specific objectives of the audits of special research contracts should determine that: (1) The amounts as submitted in the contractor's certified cost statement are accurate and were incurred in connection with the work; (2) satisfactory documentary evidence is available in support of the costs incurred; (3) DOE approval was obtained where required; and (4) the proportion of total cost charged to DOE is in accordance with the percentage stipulated in the contract.

(b) The review of special research contracts should be made on a selective basis with the selected sample including all special research contracts where the contracting officer requested that an audit be performed pursuant to the provisions of 917.7112-3(b).

(c) In the event of termination prior to the expiration date of a special research contract, unless the costs incurred by the contractor are relatively small or can be otherwise adequately corroborated, an audit should be made to determine the nature of the costs and other relevant data for use in arriving at a termination settlement.

(d) While audit is not a prerequisite to payment under a contract, the contracting officer, before authorizing final payment, should consider the necessity for an audit to determine whether the charges to the contract are proper. If any such audits result in findings which may be of value to program offices in their determinations regarding selection and renewal of research projects, such findings should be made available to them.

917.7112-6 Security.

As a general rule, investigators should not need access to classified information in the conduct of basic research funded by DOE. The contractor should be advised when, in the judgment of the principal investigator, information is developed which should be classified, the DOE field office must be notified immediately. When, in the opinion of the cognizant program office, the work moves into a classified area, prompt steps shall be taken to notify the contractor and appropriate field office.

917.7113 Format for Special Research Contracts (SRC) with educational institutions/or other nonprofit institutions.

Contract No.———————————

This contract is effective as of the ——, 19—, between the United States of America (hereinafter referred to as the "Government"), acting throught the U.S. Department of Energy (hereinafter referred to as the "DOE"), and ——— (hereinafter referred to as the "Contractor").

Recitals

DOE wishes to have the Contractor perform certain research. This contract states the terms and conditions under which the Contractor agrees to perform the work.

This contract is authorized by the Department of Energy Organization Act of 1977 and other applicable law.

Agreement

Now therefore, the parties hereto agree as follows:

Article I—The Research To Be Performed

(a) The Contractor shall furnish personnel, facilities, equipment, materials, supplies, and services, except such as are furnished by the Government, necessary for the performance of the research provided for in Appendix A and shall perform the research and report thereon pursuant to the provisions of this contract. It is understood that Appendix A, a guide to the performance of this contract, may be deviated from by the Contractor subject to the specific requirements of this contract.

(b) This work shall be conducted under the direction of or such other members of the Contractor's staff as may be mutually satisfactory to the parties.

Note A.—The description of the research in Appendix A may be omitted and Appendix A appropriately modified to incorporated, by pertinent references to the proposal or other documents, the type of data necessary to describe the research as called for by Appendix A; and where there is no cost sharing, other features may be referenced in lieu of insertion in Appendix A. In such cases, the referenced material will be retained as part of the permanent contract file.

Article II—The Period for Performance

The period of performance under this contract shall commence on ——19—, and expire on ——19—. Performance may be extended for additional periods by the mutual written agreement of the parties. It is presently expected that this contract will be extended by mutual agreement until ——19—.*

*This sentence is optional and may be omitted.

Article III—Consideration

(a) In full consideration of the Contractor's performance hereunder, DOE shall furnish the equipment, supplies, materials, and services, if any, listed in Article A-11(b)(2) and pay the Contractor the sum of ——, hereinafter called the Government "Ceiling" which sum shall be subject to adjustments as hereinafter provided.

(b) Payments to the Contractor shall equal the "cumulative Government cost" of performance of this contract, as the term "cumulative Government cost" is defined in Article B-XXIX*; provided however, and notwithstanding any other provisions of this contract, that the Government's monetary liability under this contract shall not exceed the Government ceiling or an amount equal to the cumulative Government costs, whichever is less. The Contractor shall be obligated to perform under this contract throughout the agreed-upon period of performance, and to bear all costs which DOE has not agreed to pay; provided however, that the Contractor shall have the right to cease to perform the research provided for in this contract, upon written notice to DOE to that effect, at any time, when or after the cumulative Government cost equals or exceeds the Government ceiling.

(c) The Government ceiling specified in (a) above may be increased unilaterally by DOE by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification to this contract). In the event that the stated period of performance is extended, the Government ceiling will be revised to reflect any increased DOE funding for the extended period or periods.

(d) Upon termination or expiration of the total period of performance, the Contractor shall promptly refund to DOE (or make such disposition as DOE may in writing direct) any sums paid by DOE to the Contractor under this contract, through direct payment or

under letter or credit, in excess of the cumulative Government cost incurred in performance under the contract.

*The term cumulative Government costs refers to the cost of items under A–II(a) of Appendix A, for the initial contract period plus any extension period that may be properly chargeable to DOE. If proportionate cost sharing is involved, the cost is DOE's share of such costs, and does not include the cost of items excluded from Article A–II(a), such as items to be contributed solely by the Contractor or property to be furnished by the Government. Charges to DOE will be reported after the conclusion of each contract period set forth in Appendix A (generally an annual period); in addition to the limitations on charges to DOE provided for by this Article III, charges to DOE for a specified contract period may not exceed the 110 percent limitation mentioned above as well as to the provisions of this Article III.

Article IV—Government Property

The following items of property acquired or fabricated by the Contractor are hereby listed as "Government Property;" (List all property and equipment, title to which is to remain in the Government. Insert the word "none" if title to all of the property is to be vested in the Contractor. If title to property acquired of fabricated by the Contractor is to remain in the Government, add appropriate provisions for payment for such property from plant and equipment funds. Such funds should be in addition to, and not a part of, the "Government Ceiling" funds provided under Article III).

Article V—Appendices

Appendix A—Performance guide, Appendix B—General Provisions, and Appendix C—Statement of Costs, are hereby attached to and made a part of this contract.

In witness whereof, the parties have executed this contract.

United States of America

By ———
Date ———
Contracting Officer ———
Contractor ———
By ———
Date ———
Name ———
Title ———
Contract No. ———

Appendix A—Performance Guide

Contractor ———
Contract No. ———
For the contract period ——— through ———

Article A–I. Research to be performed by the Contractor. (Insert description of research activity and state the appropriate percentage of time or effort which the principal investigator(s) expects to devote to the work.)

Article A–II. Ways and means of performance. The listing under (a), (b), and (c) below should be in a form to permit determination of which items of costs are to be chargeable to DOE or proportionately shared, and which items are to be contributed solely by the Contractor or solely by DOE. The listing should also permit application of the approval requirements of the contract. Excessive detail in listing should be avoided.

(a) Items for which funding will be provided as indicated in A–III below. Do not include in this paragraph (a) any items which are to be contributed solely by the Contractor.

(1) Salaries and wages. State total dollar amount. If any stipulated salary amounts for professional staff members are established in accordance with FAR 31.3 or 31.7 the stipulated amounts, along with any limitations or requirements on the use of such stipulated amounts should be provided for in the contract.

(2) Equipment to be purchased or fabricated by the Contractor. List equipment to be purchased or fabricated by the Contractor and for which title is to remain in the Contractor and state the total dollar amount budgeted for such equipment. Such equipment may be set forth in general classifications as specifically as possible, if it is not feasible to list them individually. However, any individual piece of equipment, the estimated cost of which is over $1,000 will be separately identified. Except where the contract may otherwise specifically provide, equipment for the pupose of this paragraph A–II shall mean an item of personal property having a useful life expectancy in excess of 1 year and an acquisition cost in excess of $500. Failure to identify equipment may result in disallowance of its cost if subsequently pruchased.

(3) Travel. (Show amounts for both foreign and domestic. If none, state none).

Domestic ———
Foreign ———

(4) Other direct costs.

(5) Indirect costs based on applicable rates or predetermined rate of — percent if with a educational institution for FY year(s) ——. Show base or bases of costs to which rate apply.

(b) Items, if any, significant to the performance of this contract, but excluded from computation of Government costs and from consideration in proportioning costs. (See 917.7107–1(c)).

(1) Items to be contributed by the Contractor. In accordance with Article B–II(c), if a proposed Contractor contribution is included in this paragraph (b)(1), the Contractor shall maintain records adequate to permit DOE to determine the extent of the contribution. If the time or effort of the principal investigator(s) is to be contributed by the Contractor and excluded from A–II(a) and A–II(b), the contributed time or effort should be listed under A–II(d).

(2) Items to be contributed by the Government.

(c) Time or effort of principal investigator(s) contributed by Contractor but excluded from computation of Government cost and from consideration in proportioning costs. Where covered under A–II(a) or A–II(b) above, state: "None." See 917.7107–1(e).

Article A–III. The total estimated cost of items under A–II(a) above for the contract period stated in this Appendix A is $——. DOE will pay — percent of the actual costs of these items incurred during the contract period stated in this Appendix A, subject to the provisions of Article III and Article B–XXIX of Appendix B. The estimated Government cost for the contract period stated in this Appendix A is $——.

The estimated Government cost is funded as follows:

(a) Estimated unexpended balance from the prior period(s) $——.

(b) New funds for the current period $——.

The new funds being added in A–III(b) constitute the basis for advance payments provided under Article B–XI.

(c) Subject to their availability, additional funds anticipated for the contract in the amount of $——.

Note.—Do not include this provision in fully funded SRCs.

Appendix B—General Provisions

Article B–I—Definitions

(a) The terms "DOE" means the U.S. Department of Energy or any duly authorized representative thereof, including the contracting officer except for the purpose of deciding an appeal under the article entitled "Disputes."

(b) The term "contracting officer" means an official designated to enter into or administer contracts and make related determinations and findings.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

*Article B–II—Inspection, Reports, Records, and Accounts**

(a) DOE shall have the right to inspect, in such manner and at all reasonable times as it deems appropriate, all activities of the Contractor arising in the course of its undertakings under this contract.

(b) The Contractor shall make progress and other reports in such manner and at such time as specified under this contract, as DOE may reasonably require from time to time.

(c) The Contractor agrees to keep records and books of account, in accordance with generally accepted accounting principles and practices, and consistent with the requirements of OMB Circular A–21, and FAR 31.3 or 31.7 as constituted on the effective commencement date of the contract period, covering its costs and expenditures for items included under Article A–II(a) of Appendix A and which are furtherance of the research work under this contract. In the event a contractor contribution is listed in Article A–II(b), the Contractor shall maintain records adequate to permit DOE to determine the extent of the contribution. If professional staff members are included under Article A–II(b), the Contractor shall maintain records on such personnel in accordance with the payroll distribution procedure of section J.6 of OMB Circular A–21.

(d) DOE shall at all reasonable times be afforded access to the premises and to these books and records and to related correspondence receipts, vouchers, memoranda, and other data of the Contractor; and the Contractor shall preserve such books and papers, without additional compensation therefor, in accordance with the retention requirements referenced in Article B–XVIII, Examination of Records.

*If the contract is with a nonprofit organization rather than an educational institution, this article should be revised to provide that the cost principles at FAR 31 as

may be modified by 931 depending on the nature of the contractors organization, will be used in determining actual cost.

Article B–III—[Reserved]

Article B–IV—Disclosure of Information

This clause should be used in place of the clauses entitled "Security," 952.204–1, and "Classification" 952.204–2, in SRCs with educational institutions for off-site research that are not likely to produce Restricted Data or other classified information.

Disclosure of Information

(a) It is mutually expected that the activities under this contract will not involve Restricted Data or other classified information or material. It is understood, however, that if in the opinion of either party, this expectation changes prior to the expiration or termination of all activities under this contract, said party shall notify the other party accordingly in writing without delay. In any event, the Contractor shall classify, safeguard, and otherwise act with respect to all Restricted Data and other classified information and material, in accordance with applicable law and the requirements of DOE, and shall promptly inform DOE in writing if and when Restricted Data or other classified information and material becomes involved. If and when Restricted Data or other classified information or material becomes involved, the Contractor shall have the right to terminate performance of the work under this contract and in such event the provisions of this contract regarding termination for the convenience of the Government shall apply.

(b) The Contractor shall not permit any individual to have access to Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and DOE regulations or directives.

(c) The term "Restricted Data" as used in this article means all data concerning the design, manufacture or utilization of atomic weapons, the production of special nuclear material or the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

Article B–V—Responsibility for the Work

(a) The Contractor is solely responsible for the conduct of the work.

(b) In instances where the carrying out of the work involves a DOE license, the provisions of the pertinent license shall prevail over any inconsistent provisions of this contract.

Article B–VI—[Reserved]

Article B–VII—Rights in Technical Data (Short Form)

Insert the clause in 952.227–7700.

Article B–VIII—Patent Rights—Small Business Firms or Nonprofit Organizations

Insert the clause in 952.227–7100.

Article B–IX—Property Items

(a) Except as otherwise provided in this paragraph (a) and paragraph (b) of this Article B–IX, title to all material, supplies, and equipment purchased or otherwise acquired by the Contractor in the performance of its research activities shall be and remain in the Contractor. Said materials, supplies, and equipment shall be used for the benefit of research under this contract and any extensions or successor contractors hereto; and provided there is no interference with said research, shall be made available for use by investigators working on any Federal research contract at the same location. Subject to these priorities, materials, supplies, and equipment may be used as the Contractor wishes. Except as otherwise agreed in writing, title to any items of property listed as "Government property" shall pass directly to the Government; such property shall be subject to paragraphs (b), (c), (d), (e), and (f) of this Article B–IX.

(b) Subject to the mutual agreements of DOE and Contractor, the Government may furnish the Contractor items of equipment, materials, supplies or facilites for use by the Contractor in performance of the work, title to these items shall remain in the Government unless otherwise agreed in writing. Such items of property and the items of property listed elsewhere in this contract as Government property, are hereinafter referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government or shall any such property, or any part thereof, be or become a fixture or lose its identity as property by reason of affixation to any realty.

(c) To the extent practicable, the Contractor shall cause all items of Government property to be suitably marked with an identifying mark or symbol indicating that the items are the property of the Government. The Contractor shall maintain, at all times and in a manner satisfactory to DOE, records showing the use and disposition of Government property. Such records shall be subject to DOE inspection at all reasonable times and DOE shall at all reasonable time have access to the premises wherein any items of Government property are located. Unless otherwise authorized in writing by DOE, the Contractor shall use Government property only for the purposes of this contract, provided, however, that the Contractor is hereby authorized to use items of equipment constituting Government property for other Federal research contracts to the extent such use: (1) Does not interfere with its work under this contract; (2) is not prohibited by provisions of the other Federal agreements; and (3) is promptly reported by the Contractor to contracting officer.

(d) The Contractor shall promptly notify DOE of any loss or destruction of or damage to Government property. It is understood that the Contractor shall not be liable for any such loss, destruction, or damage, unless same results from willful misconduct or lack of good faith on the part of any corporate officer of the Contractor, or of one or more of the contract's representatives having supervision or direction of all or substantially all of the activities under this contract. If the Contractor is liable for such loss, destruction, or damage, it shall promptly account therefor to the satisfaction of DOE; if the Contractor is not liable therefor, and is indemnified, reimbursed, or otherwise compensation for such loss, destruction, or damage, it shall promptly account therefor to the satisfaction of DOE.

(e) With the written approval of DOE, the Contractor may sell, transfer, or otherwise dispose of items of Government property to such parties and upon such terms as so approved, or itself acquire title to items of Government property upon such terms as may mutually be agreed upon in writing by the Contractor and DOE. The proceeds of any such disposition, and any agreed price of any such Contractor acquisition, shall be paid by the Contractor to the Government, or credited on account of DOE, payments to be made under this contract as DOE may direct. Subject to the other provisions of this contract, the Contractor shall deliver Government property to DOE upon request (suitably packed and shipped at the Government's expense).

(f) The Contractor shall utilize for the benefit of the work under this contract such items of property available to the Contractor by reason of its activities under other Federal research agreements as are appropriate for utilization under this Contract pursuant to the provisions of the pertinent Federal agreement.

Article B–X—Termination for Convenience of the Government

Insert the requirements of FAR 49.

Article B–XI—Payments

(a) DOE shall make payments to the Contractor with respect to the amount of consideration prescribed in Article III of this contract as follows:

(1) A maximum of an additional 45 percent of the new funds as set forth in Article A–III(b) of this contract following execution of this contract (and following the effectuation of each extended period) upon receipt of a request or requests in writing from the Contractor evidencing that the requested amount is currently needed in connection with planned expenditure or commitments for contract performance.

(2) A maximum of an additional 45 percent of the new funds as set forth in Article A–III(b) of this contract upon receipt of requests from the Contractor evidencing that the amount requested is then required in connection with the work under the contract.

Note.—Subparagraphs (1) and (2) of this paragraph (a) may be revised, as deemed appropriate by the contracting officer, in accordance with 917.71.

(3) If, following submission of an annual progress report, the contract is to be extended for an additional period of performance, and additional payment may be made at the time of execution of the extension which, when added to the payments already made under (1) and (2) above for the expiring period, will not exceed the new funds set forth in Article A–III(b) for the expiring period. A concluding payment

for the pertinent period, if appropriate, may be made following submission of a certified statement showing Government cost and evidencing the Contractor's performance under this contract.

(4) If the contract is not to be extended, the final payment of the consideration provided for in Article III shall be made following submission by the Contractor of a final report required by Article B–XXI, in form and content satisfactory to DOE, and submission of a certified statement showing Government cost and evidencing the Contractor's performance and compliance with the patent provisions.

(b) The payments made pursuant to paragraph (a) above shall not prejudice or otherwise affect adversely any of the Government's rights under the contract. For purposes of settlement in the event of termination prusant to article B–X hereof, these payments shall not be construed as evidentiary, and any excess payment in the light of Article B–X shall be promptly returned to DOE.

(c) DOE, at its option, may invoke the following with respect to any amount of consideration remaining to be paid at any given time:

(1) DOE shall issue a letter of credit as provided for by Treasury Fiscal Requirements Manual, Part 6 Chapter 2000 under which payments to the Contractor with respect to the amount of consideration provided for in Article III will be made. The Contractor agrees that the first ninety (90) percent of the new funds as set forth in Article A–III(b) will be under the letter of credit and will be subject to the submission by the Contractor of a Payment Voucher on Letter of Credit (TUS 5401), in accordance with procedures based upon Treasury Fiscal Requirements Manual, Part 6 Chapter 2000 which are agreed to by the parties. Following submission by the Contractor of a final report provided for in Article B–XXI, in form and content satisfactory to DOE, and submission of a certified statement showing the total expenditures and evidencing the Contractor's performance, and upon submission by the Contractor to DOE of such invoices or vouchers as are satisfactory to DOE, DOE shall pay the Contractor the concluding payment of the consideration provided for in Article III; or said concluding payment will be included under the letter or credit and will be subject to submission by the Contractor of a payment voucher on letter of credit, in accordance with the procedures described above. If, following submission of an annual report, the contract is extended for an additional period of performance, an additional payment may similarly be made at the time of execution of the extension which, when added to the payments already made for the expiring period, will not exceed the new funds as set forth in Article A–III(b) for the expiring period. A concluding payment for the pertinent period, if appropriate, may be made following submission of a certified statement showing Government cost for the peritent period and evidencing the Contractor's performance.

(2) DOE reserves the right to increase, decrease, or cancel the amount covered by the letter of credit, provided that such action is required because of a change in the amount of consideration provided for in Article III or is taken pursuant to paragraph (c)(1) of this article. The issuance and use of a leitter of credit and receipt of funds pursuant thereto shall not prejudice or otherwise adversely affect any of the Government's rights under the agreement.

Article B–XII—Equal Opportunity

Insert the clause from FAR 52.222–26.

Article B–XIII—Convict Labor

Insert the clause from FAR 52.222–3.

Article B–XIV—Contract Work Hours and Safety Standards Act—Overtime Compensation—General

Insert the clause from FAR 52.222–4 with appropriate insertions.

Article B–XV—Disputes

Insert the clause in FAR 52.223–1.

Article B–XVI—Officials Not To Benefit

Insert the clause in FAR 52.203–1.

Article B–XVII—Convenant Against Contingent Fees

Insert the clause in FAR 52.203–5.

Article B–XVIII—Examination of Records

Insert the clause from FAR 52.215–1. The Examination of Records clause in FAR 52.215.1 may be omitted from foreign contracts in accordance with procedures in FAR 25.9.

Article XIX—[Reserved]

Article B–XX—Assignment: Subcontracting

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor, except as expressly authorized in writing by the contracting officer. The Contractor shall not subcontract any research or development work under this contract, except as expressly authorized in writing by the contracting officer.

Article B–XXI—Reports and Renewal Proposals

The Contractor shall furnish six (6) copies of the following reports to the appropriate field office.

(a) *Progress report.* The progress report shall briefly describe the scope of investigations undertaken and the significant results obtained. It shall also indicate compliance with the contract requirements and any failures to comply. The report shall indicate the approximate percentage of time or effect which the principal investigator(s) has devoted to the project since the beginning of the current term of the contract and indicate the amount of effort which is expected to be devoted during the remainder of the current term. Technical reports, preprints, and articles prepared for publication shall be listed with bibliographical references. Reprints of all such material not previously submitted shall be appended and material contained therein need not be duplicated in the report. Progress reports shall be submitted approximately 4 months in advance of the expiration of the current contract term and shall give the Contractor's best estimate of the probable events and occurences in regard to the remainder of the current term. Except as DOE may otherwise request, no further progress report will be required for any contract year unless there has been a significant change in scientific results or compliance between the lastest progress report by the contractor and its actual experience which shall be reported promptly.

(b) *Final report.* Upon termination or expiration of the total period of performance, the Contractor shall submit, promptly, a summary of its activities for the entire period, including a list of publications issued during the entire period and copies of any reprints not previously submitted, as well as a comprehensive evaluation of progress in the area of research funded by the contract.

(c) *Renewal proposals.* A renewal proposal, if any, shall be submitted along with the technical progress reports, and each of the two documents shall be separately bound. Renewal proposals are submitted to the DOE contracting officer.

Article B–XXII—Foreign travel

Foreign travel shall be subject to the prior approval of the contracting officer for each separate trip, regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions.

Article B–XXIII—[Reserved]

Article B–XXIV—Utilization of Labor Surplus Areas Concerns

Insert the clause in FAR 52.220–3 under the conditions prescribed therein.

Article B–XXV—Utilization of Small Business Concerns and Small Disadvantaged Business Concerns

Insert the clause in FAR 52.219–8.

Article B–XXVI—Utilization of Women-Owned Small Business

Insert the clause in FAR 52.219–13.

Article B–XXVII—Sensitive Foreign Nations Controls

Insert the clause at 952.204–71 if the contract involves research in nuclear technology and it is appropriate. The contracting officer should confirm its inclusion with the local security office.

Article B–XXVIII—Affirmative Action for Special Disabled and Viet Nam Era Veterans

Insert the clause in FAR 52.222–35.

Article B–XXIX—Determination of Government Costs

"(a) The term "Government cost" as used in this contract means DOE's share** of the sum of costs incurred by the Contractor for items included under Article A–11(a) of Appendix A furtherance of the work hereunder, incurred in accordance with the provisions of this contract, and which are reported to DOE in accordance with (b) below. The term "cumulative Government costs" as used in this contract means the total of the Government costs incurred during

the initial contract period plus any extension periods.

(b) Within 3 months after the end of each contract period set forth in Appendix A, and within 3 months after the termination or expiration of the total period of performance, the Contractor shall furnish a certified statement, executed by an official of the Contractor showing the Contractor's cost and evidencing its performance under the contract, during the contract term just completed. The statement shall show all cost incurred during the pertinent contract term set forth in Appendix A for items under Article A–II(a) of Appendix A, including the Contractor's share, if any, of such costs, and show the extent of the Contractor's contribution of items under Article A–II(b)(1) of Appendix A. Costs included in the certified statement may include the following: expenditures of cash, the cost of material and supplies transferred from store's inventory, and the amount due the Contractor for indirect costs in accordance with the rate and factor shown in Appendix A of the contract for the pertinent period. The costs for the pertinent period shall be consistent with the principles of OMB Circular A–21 as constituted as of the effective commencement date of said period. The certified statement shall be in the form set forth in Appendix C.

(c) The certified statement should be in agreement with the institution's financial record and shall reflect only expenditures actually made during the period covered, including transfers from inventory. It shall not include commitments as a part of such expenditures for goods or services on order but not received or those received but not paid for, unless the Contractor is operating under an established and consistently applied system of accrual accounting. If this is the case, the certified statement shall be so footnoted. A combination of accrual and cash accounting for cost accumulation and reporting purposes shall not be used. The renewal proposal budget should be footnoted to show the estimated amount of outstanding commitments for property at the end of the current period. The certified statement contains a space in which office should be inserted the actual amount of outstanding commitments for property at the end of the period covered by the statement. This commitment amount is for information only and is not a part of the expenditure calculation. The Contractor understands that DOE expects to rely on this certified statement for determining the Government cost for the period. With respect to any period in which proportionate cost sharing is applicable, the support costs for the pertinent period will be determined by applying the percentage figure included in Article A–III for the pertinent period to the certified cost of items included under Article A–II(a) incurred during the pertinent period. All charges to DOE shall be subject to the approval requirements of this contract. The Contractor is expected to maintain auditable records as contemplated by Article B–II(c) to substantiate the costs incurred for items under Article A–II(a) and to show the extent of the Contractor's contribution of the items listed under Article A–II(b)(1).

*If the contract is with a nonprofit organization other than an educational institution or a research foundation established by an educational institution, this article should be revised to provide that the commercial cost principles (FAR 31.2) will be used in determining actual cost.

**In those cases in which there is no proportionate sharing of costs, DOE's "share" will be 100 percent. With respect to any period in which proportionate cost sharing is applicable to Article A–III, it is understood that Government cost for that specified period will equal the stipulated percent of the sum of costs incurred by the Contractor during the stated period for items under A–II(a) of Appendix A, not shown in Appendix A of the contract for the pertinent period. The costs for the pertinent period shall be consistent with the principles of OMB Circular A–21 and FAR 31.3 or FAR 31.7 as constituted on the effective commencement date of said period. The certified statement shall be in the form set forth in Appendix C.

Article B–XXX—Additional Approvals

In addition to such approvals as are specifically required by other provisions of this contract, the Contractor shall obtain DOE's approval for:

(a) A change of the principal investigator, co-investigator, or other key people as might be named in this contract or continuation of the research work for any one period in excess of 3 months without direction by an approved principal investigator. The principal investigator may increase or decrease the amount of effort which he devotes to the project without obtaining DOE approval; however, a representative of the institution shall consult with the appropriate DOE Headquarters program representative if the principal investigator plans to, or becomes aware that he will devote substantially less effort to the work than anticipated in Article A–1. The purpose of such consultation will be to determine what effect, if any, the anticipated change will have on the research work and what modification to the contract, if any, may be appropriate.

(b) No change in the phenomenon or phenomena under study, i.e., broad category of the research under the contract, shall be made without the specific written approval of the contracting officer. Ordinarily, such changes, if approved by the contracting officer, will be accomplished through a new contract or mutually agreed to modification. The Contractor may change the specific objectives in the research work described in the contract, provided it gives the contracting officer prompt notification of such changes, and the Contractor may continue to follow the new objectives while DOE determines whether it wishes to continue the program under the changed approach. Significant changes in methods or procedures employed in performing the research should be reported in the first technical program report issued subsequent to the changes.

(c) Prior approval is required. Acquisition of an item of equipment not itemized in Appendix A, the cost of which is $1,000 or more. Approval is not required if the equipment is merely a different model of an item listed in Appendix A. (If plant and capital equipment funds are provided for the acquisition of equipment with title to be vested in the Government, the total cost of such equipment shall not exceed the amount provided for such equipment unless prior DOE approval has been obtained.)

(d) Prior approval is required. Purchase any general-purpose equipment, such as office furniture, air conditioning, automatic data processing equipment, etc., not specifically provided for in Appendix A.

(e) Incurring costs for items set forth in Article A–II(a), during the pertinent contract period stated in Appendix A, in excess of 110 percent of the total estimated cost specified in Article A–III. Charges to DOE for any such costs incurred with the approval of DOE shall also be subject to the limitations of Article A–III.

(f) Any proposed foreign travel (see Article B–XXII).

(g) Prior approval is required. Expenditures for domestic travel if such expenditures exceed the amount shown in Article A–II(a) for such travel by $500 or by 25 percent, whichever is greater.

(h) Acquisition of excess personal property.

Article B–XXXI—[Reserved]

Article B–XXXII—Clean Air and Water

Insert the clause in FAR 52.223–2 under the conditions set forth therein.

Article B–XXXIII—Affirmative Action for Handicapped workers

Insert the clause set forth in FAR 52.222–36 under the conditions set forth in the section.

Article B–XXXIV—Security

Insert the clause in 952.204–1 under the conditions set forth therein.

Article B–XXXV—Classification

Insert the clause in 952.204–70 under the conditions set forth therein.

Article B–XXXVI—Preference for U.S. Flag Air Carriers

Insert the clause in FAR 52.247–63 under the conditions set forth in FAR 47.4.

Article B–XXXVII—Preservation of Individual Occupational Radiation Exposure Records

Insert the clause set forth in 952.223–75 where appropriate.

APPENDIX C.—STATEMENT OF COST

1. Name and address of Contractor .....
2. Contract number .....
3. Beginning and ending date of pertinent contract period .....
4. Costs incurred during the pertinent contract period (List only those costs which are to be reimbursed by DOE or proportionately shared by the parties in accordance with Article A–II(a) and Article A–III.)

Cost categories*	Amount
a. Salaries and wages	$
b. Equipment	$
(List separately the cost of each piece the equipment separately listed in Appendix A to the agreement or for which separate approval was obtained from DOE.)	
c. Travel	$
(Show amounts for both foreign and domestic. If none, state none.)	
Foreign	$
Domestic	$
d. Other direct costs	$
e. Total direct expenditures	$
f. Indirect charges	$

APPENDIX C.—STATEMENT OF COST—Continued

(Indicate percent and expenditures to which percent is applied.)

5. Total costs for items under Article A-II(a) for pertinent period ..... $____
6. Government costs for the pertinent period set forth in Appendix A, as defined in Article B-XXIX, chargeable to DOE for the pertinent period (percent of total costs using percent shown in Article A-III of Appendix A) for pertinent period of ..... $____
7. Cumulative Government cost (Government cost under this statement plus Government costs for previous periods ..... $____
8. Accumulated Government ceiling in Article III ..... $____
9. The difference between lines 7 and 8 ..... $____
10. Provide information regarding contributions by the Contractor of items in Article A-II(b) of Appendix A during pertinent period. State the extent of the Contractor's actual contribution, the measure of such contributions should be in the same terms as the Contractor's commitment under Article A-II(b), e.g., time, dollar, etc ... $____
11. Actual outstanding commitments for property at the end of the period covered by this statement ..... $____

I hereby certify that this report is true and correct to the best of my knowledge and belief and that the costs listed herein were incurred in connection with the performance of the research provided for under this contract and in accordance with the terms and conditions set forth therein

(Name and Title of an Authorized Representative)

(Signature) (Date)

*The listing of categories should be consistent with the itemization in Appendix A.

Supart 917.72—Program Opportunity Notices for Commercial Demonstrations

917.7200 Scope of subpart.

(a) This subpart establishes procedures for the submission, evaluation, and selection for award or support of proposals offered in response to program opportunity notices (PONs) issued by DOE to accelerate the demonstration of the technical feasibility and commercial application of all potentially beneficial non-nuclear energy sources and utilization technologies.

(b) As a result of a PON, a contract, grant or cooperative agreement may be entered into. If the intended relationship is expected to be a contract this regulation shall be followed. If the intended relationship is expected to be a financial assistance instrument the DOE Assistance Regulations (DOE-AR) shall be followed. Specifically, DOE-AR 600.233 (10 CFR Part 600.233) will apply if the intended relationship is expected to be a cooperative agreement. In any event, any public notice, solicitation, or request for applications or proposals should indicate whether the intended relationship will be one of acquisition or assistance and state that acquisition regulation will govern if an acquisition contract is entered into and that the assistance regulation will govern if a financial assistance instrument is utilized.

(c) This subpart applies to demonstrations performed by individuals, educational institutions, other commercial or industrial organizations, or other private entities, or by public entities, including State and local governments, but not other Federal agencies. For purposes of this subpart, commercial demonstration projects include demonstrating technological advances and field demonstrations of new methods and procedures, and demonstration of prototype commercial applications for the exploration, development, production, transportation, conversion, and utilization of non-nuclear energy resources.

917.7201 Policy.

917.7201-1 General.

(a) It is DOE's intent to encourage the submission of proposals to accelerate the demonstration of the technical, operational, economic, and commercial feasibility and environmental acceptability of particular energy technologies, systems, subsystems, and components. Program opportunity notices will be used to provide information concerning scientific and technological areas encompassed by DOE's programs. DOE shall, from time to time, issue program opportunity notices for proposals for demonstrations of various forms of non-nuclear energy and technology utilization.

(b) Synopsis of the notice shall be published in the Commerce Business Daily prior to release. In addition, the notice shall be circulated directly to potentially interested individuals, private and public entities (excluding Federal agencies) and associations thereof to the maximum extent feasible. Special attention in this regard should be given to small business concerns, small disadvantaged concerns, and women-owned small business concerns to insure that they are given every opportunity to participate in such acquisitions. Consideration should be given to distributing the notice to all eligible entities which, during the preceding two years, have expressed an interest in participating in, or entering into arrangements for, commercial demonstration in the particular energy field.

917.7201-2 Determination to use and approval of content.

(a) *Determination to use.* (1) Before the PON is selected as the appropriate solicitation procedure the Head of the Contracting Activity expected to issue the notice will be consulted to assure that the PON is the appropriate solicitation method. A written program determination shall be made to show that the conditions in 917.7201-3 exist to support the conclusion that the use of the PON procedure is both necessary and appropriate. The determination must not be merely conclusive but shall be supported by specific facts and explanations.

(2) The Senior Program Official or designee may approve the determination.

(3) The approved determination shall be included in the PON file.

(b) *Approval of content.* (1) When the dollar amounts are less than Source Evaluation Board (SEB) level, a PON may be originated at whatever level is consistent with the program objectives established by the Senior Program Official. When a source evaluation board is not required, notices may be approved by the Senior Program Official or designee after prior concurrence by Counsel.

(2) When an SEB is required, notices shall be reviewed and approved by the SEB after prior concurrence by Counsel, and the Senior Program Official or designee.

(3) All PONs shall be issued by the cognizant Head of the Contracting Activity or designee.

917.7201-3 Federal support criteria.

In determining the appropriateness of DOE involvement through the PON mechanism in any particular area of demonstration activity, consideration shall be given to the extent to which the proposed undertaking meets Federal support criteria including, but not limited to, the following:

(a) The urgency of public need for the potential results of the research, development, or demonstration effort is high, and it is unlikely that similar results would be achieved in a timely manner in the absence of Federal assistance;

(b) The potential opportunities for non-Federal interests to recapture the investment in the undertaking through the normal commercial utilization of proprietary knowledge appear inadequate to encourage timely results;

(c) The extent of the problems treated and the objectives, sought by the undertaking are national or widespread in their significance;

(d) The opportunities to induce non-Federal support of the undertaking through regulatory actions, end-use controls, tax and price incentives, public educations, or other alternatives to direct Federal financial assistance are limited;

(e) The degree of risk of loss of investment inherent in the research is high, and the availability of risk capital to the non-Federal entities which might otherwise engage in the field of the research is inadequate for the timely development of the technology;

(f) The research, development, and application objectives anticipated by the activities or facilities proposed, support national interests or objectives;

(g) The economic, environmental, and societal significance which a successful demonstration may have for the national fuels and energy system; and

(h) The availability of non-Federal participants to construct and operate the facilities or perform the activities associated with the proposal and to contribute to the financing of the proposal.

917.7201-4 Information to be included in program opportunity notices.

Each program opportunity notice shall include:

(a) The goal of the intended demonstration effort;

(b) A time schedule for submission of, and action on, proposals;

(c) Evaluation criteria, including an indication, when determined practicable to do so, of the approximate cost and time duration contemplated for individual projects resulting from the notice;

(d) Program policy factors.

(e) A statement that additional information, consistent with the overall concepts and approaches developed in the proposal, may be required regarding the statement of work and the proposed budget (e.g., a notice that a detailed cost breakdown may be required from the proposers being considered);

(f) Such other information, terms, or conditions that shall apply to the particular program opportunity notices;

(g) A place and manner of submission; and

(h) A late proposal provision (see FAR 15.412).

917.7201-5 Information to be provided in proposals offered pursuant to program opportunity notices.

(a) Name and address of the entity(ies) submitting the proposals;

(b) Date of preparation of submission;

(c) Type of entity(ies) (public, including State and local governments, and private, including profit and nonprofit organizations and educational institutions);

(d) Representations and certifications as specified in the notice; and

(e) Concise title and abstract of the proposed demonstration project for which assistance or participation is being sought.

(f) An outline and discussion of the proposed demonstration which shall, if applicable and to the extent possible, specifically address and reference the evaluation criteria and include:

(1) Specification of the technology;

(2) Proposed statement of work to be performed;

(3) Description of prior operation experience with the technology;

(4) Preliminary design of the demonstration plan;

(5) Time tables containing proposed construction or fabrication and installation and operation plans;

(6) Budget-type estimates of construction or fabrication and operation costs;

(7) Description and proof of title to land for proposed site, natural resources, electricity and water supply, and logistical information related to access to raw materials to construct and operate the plant and dispose of salable products from the plant;

(8) Assessment of the environmental impact of the proposed plant and plans for disposal of wastes resulting from the operation of the plant;

(9) Plans for continued use of the technology if the demonstration is successful;

(10) Plans for continued use of the plant if the demonstration is successful;

(11) Plans for dismantling of the plant if the demonstration is unsuccessful or otherwise abandoned;

(12) Form and amount of assistance or participation being sought;

(13) Form and amount of funding, or other contribution to be provided by the proposer, including proposed disposition of revenues generated; and,

(14) The extent to which the proposed expenditures would constitute permanent (nonseverable) improvement to property now owned by the Government; and proposed plans for the disposal (through acquisition by the offeror or otherwise) of any such improvements.

The information called for under this section relates primarily to a demonstration project involving the construction and operation of a "plant." In instances where the proposed project concerns a demonstration that does not involve a plant (for example, the demonstration of a process, apparatus, or device), the program opportunity notice shall state what additional information is to be submitted with the proposal;

(g) Names of key personnel to be involved, brief biographical information, including relevant experience;

(h) A current financial statement;

(i) The period for which proposal is valid;

(j) Names and telephone numbers of proposer's primary business and technical personnel whom DOE may content during evaluation or negotiation;

(k) Each proposal containing technical data or proprietary or business confidential information, which the proposer intends to be used by DOE for evaluation purposes only, should be marked on the cover sheet with the legend prescribed in 927.402-3(d); and

(l) Signature and title of official of the proposing organization authorized to contractually obligate such organization

917.7202-1 Forms of assistance and participation.

(a) In providing for demonstration, DOE may utilize various forms of Federal assistance and participation. These include but are not limited to:

(1) Contracts;

(2) Grants;

(3) Loans;

(4) Incentives, including financial awards, to individual inventors;

(5) Joint Federal-industry demonstration corporation;

(6) Federal purchase(s) or guaranteed price of the products of the demonstration project; and

(7) Cooperative agreements.

917.7202-2 Cost participation.

The provisions of DOE's cost participation policies contained in 917.70 shall apply, as applicable, to proposals hereunder.

917.7203-2 Method and criteria for evaluation and selection.

(a) *General policy.* (1) Information contained in proposals offered in response to PONs shall be handled in accordance with the policies and procedures set forth in 927.402-3(d) pertaining to the marking and handling of proprietary data.

(2) Late proposals, modifications of proposals, and withdrawals of proposals shall be handled in accordance with FAR 15.412.

(b) *Selection.* (1) When the aggregate of expected award values, plus costs shared by the performer and/or other parties, together with later phases of the same project, is expected to meet the SEB dollar threshold, comprehensive evaluation shall be conducted by a specially constituted board which shall follow procedures and documentation requirements of the SEB Handbook modified as appropriate to conform to the solicitation process as set forth herein.

(2) When the aggregate of expected award values, plus costs shared by the performer and/or other parties, together with the later phases of the same project

is not expected to meet the SEB dollar threshold, proposals submitted in response to a PON will be evaluated by a panel which shall be appointed by the cognizant program office. The panel should utilize any of the procedures and documentation requirements of the SEB Handbook (as modified as appropriate to conform to the solicitation process as set forth herein) whenever necessary to ensure the impartial, equitable and thorough evaluation of each proposal. The panel will be composed of program office and other personnel, including representatives of Procurement, Counsel, and, as deemed appropriate by the appointing official, supplemented by Personnel from other Government agencies. The representative of Counsel will be an ex-officio (nonvoting) member of the panel. Personnel from DOE management or operating contractors may be used as advisors to the panel when their services are necessary and available as long as the approvals and procedures in 927.70 and 915.613(f) are followed.

(c) *Evaluation criteria.* The evaluation criteria shall be specified in the notice along with a narrative description of their relative importance. The criteria below, to the extent applicable, as well as any additional criteria stated in the program opportunity notice, shall be considered:

(1) The overall technical feasibility of the proposed effort;

(2) The contribution which the proposed effort is expected to make to DOE in carrying out its program responsibilities, including, but not limited to, solving energy extraction and storage, transportation, conversion, waste utilization, and conservation problems;

(3) The capabilities, related experience, facilities, instrumentation, or techniques which the proposer possesses and offers, and which are considered to be integral factors for achieving the objective(s) of the proposal;

(4) The qualifications, capabilities, experience, and availability of the proposed key personnel;

(5) The ability of the proposer to furnish necessary financial support;

(6) Project and financial plans for management of the activities including the adequacy of proposed arrangements among all participants;

(7) Plans for involvement of the small business community;

(8) Cost realism and probable cost to the government.

(d) *Program policy factors.* Program policy factors are those factors which, while not appropriate indicators of a proposal's individual merit (i.e., technical excellence, proposer's ability, cost, etc.), are relevant and essential to the process of choosing which of the proposals received will, taken together, best achieve the program objectives. All such factors shall be predetermined and specified in the notice so as to notify proposers that factors which are essentially beyond their control will affect the selection process. The following are examples of possible program policy factors:

(1) It is desirable, because of the nature of the energy source, the type of projects envisioned, or limitations of past efforts, to select for award or support a group of demonstration projects with a broad or specific geographic distribution;

(2) It is desirable to select for award or support (for reasons that must be stated) projects from diverse types and sizes of proposing organizations;

(3) It is desirable to select for award or support a group of projects which represents a diversity of methods, approaches, applications, or kinds of work; and

(4) It is desirable, due to the nature of certain projects or proposing organizations, to select for award or support duplicative or complementary efforts or projects.

(e) *Selection official.* The selection official will be as provided in 915.

(f) *Preliminary review.* (1) Prior to making a comprehensive evaluation of a proposal, the SEB, or the receiving office when an SEB is not required, shall determine that it:

(i) Contains sufficient technical, cost, and other required information to enable comprehensive evaluation; and

(ii) Has been signed by a responsible official of the proposing organization or a person authorized to obligate such organization.

(2) If the proposal does not meet these requirements, a comprehensive evaluation shall not be made. In such a case, a prompt reply shall be sent to the proposer, indicating the reason(s) for its not being selected for award or support under the PON.

(g) *Comprehensive evaluation.* The basic task in the evaluation and selection of proposals for award or support is to assess their relative merit in order to determine which of them offers the greatest likelihood for achievement of the program objectives stated in the notice, considering technical quality, ability of the proposer, estimated cost, and other relevant factors. Proposals which survive preliminary review shall be evaluated by an SEB or a panel, as applicable, in accordance with the criteria stated in the notice. The Source Selection Official will select proposals for support or award from the findings established by the SEB or panel, as applicable. In this latter process, the selection official will take into account the relevant program policy factors in order to determine the mix of proposed projects which will best further specific program goals. All findings and selections are to be documented, signed, and maintained to provide an adequate record of the proceedings.

917.7204 Award or support.

While only those proposals which further the needs of the program as specified in the notice will be considered for award or support, DOE may accept for award or support all, none, or any number or part of the proposals submitted.

917.7205 Unsolicited proposals for commercial demonstrations.

See 915.503.

§ 917.7206 Optional two-step method.

Where a large number of proposals are anticipated, proposals may be limited to technical considerations with cost proposals subsequently requested from those proposers whose technical proposals are evaluated as technically acceptable.

Subpart 917.73—Program Research and Development Announcements

§ 917.7300 Scope of subpart.

(a) This subpart establishes procedures for the submission, evaluation, and selection for award or support of proposals offered in response to specific program research and development announcements (PRDAs) issued by DOE to conduct research, development, and related activities in the energy field.

(b) As a result of a PRDA, a contract, grant or cooperative agreement may be executed. If the intended relationship is expected to be a contract this regulation shall be followed. If the intended relationship is expected to be a financial assistance instrument the DOE Assistance Regulations (DOE–AR) shall be followed. Specifically, DOE–AR 600.234 (10 CFR 600.234) will apply if the intended relationship is expected to be a cooperative agreement. In any event, any public notice, solicitation, or request for applications or proposals should indicate whether the intended relationship will be one of acquisition or assistance and state that the DEAR will govern if a contract is entered into and that the DOE–AR will govern if a financial assistance instrument is utilized.

(c) This subpart applies to efforts by the DOE to conduct, or participate in joint or cooperative projects for research, development, and related activities with individuals, private entities (including educational institutions, nonprofit organizations, and commercial industrial organizations), or public entities (including State and local governments, but not Federal agencies), provided, however, that the conditions set forth in 917.7301–1(c) exist.

§ 917.7301 Policy and prerequisites.

§ 917.7301–1 General.

(a) PRDAs shall be used to provide potential proposers with information concerning DOE's interest in entering into arrangements for research, development, and related projects in specified areas of interest. It is DOE 's intent to solicit the submission of ideas which will serve as a basis for research, development, and related activities in the energy field. It is DOE's desire to encourage the involvement of small business concerns, small disadvantage business concerns, and women-owned small business concerns in research and development undertaken pursuant to PRDAs.

(b) The PRDA should not replace existing acquisition procedures where a requirement can be sufficiently defined for solicitation under standard advertised or negotiated acquisition procedures. Similarly, it should not inhibit or curtail the submission of unsolicited proposals. However, a proposal which is submitted as though it were unsolicited but is in fact germane to an existing PRDA shall be treated as though submitted in response to the announcement or returned without action to the proposer, at the proposer's option. Further, the PRDA is not to be used in a competitive situation where it is appropriate to negotiate a study contract to obtain analysis and recommendations to be incorporated in the subsequent request for proposals.

(c) The PRDA is to be used only where:

(1) Research and development is required within broadly defined areas of interest to support program goals but it is difficult, if not impossible, to describe in any reasonable degree of detail the nature of the work contemplated because of:

(i) The multiplicity of possible approaches, within the current state of the art, available for solving the problems;

(ii) The desirability of involving a broad spectrum of organizations in seeking out solutions to the problems, posed;

(iii) The expectation that many individual proposers will have unique qualifications or specialized capabilities which will enable them to perform portions of the research or development program (without necessarily possessing the qualifications to perform the entire program) so that the overall support may be broken into segments which cannot be ascertained in advance; and

(iv) The desirability of fostering new and creative solutions;

(2) Consistent with (c)(1) above, it is anticipated that choices will have to be made among dissimilar concepts, ideas, or approaches; and

(3) It is determined that a broad range of organizations exist that would be capable of contributing towards the overall research and development goals identified in (c)(1) above.

(d) The PRDA shall be synopsized in the Commerce Business Daily prior to release. The announcement shall also be circulated directly to interested individuals, private and public entities (excluding Federal agencies), and associations thereof to the maximum extent feasible.

§ 917.7301–2 Determination to use and approval of content.

(a) *Determination of use.* (1) Before the PRDA is selected as the appropriate solicitation procedure, the Head of the Contracting Activity expected to issue the announcement shall consult with requiring program office to assure that the PRDA is the appropriate solicitation method. A written program determination shall be made to show that the conditions in 917.7301–1(c) exist to support the conclusion that use of the PRDA procedure is both necessary and appropriate. The determination must not be merely conclusory but shall be supported by specific facts and explanations.

(2) [Reserved]

(3) The approved determination shall be included in the PRDA file.

(b) *Approval and content.* (1) A PRDA may be originated at whatever level is consistent with the program objectives established by the Senior Program Official.

(2) The PRDA content must be approved by the Senior Program Official or designee after prior concurrence by Counsel, and the Procurement Director of the office assigned to issue the PRDA.

(3) All PRDAs will be issued by the Head of the Contracting Activity or designee.

§ 917.7301–3 Information to be included.

Each PRDA shall include:

(a) A summary of the area(s) of program interest, expanded as appropriate, to include problems and objectives;

(b) A time schedule for submission of, and action on, proposals;

(c) Information to be provided in the proposals;

(d) Evaluation criteria;

(e) Program policy factors;

(f) Other information, terms and conditions which shall apply to the particular PRDA;

(g) Place for, and manner of, submission;

(h) A unique number for identification purposes;

(i) A statement notifying potential proposers that an announcement does not commit DOE to pay any proposal preparation costs and that DOE reserves the right to select for award or support any, all, or none of the proposals received in response to an announcement, and

(j) A late proposal provision (see FAR 15.412).

§ 917.7301–4 Information to be provided in proposals.

(a) All proposals should be specific, concise, and require inclusion, as appropriate, the following information:

(1) Name and address of the entity(ies) submitting the proposal;

(2) Date of proposal submission;

(3) Identification of the PRDA (by number and title) to which the proposal responds;

(4) Type of entity(ies) submitting the proposal, whether public (including State and local governments), or private (including profit and nonprofit organizations and educational institutions);

(5) Concise title and abstract of the proposed project or effort;

(6) An outline and narrative of the proposed effort which shall specifically address and reference the evaluation criteria and, to the extent possible, include:

(i) Objectives of the proposed effort;

(ii) Detailed plan of approach (procedures, concepts, limitations, timetables of key milestones, and expected accomplishments or research results);

(iii) Internal management controls applicable to conduct of the work;

(iv) Scope and methods of management support;

(v) Details concerning previous or ongoing work performed in the category(ies) of research proposed, or in related fields;

(vi) Form and amount of funding, or other contribution, if any, to be provided by the proposer;

(vii) Location where the work will be performed;

(viii) Cost schedule detailing estimated costs for manpower and other resources (SF 1411 with supporting data as described at FAR 15.804–6); and

(ix) Projected date of completion of the proposed effort;

(7) Resumes of key personnel to be involved which include a description of relevant experience and associated dates;

(8) A current financial statement;

(9) Period for which the proposal is valid (if other than that stipulated in the announcment);

(10) Names and telephone numbers of proposer's primary business and technical personnel whom DOE may contact during evaluation; and

(11) Signature and title of an official of the proposing organization(s) authorized to obligate such organization(s).

(b) Proposer should be advised that if a proposal will contain proprietary data or privileged business information which the proposer intends to be used by the DOE for evaluation purposes only shall be marked on the cover sheet with the notice prescribed in 927.402–3(d).

(c) Representations, certifications and acknowledgements required by law or regulation shall also be submitted as specified in the announcement.

917.7302 Cost participation.

The provision of DOE's cost participation policy in 917.70 shall apply, as applicable, to proposals submitted in response to PRDA's.

917.7303 Method and criteria for evaluation and selection.

(a) *General policy.* (1) Information contained in proposals offered in response to PRDAs shall be handled in accordance with the policies and procedures set forth in 927.402–3(d) pertaining to the marking and handling of proprietary data and privileged business information.

(2) Late proposals, modifications of proposals, and withdrawals of proposals shall be handled in accordance with FAR 15.412.

(b) *Selection panel.* A panel appointed by the cognizant program office will evaluate proposals submitted in response to a PRDA. The panel will be composed of program office and other personnel, including representatives from Procurement, Counsel, and, as deemed appropriate by the appointing official, supplemented by personnel from other Government agencies. The representative of Counsel will be an ex-office (nonvoting) member of the panel. Personnel fro.n prime management or operating contractors may be used as advisors to the panel when their services are necessary and available as long as the approvals and procedures in 927.70 are followed.

(c) *Evaluation criteria.* The evaluation criteria shall be specified in the announcement along with a narrative description of their relative importance. The following items are illustrative of the elements which may be considered as evaluation criteria:

(1) Overall technical feasibility of the proposed effort;

(2) Adequacy and relevance of the proposed research plan, including validity tests as related to the proposed goals;

(3) The capabilities, related experience, facilities, instrumentation, or techniques which the proposer possesses and offers, and which are considered to be integral factors for achieving the objective(s) of the proposal:

(4) The qualifications, capabilities, experience, and availability of the proposed key personnel;

(5) The ability of the proposer to furnish necessary financial support;

(6) Project and financial plans for management of the activities including the adequacy of proposed arrangements among all participants.

(7) Plans for involvement of the small business community.

(8) Cost realism and probable cost to the government.

(d) *Program policy factors.* Program policy factors are those factors which, while not appropriate indicators of a proposal's individual merit (i.e., technical excellence, proposer's ability, cost, etc.) are relevant and essential to the process of choosing which of the proposals received will, taken together, best achieve the program objectives. All such factors shall be predetermined and specified in the announcement so as to notify proposers that factors which are essentially beyond their control will affect the selection process. The following are examples of possible program policy factors:

(1) It is desirable, because of the nature of the energy source, the type of projects envisioned, or limitations of past efforts, to select for award or support a group of projects with a broad or specific geographic distribution;

(2) It is desirable to select for award or support (for reasons which must be stated) projects for diverse types and sizes of proposing organizations;

(3) It is desirable to select for award or support a group of projects which represent a diversity of methods, approaches, applications, or kinds of work; and

(4) It is desirable, due to the nature of certain projects or proposing organizations, to select for award or support duplicative or complementary efforts or projects.

(e) *Selection official.* The selection official will be as provided in 915.612.

(f) *Preliminary review.* (1) Prior to making a comprehensive evaluation of a proposal, the selection panel shall determine that it:

(i) Contains sufficient technical, cost, and other required information to enable comprehensive evaluation; and

(ii) Has been signed by a responsible official of the proposing organization or a person authorized to obligate such organization.

(2) If the proposal does not meet these requirements, a comprehensive evaluation shall not be made. In such case, a prompt reply shall be sent to the proposer, indicating the reason(s) for its not being selected for award or support under the PRDA.

(g) *Comprehensive evaluation.* The basic task in the evaluation and selection proposals for award or support is to assess their relative merit in order to determine which of them offer the greatest likelihood for achievement of the program objectives stated in the announcement, considering technical quality, ability of the proposer, estimated cost, and other relevant factors. Proposals which survive preliminary review shall be evaluated by the panel in accordance with the criteria stated in the announcement. The Source Selection Official will select proposals for support or award from the findings established by the panel. The selection official will take into account the relevant program policy factors in order to determine the mix of proposed projects which will best further specific program goals. All findings and selections are to be documented, signed, and maintained to provide an adequate record of the proceedings.

917.7304 Award or support.

While only those proposals which best further the needs of the program as specified in the announcement will be considered for award or support, DOE may accept for award or support, all, none, or any number part of the proposals submitted.

Subpart 917.74—Acquisition, Use, and Disposal of Real Estate

917.7400 Scope of subpart.

This subpart addresses DOE policies and procedures to be applied in DOE cost-type contracts which include authorization to acquire, use, and

dispose of real estate or interest therein for the performance of a contract or contracts; and, DOE assumes liability for, or otherwise will pay, or may be expected to pay, for the acquired real estate as a reimbursable contract cost.

917.7401 General.

Ordinarily Government agencies are not directly concerned with the real estate management procedures for fixed price or cost-type contractors. However, special circumstances and situations arise under cost-type contracts when, in the performance of their contract or subcontract, the performer shall be required, or otherwise find it necessary, to acquire real estate or interests therein by:

(a) Purchase, on DOE's behalf or in its own name, with title eventually vesting in the Government.

(b) Lease, and DOE assumes liability for, or otherwise will pay for the obligation under the lease.

(c) Acquisition of temporary interest through easement, license or permit, and DOE funds the cost of the temporary interest.

917.7402 Policy.

It is the policy of the Department of Energy that when the real estate acquisitions described in 917.7401 are made, the following policies and procedures shall be applied to such acquisitions:

(a) Real estate acquisitions shall be mission essential; effectively, economically, and efficiently managed and utilized; and disposed of promptly, when not needed;

(b) Acquisitions shall be justified, with documentation which describes the need for the acquisitions, general requirements, cost, acquisition method to be used, site investigation reports, site recommended for selection, and property appraisal reports; and

(c) Acquisition by lease, in addition to the requirements in paragraphs (a) and (b) of this section:

(1) Shall not exceed a one-year term if funded by one-year appropriations.

(2) May exceed a one-year term, when the lease is for special purpose space funded by no-year appropriations and approved by the Department.

(3) Shall contain an appropriate cancellation clause which limits the Government's obligation to no more than the amount of rent to the earliest concellation date plus a reasonable cancellation payment.

(4) Shall be consistent with Government laws and regulations applicable to real estate management.

917.7403 Application.

(a) The Officer of Project and Facilities Management is the Headquarters contact point for Departmental policies and procedures governing the acquisition, use, and disposal of the Department's real estate or interests therein. Real estate interests include purchases, leases, easements, permits and licenses.

(b) It is the contracting officer's responsiblilty to coordinate with the Office of Project and Facilities Management when contractor real estate acquisitions meet the criteria set forth in 917.7401 in order to assure that appropriate procedures are followed by the contractor.

(c) The clause at 952.217–70 will be included in contracts or modifications where contractors acquisitions are expected to meet the criteria specified in this subpart.

917.7404 Competition.

(a) Contracting officers shall make certain that solicitation documents:

(1) Require proposals to specify additional facilities and equipment which must be acquired for contract performance, the estimated cost of individual items, and whether acquisition of such property will be financed by the prospective contractor or whether the Government will be requested to provide the required items.

(b) Explain whether it is the Government's intention to provide property, when it is known prior to solicitation that contract performance will require additional facilities or equipment.

(c) Require prospective contractors to:

(i) List items (including dollar value) of Government-owned property in the offerors possession which is proposed to be used in performance of the prospective contract;

(ii) Identify the contract or other instrument under which the property is accountable; and

(iii) Present written permission to use such property in the performance of the prospective DOE contract from the Government contracting officer having cognizance of the property.

(d) Include a statement that the user will assume all costs related to making the property available for use (e.g., transportation, installation, rehabilitation, modification, etc.) unless the Government is to assume such costs.

(e) Include a statement which explains the consideration to be given Government property during evaluation of bids and proposals. This is insure that all prospective bidders and offerors understand that Government property will be an important consideration in evaluating their bids and proposals.

Subpart 917.75—Multiple Awards-Phased Acquisitions

917.7500 Scope of subpart.

Some projects lend themselves to the use of multiple phase, parallel contracts. The basic decision in regard to the use of multiple awards for phased acquisitions will be made by the program office based on technical, schedule, and cost considerations. In the first phase, more than one contractor may undertake a design effort. For the second and succeeding phases, one or more contractors may then be selected from the preceding phase's participants. Since there is an important selection decision to be made at the end of any phase, explicit evaluation and selection procedures will be made known to the contractors prior to competitive selection for succeeding phases.

917.7501 RFP provisions.

Where multiple awards for phased acquisitions are contemplated, requests for proposals (RFPs) for the initial phase shall include:

(a) Notice that the initial negotiated contract will be for Phase I only; however, the Government reserves the right to require a proposal(s) for additional phases of the project as defined in the provisions of the RFP.

(b) If appropriate, notice that competition on subsequent phases will be restricted to the Phase I contractor(s).

(c) Evaluation and qualification criteria should not ordinarily be restricted to Phase I consideration only, but rather should be designed to assure that selected offerors have the requisite technical, management and financial capacity to compete for and perform all phases.

(d) A requirement that each contractor submit a proposal to perform subsequent phases. Instructions for proposal submission and the evaluation criteria to be used in the selection of contractor(s) for subsequent phases will be provided to the Phase I contractors, by letter, as early as possible and at least 90 days prior to the date for submission of proposals.

(e) A requirement of each Phase I, or subsequent phase, contractor to submit a comprehensive report covering actual and projected accomplishments under the present phase. This information will be used in addition to the proposal and the Government's assessment of contractor performance in the evaluation and selection process for subsequent phases. The report shall, as

a minimum address the technical, schedule, and cost aspects of the phase of work now under contract.

917.7502 Evaluation.

(a) The contracting officer or other source selection official as appropriate, shall establish an evaluation team sufficiently in advance of the Phase II proposal due date. The evaluation team shall consist of a chairman from the program office and representatives of procurement and other DOE programmatic or functional areas as appropriate. Counsel will be included as a non-voting advisory member of the evaluation team as deemed appropriate.

(b) The evaluation team will develop the evaluation criteria and proposal instructions to be furnished to the contractors. The purpose of the evaluation is to select that or those offerors which best satisfies the DOE requirements for successful completion of the project. The evaluation shall consider such factors as technical, price, programmatic and other requirements. The evaluation process shall be accomplished in an impartial, equitable, comprehensive, and timely fashion to assure the selection of one or more organizations, which offer the best possibility for successful performance, cost and other factors considered. It is contemplated that the initial phase of multiphase parallel contracts awarded under these procedures will be performed in the same timeframe so that a single competitive evaluation and selection can be accomplished at one point in time. Accordingly, the contracts should contain provisions permitting the Government to synchronize contractor Phase I performances through acceleration or deceleration, as is appropriate, to achieve simultaneous completion of the Phase I activities by all firms under consideration. A thorough and detailed evaluation shall be completed so as to provide the basis on which the best selection can be made.

PART 919—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 919.2—Policies

Sec.
919.201 General policy.

Subpart 919.5—Set-Asides for Small Business

919.501 General.
919.502-2 Total set-asides.
919.503 Setting aside a class of acquisitions.

Subpart 919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

919.705-5 Awards involving subcontracting plans.
919.705-6 Postaward responsibilities of the contracting officer.
919.708 Solicitation provisions and contract clauses.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 919.2—Policies

919.201 General policy.

(c) The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Headquarters, is responsible for the administration of the DOE small and small disadvantaged business programs. This includes responsibility for developing, implementing, executing, and managing these programs, providing advice on these programs, and representing DOE before other Government agencies on matters primarily affecting small and small disadvantaged businesses. Heads of Contracting Activities (HCAs) shall appoint a small business/small disadvantaged business (SB/DB) specialist.

Subpart 919.5—Set-Asides for Small Business

919.501 General.

(c) The Department has established a comprehensive review and screening process for acquisitions over the small purchase threshold. The review is intended to enhance the prospect of participation by small business, small disadvantaged business, and women-owned small business concerns.

919.502-2 Total set-asides.

In considering set-asides in the area of architect engineer contracts, contracting personnel must first consider the special procedures required by the Brooks Act, Pub. L. 92-582 pertaining to this type acquisition.

919.503 Setting aside a class of acquisitions.

By agreement with SBA, the DOE has established a class set-aside for construction acquisitions not exceeding $3 million, including new construction and repair and alteration of structures. Lists of other class set-asides shall be maintained by all DOE contracting offices. These lists shall be updated at least annually.

Subpart 919.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

919.705-5 Awards involving subcontracting plan.

(b) When the exigencies of the situation prevent obtaining a subcontracting plan prior to the award of a letter contract, the plan shall be obtained prior to definitization.

919.705-6 Postaward responsibilities of the contracting officer.

A copy of the notification to the SBA of awards of contracts, amendments or modifications that contain subcontracting plans, as required by FAR 19.705-6(a), shall be provided to the OSDBU.

919.708 Solicitation provisions and contract clauses.

(b) When using the clause at FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, it shall be modified as specified at 952.219-9. The effect of this modification is to relieve DOE contractors and subcontractors from the burden of submitting the SF295 quarterly report since DOE is able to extract this information from the SF294 report. However, in order to do this, DOE must obtain the SF294 on a quarterly basis rather than semiannually. The modification also requires DOE contractors and subcontractors to indicate, at the "Remarks" section of the form, the number and dollar value of awards to labor surplus area concerns if required by the terms of the contract. Upon receipt of these reports, contracting officers shall input the information to the DOE Subcontracting Data System.

(c) Advance approval of the Procurement Executive, or designee, is required prior to including any small and small disavantaged business concerns incentive subcontracting provision in any solicitation or of this clause in any contract.

PART 920—LABOR SURPLUS AREA CONCERNS

Subpart 920.1—General

Sec.
920.102 General policy.
920.106 Records and reports.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 920.1—General

920.102 General policy.

Acqusitions shall be reviewed for potential labor surplus area set-aside consideration in accordance with 919.501(c).

920.106 Records and reports.

Records and reports shall be as required by "A Guide to Preparation of DOE Quarterly Procurement and Financial Assistance Reports."

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

Subpart 922.1—Basic Labor Policies

Sec.
922.103 Overtime.
922.103–4 Approvals.

Subpart 922.4—Labor Standards for Contracts Involving Construction

922.470 Applicability.
922.471 Decisions and other guides in difficult areas.
922.472 Wage determinations.
922.473 Administration and enforcement.

Subpart 922.6—Walsh-Healey Public Contracts Act

922.608–3 Protests against eligibility.
922.608–4 Award pending final determination.
922.608–5 Award.
922.608–6 Postaward.

Subpart 922.8—Equal Employment Opportunity

922.800 Scope of subpart.
922.802 General.
922.803 Responsibilities.
922.804 Affirmative action programs.
922.804–1 Nonconstruction.
922.804–2 Construction.
922.805 Procedures.
922.807 Exemptions.

Subpart 922.70—Special Concerns Affecting Construction Laborers and Mechanics

922.7000 Scope of subpart.
922.7001 Responsibilities.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 922.1—Basic Labor Policies

922.103 Overtime.

922.103–4 Approvals.

(d) *Approvals.* (1) Where the cost to the Government may be affected, approval of hours of work in excess of the normal workweek is justified only in those instances and for those employees where it can be shown that overtime would provide needed and demonstrable impetus to the accomplishment of DOE objectives and that all other means of meeting these objectives have been considered and found inadequate or not feasible. Accordingly, Heads of Contracting Activities shall:

(i) Establish controls to prevent excess casual overtime and to assure that such overtime work is in the best interest of the Government. By casual overtime is meant (A) work in excess of the normal workweek (or in excess of an authorized extended workweek) which cannot be regularly scheduled in advance, or (B) regularly scheduled work in excess of the normal workweek for a period of four consecutive weeks or less; and

(ii) Establish controls to assure that any use of any extended workweek schedule is in the best interest of the Government. Extended workweek means a workweek regularly scheduled and established in excess of the normal workweek for a period in excess of four consecutive weeks.

Subpart 922.4—Labor Standards for Contracts Involving Construction

922.470 Applicability.

(a) Although the statutes required to be followed per FAR 22.400 direction do not contain definitions, the Secretary of Labor's regulations in 29 CFR 5.2 include definitions, of "contract," "building," "work," "construction," "prosecution," "completion," "repair," "public building," and "public work." In general, contracts are classifiable as being covered by the statutes when performance by the contractor consists substantially of the erection or assembly of new plants (including laboratory or other buildings or works), or the alteration and/or repair including painting and decorating, of new and existing plants. The fact that certain contracts may be entered into without regard to general statutory requirements as to advertising for bids or proposals, or upon a cost-reimbursement basis or otherwise, is not determinative in the classification of such contracts, activities, construction projects, or other work or services performed thereunder.

(b) Contracts for servicing or maintenance work are not ordinarily subject to the requirements of this subpart. Maintenance includes the routine, recurring type of work necessary to keep a facility in such condition that it may be continuously used at an established capacity and efficiency for its purpose. However, if such maintenance or service contracts call for substantial and segregable task for construction, alteration or repair, the labor standards provision for construction contracts will be applicable to those items. All contracts in excess of $2,000 for painting of public buildings or public works, whether performed in connection with the original construction or as regular maintenance, are subject to the labor standards provisions for construction contracts.

(c) The requirements that must be followed as a result of FAR 22.4 and other parts of FAR 22 in respect to the Davis-Bacon and Copeland Acts do not apply to the following:

(1) Contracts, regardless of their nature, not in excess of $2,000 (Does not apply to the Copeland Act). However, no item of work, the cost of which is estimated to be in excess of $2,000, shall be artificially divided into portions less than $2,000 for the purpose of avoiding the applicability of the Davis-Bacon Act.

(2) Contracts for furnishing supplies and equipment, including installation, where the installation requires only an incidental amount of work (as defined in paragraph (c) of this section) that would otherwise be considered construction, alteration and/or repair of a public building or public works.

(3) Contracts for servicing or maintenance work in an existing plant, including installation or movement of machinery or other equipment, and plant rearrangement, which involve only an incidental amount of work (as defined in paragraph (e) of this section) that would otherwise be considered construction, alteration and/or repair.

(4) Contracts for operational or maintenance activities (e.g., production, research and development, or community services, as distinguished from contracts for construction). In general, these are contracts where performance by the contractor consists primarily of the utilization of existing facilities and the services of personnel to produce materials, conduct research and development, or provide community-type services, and of the use of or maintenance of plant. However, the classification of a contract as a contract for operational or maintenance activities does not necessarily mean that all work and activities at the contract location are not covered, since it may be necessary to separate out work which should be classified as covered. As used in connection with "operational activities," the term "produce" means to manufacture, make, or refine special nuclear or other material; to separate material from other substances in which it is contained; or to make new material. The "materials" includes supplies, articles, or equipment; the term "research and development" means the same as defined in 909.5703(b).

(5) Contracts to be performed outside the United States and the District of Columbia. (Does not apply to the Copeland Act.)

(6) Contracts for demolition, except when performed as a phase of a covered construction project or when subsequent construction activity at the site being cleared is contemplated.

(7) Contracts with a State or subdivision thereof.

(8) Contracts with railroads for construction services to the extent that the services are performed by railroad employees covered by the Railway Labor Act.

(d) It should be noted, however, that the requirements of FAR Subpart 22.4 do apply to work performed by laborers and mechanics employed by a construction contractor or subcontractor at the site of the work under a contract for the construction, alteration and/or repair, including painting and decorating of public buildings or public works, which is otherwise subject to these Acts whether or not such work would be covered if it were a separate contract.

(e) As used in paragraph (c) (2) and (3) of this section, "an incidental amount of work" is defined to mean work directly related to the installation, movement or rearrangement of equipment or machinery, relatively small in amount, and which does not include changes in a facility affecting its architectural or structural strength, stability, safety, size, or function as a public work.

922.471 Decisions and other guides in difficult areas.

The following are examples of applications of the Davis-Bacon Act to particular situations.

(a) *Land-based prototypes.* (1) The Department of Labor has held that the construction of a full-scale operating prototype of a reactor and all necessary nuclear power components, systems, and propulsion equipment for a submarine is covered.

(2) The Department of Labor has held that assembling and fitting the components of nuclear steam propulsion units in a prototype ship situation into the hull sections, including installation of the pressure vessels, turbo-generator sets, heat exchangers, control wiring, etc., is covered.

(3) A later decision involving the prototype situation in (a)(2) above indicates that the earlier rulings should not be construed as intended to cover all equipment assemblies irrespective of the status of construction and other pertinent factors.

(b) *Paving.* The construction of roads, including grading, and their repair—where such repair includes work in roadbeds before resurfacing, building up shoulders, forming ditches, culverts and bridges, and on the actual resurfacing of roads—is covered. However recurring-type maintenance work, such as patching surfaces, filling chuck holes, patching shoulders, and resurfacing railroad crossings is non-covered. Similarly, patch and maintenance work on a parking lot, the replacement of bumper stops, and the repainting of parking dividers is non-covered.

(c) *Stationary boilers.* The construction, alteration and/or repairs, including installation and rebuilding, of stationary boilers costing in excess of $2,000 for labor and materials is covered. Inspection may reveal a need for replacement of pieces of insulation, individual tubes, or other defective parts. Such minor maintenance, necessary to keep the boiler in safe operating condition, is non-covered.

(d) *Start-up of operating activity after fire or other catastrophe.* Rebuilding of a plant following a catastrophe, such as replacement of structural members, roof trusses, walls, roof, utility services, and process piping is covered. However, where process equipment can be restarted and/or operational activities resumed prior to such rebuilding, the actual work of start-up, including preliminary activity, e.g., cleaning, drying, checking, adjustment, temporary services, and temporary weather protection of equipment, essential to such resumption of operational activity, is non-covered.

(e) *Rehabilitation of facilities.* By contrast with emergency services needed to restore or maintain functional usefulness, as above described, rehabilitiation (e.g., painting, change-out, rearrangement and installation of equipment, replacement or repair of damaged parts of a structure or of building services or equipment) of a facility is covered. In such rehabilitation, the startup of equipment by operating employees is non-covered.

(f) *Painting.* Although painting and decorating are specifically mentioned in the Davis-Bacon Act, painting which is closely integrated within operation and maintenance activities and such repainting as color coding of process lines and service piping (including valves and directional arrows), is non-covered. Likewise, application of various materials for localizing contamination, painting of machine tools to identify degree of contamination, and preventive maintenance such as repainting of machine tools, equipment and plant structures are non-covered when performed with a stable work force employed by the operating contractor.

(g) *Installation, rearrangement of adjustment of equipment.* (1) *During construction.* In the construction of a new facility—whether it is a production plant, a laboratory, or supporting facilities, such as shops and warehouses—an integral part of a construction project is the installation of equipment (including mechanical equipment, building services, instruments, etc.) which permits the facility to be utilized for the purpose intended. Normally, the initial installation, arrangement, adjustment, balancing, calibration, and checking of such equipment is a logical part of the construction contract(s) for completion of the facility and, whether or not included within the scope of such contract(s), is covered.

(2) *Plant start-up.* At the time of the turnover of a DOE facility from construction to operating activities, if the facility is turned over a section at a time, some problems of coverage may arise. Usually, it is essential that final checkout of a plant prior to the start-up of plant operations be performed by personnel of the operating organization and, as such, is not covered. The important thing is to work out a practical plan that will assure: (i) Safe and effective start-up of the facility, (ii) the fulfillment of obligations under applicable statutes, and (iii) uninterruption of continuing construction at the facility.

(3) *Equipment and equipment assemblies.* Although the current construction status of a public building or public work is not the controlling factor as to coverage of supply-installation type contracts, it is a factor to be considered in judging the applicability of the Davis-Bacon Act. The Department of Labor has ruled (Walsh-Healey Rulings and Interpretations No. 3, section 6(b)) that while contracts in excess of $10,000 for equipment, including erection or installation, are subject to the Walsh-Healey Act, they may be also covered under the Davis-Bacon Act where more than an incidental amount (see 922.403-71(c)) of work is involved. Examples given in this ruling include furnishing and installation of mechanical equipment such as elevators or of generators requiring prepared foundations or housing. The Department has indicated that a contract for furnishing the initial installation of piping, wiring, gas exhaust fans, plumbing, sheet metal work, and related activities to install kitchen baking equipment was comparable to the basic plumbing, wiring, and heating contracts and was covered. While such a situation

involves an initial installation, alteration or rearrangement of existing facilities involving such work to accommodate new or different equipment is also covered. Conversely, it follows that where the test of more than an incidental amount of construction is not met, and where the installation, rearrangement or adjustment of equipment is not a logical part of any current related construction project, it is non-covered.

(4) *Telephone and utility systems.* Contracts involving the installation of telephone systems or utilities are not covered when the work is performed by employees of the telephone or utility company supplying the services, and the material and equipment installed are owned by the telephone or utility company. Such installation is considered to be an extension of the utility's services. However, a contract for a telephone central system to be installed by the manufacturer and owned by the United States has been held to be covered. In addition, relocation of utility lines to accommodate construction of a public work is covered..

922.472 Wage determinations.

(a) The Heads of Contracting Activities are responsible for submitting to the Wage and Hours Division, Employment Standards Administration, Department of Labor, Washington, D.C. 20210, all DOE requests for wage determinations, or individual determinations, or extensions or modifications thereto. Requests for such determinations shall be made on Standard Form 308, at least 30 calendar days before they are required for use in advertising for bids or requests for proposals.

(b) In general, the Davis-Bacon Act rates applicable to a contract at the time it is awarded continue in effect during its term regardless of whether it is a fixed-price or cost-reimbursement contract. However it should be noted that:

(1) The minimum wage rates that will be paid to laborers and/or mechanics engaged on jobs which are programmed on a fiscal year or shorter basis are those predetermined by the Secretary of Labor to be prevailing as of the date the program is approved by DOE for performance by the contractor. However, in the event of a substantial addition to the scope of a contract containing a "general or area wage determination," the current "general or area wage determination," including modifications thereto, shall be made applicable to the additional work. It the contract contains a "project area or installation (54A) determination," or an individual determination, and substantial addition to the scope of the contract is made during the fiscal year or shorter basis but more than 120 days from the date of the determination, a new determination is required for the substantial addition. Programmed work will be performed by the contractor under continuing contracts for minor or miscellaneous construction, alteration and/or repair, including painting and decorating.

(2) The minimum wage rates that will be paid to laborers and/or mechanics engaged on subcontracts let by an operating contractor will be those in the wage determination decision of the Secretary of Labor which has been issued in conformance with 29 CFR 1.7.

(c) The **Federal Register** prints general or area wage determinations as they are issued by the Secretary of Labor or designee.

922.473 Administration and enforcement.

(a) The statutes and regulations alluded to in FAR 22.400 impose direct responsibilities for administration and enforcement upon DOE. Therefore, Heads of Contracting Activities and others, consistent with their assignments of responsibilities and delegations of authority, shall assure that DOE contract activities are carried out consistent with these laws and regulations.

(b) Heads of Contracting Activities shall submit (to the Office of Contractor Industrial Relations) reports, recommendations, and requests for ruling and interpretations resulting from following the requirements of FAR 22.400 and 922.400.

Subpart 922.6—Walsh—Healey Public Contracts Act

922.608-3 Protests against eligibility.

When an eligibility determination made by the contracting officer is challenged, this protest shall be handled in accordance with procedures for agency protests against award, except the matter shall be submitted to the Department of Labor for final determination. However, if the eligibility determination challenged pertains to a small business, the protest shall be forwarded to the Small Business Administration for determination.

922.608-4 Award pending final determination.

(a) Award, as contemplated by FAR 22.608-4, may be made only with the approval of the Head of the Contracting Activity.

922.608-5 Award.

The notice required by FAR 22.608-5(b) is to be sent to the appropriate Department of Labor Regional Office in which the contractors place of business is located. Regional Office locations are specified at FAR 22.609.

922.608-6 Postaward.

(c) Any postaward actions of the type discussed at FAR 22.608-6 should be coordinated in advance with the Office of Industrial Relations, Headquarters.

Subpart 922.8—Equal Employment Opportunity

922.800 Scope of subpart.

This subpart implements FAR 22.800. It applies to all DOE contracts and subcontracts.

922.802 General.

922.803 Responsibilities.

(a) The Director, Office of Federal Contract Compliance Programs of the Department of Labor has been delegated authority and responsibility for carrying out the requirements of Executive Order 11246, as amended. In conjunction with the delegation, contracting officers shall be familiar with existing and any updated provisions of 41 CFR Ch. 60, and assist the Department of Labor in its compliance responsibilities. DOE contracting officers will include the applicable Equal Employment Opportunity (EEO)) and Affirmative Action Program (AAP) requirements in their solicitations and obtain the applicable reports of compliance from the Office of Federal Contract Compliance Programs (OFCCP) (when required) prior to awarding of contracts. The provisions of 41 CFR Ch. 60, are applicable to all DOE contracts.

(d) The OFCCP requires that requests for pre-award clearances be directed to the OFCCP Regional Office in which the contractor's facility is (to be) located. If OFCCP finds the contractor in compliance, the contracting officer will be notified. Findings of non-compliance can be communicated to the contracting officer by the OFCCP or Headquarters Director or his designee. The appropriate Regional Office will provide the apporpriate contact point in cases of non-compliance. The Director, Office of Industrial Relations (DOE HQ), when requested, will provide assistance to contracting officers resolving non-compliance issues by providing assistance in obtaining a final decision from the OFCCP.

922.804 Affirmative action programs.

922.804-1 Nonconstruction.

In the event a prospective contractor or subcontractor is entering into its first contract containing the Equal Opportunity clause, the contracting officer shall determine that the prospective contractor understands and appears able to conform to the requirements of the EEO clause.

922.804-2 Construction.

(a) Construction contracts, including cost-sharing contracts, are subject to OFCCP orders applicable in particular areas.

(1) When a proposed nonexempt construction contract is within a geographic area where construction is subject to the provisons of Federal EEO Bid Conditions, Part I or Part II, the solicitation shall contain those bid conditions. The contracting officer shall include in such solicitation a provision that "the offeror shall adhere to the affirmative action plan (bid conditions) set forth in this solicitation."

(2) Lists of areas for which OFCCP has designated specific affirmative action requirements are available through the Procurement Executive. Contracting officers should assure that this list and copies of pertinent orders are made available to all concerned DOE offices and to DOE contractors and construction subcontractors for work to be performed in the specified geographical areas.

(b) *Other nonexempt construction contracts.* (1) When a proposed nonexempt construction contract is not in a "plan area" and is in the amount of $10,000 or more, offerors must agree to comply with the Equal Employment Opportunity clause.

(2) When proposed nonexempt contracts of $1,000,000 or over are not in plan areas and have not been designated as high impact, offerors also must submit to the contracting officer details regarding specific affirmative action steps to be taken by the offeror in connection with all work under the contract. Such details shall include estimates of the percentage of minority group persons expected to be employed in each craft involved in the performance of the contract work. All solicitations for construction contracts shall reference the affirmative action requirements and the offeror's obligation to make good faith efforts to employ women in craft positions.

(3) Pursuant to the OFCCP order dated August 30, 1976, agencies shall develop "Special Bid Conditions" for use on high impact projects in non-plan areas. These special bid conditions will include mandatory goals and timetables for the utilization of minorities. The Procurement Executive using the criteria issued by OFCCP will determine those projects that are "high impact." The contracting officer is responsible for compliance with policies and procedures contained in the OFCCP "Construction Compliance Program Operations Manual." Language for inclusion in solicitations or contracts contained in the manual may be modified, provided all of the requirements are retained. The contracting officer shall develop the goals and timetables and shall confer with the appropriate OFCCP regional office. The Office of Industrial Relations will provide assistance as necessary, when requested. Special bid conditions will be submitted by the contracting officer to the appropriate OFCCP regional office for approval unless otherwise directed by the Procurement Executive. When special bid conditions are applicable, adequate presolicitation lead time should be allowed for submission of the special bid conditions to OFCCP national and regional offices.

(c) An attempt to limit in any major respect the equal opportunity requirements included in an invitation for bids or request for proposals for a construction contract shall constitute grounds for a determination that the offeror does not qualify as a responsible offeror and for rejection of the bid or proposal.

922.805 Procedures.

(b) *Furnishing Posters.* The contracting officer may obtain posters from the Government Printing Office.

922.807 Exemptions.

(c) Contracting officer requests for exemption from EO 11246 should be directed to the Procurement Executive for submission to the Director, OFCCP.

Subpart 922.70—Special Considerations Affecting Construction Laborers and Mechanics

922.7000 Scope of subpart.

This subpart discusses DOE responsibilities and actions regarding DOE construction programs.

922.7001 Responsibilities.

(a) *General.* (1) As collective bargaining arrangements exist generally throughout the construction industry, the wages, hours and working conditions followed for construction laborers and mechanics normally will result from collective bargaining between management and labor. It is important that practices contributing to harmonious labor-management relations prevail throughout the DOE program. All participants in the DOE program, including employees and their unions, have a special and continuing obligation to do their part in accomplishing a stable, efficient construction operation under adequate and reasonable conditions.

(2) In some areas, DOE construction is a minor part of local construction activity, while in other areas DOE construction may, at times, overshadow local construction. Normally, there will be a number of contractors and subcontractors, both cost-type and fixed price, engaged simultaneously on a single large DOE project. It is important that adequate coordination exist among all such contractors in order that similar conditions are provided for all construction employees, in a given classification, at a particular location.

(3) The problem of establishing appropriate conditions for the large projects is complicated by the essential requirements that initial conditions be clearly identified and fixed prior to recruitment of work force. This factor involves applicability of all pertinent Federal statutes, including the Davis-Bacon Act and the Labor Management Relations Act of 1947, as amended (29 U.S.C. 141 et seq.).

(b) *Steps preliminary to the staffing of new cost-reimbursement projects.* Preliminary to the actual recruitment of workers, it is important that sufficient data be accumulated by the field office concerned to reflect area practices accurately. These data should cover in detail the pattern of bargaining in the area; the proportion of the work force employed by employer parties to collective bargaining agreements in relation to the total construction work force; the terms of local area agreements; the extent of conformance with such agreements and any accepted interpretations of them; and a description of practices which may have developed outside of the local agreements. These data will furnish the basis for decision contemplated in (c) and (d) below. Where the data indicate local agreements are adequate for the contemplated work, there may still be areas that need to be filled by additional understandings to attain the desired stability of conditions. The data obtained in the initial survey will also be used in connection with the original Davis-Bacon predetermination.

(c) *Role of project contractor management in collective bargaining.* The DOE expects contractor management engaged in the negotiation and/or administration of collective bargaining agreements to assume

responsibility for assuring conditions which are consistent with the judicious expenditure of public funds, attracting and retaining the skills needed, and giving due consideration to the community's interests and established standards. To meet these responsibilities, it is important that the collective bargaining role to be played by project contractor management be clearly determined in the light of project requirements and local conditions.

(1) In an area where DOE construction does not overshadow total local construction activity, and the majority of construction is performed by members of local contractor associations, the DOE expects that basic conditions for labor on its projects will be negotiated between the local contractor associations and local unions and generally adhered to on construction work in the area. In such situations, DOE contractors will provide for clear identification and application of these local agreements to the DOE work. In such applications, the conditions to be followed will be those which obtain in actual practice in the area covered by the agreement and are consistent with applicable laws, rather than those appearing from a literal interpretation of the language of the agreement. Conditions not covered by local agreements may be provided for as necessary to meet project goals.

(2) In some areas, local agreements may be nonexistent, or inadequate, or the employer parties may not be representative of the employers of the bulk of the labor force in the area. In such event, DOE contractors are expected to carry their share of the responsibility for negotiations and to negotiate directly or in cooperation with others to establish appropriate conditions.

(3) In an area where DOE construction work is of such magnitude as to overshadow local construction, it may be desirable for DOE contractors to negotiate special project conditions (on either a craft or a multi-craft basis) as the best way to meet their obligations to the DOE. Such agreements usually involve the establishment of new bargaining units and are therefore dependent upon the voluntary cooperation of the building trades unions. Normally both the Building Trades Department (AFL–CIO) and the Senior Official, Office of Industrial Relations, should be consulted in respect to any proposed course of action.

(d) *Role of DOE in construction labor relations.* The DOE's role in construction labor relations is one of overall cognizance consistent with DOE's ultimate responsibilities. The scope of the construction program, the complexity of the problems which may arise, and the need for coordination among contractors at the same site are factors which affect the degree of influence exercised by DOE in carrying out the following responsibilities:

(1) To assure that careful advance survey and analysis is made of each contract situation and that the role of the contractor management is in accordance with the considerations in (c) above;

(2) To establish effective machinery for coordination among project contractor management;

(3) With respect to DOE contracts carried out under area practices, to assure that conditions proposed are actually prevalent in the area or have other substantial foundation and that, to the extent consistent with the terms of fixed-price contracts, practices established by fixed-price contractors are not of a character that will destabilize other DOE work;

(4) With respect to DOE contracts carried out under project agreement, both union and management, to take into account all relevant factors pertaining to any conditions peculiar to the project, duration of project, tenure of employment, housing and travel accommodations, length of regular work week, uniformity of shift, special subsidies, etc.;

(5) To encourage contractor officials and representatives of employees to establish similar conditions among all construction employers for each class or classification of employees at a particular location;

(6) To encourage contractor officials and representatives of employees to provide clear identification and application of practices under local agreements, or to make and maintain project agreements on DOE construction projects; and

(7) To encourage contractor officials and representatives of employees to establish reliable working contact between the DOE project contractors and any unions that are cooperating in staffing the job.

(e) *Initial wage rates.* The wage rates initially established under both cost-reimbursement and fixed price contracts will not be less than, and will normally conform to, those determined by the Secretary of Labor pursuant to the requirements of the Davis-Bacon Act. On cost-reimbursement work, the total compensation on the DOE project will be comparable with the total compensation allowed similar workers in an appropriate area of comparison. Where the DOE project is applying the practices under local agreements, the area of comparison normally will be the geographic area within the jurisdiction of each local union cooperating in staffing the project. In this situation, the application of local pratices and agreements will usually be carried out on an item-by-item basis. Where a project agreement has been agreed on as the foundation for project conditions, the area of comparison for each craft should be large enough to provide a sound base which will result in realistic wage rates. In the development of a project agreement, the Office of Industrial Relations should be consulted.

(f) *Adjustments in compensation.* Subject to limitations imposed by applicable labor laws, changes in established wage rates and working conditions under cost-reimbursement contracts may be effected as follows:

(1) Adjustments in wage rates and other job conditions established in project collective bargaining agreements may be effected by the renegotiation or modification of the agreements at appropriate times and by the reopening of existing agreements as provided therein. The Office of Industrial Relations should be consulted as appropriate criteria to follow in review of such reopenings.

(2) In situations where DOE contractors working under cost-reimbursement type contracts apply local established job conditions included in applicable bargaining agreements, adjustments in wages and job conditions may coincide with changes within the locality. Wage rates may be adusted to bring rates into conformity with new rates which are verified as established in the area at the time of their acceptance for DOE work.

(g) *National Joint Board for the Settlement of Jurisdictional Disputes in the Building and Construction Industry.* Construction contractors and representatives of employees are encouraged to settle craft jurisdiction disputes, in accordance with the procedural rules and regulations of the National Joint Board.

(h) *Responsibility of the Office of Industrial Relations.* The Office of Industrial Relations, Headquarters, is responsible for coordinating all activities arising under this subpart, and for maintaining liaison with the Department of Labor, the Building Trades Department (AFL–CIO), and other construction labor and employer organizations.

PART 923—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 923.70—Environmental, Conservation, and Occupational Safety Programs

Sec.
923.7001 Nuclear safety.
923.7002 Contract clauses.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 923.70—Environmental, Conservation, and Occupational Safety Programs

923.7001 Nuclear Safety.

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

923.7002 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 environmental, safety and health program management 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 shall be used in such contract or subcontract if conditions (a) (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 923.7002(b) above 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 nor 952.223-72 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) above, 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) below). When such a determination is made, the clause found at 952.223-72 shall be included in the contract or subcontract.

(d) In facilities not meeting the requirements of either 923.7002(b) or 923.7002(c) above 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 nor 952.223-72 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 shall be included in the contract. The Deputy Assistant Secretary for Environment, Safety and Health shall be consulted to determine if a non-agreement (NRC) 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 and 952.223-72 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).

PART 924—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 924.1—Protection of Individual Privacy

Sec.
924.103 Procedures.

Subpart 924.2—Freedom of Information Act

924.202 Policy.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 924.1—Protection of Individual Privacy

924.103 Procedures.

(b)(2) See 10 CFR Part 1008, Records maintained on Individuals (Privacy Act), for the DOE regulations relating to the maintenance or disclosure of information from systems of records on individuals. In addition, see DOE order 1800.1, Privacy Act, for internal DOE procedures to be followed in the establishment and maintenance of systems of records.

Subpart 924.2—Freedom of Information Act

924.202 Policy.

(b) See 10 CFR Part 1004, Freedom of Information for the DOE regulations relating to the availability of DOE records to the public.

PART 925—FOREIGN ACQUISITION

Subpart 925.1—Buy American Act—Supplies

Sec.
925.102 Policy.
925.105 Evaluating offers.
925.108 Excepted articles, materials, and supplies.

Subpart 925.2—Buy American Act—Construction Materials

925.202 Policy.
925.204 Violations.

Subpart 925.5—Payment in Local Foreign Currency

925.501 Policy.

Subpart 925.9—Omission of the Examination of Records Clause

925.903 Conditions for omission.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

Subpart 925.1—Buy American Act—Supplies

925.102 Policy

(a)(4) Contracting officers may make the determination required by FAR 25.102(a)(4), provided such determination is facutally supported in writing. If the contract is estimated to exceed $1 million, the Head of the Contracting Activity shall approve the determination.

925.105 Evaluating offers.

(c) Proposed awards shall be submitted (in triplicate) through the Procurement Executive, to the Head of the Agency for decisions required by FAR 25.105(c).

925.108 Excepted articles, materials, and supplies.

(b) Suggestions for changes and additions to the FAR 25.108(d) list, with appropriate justifications, shall be submitted to the Procurement Executive.

Subpart 925.2—Buy American Act—Construction Materials

925.202 Policy.

(b) Contracting officers may make the determination required by FAR 25.202(a)(3). If the cost of the materials is expected to exceed $100,000, the Head of the Contracting Activity shall approve the determination.

925.204 Violations.

(d) Contracting officers shall make a complete written report (in triplicate) to the Secretary through the Procurement Executive of each violation of the Buy American Act—Construction Materials clause at 52.225–5.

Subpart 925.5—Payment in Local Foreign Currency

925.501 Policy.

(b) The contracting officer, prior to award of a contract requiring payment to be made in a foreign currency, should ensure that sufficient DOE funds will be available to purchase the foreign currency needed for making such payments.

(c) The contracting officer, when required by applicable financial regulations or directives, may obligate funds in excess of the current contract price, or contract with a financial organization dealing in foreign exchange for the future delivery of the required foreign currency. The official contract file should be appropriately documented to reflect the amount of funds reserved or other actions to be taken in the event additional U.S. dollars are required to make such payments because of an increase in the value of the foreign currency.

Subpart 925.9—Omission of the Examination of Records Clause

925.903 Conditions for omission.

Any proposed determinations and any reports mentioned at FAR 25.903 shall be forwarded to the Procurement Review Office, Headquarters.

PART 927—PATENTS, DATA, AND COPYRIGHTS

Subpart 927.3—Patent Rights Under Government Contracts

Sec.

927.300 General.

Subpart 927.4—Technical Data and Copyrights

927.400 Scope of subpart.
927.401 Definitions.
927.402 Acquisition and use of technical data.
927.402–1 General.
927.402–2 Policy.
927.402–3 Procedures (supply, research, development, or demonstration contracts).
927.403 Negotiations and deviations.

Subpart 927.70—Disclosure of Proposal Information

927.7000 Disclosure outside Government.
927.7001 Proposal information.
927.7002 Treatment of proposal information.
927.7003 Handling notice.
927.7004 Identification of proprietary data in proposals.
927.7004–1 Solicited proposals.
927.7004–2 Solicitations.
927.7004–3 Unsolicited proposals.
927.7005 Required notice of right to request patent waiver.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

Subpart 927.3—Patent Rights Under Government Contracts

927.300 General.

(a) The provisions of 41 CFR 9–9.1 shall continue in effect; provided, however, that the provisions of 41 CFR 9–9.107–1 through 9–9.107–6 and 9–9.109–6 shall apply only to contracts with other than small business firms and domestic nonprofit organizations which do not fall within the provisions of 35 U.S.C. 202(a) (i), (ii), or (iii). The following sentences shall be substituted for the first sentence of paragraph (j)(2) of the Patent Rights (Long Form) clause of 41 CFR 9–9.107–5(a) and paragraph (e)(2) of the Patent Rights (Short Form) clause of 41 CFR 9–9.107–6:

The contractor will include the clause at 952.227–71 "Patent Rights—Small Business Firms or Nonprofit Organizations" of the Department of Energy Acquisition Regulation 48 CFR Part 952 suitably modified to identify the parties, in all subcontracts regardless of tier, for experimental, developmental, demonstration or research work to be performed by a small business firm or domestic nonprofit organization. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor will include the Patent Rights clause of 41 CFR 9–9.107–5(a) or 41 9–9.107–6 as appropriate, modified to identify the parties.

(b) The clause at 952.227–71 shall be used in contracts with small business firms and nonprofit organizations in accordance with OMB Circular A–124 and Chapter 18 of Title 35 of the United States Code.

Subpart 927.4—Technical Data and Copyrights

927.400 Scope of subpart.

This subpart sets forth DOE's policy, procedures, and instructions for contract clauses with respect to the acquisition and use of technical data and copyrights in contracts or subcontracts entered into, with or for the benefit of the Government.

927.401 Definitions.

"Technical data" means for the purpose of this subpart, recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, demonstration, or engineering work or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data, as used in this subpart, do not include financial reports, cost analyses, and other information incidental to contract administration.

"Proprietary data" means for the purpose of this subpart, technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(1) Are not generally known or available from other sources without obligation concerning their confidentiality;

(2) Have not been made available by the owner to others without obligation concerning their confidentiality; and

(3) Are not already available to the Government without obligation concerning their confidentiality.

"Contract data" means for the purpose of this subpart, technical data first produced in the performance of the contract, technical data which are specified to be delivered under the contract, technical data that may be called for under the Additional Technical Data Requirements clause of the contract, if any, or technical data actually delivered in connection with the contract.

"Unlimited rights" means for the purpose of this subpart, rights to use, duplicate or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

927.402 Acquisition and use of technical data.

927.402-1 General.

(a) The provisions herein pertain to research, development, demonstration and supply contracts. Special considerations for contracts for the operation, design, or construction of Government-owned facilities are covered by Subpart 970.27. Under DOE's broad charter to perform research, development, and demonstration work, in both nuclear and nonnuclear fields, and to meet the objectives stated in 927.402-2, DOE has extensive needs for technical data. The satisfaction of these needs and the achievement of DOE's objectives through a sound data policy are found in the balancing of the needs and equities of the Government, its contractors, and the general public.

(b) It is important to keep a clear distinction between contract requirements for the delivery of technical data on the one hand, and rights in technical data on the other. The legal rights which the Government acquires in technical data in DOE contracts (other than "facilities" contracts) are set forth in the Rights in Technical Data (long form) clause of 952.227-75. However, this clause does not obtain for the Government the delivery of any data whatsoever. Rather, known requirements for the technical data to be delivered by the contractor shall be set forth as part of the contract (e.g. in the statement of work). The Additional Technical Data Requirements clause at 952.227-73 may be used along with the clause at 952.227-75 to enable the contracting officer to require the contractor to furnish additional technical data, the requirement for which was not known at the time of contracting. There is, however, a built-in limitation on the kind of technical data which a contractor may be required to deliver under either the contract statement of work or the Additional Technical Data Requirements clause. This limitation is found in the withholding provision of paragraph (e) of the Rights in Technical Data (long form) clause of 952.227-75 which provides that the contractor need not furnish "proprietary data." It is specifically intended that the contractor may withhold "proprietary data" even though a requirement for technical data specified in the statement of work or called for pursuant to the Additional Technical Data Requirements clause would seemingly require the furnishing of proprietary data. This withholding of proprietary data is the primary means by which the contractor may protect its proprietary position.

(c) There are, however, two situations where the Government, or its representative, may need to have limited access to a contractor's proprietary data.

(1) First, paragraph (f) of the Rights in Technical Data (long form) clause gives the contracting officer's representatives the limited right to inspect at the contractor's facility the contractor's proprietary data which were withheld from delivery under paragraph (e) of the clause for the purpose of verifying that such data were properly withheld or to evaluate work performance. In carrying out the inspection, normally the contracting officer's representative is a DOE employee although he may be an employee of a DOE contractor acting under an agreement to treat in confidence the proprietary data to be inspected. However, where the contractor whose data are to be inspected demonstrates that there would be a possible conflict of interest if the inspection were made by such a contractor employee, the contracting officer's representative may be limited to a DOE employee. Paragraph (f) has a built-in exclusion from these inspection rights for "specific items of proprietary data" when they are so specified in the contract schedule. Such exclusions limit even DOE's minimum rights of evaluating contract work performance and verifying that technical data withheld by the contractor is proprietary in fact. Such exclusions should be sparingly used, and only in situations where program personnel stipulate to the fact that DOE has no need for access to the specified items to be excluded from paragraph (f), i.e., that the nondisclosure and nonaccessibility will not adversely affect the DOE program involved. It should also be noted that paragraph (f) permits exclusion of "specific items" of proprietary data and, accordingly, should not be used to exclude classes of technical data or all technical data pertaining to specific items or processes or classes of items or processes.

(2) The second situation, where the Government may have limited access to a contractor's proprietary data, is provided in optional paragraph (g) of the Rights in Technical Data (long form) clause at 952.227-75 Alternate I. When used, optional paragraph (g) provides the Government the right to require the contractor to furnish with limited rights the proprietary data previously withheld under paragraph (e). In this situation, the limited rights in proprietary data and the Government's obligation for limited use and disclosure of such data as set forth in the Rights in Technical Data (long form) clause provides the means by which the contractor protects its proprietary position. Paragraph (g) will be used only where it is determined by DOE that for programmatic reasons there is a need for the delivery of proprietary data to the Government. Where proprietary data is to be delivered under paragraph (g) and subparagraph (a) or (b) of the limited rights legend is to be applied to the data, the contractor may, if he can show the possibility of a conflict of interest regarding disclosure of such data to other contractors, limit or modify subparagraphs (a) or (b) as set forth in 927.402-3(e)(2), to exclude or include certain contractors.

(d) The contractor licensing provisions of optional paragraph (h) at 952.227-75 Alternate II of the Rights in Technical Data (long form) clause enable DOE to require limited licenses in proprietary contract data to be granted to the Government and responsible parties in certain circumstances. Such a license may parallel or supplement the license obtained in background patents under the provisions of paragraph (k) of the Patent Rights clause of 41 CFR 9-9.107-5(a). Paragraph (h) is normally to be included in contracts for research, development or demonstration where it is deemed by DOE that the limited license afforded therein is necessary to ensure widespread commercial use or practical utilization of a subject of the contract. As explained in 927.402-3(e)(3), paragraph (h) provides that upon request by DOE, the contractor will grant to the Government and responsible third parties a license in proprietary data only where such data in the form of results obtained by its use, i.e., essential equipment, articles, products, and the like which were the subject of the contract, are not otherwise available, or cannot be made

available in a reasonable time as set forth in paragraph (h).

(e)(1) It is the responsibility of prime contractors and higher tier subcontractors, in meeting their obligations with respect to contract data, to obtain from their subcontractors the rights in, access to, and delivery of such data on behalf of the Government. Accordingly, subject to the policy set forth in these regulations, and subject to the approval of the contracting officer where required, selection of appropriate technical data provisions for subcontracts is the responsibility of the prime contractor or higher-tier subcontractor. In many but not all instances, inclusion in a subcontract of the Rights in Technical Data (long form) clause of 952.227–75 will suffice to obtain for the benefit of the Government the rights in and, if appropriate, access to technical data. Access by DOE to technical data, i.e., the inspection rights afforded in paragraph (f) of the Rights in Technical Data (long form) clause at 952.227–75 normally should be obtained only in first-tier subcontracts having as a purpose the conduct of research, development, or demonstration work or the furnishing of supplies for which there are substantial technical data requirements as reflected in the prime contract. If a subcontractor refuses to accept technical data provisions affording rights in and access to technical data on behalf of the Government, the contractor shall so inform the Contracting Officer in writing and not proceed with the subcontract without written authorization of the Contracting Officer. In prime contracts (or higher-tier subcontracts) which contain the Additional Technical Data Requirements clause, it is the further responsibility of the contractor (or higher-tier subcontractor) to determine whether inclusion of such clause in a subcontract is required to satisfy technical data requirements of the prime contract (or higher-tier subcontract).

(2) As is the case for DOE in its determination of technical data requirements, the Additional Technical Data at 952.227–73 Requirements clause should not be used at any subcontracting tier where the technical data requirements are fully known, and normally the clause will be used only in subcontracts having as a purpose the conduct of research, development, or demonstration. Prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to inequitably acquire rights in the subcontractor's proprietary data for their private use, and they shall not acquire rights on behalf of the Government to proprietary data for standard commercial items unless required by the prime contract.

(f) Related to the acquisition and use of technical data are the contractor's rights in contract data as well as technical data furnished to the contractor by DOE or its contractors. These rights are set forth in paragraph (b)(2) of each Rights in Technical Data clause and provide that the contractor may, subject to patent, security and other provisions of the contract, use for its private purposes contract data it first produces in the performance of the contract, provided that the contractor has met its data requirements (e.g., delivery of data in form of progress or status reports specified to be delivered) as of the date of the private use of such data. It is not necessary that a final report be submitted in order to privately use data if all required progress and interim reports and other technical data then due have been delivered. Paragraph (b)(2) further provides that technical or other data received by the contractor in the performance of the contract must be held in confidence by the contractor in accordance with restrictions accompanying the data.

(g) An additional clause described further at 927.402–3(f), the text of which is found at 952.227–76 entitled Rights in Data—Special Works, is to be used in place of or in addition to the Rights in Technical Data (long form) clause in contracts where a purpose of the contract is the production of copyrightable material, a substantial portion of which is to be first produced in the performance of the contract, such as motion pictures, television recordings, books, histories, etc. Where, during contract negotiations, it may be determined to purchase, i.e., "specifically acquire," unlimited rights in technical data, or to lease or obtain a license therein, or to obtain rights in existing data, an appropriate clause therefor should be obtained from patent counsel. In situations where technical data including computer software are to be leased or licensed, the terms of any agreement restricting the Government's rights will be included in the contract as either a special clause or an agreement annexed thereto. Another clause, the Rights in Technical Data (short form) clause further described at 927.402–3(g), the text of which is found at 952.227–77, is provided for use in research contracts with educational institutions and consultants. Such contracts may, for example, include those for conducting symposia, training, or education, or other contracts not involving possible use of proprietary data.

(h) In contracts involving access to certain categories of DOE-owned restricted data, as set forth in 10 CFR Part 725, DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including its related data and technology. Accordingly, in contracts where access to such restricted data is to be provided to contractors, the following parenthetical phrase shall be inserted after "contract data" in paragraph (b)(2)(ii) of the clause at 952.227–75, after "technical data" in paragraph (b)(2) of the clause at 952.227–77, or after "technical data" in paragraph (b)(2)(ii) of the clause at 952.227–78 as appropriate: "(except Restricted Data in category C–24, 10 CFR Part 725, in which DOE has reserved the right to receive reasonable compensation for the use of its inventions and discoveries, including related data and technology)." In addition, there are other types of contract situations (e.g., no cost contracts for studies or evaluation) wherein the contractor is given access to restricted data. In such contract situations, limitations on the use of such data may be appropriate.

927.402–2 Policy.

The technical data policy is directed toward achieving the following objectives:

(a) Making the benefits of the energy research, development and demonstration programs of DOE widely available to the public in the shortest practicable time;

(b) Promoting the commercial utilization of the technology developed under DOE programs;

(c) Encouraging participation by private persons in DOE energy research, development, and demonstration programs; and

(d) Fostering competition and preventing undue market concentration or the creation or maintenance of other situations inconsistent with the antitrust laws.

927.402–3 Procedures (supply, research, development, or demonstration contracts).

(a) *Known requirements for technical data.* Technical data requirements are determined in relation to the intended use of the data which in turn depends upon the intended use of the contract end item. In many contracts for research, the end item may often be a technical report or series of such reports, while in contracts beyond research, the subject of the contract may be a feasibility model, an engineering or advance development model, or a

prototype. The extent to which required technical data may be needed often depends on the level of maturity of design and perfection of the end item, and for a demonstration plant or prototype, may include data pertaining to performance, operational and environmental testing, repair, maintenance, operation, quality assurance, detailed design, logistics, training, etc. Known technical data requirements shall be programmatically ascertained prior to contracting and shall be included in requests for proposals or disclosed during contract negotiations for incorporation as data requirements in the contract statement of work.

(b) *Additional requirements for technical data.* In contracts for research, development, or demonstration, it is not normally possible or appropriate for the Government to ascertain all actual needs for technical data in advance of contracting. Accordingly, the Additional Technical Data Requirements clause at 952.227-73, shall normally be used in such contracts (and, if appropriate, in subcontracts) to enable the ordering of technical data as the actual need and requirement therefor becomes known during the course of the contract. If all technical data requirements are known in advance of contracting and are set forth in the contract statement of work, this clause need not be used. The Additional Technical Data Requirements clause should not normally be used in supply contracts because the required technical data therefor are ordinarily known in advance and thus are specified in the contract statement of work or specification. When the Additional Technical Data Requirements clause is used, the Rights in Technical Data-Long Form clause at 952.227-75 shall also be used.

(c) *Clause text.* The text of the Additional Technical Data Requirements clause is found at 952.227-73.

(d) *Proposals.* (1) The policy and procedures for treatment of proposal information are set forth in FAR 15.413 for solicited proposals, in FAR 15.509 for unsolicited proposals, and 927.70.

(2) Solicited proposals are to be handled in accordance with the procedures of FAR 15.413-2. Evaluation of such proposals outside the Government is authorized in accordance with the procedures of FAR 15.413-2(f) and paragraph (d)(4) below. In order to assure that solicited proposals are properly handled, the handling notice of FAR 15.413-2(e) shall be affixed to a cover sheet attached to each proposal upon receipt by DOE. Use of the notice neither alters any obligation of the Government, nor diminishes any rights in the Government to use or disclose the information.

(3) Unsolicited proposals are to be handled in accordance with FAR 15.509. Outside evaluations of such proposals are authorized in accordance with the procedures of 925.7000.

(4) It is DOE policy to have proposals evaluated by the most competent persons available in Government. In addition, DOE may meet its evaluation needs by having proposals reviewed by evaluators and contractor organizations operating or managing government-owned facilities. Where it is determined to evaluate a proposal outside the Government, such as by consultants, grantees and contractors including those who operate or manage Government-owned facilities, the agreement of 927.7000 or an equivalent arrangement for the treatment of the proposal shall be obtained from the outside evaluator before DOE furnishes a copy of the proposal to such person. In addition, care should be taken that the required handling notice is affixed to a cover sheet attached to the proposal before it is disclosed to the evaluator.

(5) Should a contract be awarded based on a proposal, it is DOE policy, in consideration of the award, to obtain unlimited rights for the Government in the technical data contained in the proposal unless the prospective contractor marks those portions of the technical information which it asserts as "proprietary data", or specifies those portions of such technical data which are not directly related to or will not be utilized in the work to be funded under the contract. "Proprietary data" is defined in 927.401(b). A proposer who receives a contract award shall mark the data identified as proprietary by specifying the appropriate page numbers to be inserted in the Rights to Proposal Data clause of 952.227-82, which clause shall be inserted in the contract. Subject to the concurrence of the contracting officer, information unrelated to the contract may be deleted from the proposal by the contractor. The responsibility, however, of identifying technical data as proprietary or deleting it as unrelated, rests with the prospective contractor.

(e) *Rights in technical data.* (1) The Rights in Technical Data (long form) clause set forth at 952.227-75 shall be used in all contracts having as a purpose the conduct of research, development, or demonstration, or in contracts for supplies, or in any other contract where technical data are expected to be first produced under the contract, where technical data are specified to be delivered in the contract, or where the contract contains the Additional Technical Data Requirements clause. Accordingly, all such contracts shall contain the Rights in Technical Data (long form) clause at 927.227-75, except as noted in 970.2702 and 927.402-3 (f) and (g) and except contracts for standard commercial off-the-shelf supplies where technical data such as operating or repair manuals are routinely furnished with the supplies.

(2) *Optional paragraph-Limited Rights in Proprietary Data.* In research, development, or demonstration contracts, and supply contracts where it is determined that delivery of proprietary data is necessary with limited rights in the Government, the Rights in Technical Data (long form) clause at 952.227-75 shall be supplemented by the additional paragraph (g) set forth at Alternate I to the clause. It should be noted that this paragraph does not entitle the contractor to place a limited rights legend on any technical data furnished to the Government under paragraph (g) unless the contracting officer requests in writing delivery of identified technical data previously withheld under paragraph (e) of the Rights in Technical Data clause. Paragraph (g) provides that proprietary data may be specified in the contract as being excluded from the delivery requirements of paragraph (e). Alternatively, the limited rights legend specified in Alternate I may be made applicable to only those classes of proprietary data determined as being necessary for delivery with limited rights. In addition, when furnishing proprietary data with the limited rights legend, subparagraphs (a), (b) and (c) thereunder may be modified as follows. When proprietary data is to be furnished only for evaluation, subparagraph (a) of the limited rights legend shall be used, and subparagraphs (b) and (c), if otherwise inapplicable, may be deleted. When there is a programmatic requirements that proprietary data be disclosed to other DOE contractors only for information or use in connection with work performed under their contracts, subparagraph (b) of the limited rights legend shall be used, and subparagraphs (a) and (c) may be deleted if otherwise inapplicable. In either of the foregoing examples, the contractor may, if it can show the possibility of a conflict of interest because of disclosure of such data to certain contractors or evaluators, exclude such contractors or evaluators from subparagraphs (a) or (b). If the data is required solely for emergency repair or overhaul, subparagraph (c) of

the limited rights legend shall be retained, and subparagraphs (a) and (b) may be deleted, unless otherwise applicable. In the event it is determined that all of the subparagraphs (a), (b) and (c) of the limited rights legend are to be deleted, the word "none" shall be inserted in the legend after the colon(:).

(3) *Optional paragraph-Contractor Licensing.* In many contracting situations the achievement of DOE's objectives would be frustrated if the Government, at the time of contracting, did not obtain on behalf of responsible third parties and itself limited license rights in and to proprietary contract data. Where, for example, the contractor is required to license background patents, consideration should be given to securing co-extensive license rights to the Government and responsible third parties at reasonable royalties, and under appropriate restrictions, for contract data which are proprietary data in order to practice the technology which is a subject of the contract. When such a license right is deemed necessary, the Rights in Technical Data (long form) clause at 952.227–75 should be supplemented by the addition of paragraph (h) at 952.227–75 Alternate II. Paragraph (h) will normally be sufficient to cover proprietary contract data for items and processes that were used in the contract and are necessary in order to insure widespread commercial use of a subject of the contract. The expression "subject of the contract" is intended to limit the licensing required in paragraph (h) below to the fields of technology specifically contemplated in the contract effort and may be replaced by a more specific statement of the fields of technology intended to be covered in the manner described in 41 CFR 9–9.107–5(b)(9) pertaining to "Background Patents." Where, however, proprietary contract data cover the main purpose or basic technology of the research, development, or demonstration effort of the contract, rather than subcomponents, products or processes which are ancillary to the contract effort, the limitations set forth in subparagraphs (h) (1)–(4) should be modified or deleted. Paragraph (h) further provides that technical data may be specified in the contract as being excluded from or not subject to the licensing requirements thereof. This exclusion can be implemented by limiting the applicability of the provisions of paragraph (h) to only those classes or categories of proprietary data determined as being essential for licensing. Although contractor licensing may be required under paragraph (h), the final resolution of questions regarding the scope of such licenses, the terms thereof, including provions for confidentiality and reasonable royalties, is then left to the negotiation of the parties with resolution of the issues being made, if necessary, by a court of competent jurisdiction.

(f) *Rights in Data—Special Works.* (1) The clause set forth in 952.227–76 shall be used in all contracts where the principal purpose or a task of the contract is the production of copyrightable works, even through such works may incorporate uncopyrighted material or material previously copyrighted by the contractor or others. Such contracts include those:

(i) Primarily for production of motion picture or television recordings or scripts, musical compositions or arrangements, sound tracks or recordings, translations, adaptations, and the like;

(ii) For books, compilations, surveys, histories, or technology information pamphlets;

(iii) For works pertaining to management studies, support services, training, career guidance, or similar functions of DOE; and

(iv) For works pertaining to guidance or instruction of DOE officials or employees in the discharge of official duties.

(2) The Rights in Data—Special Works clause at 952.227–76 should be modified with the assistance of Patent Counsel where the contract calls for the editing, translation, addition, or other modification of the subject matter of an existing work.

(g) *Rights in Technical Data (short form).* The clause set forth in 952.227–77 may be used in contracts for basic research including grants, special research contracts with educational institutions, contracts with consultants, contracts for symposia, or for the conduct of training and educational programs, and in other contracts of a similar nature. This clause shall not be used in any contract where proprietary information of the contractor may be utilized in the performance of work under the contract; in such instances the Additional Technical Date Requirements clause of 952.227–73 and the Rights in Technical Data (long form) clause of 952.227–75 shall be used. The short form clause of this section shall not be used in situations involving long-term consultancy arrangements for work in DOE programs providing opportunities for specialized work experience at DOE-owned facilities for scientific, engineering, and other employees of private firms and institutions engaged in civilian applications of atomic energy.

927.403 Negotiations and deviations.

Contracting officers shall contact the Patent Counsel assisting their contracting activity, or the Assistant General Counsel for Patents, for assistance to the contracting officer in selecting, negotiating, or approving appropriate data and copyright clauses in accordance with the procedures as set forth in 927.402 and 970.27. In particular, advice of Patent Counsel should be obtained regarding the appropriateness or modification of optional paragraphs (g) and (h) of the Rights in Technical Data (long form) clause, the exclusion of specific items of proprietary data from paragraph (f) in said clause, and the exclusion of the Additional Technical Data Requirements clause of 952.227–73.

Subpart 927.70—Disclosure of Proposal Information

927.7000 Disclosure outside Government.

(a) It is DOE policy to have proposals evaluated by the most competent persons available in the Goverment. In addition, DOE may meet its evaluation needs by having proposals reviewed by evaluators and contractor organizations operating or managing government-owned facilities. Outside evaluations may be made provided the requirements in (b) and (c) below are met. A decision to employ outside evaluators shall take into consideration requirements for avoidance of organizational conflicts of interest set forth in 909.5 and the competitive relationship, if any, between the proposer and the outside evaluator.

(b) Decisions to evaluate proposals outside the government shall be made only by the Source Selection Official with the concurrence of the Procurement Executive, Headquarters, for all source evaluation board acquisitions, or by the Senior Program Offical or designee with the concurrence of the HCA or his designee for other acquisitions. If the proposal under consideration expressly indicates that only Government evaluation is authorized and evaluation outside the Government is neverthless desired, the proposer shall be advised that DOE may be unable to give full consideration to the proposal unless the proposer consents in writing to having the proposal evaluated outside the Government.

(c) Where it is determined to evaluate a proposal outside the Government, such as by consultants, grantees or contractors including those who grant or manage Government-owned facilities

the following agreement or an equivalent arrangement for the treatment of the proposal shall be obtained from the outside evaluator before DOE furnishes a copy of the proposal to such person. In addition, care should be taken that the handling notice required by 927.7003 is affixed to a cover sheet attached to the proposal before it is disclosed to the evaluator.

Agreement

Conditions for Evaluating Proposal

Whenever DOE furnishes a proposal for evaluation, I the recipient agree to use the information contained in the proposal only for DOE evaluation purposes and to treat the information obtained in confidence. This requirement does not apply to information obtained from any source, including the proposer, without restriction. Any notice or restriction placed on the proposal by either DOE or the originator of the proposal shall be conspicuously affixed to any reproduction or abstract thereof and its provisions strictly complied with. Upon completion of the evaluation, it is agreed all copies of the proposal and abstracts, if any, shall be returned to the DOE office which initially furnished the proposal for evaluation. Unless authorized by the conracting officer, it is agreed the recipient shall not contact the originator of the proposal concerning any aspect of its contents.

Recipient: _____

Date: _____

927.7001 Proposal information.

Information contained in proposals will be used only for evaluation purposes except to the extent such information is generally available to the public, is already the property of the Government, or the Government already has unrestricted use rights, or is or has been made available to the Government from any source, including the proposer or offeror, without restriction. The term "proposal," as used in this section, includes responses to program opportunity notices (PONs), program research and development announcements (PRDAs) and solicitations of a similar nature, in addition to requests for proposals (RFPs) and unsolicited proposals. As a practical matter, DOE cannot assume any responsibility for disclosure or use of any such information unless it is identified by the proposer or offeror in accordance with this section. Unless a solicitation specifies otherwise, DOE will not refuse to consider a solicited proposal or an unsolicited proposal merely because the proposal is restrictively marked.

927.7002 Treatment of proposal information.

(a) A proposal may include technical data and other data, including trade secrets and/or privileged or confidential commercial or financial information which the offeror does not want disclosed to the public or used by the Government for any purpose other than proposal evaluation. To protect such data the offeror should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the proposal with the notice set forth at FAR 52.215–12, as prescribed at FAR 15.407(c)(8) for solicited proposals or FAR 15.509 for unsolicited proposals. Solicitation documents shall include instructions to proposers to mark their proposals in the prescribed manner.

(b) A reference to that notice on a proposal cover sheet shall be placed on each page to which the notice applies. Data, or abstracts of data, marked with that notice will be retained in confidence and used by the DOE or its designated representative(s) including Government contractors and consultants, as set forth in paragraph (c) below solely for the purpose of evaluating the proposal. The data so marked will not otherwise be disclosed or used without the proposer's prior written permission except to the extent provided in any resulting contract, or to the extent required by law. Offerors should be made aware of the provisions of paragraph (c) below if they desire to modify the notice at FAR 52.215–12 or otherwise seek to limit the evaluation to the Government only. The restriction contained in the notice does not limit the Government's right to use or disclose any data contained in the proposal if it is obtainable from any source, including the offeror, without restriction. Although it is the policy of the DOE to treat all proposals as confidential, the Government assumes no liability for disclosure or use of unmarked data and may use or disclose such data for any purpose. See FAR 15.1001(b) regarding disclosure to other offerors.

(c) Should a contract be awarded based on a proposal, it is DOE policy, in consideration of the award, to obtain unlimited rights for the Government in the technical data contained in the proposal unless the prospective contractor marks those portions of the technical information which he asserts "proprietary data," or specifies those portions of such technical data which are not directly related to or will not be utilized in the work to be funded under the contract. "Proprietary data" is defined in 927.401. An offeror who receives a contract award shall mark the data identified as proprietary by specifying the appropriate page numbers to be inserted in the Rights to Proposal Data clause of 952.227–82, which clause shall be inserted in the contract. Subject to the concurrence of the contracting officer, information unrelated to the contract may be deleted from the proposal by the contractor. The responsibility, however, of identifying technical data as proprietary or deleting it as unrelated, rests with the prospective contractor.

(d) The clause at 952.227–82 shall be included in any contract which resulted from a proposal that was the basis of negotiation and award of the contract. This clause is intended to apply only to technical data and not to other data such as privileged or confidential commercial or financial information.

927.7003 Handling notice.

In order that proposals may be handled in confidence consistent with the policies set forth in this section and pursuant to 927.402–3(d)(2), the notice at FAR 15.413–2(e) for solicited proposals and FAR 15.509(d) for unsolicited proposals shall be affixed to a cover sheet attached to each proposal upon receipt by DOE. Use of the notice neither alters any obligation of the Government, nor diminishes any rights in the Government to use or disclose data or information.

927.7004 Identification of proprietary data in propsals.

927.7004–1 Solicited proposals.

Even though the statement of work contained in a solicitation sets forth the known requirements for technical data, i.e., technical data which will be specified to be delivered, there is no assurance that the contractor will deliver all of this data because paragraph (e) of the Rights in Technical Data (long form) clause at 952.227–75 permits the contractor to withhold proprietary data from delivery. In order to ascertain the technical data the proposer intends to withhold as proprietary data, and as an aid in determining whether to include the provision for limited rights in proprietary data set forth in optional paragraph (g) of the Rights in Technical Data (long form) clause, the provision set forth in 952.227–83 shall be included in the solicitation. This provision explains that solicitations will include DOE's known requirements for technical data, and that the proposer must submit a list identifying to the best of its knowledge which of this data will be withheld as proprietary data, or state that no technical data will be withheld. The submission of such a list does not constitute a stipulation or determination by the Government that the data identified therein are in fact proprietary.

In addition, the provision to be included in the solicitation refers to the Additional Technical Data Requirements clause at 952.227–73, as being included in the proposed contract where, due to programmatic considerations, it is contemplated that all of the requirements for technical data will not be known at the time of contracting. When a proposer specifically identifies the proprietary data to be withheld, the contracting officer shall determine as advised by the appropriate program manager, whether:

(a) the Government needs limited rights in the proprietary data, in which case the optional paragraph (g) will be included in the Rights in Technical Data (long form) clause;

(b) the Government needs to require the contractor to license proprietary data to the Government and responsible third parties, in which case optional paragraph (h) will be included in the Rights in Technical Data (long form) clause; and

(c) the Government needs unlimited rights in the proprietary data, in which case negotiations may be held to purchase or obtain a suitable license to the proprietary data.

927.7004–2 Solicitations.

The provision at 952.227–83 shall normally be included in solicitations which may result in contracts calling for research, development, or demonstration work or solicitations for supplies in which delivery of required technical data is contemplated.

927.7004–3 Unsolicited proposals.

The contracting officer, during contract negotiations, shall identify technical data which will be required to be furnished under the contract. The proposer shall be required to submit a list identifying, to the best of his knowledge, which of this data will be withheld as proprietary under paragraph (e) of the Rights in Technical Data (long form) clause, or to state that no technical data will be withheld. The contracting officer shall then make the determinations, in the same manner as set forth in 927.7004–1 for solicited proposals, pertaining to the proprietary data identified to be withheld.

927.7005 Required notice of right to request patent waiver.

Offerors are to be provided with notice of the right to request, in advance of or within 30 days after the effective date of contracting, a waiver of all or any part of the rights of the United States with respect to subject inventions. In no event will the fact that an offeror has requested such a waiver be a consideration in the evaluation of his offer or the determination of his acceptability. Accordingly, the notice at 952.227–84 shall be given to all prospective contractors and shall be inserted in all solicitations which may result in contracts calling for research, development, or demonstration work.

PART 928—BONDS AND INSURANCE

Subpart 928.1—Bonds

Sec.
928.101–1 Policy on use.
928.101–70 Review of bid bonds for construction.
928.102–70 Review of performance and payment bonds for construction.
928.103–2 Performance bonds.
928.103–3 Payment bonds.
928.103–70 Review of performance and payment bonds for other than construction.
928.170 Fidelity bonds.

Subpart 928.2—Sureties

928.202–1 Corporate sureties.
928.202–70 Partnerships as sureties.
928.202–71 Substitution or replacement of a surety.

Subpart 928.3—Insurance

928.301 Policy.
928.370 Service-type insurance policies.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

Subpart 928.1—Bonds

928.101–1 Policy on use.

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

928.101–70 Review of bid bonds for construction.

Prior to award of a contract, the contracting officer shall obtain a review from Counsel of the bid bond furnished with the successful bid as to legal form and sufficiency and as to acceptability of the surety. Prior to award of a subcontract, the contracting officer shall review the bid bond furnished with the successful bid as to legal form and sufficiency and as to acceptability of the surety and adequacy of the bond.

928.102–70 Review of performance and payment bonds for construction.

Prior to the award of a contract for construction the contracting officer shall obtain review of performance and payment bonds as to legal form and sufficiency, acceptability of the surety, and adequacy of the bond. A performance or payment bond, other than an annual bond, shall not antedate the contract to which it pertains.

928.103–2 Performance bonds.

Situations in addition to those listed in FAR 28.103–2, which may warrant requiring a performance bond for other than construction contracts are:

(a) Where doubt exists as to the financial or technical ability of all possible suppliers;

(b) Where the contractor's talent is overly concentrated in a few key personnel whose illness or departure could seriously impair the contractor's ability to perform the proposed work;

(c) Where other commitments of the contractor might delay performance;

(d) Where performance of the proposed work might disrupt other operations of the contractor and impair its overall efficiency; and

(e) Where the item being manufactured is a component for another article and is required by a particular date in order to avoid delay in delivery of the end product.

928.103–3 Payment bonds.

(a) 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. Such approval is subject to the approval of the Head of the Contracting Activity. In the case of either advertised or negotiated acquisitions, whenever the contracting officer has reason to believe that work under a proposed contract might be delayed because of the concern of subcontractors or suppliers over the credit standing of a potential prime contractor, the contracting officer should consider requiring a payment bond.

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

Prior to the award of a contract for other than construction the contracting officer shall obtain review of performance and payment bonds as to legal form and sufficiency, acceptability of the surety, and adequacy of the bond. A performance or payment bond, other than an annual bond, shall not antedate the contract to which it pertains.

928.170 Fidelity bonds.

Fidelity bonds shall not be required in connection with fixed-price contracts. They may be required, however, in connection with cost-reimbursement contracts for supplies, or construction, where it is determined that a fidelity bond is necessary for the protection of the Government or the contractor, or

when it is considered desirable to obtain the investigative and claim services of the surety company.

Subpart 928.2—Sureties

928.202-1 Corporate sureties.

Each corporate surety, may, by setting forth the limit of its liability in the bond as a definite and specified sum, limit such liability. The co-sureties must, however, bind themselves "jointly and severally" for the purpose of allowing a joint action or actions against any or all of them.

928.202-70 Partnerships as sureties.

A partnership or other unincorporated association, as such, shall not be accepted as a surety. The individual members of the partnership or association may, of course, qualify as sureties, provided they meet the requirements set forth in FAR 28.202-2. Individual members of a partnership or association shall not, however, be acceptable as sureties on bonds under which the partnership or association, or any co-partner or member thereof, is the principal obligor.

928.202-71 Substitution or replacement of a surety.

In case of financial inadequacy, failure, or other disqualifying cause on the part of a surety under a bond, the contracting officer shall require the substitution of a new surety satisfactory to the contracting officer.

Subpart 928.3—Insurance

928.301 Policy.

The DOE policies and procedures for indemnification of DOE contractors are set forth in FAR Part 50 and 950.

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.

PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 931.1—Applicability

Sec.

931.102 Fixed-price contracts.

Subpart 931.2—Contracts With Commercial Organizations

931.205-18 Independent research and development and bid and proposal costs.
931.205-32 Precontract costs.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

Subpart 931.1—Applicability

931.102 Fixed-price contracts.

The intent of the first sentence of FAR 31.102 is that applicable subparts of FAR 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 FAR 31.204(b).

Subpart 931.2—Contracts With Commercial Organizations

931.205-18 Independent research and development and bid and proposal costs.

(c)(3) In determining the amount of cost recoverable under DOE contracts the maximum total amount of annual IR&D costs recoverable under all DOE contracts with a business unit or segment shall not exceed (i) those contracts' allocable share of the business unit's (or segment's) total allocable IR&D amounts (as established in accordance with paragraphs FAR 31.205-18(c)(1) and (2)), or (ii) the total cost of the business unit's (or segment's) annual IR&D activities determined to have potential benefit or relationship to the DOE program, whichever is less. The maximum total amount of B&P cost which is recoverable under DOE contracts with a business unit (or segment) shall be those contracts' share of the allocable B&P expense computed in accordance with FAR 31.205-18(c)(1) and (2).

(4) For purposes of 931.205-18(c)(3), the term "DOE program" encompasses the DOE total mission and its objectives. However, IR&D costs that exceed the benefit threshold at one business unit or segment of a business organization cannot be used to offset IR&D costs that are less than the benefit threshold of another segment or business unit.

931.205-32 Precontract costs.

(a) To the extent practical, known expenditures of precontract costs under DOE contracts should be governed by establishing advance understandings as contemplated by FAR 31.109. Contracts that include authorized precontract costs shall include the "Date of Incurrence of Cost" clause specified at 952.321-70.

(b) The following limitations apply to establishment of advance understandings relative to precontract costs:

(1) Precontract cost authorizations shall not be used to cover a period in excess of 15 days, unless a longer period is approved by the HCA based upon a written finding that such an allowance is reasonable, and shall not be extended or renewed. A copy of the findings shall be forwarded to the Procurement Executive at the time of approval. If prolonged coverage is necessary, a letter contract shall be issued.

(2) All precontract cost authorizations shall be reviewed and approved at a management level above the contracting officer.

(3) Retroactive precontract cost authorization and the predating of contractual agreements shall not be used.

(4) Precontract cost authorizations shall not authorize the delivery or furnishing of any goods or services from a contractor until after the contract is executed.

PART 932—CONTRACT FINANCING

Subpart 932.1—General

Sec.

932.102 Description of contract financing methods.
932.111 Contract clauses.

Subpart 932.3—Loan Guarantees for Defense Production

932.304-2 Certificate of eligibility.

Subpart 932.4—Advance Payments

932.402 General.
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Subpart 932.5—Progress Payments Based on Costs

932.501-2 Unusual progress payments.

Subpart 932.6—Contract Debts

932.605 Responsibilities and cooperation among Government officials.

Subpart 932.7—Contract Funding

932.703-1 General.

Subpart 932.8—Assignment of Claims

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932.803 Policies.
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932.7000 Scope of subpart.
932.7001 Definitions.
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932.7004–3 Eligibility.

Subpart 932.71—Contract Payments

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932.7101 Definitions.
932.7102 General.
932.7103 Exemptions.
932.7104 Procedures.
932.7105 Payment due dates.
932.7106 Inspection periods.
932.7107 Contract clauses.
932.7107–1 DOE payment clauses.
932.7107–2 Modified FAR clauses.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 932.1—General

932.102 Description of contract financing methods.

(e)(2) Progress payments based on a percentage or stage of completion are authorized for use as a payment method under DOE contracts or subcontracts for construction, alteration or repair, and shipbuilding and conversion. For all other contracts, progress payment provisions shall be based on costs, as provided in FAR Subpart 32.5, and Subpart 932.5 of this chapter, except that progress payments based on a percentage or stage of completion may be authorized by the Head of the Contracting Activity when a determination is made that progress payments based on costs cannot be practically employed and that there are adequate safeguards provided for the administration of progress payments based on a percentage or stage of completion.

932.111 Contract clauses.

Payment due dates shall be established in accordance with the provisions set forth in Subpart 932.71, Contract Payments.

Subpart 932.3—Loan Guarantees for Defense Production

932.304–2 Certificate of eligibility.

(h) Guaranteed loan applications shall be authorized and transmitted to the Federal Reserve Bank only by the Secretary or designee specified for that purpose.

Subpart 932.4—Advance Payments

932.402 General.

(e)(1) The Head of the Contracting Activity or designee shall have the responsibility and authority for making findings and determinations, and for approval of contract terms concerning advance payments.

(2) Before authorizing any advance payment arrangements, the approving official shall obtain the advice, and other inputs of the servicing finance office.

932.407 Interest.

(d)(4) Advance payments may be made without interest under cost-reimbursement contracts for construction or engineering services.

Subpart 932.5—Progress Payments Based on Costs

932.501–2 Unusual progress payments.

(a)(3) The Head of the Contracting Activity shall forward all requests which are considered favorable, with supporting information, to the Procurement Executive, who, after coordination with the Controller, will approve or deny the request.

(d) Requests for unusual progress payments will not be considered as a handicap or adverse factor in the award of a contract; provided the bid or proposal is not conditioned on approval of such request.

Subpart 932.6—Contract Debts

932.605 Responsibilities and cooperation among Government officials.

(b) The DOE contracting officer has primary responsibility for determining the amount of contract debt and notifying the cognizant finance office of such debt due the Government. The servicing DOE finance office making payments under the contract has primary responsibility for debt collection.

Subpart 932.7—Contract Funding

932.703–1 General.

(a) The contracting officer shall, prior to contract award and obligation of funds, ensure sufficient funds are available to cover the maximum amount of Government liability being created under a fully funded contract; e.g., the ceiling price under a fixed-price incentive or redeterminable contract.

(b) For incrementally funded contracts the contracting officer shall limit the Government's liability to available funds and only require a contractor to provide:

(1) The property or services for which funds are available under a fixed price arrangement; or

(2) The intended increment of work and a proportionate amount of fee under a cost-reimbursement contract.

Subpart 932.8—Assignment of Claims

932.802 Conditions.

(d)(1) This paragraph covers all unpaid amounts payable under the contract except that partial assignments may be permitted when primarily for the benefit of the Government.

932.803 Policies.

(d) In the case of prime contracts, when it has been determined that the financing of contracts will be facilitated in the interest of DOE programs, it is the policy of DOE that such contracts provide, or be amended without consideration (see Assignment of Claims Act of 1940) to provide, in conformance with FAR 32.804, that payments to be made to an assignee shall not be subject to reduction or setoff. In the case of subcontracts, when loans are made for the purpose of financing performance of subcontracts under DOE prime contracts, financing institutions or the Government as guarantor in those instances in which such loans are guaranteed should not be required to incur risks of loss by reason of possible diversion of assigned subcontracts proceeds for payment of other claims of the prime contractor against the borrower, otherwise unrelated to the assigned subcontracts. The Head of the Contracting Activity shall require the adoption of these policies and practices by DOE prime contractors with respect to DOE subcontract work. The Head of the Contracting Activity should inform the Controller of each DOE contractor who is unwilling to adopt policies consistent with this paragraph and the reasons given in support of the contractor's position.

932.805 Procedure.

(f) For classified contracts, the assignee should ordinarily be furnished, upon request, with the following information, as applicable, in lieu of a copy of the contract:

(1) Name and address of the DOE prime contractor;

(2) Prime contract number and date;

(3) Name, address, and phone number of responsible official in the

(i) DOE office receiving the material or service; and

(ii) DOE finance office making payments;

(4) Subcontract number or purchase order number;

(5) Date of the subcontract or purchase order;

(6) Date on which prime contract, subcontract, or purchase order is to be completed;

(7) Total amount of the subcontract or purchase order;

(8) Dollar amount remaining to be delivered on prime contract, subcontract, or purchase order; and

(9) A statement as to the assignability of the prime contract, subcontract, or purchase order.

Subpart 932.70—DOE Loan Guarantee Authority

932.7000 Scope of subpart.

This subpart prescribes policies and procedures for guarantees of loans made by a private financial institution to borrowers performing DOE contracts relating to DOE programs for which guaranteed loans are authorized by legislation.

932.7001 Definitions.

(a) The terms "borrower," "Federal Reserve Board," and "guaranteed loan" have the same meaning set forth in FAR 32.301.

(b) "Guaranteeing Agency" as used in this subpart, means the Department of Energy when authorized to guarantee loans through the Federal Reserve Banks.

932.7002 Authority.

Guaranteed loan applications shall be authorized and transmitted to the Federal Reserve Board only by the Secretary, or designee specified for that purpose, and only when made pursuant to enabling legislation or other authority; e.g., by executive order or regulation.

932.7003 Policies.

The following policies governing the exercise of its loan guarantee authority have been established by DOE:

(a) The use of the loan guarantee authority is not restricted to contracts or subcontracts of any particular type or of class. Each case is to be evaluated on its own merits and under the particular circumstances applicable thereto.

(b) The fact that a contract has been awarded as a result of competitive bidding should not, of itself, render the loan ineligible for guarantee by DOE if the contractor is financially responsible and its need for working capital is the result of the impact of a defense program or any other DOE program for which guaranteed loans are authorized.

(c) The guarantee authority should, in general, not be used in connection with loans to contractors required to furnish performance bonds, except in those cases in which the time likely to be required for the surety or DOE to take over in the event of default will result in delays which cannot be tolerated by the particular program concerned. When performance bonds have been furnished, the surety shall be required to subordinate its rights in favor of the guaranteed loan.

(d) The criterion that the materials or services to be provided cannot readily be acquired from alternative sources does not require the finding that the materials or services are absolutely unobtainable elsewhere. The criterion should be so applied as to permit guarantees of loans when, although the materials or services can be obtained elsewhere, such factors as the urgency of supply schedules, technical capacity of the contractor, comparative prices, and time and expense involved in reissuing the contract, including termination payment, establish that it is to the Government's advantage not to resort to alternative sources merely because the contractor or subcontractor may require a guaranteed loan.

(e) If it is known at the time the contract is to be awarded that the low offeror who is technically qualified and competent to furnish the required materials and services will require a guaranteed loan, the contracting officer should obtain appropriate advice and in reaching a decision should consider at least the following:

(1) The savings to be realized by awarding the contract to the low offeror;

(2) The risk to the Government in guaranteeing a loan; and

(3) The likelihood, if award is made to the second low offeror, of that offeror's applying for a guaranteed loan at a later date.

Extreme care should be exercised in rejecting a low bid or proposal simply because the low offeror requires a guaranteed loan.

(f) The amount of the loan should bear reasonable relationship to such factors as the value and terms of the contract, the probable investment required to be made by the contractor in payrolls and inventories, the frequency with which contract payments are to be made, and the borrower's current working capital position.

(g) Borrowings for working capital purposes under guaranteed loans shall be limited to the amount necessary to perform the contract for which the loan is sought. In order that the contractor will also use its own funds in the performance of the contracts, amounts outstanding under the loan or line-of-credit shall be limited to an amount not to exceed 90 percent of the borrower's investment in its contracts, regardless of the total amount of the loan or line of credit authorized. The borrower's investment includes all items for which the borrower would be entitled to payment on performance or termination of contracts, but does not include any items for which no work has been done nor expenditures made.

(h) Unless there are exceptional circumstances, the loan should mature not later than 30 days after the estimated date of final payment under the contract.

932.7004 Procedures.

932.7004-1 Guaranteed loans for civilian programs.

The procedures for authorizing a guaranteed loan under legislation other than section 301 of the Defense Production Act of 1950 (50 U.S.C. App. 2091) shall be essentially the same as those set forth in FAR 32.304, Procedures, FAR 32.305, Loan Guarantees for Terminated Contracts, and FAR 32.306 Loan Guarantee for Subcontacts; except that any contrary provisions required by enabling legislation authorizing the loan shall govern.

932.7004-2 Criteria.

(a) The materials or services to be furnished by the contractor are necessary to the Government interest.

(b) The materials or services cannot as a practical matter be obtained from alternate sources without delay or impeding the Government's interest, except that no small business concern shall be held ineligible for the issuance of such guarantee by reason of alternative sources of supply.

(c) The contractor has demonstrated its inability to obtain the necessary financing in conventional credit channels without the guarantee.

(d) There is reasonable assurance that the loan can be repayed.

(e) The contractor is competent to perform the contract.

932.7004-3 Eligibility.

The applicant's eligibility for a guaranteed loan will be based on:

(a) Contracting officer determinations and findings regarding items (a), (b) and (e) in 932.7004–2 as incorporated in a Certificate of Eligibility (FAR 32.304–2); and

(b) The Controller's determination for items (c) and (d) in 932.7004–2 based on information contained in the application, the Federal Reserve Bank's report, and information furnished by the contracting activity concerned.

Subpart 932.71—Contract Payments

932.7100 Scope of subpart.

This subpart prescribes policies and procedures on (a) the inclusion of payment terms in DOE contracts and purchase orders (b) the requirements of the Prompt Payment Act (31 U.S.C. 3901 et seq.,) Office of Management and Budget (OMB) Circular No. A-125, Prompt Payment, and (c) invoice requirements and matters concerning payments to contractors.

932.7101 Definitions.

"Business Concern" means any person or organization engaged in a profession, trade, or business; and nonprofit entities (including State and local governments, but excluding Federal entities) operating as contractors.

"Contract" means any enforceable agreement, including rental and lease agreements and purchase orders, between an agency and a business concern for the acquisition of property or services.

"Designated payment office" means the place named in the contract for the forwarding of invoices for payment, or in certain instances for approval.

"Due date" means the date on which Federal payment should be made. Determination of such dates is discussed in 932.7105.

"Discount date" means the date by which, if payment is made, a specified discount can be taken.

"Payment date" means the date on which a check for payment is dated or an electronic funds transfer payment is made.

"Proper invoice" means a bill or written request for payment prepared and submitted by a contractor in accordance with contract specified terms and conditions.

"Receipt of invoice" means the date a proper invoice is actually received in the designated payment office; or, the date on which the DOE accepts the property or service; whichever is the later.

932.7102 General.

(a) It is the policy of the Department of Energy to include payment terms in its contracts and to make payments due thereunder on the due dates determined in accordance with such terms. Adherence to this policy will avoid interest penalities for overdue payments, establish better business relationships with suppliers, and increase competition for Government contracts.

(b) In accordance with guidelines set forth in Chapter 8000, Cash Management, section 8040.20, Timeliness of Disbursements, of the Treasury Fiscal Requirements Manual (TFRM), it is also the policy of the Government to defer payment until as close as administratively possible to the due date for payment or, if appropriate, the discount date. Discounts for early payments shall not be taken, however, unless such discounts are determined to be economical in accordance with section 8040.30 of the TFRM. These practices will tend to maximize cash balances available to the Treasury, reduce the need for borrowing, and thus contribute to lowering the public debt.

(c) When not established contractually, it is the DOE policy that the payment due date for invoices, bills, statements, or any other documents including progress and final payments (hereinafter referred to as "invoices") shall be the thirtieth (30th) calendar day after date of invoice receipt, as defined in this subpart, unless a different date is required by law or regulations.

(d) Notice of an apparent error, defect, or impropriety in an invoice shall be given to a business concern within 15 days of invoice receipt (3 days for meat or meat food products and 5 days for perishable agricultural commodities). When provided by telephone, the notice shall be suitably documented.

(e) The contracting officer and other responsible officials shall ensure that receipt and acceptance of goods and services are executed as promptly as possible. Receiving reports shall be forwarded in time to be received by the designated payment office by the fifth business day after acceptance, unless other arrangements are made. Designated payment offices shall stamp receiving reports and invoices with the date received in those offices.

(f) DOE Payment Offices are required to schedule contractual payments to occur on or as near as administratively possible to established payment due dates. Payments made by Treasury checks will be mailed or transmitted on or about the same day for which the check is dated.

(g) When the DOE accepts property or services from a business concern, but does not make payment for each such complete delivered item of property or service by the required payment date, an interest penalty shall be paid to such business concern unless such payment is made within 15 days after the due date (3 days for meat or meat products and 5 days for perishable agricultural commodities) or is exempted pursuant to 932.7103 below.

(h) If a business concern offers the DOE a discount from the amount otherwise due under a contract for property or services in exchange for payment within a specified period of time, payment will be made in an amount equal to the discounted price only if payment is made within such specified period of time. Violation of this provision shall result in payment of an interest penalty on any amount which remains unpaid and on which the Department fails to correct the underpayment within 15 days of the expiration of the discount period (3 days for meat and meat food products, and 5 days for perishable agricultural commodities).

(i) To ensure prompt payment of amounts due, all DOE contracts shall incorporate appropriate payment provisions enabling the Government, at its option, to determine at the time of payment the method of payment to be used (e.g., check, electronic funds transfer).

932.7103 Exemptions.

The interest penalty provisions of this subpart are not applicable to the following types of contract payments.

(a) Advance payments, progress payments or other payments made for financing purposes before receipt of complete delivered items of property or service.

(b) Payments under cost-reimbursement contracts or similar payments under other types of contracts providing for cost-reimbursements; e.g., a Time-and-Materials or Labor-Hour Contract, a Personal Services Contract.

(c) Payments for utilities (gas, water, electricity, etc.) where the contract includes provisions for late payment charges established by tariffs or State regulatory commissions.

(d) Payments under informal contracts for the purchase of utilities under a tariff when such tariff provides for late payment charges.

(e) Late payments, if any, made under a contract awarded prior to October 1, 1982; unless such contract contains a specific interest penalty clause.

932.7104 Procedures.

(a) In all DOE contract and purchase order solicitations and awards, the contracting officer shall:

(1) Establish specific payment terms, payment due dates, stated inspection periods, invoice requirements, notification of defective invoice requirements and interest penalty provisions as set forth in this subpart; and

(2) Ensure awards specify the name (where practicable), title, phone number, office name and complete mailing address, of officials of:

(i) The business concern to be notified when the Government receives a defective or improper invoice, and

(ii) The Government office where the invoices or vouchers are to be sent by the contractor.

932.7105 Payment due dates.

(a) The contracting officer shall provide for contract payment due dates that are equitable and give proper consideration to prevailing industry practices for the same or similar products or services and the financial condition of the prospective contractor. To the extent feasible and appropriate, payment cycles should be established to minimize or avoid entirely the necessity for the making of advance payments or progress payments.

(b) Contract specified payment due dates, shall generally be predicated on a payment cycle of thirty (30) calendar days after invoices receipt, as defined herein, in order to permit DOE officials to routinely receive, review, approve, and otherwise administratively process invoices for payment of cost reimbursement vouchers or invoices for complete delivered products or services. However, payment due dates based on different payment cycles may be established for a contract, or class of contracts, as appropriate or required by law, regulation, the contractor's financial condition or the payment procedures and practices of the awarding office.

(c) Payment cycles of less than thirty (30) calendar days may be appropriate when:

(1) An award is made to a small business concern.

(2) Advance payments or progress payments are authorized to finance contract work or such financing payments can be curtailed by making payments sooner for completed work.

(d) When authorized, separate payment due dates shall be established for progress payments. The absence of a contract specified due date may preclude progress payments from being made on other than a thirty (30) day payment cycle.

(e) Advance payments, when provided, shall be timed to coincide with the contractor's financial need for such payments in accordance with applicable Treasury Department requirements.

(f) In connection with the acquisition of meat and meat food products, as defined in section 2(a)(3) of the Packers and Stockyards Act of 1921 (7 U.S.C. 182(3)), the Prompt Payment Act requires payment to be made not later than 7 days after the date of delivery. Similarly, for perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), the required time for payment is 10 calendar days after delivery.

(g) When contract payment due dates other than those established by local policy are to be incorporated, or are requested by the contractor, the contracting officer shall first obtain concurrence from cognizant finance and program officials.

932.7106 Inspection periods.

(a) In order to ensure timely payments when contract payment due dates are partially or wholly based on a specified number of days after Government acceptance of complete delivered property or services, the contract shall specifiy an agreed to maximum period for Government inspection and acceptance.

(b) For purposes of determining such payment due dates, a delivered item shall be deemed constructively accepted on the last day of the contract specified inspection period if actual acceptability has not yet been determined.

(c) For purposes of determining payment due dates for purchase orders, constructive acceptance shall be deemed to occur on the date of receipt at the specified delivery point unless the contracting officer specifically requires otherwise in the purchase order.

(d) Failure by the Government to accept or reject delivered items within specified time period may result in the payment of interest penalties. However, such failure shall not be considered a breach of contract terms.

(e) Contract specified inspection periods shall be predicated on the estimated number of calendar days required to determine the acceptability of the delivered item(s) after the date of receipt at the contract specified delivery point.

(f) When more than a ten (10) calendar day inspection period is contractually established, approvals of contracting and program officials should be included with the contract file.

932.7107 Contract clauses.

932.7107-1 DOE payment clauses.

(a) The contracting officer shall insert—

(1) The basic clause at 952.232-70, Payment Due Dates, Invoice Requirements and Penalties, in solicitations and awards containing the clause at FAR 52.232-1, Payment (applicable to fixed-price supply contracts, fixed-price service contracts, and contracts for nonregulated communication services), FAR 52.232-2, Payment under Fixed-Price Research and Development Contracts, or FAR 52.232-4, Payment under Transportation Contracts and Transportation-Related Services Contracts;

(2) Alternate I of the basic clause at 952.232-70 in solicitations and awards containing the clause at FAR 52.232-3, Payment under Personal Services Contracts, or FAR 52.232-7, Payments under Time-and-Materials and Labor-Hours Contracts, when such contracts provide for cost-reimbursements;

(3) Alternate II of the basic clause at 952.232-70 in solicitations and awards containing the clause at FAR 52.232-5, Payments under Fixed-Price Construction Contracts, or FAR 52.232-10, Payments under Fixed-Price Architect-Engineer Contracts;

(4) Alternate III of the basic clause at 952.232-70, or a clause substantially the same as alternate III, in solicitations and awards containing the clause at FAR 52.232-6, Payments under Communication Service Contracts with Common Carriers, in order to establish appropriate due dates and to provide for late payment charges established by tariffs or state regulatory commissions; or

(5) Alternate IV of the basic clause at 952.232-70 in fixed-price solicitations and awards providing for the acquisition of meat and meat products or perishable agriculture commodities to ensure compliance with Prompt Payment Act requirements.

(b) The contracting officer shall insert the clause at 952.232-71, Payment Due Dates and Invoice Requirements, in all cost-reimbursement contract solicitations and awards containing the clause at FAR 52.216-7, Allowable Cost and Payment, as modified at 952.216-7; or, FAR 52.216-13 Allowable Cost and Payment-Facilities.

(c) Fixed-price purchase orders shall incorporate the prompt payment clauses at 952.232-72.

(d) The contracting officer shall insert the clause at 952.232-73, Payment Methods, in all DOE contract solicitations and awards in order to provide proper notice and require contractor acceptance of electronic funds transfers for any required contract payments not to be made under a letter-of-credit advance payment arrangement.

932.7107-2 Modified FAR clauses.

(a) For consistency with the applicable clauses prescribed in 932.7107-1 above, the payment clauses prescribed in FAR 32.111 shall be modified as provided below:

(1) Revise the payment clauses at FAR 52.232-1 through FAR 52.232-6, as

prescribed in FAR 32.111(a)(1) through FAR 32.111(a)(6), to indicate payments will be made "after" rather than "upon" invoice receipt or acceptance.

(2) Revise the clause cited at FAR 52.232-7, as prescribed in FAR 32.111(b), to indicate payments will be made "after" rather then "upon" invoice receipt or acceptance.

(3) Modify the clause at FAR 52.232-8, Discounts For Prompt Payment, as prescribed in FAR 32.111(c)(1), to reflect the term "proper" in lieu of "correct" and the last sentence to read as follows—For the purpose of computing the discount earned, payment shall be considered to have been made on the date either a government check was dated or an electronic funds transfer payment was made.

(4) Revise the clause at FAR 52.232-10, Payments Under Architect-Engineer Contracts, as prescribed at FAR 32.111(d)(1), to indicate payments shall be made "after" rather than "upon" invoice receipt or acceptance.

PART 933—DISPUTES AND APPEALS

933.011 Contracting officer's decision.

(a) In addition to the information specified in FAR 33.011, the contracting officer's decision shall include the contracting officer's written findings of fact.

(b) The contracting officer shall also furnish the contractor a copy of the rules established by the DOE Board of Contract Appeals.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

935.007 Solicitations.
935.010 Scientific and technical reports.
935.014 Government property and title.
935.015 Contracts for research with educational institutions and nonprofit organizations.
935.070 Contract clauses.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

935.007 Solicitations.

See Subpart 917.72 for the conditions under which Program Research and Development Announcements may be used, and the procedures for their use.

935.010 Scientific and technical reports.

(c) All research and development contracts which have as a requirement the submission of a scientific or technical report shall include a provision which requires the contractor to submit a copy of the final, edited report to the following address: U.S. Department of Energy Technical Information Center, P.O. Box 62, Oak Ridge, TN 37830.

(d) Contractors shall be required to submit with the report a completed DOE Form RA-426, "DOE and Major Contractor Recommendations for Announcement and Distribution of Documents," except when the contract is with an educational institution, in which case the contractor shall be required to submit with the report a completed DOE Form RA-427, "University Contractor, Grantee and Cooperative Agreement Recommendations for Announcement and Distribution of Documents."

935.014 Government property and title.

(b) As authorized by FAR 35.014(b), DOE has established a threshold of $1,000 with respect to consideration of vesting title to property to the contractor in contracts with nonprofit and educational institutions as contemplated by FAR 35.014(b)(1) and 35.014(b)(2).

935.015 Contracts for research with educational institutions and nonprofit organizations.

See Subpart 917.71 for the conditions and procedures under which Special Research Contracts may be used and the procedures for their use.

935.070 Contract clauses.

Insert the clause at 952.235-70, Key Personnel, in Research and Development contracts under which performance is largely dependent on the expertise of specific key personnel. To prevent administrative burden, the list should be as limited as possible.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 936.2—Special Aspects of Contracting for Construction

Sec.

936.202 Specifications.

Subpart 936.6—Architect-Engineer Services

936.601 Policy.
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936.603 Collecting data on and appraising firm's qualifications.
936.605 Government cost estimate for architect-engineer work.
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Subpart 936.7—Standard Forms for Contracting Architect-Engineer Services and Dismantling, Demolition or Removal of Improvements

936.702 Forms for use in contracting for architect-engineer services.

Subpart 936.70—Rental of Construction Equipment

936.7000 Scope of subpart.
936.7001 General policy.
936.7002 Rental of contractor-owned equipment.
936.7002-1 Rental agreements.
936.7002-2 Rental period.
936.7002-3 Rental rates.
936.7002-4 Application of rates.
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936.7002-7 Record of negotiation.
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936.7002-9 Equipment condition and inspection.
936.7003 Rental of third-party-owned equipment.
936.7003-1 Rental agreement.
936.7003-2 Rental rates.
936.7003-3 Insurance.
936.7003-4 Option to purchase equipment.

Subpart 936.71—Inspection and Acceptance

936.7100 Scope of subpart.
936.7101 Construction contracts.

Subpart 936.72—Acquisition of Special Equipment

936.7200 Scope of subpart.
936.7201 Definition.
936.7202 Description of acquisition services.

Subpart 936.73—Outline for Equipment Rental Agreement

936.7300 Scope of subpart.
936.7301 Outline of agreement for rental of contractor-owned construction equipment.
936.7302 Outline of agreement for rental of third-party owned construction equipment.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

Subpart 936.2—Special Aspects of Contracting for Construction

936.202 Specifications.

(a) Construction specifications shall allow the use of concrete which contains fly ash as an optional or alternate material in accordance with 910.004 unless a determination is made that its use is technically unacceptable.

(b) The list of excepted supplies appearing at FAR 25.108 shall be noted in the specifications.

(c) To support all invitations for bids, plans and specifications will be available on request to all prospective bidders, including general contractors, subcontractors, and material and

equipment suppliers. Where the cost of reproduction is $10 or more, the charge shall be a minimum of $10 and subject to a maximum of $500, depending upon the size of the project and the number of drawings and the volume of specifications involved. Where the cost of reproduction is less than $10, the contracting officer has authority to make distribution at cost of reproduction, or free of charge, as a particular situation dictates.

(d) No refund for the return of plans and specifications will be made except when the invitation is canceled. Under such circumstances, refund of payments will be made upon return of the plans and specifications in good condition to the issuing office.

(e) Plans and specifications will be issued without charge to such organizations as The Associated General Contractors of America, American Road Builders' Association, Dodge Reports, Blue Reports, Brown's Letters, Inc., builders and contractors exchanges in the locality in which the project is to be constructed, and others that maintain public plan display rooms.

(f) Payments received for plans and specifications shall be handled in accordance with the regulations prescribed by the General Accounting Office in sections 3020–10 and 3030 of Title 7 of GAO Manual for Guidance of Federal Agencies.

(g) If the contracting officer desires to have the architect-engineer or construction manager handle the furnishing of plans and specifications and payments therefor, the invitations for bids should so state, and the architect-engineer or construction management contract shall provide the manner in which the receipts are to be handled, generally as a credit to the contract.

(h) No charge will be made to original receivers of plans and specifications for revised sheets of drawings and revised pages of specifications which are issued by amendments to invitations.

(i) Plans and specifications may be issued in complete sets only, or in complete sets and parts of sets, as the Head of the Contracting Activity determines to be best. If less than complete sets of plans and specifications are issued, the distribution should be based on an applicant's request for specific pages and drawing sheets.

(j) When a non-refundable fee is to be charged, a provision substantially the same as 952.236–72 shall be included in the solicitation.

Subpart 936.6—Architect-Engineer Services

936.601 Policy.

To ensure the broadest publicity concerning DOE's interest in obtaining architect-engineer services, a notice of intention to contract for architect-engineer services shall be prepared and published for each acquisition of architect-engineer services, in accordance with the requirements of FAR 5.205(c) and 5.207. The submissions requested and received as part of the architect-engineer selection process differ in substance from proposals received for other types of acquisition. Consequently, the policies and procedures contained in FAR 15.412, and 915.412 concerning the consideration of the late responses are not applicable to proposals submitted under the provisions of this Subpart 936.6.

936.602-2 Evaluation boards.

(a) Architect-engineer evaluation boards shall be used for the selection of professional architect-engineer services when the estimated cost of the contract is $500,000 or more. Except as provided by this subpart, the use of architect-engineer evaluation boards shall be governed by the general policies and procedures contained in FAR 36.603 and the policies concerning the selection of such contractors by board process contained in internal DOE Directives. These policies and procedures are also applicable to the selection of architect-engineers for awards of less than $500,000. However, less formal procedures and practices may be followed, depending upon the circumstances in each particular selection, at the discretion of the selecting official. The Source Selection Office, as designated in 915.612, shall establish an architect-engineer evaluation board and select the contractor.

936.602-3 Evaluation board functions.

(a)(1) Firms indicate their general interest in providing services by annual submittal of Standard Form 254; and indicate specific interest in providing services for a particular project, in response to the public announcement, by submittal of Standard Form 255 (and Standard Form 254 if not previously submitted). Supplemental information may be solicited as a means of initiating the discussion phase of the architect-engineer selection process. This may be particularly appropriate for the larger or more complex projects where sufficient qualification and performance data are not available from the Standard Forms 254 and 255, and additional information beyond that already furnished is needed to apply the selection criteria and evaluate and rank the firms. Firms should not be requested to furnish the same information previously submitted on Standard Forms 254 and 255, nor should they be requested to submit preliminary designs, plans and drawings, except in appropriate circumstances involving design competitions.

(2) After the notice of intention of contract for architect-engineer services has been published and the date for submission of the standard forms has passed, the evaluation board and/or the selecting official shall review and evaluate the Standard Form 254 and the Standard Form 255, where applicable, submitted in response to the public announcement. Consideration should be given to requesting submission of a Standard Form 255, by qualified firms which fail to respond to the public announcement to assure adequate competition. Based on this evaluation, no less than three firms shall be selected for the purpose of holding discussions. It is not necessary to hold discussions with any firm that fails to submit a Standard Form 255, where required.

(c)(1) Normally, only those firms which are compatible with the size and complexity of the job requirements should be considered for discussions; that is, for a small, relatively simple job, firms whose resources and qualifications are far in excess of the job requirements should not be considered unless no satisfactory response is received from any other compatible highly qualified firm, and where size and simplicity of the project permit, consideration should be limited to the geographic area of the project.

(2) Every opportunity and encouragement shall be given to small business, small disadvantaged businesses and women-owned small business concerns firms. Toward this end, groups that propose to form a joint venture or engage the services of small consulting firms for portions of the effort shall be given full consideration by the evaluation board and the selection official of their combined qualifications

(3) After three or more firms have been selected in accordance with 936.602–70, discussions shall be held with these firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services. These discussions may be used to obtain additional qualification, performance, and management data, and other information needed to properly apply

the evaluation criteria and evaluate the firms under consideration.

(4) Requests for supplemental information shall not request firms to submit price proposals. Such requests can be used only to obtain information that will enable DOE to select the best qualified contractor. When a request for supplemental information is made, some wording should be included to identify it with the discussion phase of the selection process similar to the following: "As a result of our evaluation of material on file with this office and the SFs 254 and/or 255 submitted in response to Public announcement ——, we have selected your firm for further consideration for selection and award of a contract to perform the architect-engineer services which are described below. The principal purpose of this request is to obtain additional specific qualification and performance data concerning your firm."

(5) The term "discussions" includes telephone conversations, exchange of correspondence, or interviews. The term "interview" as used in FAR 5.207(d), Note 63, means "discussions" as defined above.

(d) When the evaluation board completes its functions, it shall prepare a report, including its recommendations, and submit it along with the solicitation, selection criteria, weights, and other information and documents, as may be requested, to the Source Selection Official through the Procurement Executive, or designee, when the Source Selection Official is in Headquarters. The Procurement Executive, or designee, shall arrange for appropriate Headquarters review of the report and prepare an action memorandum to the Source Selection Official for consideration in making the selection.

(e) The evaluation board's duties will ordinarily include preparation of the public announcement (936.601) and development of evaluation criteria, based on architect-engineer services requirements established by the appropriate DOE program and staff organization; development of evaluation criteria weighting; review and evaluation of Standard Forms 254 and 255; review and evaluation of information from other sources, such as appraisals of performance on previous contracts awarded to the architect-engineer firm; development of additional information requirements and conduct of discussions with firms selection for further consideration; determination of ranking of the firms evaluated; preparation of the evaluation board report and presentation of the board's findings, or recommendations, to the selecting official.

(f) The public announcement (see 936.601) covering the requirement for architect-engineer services, criteria and relative weightings, as developed by the evaluation board, shall be submitted to the Procurement Executive or designee, for appropriate review and comment prior to issuance of the announcement, where it is a Headquarters' selection or requires Headquarters' review and approval of the contract action. Commerce Business Daily announcements shall be prepared in accordance with FAR Subpart 5.2.

936.602-4 Selection authority.

(b) Upon completion of discussions and evaluation of the firms that were selected for discussions, the board shall recommend to the selecting official, in order of preference, based upon the criteria in 936.602-70 and any special criteria included in the public announcement, no less than three firms deemed to be the most highly qualified to provide the services required. The Standard Form 255 submitted by firms with which written or oral discussions were held should be retained in selection file; all other Standard Forms 254 may be discarded 90 days after award. The selecting official shall then select the firm determined to be most highly qualified. Should the firm selected be other than that ranked highest in qualifications by the evaluation board, the selecting official shall provide complete documentation of his decision which shall become part of the contract file.

936.602-70 DOE selection criteria.

Contracting officers or architect-engineer evaluation boards shall apply the evaluation criteria contained in this subsection, as appropriate, and any special criteria developed for individual selections. When special and additional criteria are to be used, they shall be set forth in the public announcement required by 936.601, and a written justification for their use shall be placed in the DOE file maintained for the project.

(a) *General qualifications, including:*

(1) Reputation and standing of the firm and its principal members;

(2) Experience and technical competence of the firm in comparable work;

(3) Past record in performing work for DOE, other Government agencies, and private industry, including projects or contracts implemented with no overruns; performance from the standpoint of cost including cost overruns (last 5 years); the nature, extent, and effectiveness of contractor's cost reduction program; quality of work; and ability to meet schedules including schedule overruns (last 5 years) (where applicable);

(4) the volume of past and present workloads;

(5) Interest of company management in the project and expected participation and contribution of top officials;

(6) Adequacy of central or branch office facilities for the proposed work, including facilities for any special services that may be required;

(7) Geographic location of the home office and familiarity with the locality in which the project is located.

(b) *Personnel and organizations.*

(1) Specific experience and qualifications of personnel proposed for assignment to the project, including, as required for various phases of the work:

(i) Technical skills and abilities in planning, organizing, executing, and controlling;

(ii) Abilities in overall project coordination and management; and

(iii) Experience in working together as a team;

(2) Proposed project organization, delegations of responsibility, and assignments of authority;

(3) Availability of additional competent, regular employees for support of the project, and the depth and size of the organization so that any necessary expansion or acceleration could be handled adequately;

(4) Experience and qualifications of proposed consultants and subcontractors; and

(5) Ability to assign adequate qualified personnel from the proposed organization (firms own organization, joint-venture organizations, consulting firms etc.) including key personnel and a competent supervising representative.

(c) Additional (or special) criteria developed for the specific project shall be considered and evaluated as may be appropriate.

936.603 Collecting of data on and appraising firms' qualifications.

(a) *Establishing offices.* DOE offices that regularly acquire architect-engineer services shall collect and maintain current qualifications and performance data files on architect-engineer firms, including information on their past experience on various types of construction projects. Normally, Standard Form 254, Architect-Engineer and Related Services Questionnaire, shall be used for this purpose. Information from other sources, such as appraisals of performance of previous projects awarded to the firm, may also be included in the files.

936.605 Government cost estimate for architect-engineer work.

(a) Prior to the initiation of negotiations, an independent Government estimate of the cost of the required architect-engineer services will be prepared based on a detailed analysis of the costs expected to be generated by the work. Consideration shall be given to the estimated value of the services to be rendered, and to the scope, complexity, and nature of the project. The independent Government estimate shall be revised as required during negotiations to reflect changes in or clarification of the scope of the work to be performed by the architect-engineer. On construction projects, a fee estimate based on the application of percentage factors to project cost estimates of the various segments of the work involved may be developed for comparison purposes, but such a cost estimate shall not be used as a substitute for the independent Government estimate.

(b) The Government estimate shall include the following information:

(1) A sufficiently detailed description and cost estimate of the work to permit an evaluation of services to be performed by the various participants and the degree of complexity of its principal components. When A-E contracts are fixed price, the information as to the work should be in more detail and on a firmer basis, particularly as to estimated costs, than for a CPFF contract. The estimated cost of the component items (including the cost of material and equipment furnished by DOE) and their descriptions, insofar as available, should be included as follows:

(i) Major buildings and other structures for which complete designs and specifications are to be prepared by the architect-engineer, including number and cost of each type, with as much information as is available (within security requirements) as to the functional requirements for such structures;

(ii) Major utilities, including classifications and costs, in as much detail as practicable;

(iii) Special equipment to be procured by a DOE operating contractor, construction contractor, or architect-engineer, or furnished by DOE;

(iv) Special equipment to be designated by the architect-engineer; and

(v) Special equipment to be installed by the construction contractor.

(2) A statement should be provided indicating total estimated cost of the work exclusive of the construction contractor's fee, and to the extent available, identifying labor, material, and indirect costs, and any amount included for contingencies; estimated cost of architect-engineer services; and the estimated time of completion of design or construction work with an explanation of the basis for establishing the completion schedules.

(c) A written statement should be prepared which gives the extent to which the services of the architect-engineer include any of the services set forth below.

(1) Conceptual Design—Provide preliminary studies to develop a project scope that satisfies a program need, statutory requirements; validate feasibility and attainable performance levels; identify and quantify risks; develop a reliable budget estimate and a realistic performance schedule; develop project criteria and design parameters for all engineering disciplines, identify applicable codes and standards, quality assurance requirements, environmental studies, materials of construction, space allowances, energy conservation features, health, safety, safeguards, and security requirements and any other features or requirements necessary to describe the project.

(2) Title I—Provide the necessary topographical and other field surveys, test boring, and other subsurface investigation; prepare preliminary studies, sketches, layout plans, and outline specifications; and prepare reports including estimates of cost of the proposed project and of all structures, utilities, and appurtenances thereto.

(3) Title II—Provide complete design of the work including preparation of all required preliminary and final working drawings, specifications, estimates, and contract documents; and assist in securing, analyzing, and evaluating bids or proposasl for construction; and consult with DOE on all questions arising in connection with the services performed by the architect-engineer.

(4) Title III—Provide complete architect-engineer supervision and inspection of construction under the direction of a responsible representative, check shop drawings, and furnish drawings to show construction has actually been accomplished.

(5) Process design-Process design normally requires the preparation of flow diagrams showing each operating step to perform the process; material and heat balances where required; determination of the nature, capacity and design characteristics of production equipment; the general design of connecting flow lines to handle the calculated rates of product and by-product flow; and schematic layouts.

(6) Procurement of materials and equipment (describe fully) if specified for accomplishment in conjunction with Title I, II, and III services and approved by the Procurement Executive.

(7) Other special services (describe fully) if specified for accomplishment in conjunction with Title I, II, and III services and approved by the Procurement Executive.

936.606 Negotiations.

(a) A fixed-price contract for architect-engineer services should be used wherever it is practicable to compile, in advance of the preparation of plans and specifications, adequate information specifically describing the character and extent of services required. When there is insufficient scope information available to permit contracting for complete services (Title I, II, and III) on a fixed-price basis, and when it may be to the advantage of the Government to do so, appropriate consideration should be given to contracting only for a study contract or for the preliminary engineering (Title I), on either a reimbursable or fixed-price basis, in order to permit entering into a fixed-price contract for the remaining portion of architect-engineer service (Title II and III), based upon information developed in the first phase.

(b) The contracting officer shall request the selected architect-engineer firm to submit its price proposal with supporting cost or pricing data in accordance with FAR 15.804. Revisions of the price and supporting cost or pricing data may be made as required during negotiations to reflect changes in or clarification of the scope of work to be performed by the architect-engineer or findings derived from preaward audits conducted pursuant to FAR 15.805-5.

(f) The contracting officer shall negotiate a price considered fair and reasonable based on a comparative study of the independent Government estimate and the architect-engineer's proposal. Significant differences between elements of the two figures and between the overall figures shall be discussed and the contracting officer shall ascertain the reasons therefor. Under the authority of section 602(d) (13) and (20) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 474) as amended, contracts for architect-engineer services for former AEC functions and those of BPA now being performed by DOE shall not be limited to the six percentum fee restriction in section 304 of the Act. 41 U.S.C. 245(b).

(g) Promptly at the conclusion of each negotiation, a memorandum setting forth the principal elements of the negotiation shall be prepared in accordance with the requirements of FAR 15.808, for use by the reviewing authorities and for inclusion in the contract file. The memorandum shall contain sufficient detail to reflect the significant considerations controlling the establishment of the price and other terms of the contract.

936.609-3 Work oversight in architect-engineer contracts.

In addition to the clause at FAR 52.236-24, the contracting officer shall insert the clause at 952.236-71 in architect-engineer contracts.

Subpart 936.7—Standard Forms for Contracting Architect-Engineer Services and Dismantling, Demolition or Removal of Improvements

936.702 Forms for use in contracting for architect-engineer services.

(a) The contracting officer shall also include the additional terms at 952.236-70 in Standard Form 252 item 6.

Subpart 936.70—Rental of Construction Equipment

936.7000 Scope of subpart.

This subpart sets forth general policy and instructions which shall be applied to rental of construction equipment for use by DOE contractors with cost-reimbursement type contracts.

936.7001 General policy.

(a) It is the policy of the DOE to use presently owned DOE construction equipment to the fullest extent. Careful investigation shall be made of the equipment available, not only at the field office concerned, but at other field offices, to determine whether such equipment can be economically utilized on the job. The Procurement Executive or designee, can assist in the investigation of excess equipment available in other offices.

(b) It is the policy of the DOE to rent construction equipment, where available, rather than purchase it, unless in the case of third-party-owned equipment, the contracting activity determines that accrued rentals on a particular item of equipment will approximate the cost of ownership of it except, however, that individual items of construction equipment having an original cost of less than $1,000 ordinarily should be purchased and not rented. Where it is clearly to the advantage of the Government, items having a cost of less than $1,000 may be rented with the approval of the Head of the Contracting Activity. Whenever it is practical, cost and other factors considered, Contractor-owned equipment shall be rented in preference to renting third-party-owned equipment.

(c) It is the policy of the DOE to pay rental for construction equipment at rates not higher than those prevailing in the locality, except under unusual circumstances, and at as low a rate as is consistent with securing modern equipment in good operating condition. Costs of repair, job interruption due to poor equipment, transportation and in-transit rental may well offset any apparent savings in rental rates. Rental paid shall be subject to any Government price ceiling regulations that may be in effect.

936.7002 Rental of contractor-owned equipment.

936.7002-1 Rental agreements.

The terms and conditions governing rental by DOE of construction equipment from a cost-type construction contractor are set forth in 936.7301. Outline of agreement for rental of contractor-owned construction equipment. This form of agreement is designed for use as an appendix to a DOE cost-type construction contract. It may be modified for rental of equipment under other contractual arrangements and it may be modified for use as a separate contract or as an attachment to a subcontract. Some of the aspects of this agreement to which particular attention should be given are set forth in 936.7002-2 through 936.7002-9.

936.7002-2 Rental period.

The base rental period shall extend from the time the equipment is accepted at the job site until the contractor is notified in writing by DOE's representative that the equipment is no longer required. Subject to applicable limitations covered in the rental agreement form, the contractor shall be paid rental during the in-transit time and during the time required for equipment repair or replacement prior to return to the contractor.

936.7002-3 Rental rates.

(a) Rates for rental of contractor-owned equipment shall be fair and equitable. The rental rates contemplate that the DOE will pay incoming and outgoing transportations costs and rental during in-transit time for both inbound and outbound transportation of equipment; however, terms more favorable to DOE may be negotiated where appropriate. The rental rates to be paid for the use of contractor-owned equipment under normal conditions should not exceed 65 percent of the rates quoted in the latest edition of the Associated Equipment Distributor's (A.E.D.) "Compilation of Average Rental Rates for Construction Equipment." However, Heads of Contracting Activities may approved rates in excess of 65 percent of the current A.E.D. schedule when local conditions require higher rates. When it becomes necessary as a general practice to exceed 65 percent of the current A.E.D. schedule, Heads of the Contracting Activities shall be advised.

(b) For items of equipment that are not covered by the A.E.D. schedule, use the latest edition of "Contractors' Equipment Ownership Expense" document published by the Associated General Contractors of America, Inc., and information on prevailing local rates for developing rates that would be consistent with the 35 percent reduction of the A.E.D. rates (i.e., taking into consideration the expenses paid by the Government under the rental agreement).

936.7002-4 Application of rates.

(a) Rental rates shall be based upon one shift of 8 hours per day, 40 hours per week, or 176 hours per month of a 30-consecutive-day period.

(b) The monthly rental rate and its pro-rata share shall apply to all rental periods of 1 month or more. The weekly rate and its pro-rata shall apply to all rental periods of 1 week or more up to 1 month. The daily rate and its pro-rata shall apply to all rental periods up to 1 week.

(c) Inasmuch as there are certain elements of cost to an equipment owner which do not change even though the equipment is used on more than one shift per day, it is believed equitable to pay a lower rental rate during a second and third shift than would be paid during a single shift. Therefore, the rental agreement form provides for payments for overtime at a rate equal to one-half the rate for the first shift.

936.7002-5 Insurance.

(a) Generally, rental rates should include the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods. The rental agreement for contractor-owned equipment is so worded.

(b) However, if the contracting officer determines that it is not practical to include the cost of such insurance in the rental rates, paragraphs 3(d) and 7(a) shall be amended as indicated in the applicable notes following these paragraphs in 936.7301.

936.7002-6 Rental limitation.

The rental agreement form provides that when the total amount of rental paid to the contractor for any one unit of equipment equals 75 percent of the mutually agreed value of that unit, as set forth in the initial inspection report, the equipment is to remain available for the work under the construction contract as long as it will be required without any further rental payments to the contractor. The rental ceiling of 75 percent of the agreed-upon value of the equipment applies to all rental paid, including rental paid during in-transit time to and from the site of the work and down time from any operating repairs or restoring of the equipment after it is no longer needed at the site. The purpose of the provision is to prevent the Government from paying rental in excess of the contractor's investment, and is included in lieu of an "option to purchase" clause. Once a particular piece of equipment has been released, the contractor will be required to return it to the job under the original rental period.

936.7002-7 Record of negotiation.

A record of negotiation shall set forth the information used to determine the reasonableness of the rental rates, including a breakdown of the contractor's equipment ownership expense, similar to that itemized in the Associated General Contractors of America's document, "Contractors' Equipment Ownership Expense."

936.7002-8 Responsibility for repair and replacement.

The rental agreement describes the responsibilities of the parties with respect to maintenance and repair necessary to the operation of the rented equipment, or replacement of such equipment. The DOE's responsibility includes repairs resulting from normal wear and tear, provided they were necessary in order to continue the equipment in service. However, when the equipment is no longer required on the job, the extent of the DOE's obligation is only to return the equipment to the contractor in as good operating condition as when received, less wear and tear.

936.7002-9 Equipment condition and inspection.

(a) Construction equipment shall be given a rigid and detailed inspection by representatives of the DOE and, at the contractor's option, by representatives of the contractor, before its shipment and acceptance or use on the job. Equipment shall be inspected under actual workloads insofar as practicable. In cases where it is not practical to inspect equipment prior to its shipment to the job site, the contractor should be informed of the extent of inspection and the expected condition of his equipment in t event the equipment does not meet required standards. The transportation, rental, or any other expenses shall be paid by DOE unless, at contractor's expense, the equipment is repaired to acceptable standards in a reasonable length of time. A similar inspection shall be made immediately prior to scheduled return shipment of an item of equipment.

(b) A detailed inspection report shall be signed by each representative inspecting. The initial inspection report shall be used at the time of release as a basis of determining the repairs necessary to place the equipment in as good operating conditions as when accepted less normal wear and tear. After necessary repairs are completed, a final inspection report shall be completed by a representative of the DOE and, at his option, the contractor.

(c) If initial detailed inspection discloses that the condition of the equipment is doubtful, arrangements should be made with the contractor for a trial period of operation to prove the equipment, with provisions that if equipment is found unacceptable in the trial period, no rental, transportation, or other expenses will be due the contractor. Repairs to equipment which fails in service due to defects not reasonably ascertainable on initial inspection shall be at the contractor's expense.

936.7003 Rental of third-party-owned equipment

936.7003-1 Rental agreement.

The terms and conditions governing rental of construction equipment from a third party which does not operate the equipment are in accordance with 936.7002-2, 936.7002-4, 936.7002-8, and 936.7002-9, and the following subsections of this part, and are set forth in 936.7302, Outline of agreement for rental of third-party-owned construction equipment. Heads of Contracting Activities shall assure that these terms and conditions are used by DOE cost-reimbursement construction contractors and that similar terms and conditions are used by other DOE cost-reimbursement contractors or subcontractors in renting construction equipment from a third party. These terms and conditions may be suitably modified to provide for rental of equipment with operators. Some of the aspects of this agreement to which particular attention should be given are set forth in the next three subparts.

936.7003-2 Rental rates.

Third-party equipment shall be rented on the basis of competitive bids, rental rates, transportation costs, and other factors being considered. The rental specifications shall be based on the circumstances of a particular case, including the length of rental period, the availability of equipment in certain localities, and the work requirements.

936.7003-3 Insurance.

The provisions of 936.7002-5(a) also apply to the rental of construction equipment from a third party. However, if the contracting officer determines that the rental rates are not to include the cost of insurance or self-insurance covering loss of or damage to the equipment, the rental agreement shall reflect this condition.

936.7003-4 Option to purchase equipment.

When accrued rentals on a particular item of equipment will likely approximate the appraised value of equipment and a decision has been made not to purchase in accordance with 936.7001(b), consideration shall be given to including in the rental agreement, an option to purchase the equipment.

Subpart 936.71—Inspection and Acceptance

936.7100 Scope of subpart.

This subpart implements and supplements FAR Part 36 by prescribing the policies and requirements for inspection and acceptance under construction contracts.

936.7101 Construction contracts.

(a) Inspection services may be performed by the architect-engineer responsible for the design. Inspection services may not be procured from a construction contractor with respect to its own work.

(b) When one contractor is to inspect the work of another, the inspection contractor will be given written instructions defining its responsibilities and stating that it is not authorized to modify the terms and conditions of the contract, to direct additional work, to waive any requirements of the contract, or to settle any claim or dispute. Copies of the instructions will be given to the contractor who is to be inspected, with a request to acknowledge receipt on a copy to be returned to the contracting officer. In this manner, both contractors are on express notice of the authority and limitations of the authority of the inspecting contractor.

Subpart 936.72—Acquisition of Special Equipment

936.7200 Scope of subpart.

Contracts for acquisition services only are rarely used. Acquisition of special equipment is generally contracted for in conjunction with CPFF contracts for construction, operating, or architect-engineer services. In special situations, acquisition of other equipment and construction materials is also contracted for in conjunction with CPFF contracts for operating or architect-engineer services. The description of acquisition services in paragraph (936.7202) below is applicable to all of these cases.

936.7201 Definition.

Special equipment is equipment for which the purchase price is of such a magnitude compared to the cost of installation as to improperly reflect the amount of technical direction and management effort required of the contractor. Generally, special equipment is considered to be a capital-asset-type of equipment (typically, equipment costing more than $1,000 and having a service life of more than two years) for which the cost of installation and handling (including unloading, hauling and warehousing) is 5 percent or less, of the purchase price of the equipment. However, the determination of specific items of equipment in this category requires application of judgment and careful study of the circumstances involved for each project. This category of equipment would generally include items such as:

(a) Major items of prefabricated process or research equipment.

(b) Major items of preassembled equipment such as packaged boilers, generators, machine tools, and larger electrical equipment. In some cases it would also include special apparatus or devices such as reactor vessels and reactor charging machines.

936.7202 Description of acquisition services.

(a) Acquisition as herein considered is an activity involving judgment, knowledge, and experience relating to the manufacture, use, or application of the article or process to be purchased. It may include the development or location of sources of supply, and generally includes preparation of bidding documents, solicitation of proposals, analysis of proposals received (including, where necessary, technical and sometimes complicated evaluation of performance characteristics of the equipment of different manufacturers), inspection at manufacturer's plant as distinguished from inspection supplied under Title III services of an architect-engineer contract, and evaluation of production capacities to meet required delivery. Acquisition includes necessary coordination with participating contractors and DOE for especially designed equipment, general and specific expediting, and special assistance to the manufacturers in helping to locate scarce materials and machine tools and in supporting allocation for critical materials where this is a necessary function. Acquisition normally includes inspection and receiving upon delivery at the site (this may be a joint activity where the contracting agent is not the constructor) and payment. All on-site physical activities after delivery, including unloading, warehousing, hauling, and installation are considered a construction activity and not acquisition.

(b) Coordination, timing, and technical know-how are important factors to be considered in the selection of a contracting agent. The advantages and disadvantages of placing full responsibility in one contractor for construction and acquisition, or split responsibility where the acquisition is placed under a contract with architect-engineer or operating contractor, should be evaluated in the light of the above factors.

Subpart 936.73—Outline for Equipment Rental Agreement

936.7300 Scope of subpart.

This subpart contains agreement formats which are suggested for use where DOE rents construction equipment from a prime cost-type construction contractor, or third-party-owned equipment. The outline for rental from the prime contractor is designed for use as an appendix to the prime cost-type construction contract. The format for use with third parties is an agreement within itself.

936.7301 Outline of agreement for rental of contractor-owned construction equipment.

Attached to and made a part of Contract No. ———.

Contractor: ————.

The following provisions shall govern the use and rental of the Contractor's construction plant and equipment (hereinafter called the "equipment") under the contract:

1. *Equipment rented.* The Contractor agrees to furnish for his own use in the performance of the contract the equipment itemized in Schedule 1 (attached to and made part of this agreement). Each item of the equipment shall be clearly marked with the identification number assigned to it on Schedule 1. the Contractor and DOE may from time to time amend Schedule 1 by deleting items or adding items.

2. *Payments.* As provided in the clause of the contract entitled "Allowable Cost and Payment," the allowable costs of the performance of the contract shall include:

(a) Rental. Rental of equipment, for rental periods determined in accordance with paragraph 4 and at the rates set forth in Schedule 1 applied in accordance with paragraph 3.

(b) Transportation. Transportation of equipment in accordance with paragraph 5.

(c) Repair. Maintenance, repair, and replacement of equipment to the extent provided in paragraphs 6 and 7.

Payment shall be made in accordance with procedures set forth in the clause of the contract entitled "Allowable Cost and Payment."

3. *Application of rates.* The rates set forth in Schedule 1 shall be applied in accordance with the following rules:

(a) Basis of rates. The rates are based upon one shift of 8 hours per day, 40 hours per week, or 176 hours per month (of 30 consecutive days).

(b) Apportionment of rates. The monthly rate and its pro-rata share shall apply to all rental periods of 1 month or more. The weekly rate and its pro-rata share shall apply to all rental periods of 1 week or more up to one month. The daily rate and its pro-rata share shall apply to all rental periods up to 1 week.

(c) Overtime. If the equipment is rented by the day, the rate for overtime is one-sixteenth (1/16) of the daily rate for each hour of use in any day in excess of 8 hours; if it is rented by the week, the rate for overtime is one-eightieth (1/80) of the weekly rate for each hour of use in any week in excess of 40 hours; and if it is rented by the month, the overtime rate is one-three hundred and fifty-second (1/352) of the monthly rate for each hour of use in excess of 176 hours in any one 30 consecutive day period.

(d) Insurance. Rental rates include the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods, as indicated in Schedule 1 and copy of policy attached. The Contractor agrees to maintain this insurance coverage for loss of or damage to the equipment during the entire term of this agreement. The Contractor shall waive any right of action against the government to the extent that loss is recovered from insurance applicable to loss, damage or destruction of leased equipment.

Note.—*When rental rates do not include the cost of insurance or self-insurance, substitute the following text for paragraph (d):*

"Rental rates do not include any factor representing the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods."

4. *Rental period.* The rental period for which rental is payable for an item of equipment shall consist of a base period, beginning upon the date stipulated in a written notice from the contracting officer to the Contractor that DOE has accepted the item of equipment at the job site, and ending upon the date stipulated in a written notice

from the contracting officer to the Contractor that use of the item of equipment is terminated, subject to the following additions, deductions, and conditions:

(a) In-transit time. There shall be added to the base period:

(1) The actual in-transit time of inbound transportation from one point of shipment to the job site, not exceeding the time required for such transportation by commercial carrier via the most expeditious routing available, of any item of equipment subsequently accepted by DOE and

(2) The actual in-transit time of outbound return transportation from the job site, to the original point of inbound shipment, or other destination at equal or less distance from the job site, not exceeding the time required for such transportation by commercial carrier via the most expeditious routing available, of any item of equipment whose use has been terminated by DOE.

(b) Delay due to repairs.

(1) The time required for repair of equipment shall be deducted from the base period if such repair is necessitated by willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, or made necessary by defects not reasonably ascertainable on initial inspection by DOE.

(2) If an item of equipment has been accepted by DOE, the subsequent withdrawal by the Contractor of such item from the work for necessary repairs (due to causes other than those mentioned in the preceding paragraph) shall not interrupt the running of the base period unless the contracting officer finds that the Contractor has not exercised due diligence in effecting the repairs or in returning the item to use, and in such event the time which the contracting officer finds to have been excessive shall be deducted from the base period.

(c) Time for repairs on termination. In the event DOE, in accordance with paragraph 6(c), elects to effect repair or replacement of an item of equipment prior to scheduled return shipment, the time required for such repair or replacement shall be added to the base period.

(d) Trial period. If initial inspection by DOE discloses that the condition of an item of equipment is doubtful, it will not be accepted by DOE without a trial period of operation to prove such item, upon terms and conditions agreed upon by the Contractor and DOE. If the equipment is found unacceptable in the trial period, no rental, transportation, or other expenses will be due the Contractor.

(e) Rental limitation. When the aggregate of rental paid for an item of equipment equals 75 percent of its appraised value, as agreed upon by the Contractor and the contracting officer at or prior to the time of acceptance by DOE and set forth in the initial inspection report, the rental period shall cease as to such item for purposes of rental payment. Such item shall thereafter remain available for use under the contract without further rental payments but otherwise in accordance with the terms and conditions of this agreement, until the contractor receives written notice from the contracting officer that use of the item is terminated. The limitation of rental to 75 percent of the agreed value shall apply to the total of all rental due under this paragraph 4. A failure to agree as to the value of an item of equipment shall be deemed to be a dispute within the meaning of the article of the contract entitled "disputes."

5. *Transportation.* Inbound transportation of equipment, f.o.b. cars from the original point of shipment to the job site, and outbound return transportation of shipment f.o.b. cars to the original point of shipment or to another destination selected by the Contractor at equal or less distance from the job site, shall be at the expense of the Government, subject to the following conditions:

(a) Limitation on return transportation. The Government shall not bear any expense for outbound return transportation in excess of the amount paid for inbound transportation to the job site, except additional amounts representing or equivalent to increase in freight rates applicable to the route to the original point of shipment.

(b) Limitation on long distance transportation. Transportation over a distance in excess of 500 miles shall be subject to the approval of the contracting officer.

(c) Transportation by other than common carrier. The expense borne by the Government hereunder for transportation by a method other than common carrier shall be the actual expense of such transportation as shown by evidence satisfactory to the contracting officer.

(d) Loading and unloading. Only such costs of loading and unloading equipment as are incurred at the job site shall be borne by the Government.

(e) Equipment not in required condition. The Government shall not bear the expense of transportation of any item of equipment which arrives at the job in a condition which does not fulfill the requirements of paragraph 6(a) and which is not placed in the condition required under paragraph 6(a) by the Contractor at the Contractor's expense within a reasonable time.

6. *Condition of equipment.* The following conditions apply.

(a) Condition on delivery. The equipment shall, on delivery at the job site, be in good operating condition to render efficient, economical, and continuous service, and shall be equipped with necessary and required safety devices according to ICC regulations and other applicable Federal and State laws. Each item of the equipment shall have been registered by the Contractor at the Contractor's own expense with all Federal, State, and local authorities requiring registration, and registration plates or other evidence of registration shall be displayed in accordance with the requirements of the registering authority. The cost of subsequent registration shall also be borne by the Contractor. If any item of equipment on arrival at the job site is not placed in the condition required by this paragraph within a reasonable time, the contracting officer may reject the item and require its removal from the job site, and in that event, the Government shall not be liable for rental, transportation, or any other expense in connection with such item.

(b) Condition on the job. Equipment accepted by DOE shall be maintained by the Contractor in the condition required for its operation until use of the equipment is terminated by the contracting officer. Maintenance and repair required to keep accepted equipment in such condition during such time and replacement (at the agreed value set forth in the initial inspection report, less depreciation) of accepted equipment lost or destroyed during such time, shall be at the expense of the Government unless such maintenance, repair, or replacement is made necessary by loss or damage covered by any policy of insurance (or self-insurance), or caused by willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, or is made necessary by defects not reasonably ascertainable on initial inspection of DOE.

(c) Condition on termination. Upon termination by DOE of the use of any item of equipment, the item shall be returned by DOE to the Contractor at the job site in as good condition as when received by DOE (as shown by the initial inspection report) less normal wear and tear, except for any loss or damage which is due to willful misconduct or lack of good faith on the part of the Contractor's mangerial personnel, or defects not reasonably ascertainable on initial inspection by DOE, or which is covered by any policy of insurance (or self-insurance). If the inspection report to be made immediately prior to the scheduled return shipment of an item of equipment discloses the necessity for repairs or replacement the cost of which is the responsibility of the Government under this paragraph, DOE may at its election either (A) effect such repairs or replacements or (B) allow the Contractor the agreed estimated reasonable cost of such repairs (or the agreed value set forth in the initial inspection report, less depreciation, if replacement is required), and a sum in lieu of rental for the time estimated by the contracting officer to be necessary for such repairs. Failure to agree as to the estimated reasonable cost of affecting such repairs or replacement under (C) above, shall be deemed to be a dispute within the meaning of the article of the contract entitled "Disputes."

(d) Inspection. For the purpose of establishing the condition of the equipment, each item of equipment shall be inspected, tested and inventoried by representatives of DOE and at the Contractor's option, together with representatives of the Contractor, prior to its acceptance by DOE and also immediately prior to scheduled return shipment. The results of such inspections and tests, and the inventories compiled, shall be incorporated in reports submitted to the contractor and to the contracting officer. For any item of equipment which the Contractor has failed to inspect, test, and inventory, or has failed to report as provided herein, the Contractor agrees that the report submitted hereunder by a representative of DOE shall be conclusive evidence of the condition as of the date of inspection.

(e) Excessive repairs. The contracting officer may deduct from payments otherwise due the Contractor, any amounts previously allowed the Contractor under this agreement for repairs made at the Government's expense which the contracting officer finds to

have been in excess of the requirements of this agreement.

7. *Protection of equipment—steps to be taken in event of loss.* The following apply.

(a) The Contractor shall take all reasonable and necessary precautions to safeguard and protect the equipment. Any loss of or damage to the equipment is not reimbursable to the extent that such loss or damage is required to be covered by insurance under paragraph 3(d) of this agreement.

Note.—*When paragraph 3(d) of the agreement provides that rental rates do not include any factor representing the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods, the following paragraph (a) shall be used*

(a) The Contractor shall take all reasonable and necessary pre-cautions to safeguard and protect the equipment. Any loss or damage to the equipment will be at the Contractor's risk to the extent that such loss or damage is covered by any policy of insurance (or self-insurance).

(b) Upon the happening of any loss or damage which is at the risk of the Government under this agreement, the Contractor shall immediately notify the contracting officer of the occasion and extent thereof, shall at the contracting officer's request effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such loss or damage, shall, if required by the contracting officer, authorize representatives of the Government to settle or prosecute to final judgment any such claims, and shall furnish to the Government on request all reasonable assistance in obtaining recovery.

8. *Liquidation of indebtednes.* The Contractor warrants full and complete title and right to possession of all the equipment, subject only to those liens, encumbrances or claims to title or possession securing the indebtedness detailed on Schedule 1, Part 2. The Contractor agrees to apply such portion of the rental payment hereunder as may be necessary for the prompt discharge of such indebtedness. If at any time any person holding a lien, encumbrance, or claim against any item of equipment shall submit to DOE evidence that the Contractor is not discharging the indebtedness secured thereby in accordance with the terms under which the indebtedness is payable or dischargeable, DOE shall have the right upon three day's written notice to the Contractor to impound such part of the unpaid rental hereunder, as DOE in its sole discretion deems necessary, until the rights of the Contractor and any such person are determined and all just and proper claims of such persons are satisfied, provided, that nothing contained in this paragraph shall be construed to pay to such person any sum not required to be paid by the terms under which the indebtedness was incurred or to pay any sum prior to the time it becomes due.

9. *Taxes.* Unless otherwise directed by the contracting officer, the Contractor shall at the Contractor's own expense pay and discharge any and all taxes levied upon any item of the equipment.

Schedule 1

Part 1—Items and Rental Rates

Item No.———

———

Item description (equipment No.; type of equipment; serial No.; manufacturer; year of model; original point of shipment; etc.) ———

———

Description of any insurance coverage for loss or damage to equipment ———

———

Item Rental Rates ———

———

Attach certified copy of insurance policy.

(Continue, if necessary, on reverse side or on separate sheets.)

Part 2—Liens, Encumbrances and Claims

The following is a complete and correct statement of the amount of any and all indebtedness secured by liens or other encumbrances of any nature, legal or equitable, which are held by any person, firm or corporation against the equipment, items Nos. 1 through ———.

(Contractor) ———.

By ———.

(Title) ———.

Item No.———

———

Name and address of present creditor ———

———

Present unpaid balance ———

———

Amounts and date of future payments ———

———

(Continue, if necessary, on the reverse side or on separate sheets.)

936.7302 Outline of agreement for rental of third-party-owned construction equipment.

This agreement, made and entered into this ——— day of ———, 19——, by and between ——— ——— ("hereinafter called the lessor") and ———) (hereinafter called the "lessee") Witnesseth:

Whereas, the lessee has entered into a contract, dated ———, (hereinafter called the "construction contract"), with the United States of America (hereinafter called the "Government"), represented by the U.S. Department of Energy hereinafter called "DOE"), for the performance of certain construction work in connection with the construction at ———; and

Whereas, the lessor is the owner of certain construction plant and equipment (hereinafter called the "equipment"), listed on the attached Schedule 1 attached to and made a part of this agreement; and

Whereas, the lessee desires to rent the equipment for use in performing the construction contract.

Now, therefore, in consideration of the mutual covenants and conditions herein set forth, it is agreed as follows:

Article I—Equipment rented. The lessor agrees to furnish for use by the lessee in the performance of the construction contract the equipment itemized in Schedule 1 at time specified as follows:

(Each item of equipment shall be clearly marked with the identification number assigned to it on Schedule 1. The lessor and the lessee may from time to time amend Schedule 1 by deleting or adding items.)

Article II—Payments. Payments shall be made by the lessee to the lessor at monthly intervals on invoices rendered by the lessor for:

(a) *Rental.* Rental of equipment, for rental periods determined in accordance with the article entitled "Rental Period" and at the rates set forth in Schedule 1 applied in accordance with the article entitled "Application of Rates."

(b) *Transportation.* Transportation of equipment in accordance with the article entitled "Transportation."

(c) *Repair.* Maintenance, repair, and replacement of equipment to the extent provided in the articles entitled "Conditions of Equipment" and "Protection of Equipment—Steps to be Taken in Event of Loss."

Article III—Application of rates. The rates set forth in Schedule 1 shall be applied in accordance with the following rules:

(a) *Basis of rates.* Rates are based upon one shift of 8 hours per day, 40 hours per week, or 176 hours per month (30 consecutive days).

(b) *Apportionment of rates.* The monthly rate and its pro-rata share shall apply to all rental periods of 1 month or more. The weekly rate and its pro-rata share shall apply to all rental periods of 1 week or more up to 1 month. The daily rate and its pro-rata share shall apply to all rental periods up to 1 week.

(c) *Overtime.* If the equipment is rented by the day, the rate for overtime is one-sixteenth (1/16) of the daily rate for each hour of use in any day in excess of 8 hours; if it is rented by the week, the rate for overtime is one-eightieth (1/80) of the weekly rate for each hour of use in any week in excess of 40 hours; and if it is rented by the month, the overtime rate is one-three hundredth and fifty-second (1/352) of the monthly rate for hour of use in excess of 176 hours in any one 30-consecutive-day period.

(d) *Insurance.* Rental rates include the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods as indicated in Schedule 1 and copy of policy attached. The lessor agrees to maintain this insurance coverage for loss or damage to the equipment during the entire term of this agreement. The lessor shall waive any right of action against the contractor or the United States Government for loss, damage or destruction of the leased equipment to the extent that the lessor recover from insurance applicable to loss, damage or destruction of the leased equipment.

Note.—*When rates do not include the cost of insurance or self-insurance, substitute the following text for paragraph (d) Insurance:*

"Rental rates do not include any factor representing the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods."

Article IV—Rental period. The rental period for which rental is payable for an item of equipment shall consist of a base period, beginning upon the date stipulated in a written notice from the lessee to the lessor that the lessee has accepted the item of equipment at the job site, and ending upon date stipulated in a written notice from the lessee to the lessor that use of the item of equipment is terminated, subject to the following additions, deductions, and conditions.

(a) *In-transit time.* There shall be added to the base period:

(1) The actual in-transit time of inbound transportation from the point of shipment to the job site, not exceeding the time required for such transportation by commercial carrier via the most expeditious routing available, of any item of equipment subsequently accepted by the lessee.

(2) The actual in-transit time of outbound return transportation from the job site to the original point of inbound shipment, or other destination at equal or less distance from the job site, not exceeding the time required for such transportation by commerical carrier via the most expeditious routing available, of any item of equipment whose use has been terminated by the lessee.

(b) *Trial period.* If initial inspection by the lessee discloses that the condition of an item of equipment is doubtful, it will not be accepted by the lessee without a trial period of operation to prove such item upon terms and conditions agreed upon by the lessor and the lessee and approved by DOE. If the equipment is found unacceptable in the trial period, no rental, transportation, or other expenses will be due the lessor.

(c) *Delay due to repairs.*

(1) The time required for repair of equipment shall be deducted from the base period if such repair is necessitated by willful misconduct or lack of good faith on part the of the lessor, of an individual, or the partners or corporate officers of the lessor, or a supervising representative of the lessor, or made necessary by defects not reasonably ascertainable on initial inspection by the lessee.

(2) If arrangements are made for the lessor to repair an item of equipment, the withdrawal of such item from work for necessary repairs (due to causes other than those mentioned in the preceding paragraph) subsequent to acceptance of the item by the lessee shall not interrupt the running of the base period, unless the lessee or DOE finds that due diligence in effecting the repairs or in returning the item to use has not been exercised. In the latter event, the time found to have been excessive shall be deducted from the base period.

(d) *Time for repairs on termination.* In the event the lessee, in accordance with the article entitled "Condition of Equipment," elects to effect repair or replacement of an item of equipment prior to scheduled return shipment of the item, the time required for such repair or replacement shall be added to the base period.

Article V—Transportation. Inbound transportation of equipment to the job site, f.o.b. cars and return to the original point of shipment or to another destination selected by the lessor at equal or less distance from the job site, shall be at the expense of the lessee, subject to the following conditions:

(a) *Limitation on return transportation.* The lessee shall not bear any expense for outbound return transportation in excess of the amount paid for inbound transportation to the job site, except additional amounts approved by DOE representing or equivalent to increase in freight rates applicable to the route to the original point of shipment.

(b) *Limitation on long distance transportation.* Transportation over a distance in excess of 500 miles shall be subject to the approval of the lessee and DOE.

(c) *Transportation by other than common carrier.* The expense borne by the lessee hereunder for transportation by a method other than common carrier shall be the actual expense of such transportation as shown by evidence satisfactory to the lessee and DOE, but shall in no case exceed the amount which would be paid for such transportation by a suitable and available common carrier, unless otherwise authorized by the lessee and DOE.

(d) *Loading and unloading.* Only such costs of loading and unloading equipment as are incurred at the job site shall be borne by the lessee.

(e) *Equipment not in required condition.* The lessee shall not bear the expense of transportation of any item of equipment which arrives at the job site in a condition which does not fulfill the requirements of the article entitled "Condition of equipment" and which is not placed in the condition required under that article by the lessee at the lessor's expense within a reasonable time.

Article VI—Condition of equipment.

(a) *Condition on delivery.* The equipment shall, on delivery at the job site, be in good operating condition to render efficient, economical, and continuous service and shall be equipped with necessary and required safety devices according to ICC regulations and other applicable Federal and state laws. Each item of the equipment shall have been registered by the lessor at the lessor's own expense with all Federal, State, and local authorities requiring registration, and registration plates or other evidence of registration shall be displayed in accordance with the requirements of the registering authority. The cost of subsequent registration shall also be borne by the lessor. If any item of equipment on arrival at the job site is not in the condition required by this paragraph, its use on the work shall not be permitted unless and until it is placed in the condition required by this paragraph at the lessor's expense and within a reasonable time. If any such item is not placed in the condition required by this paragraph within a reasonable time, the lessee may reject the item and require its removal from the job site, and in that event, the lessee shall not be liable for rental, transportation, or any other expense in connection with such item.

(b) *Condition on the job.* Maintenance and repair necessary to keep accepted equipment in the condition required for its operation until use of the equipment is terminated by the lessee, and replacement (at the value agreed upon by the lessor and the lessee with the approval of DOE at or prior to the time of acceptance by the lessee and set forth in the initial inspection report, less depreciation) of accepted equipment, lost or destroyed during such time, shall be at the expense of the lessee. Except, however, such maintenance, repair, or replacement will not be at the expense of the lessee if it is made necessary by loss or damage covered by any policy of insurance (or self-insurance), or caused by willful misconduct or lack of good faith on the part of the lessor, of an individual, or the partners or corporate officers of the lessor, of a supervising representative of the lessor, or is made necessary by defect not reasonably ascertainable on initial inspection by the lessee.

(c) *Condition on termination.* Upon termination by the lessee of the use of any item of equipment, the item shall be returned by the lessee to the lessor at the job site in as good conditions as when received by the lessee (as shown by the initial inspection report), less normal wear and tear, except for any loss or damage which is due to willful misconduct or lack of good faith on the part of the lessor, of an individual, or the partners or corporate officers of the lessor or a supervising representative of the lessor, or defects not reasonably ascertainable on initial inspection by the lessee, or which is covered by any policy of insurance (or self-insurance). If the inspection report is to be made immediately prior to the scheduled return shipment of an item of equipment discloses the necessity for repairs or replacements, the cost of which is the responsibility of the lessee under this paragraph, the lessee may, at its election, either (1) effect such repairs or replacements, or (2) with the approval of DOE, allow the lessor the agreed estimated reasonable cost of such repairs (or the agreed value less depreciation, if replacement is required), and a sum in lieu of rental for the time estimated by the lessee to be necessary for such repairs

(d) *Inspection.* For the purpose of establishing the condition, the equipment shall be inspected, tested, and inventoried by representatives of the lessee and, at the lessor's option, together with representatives of the lessor (and of DOE, if DOE so elects), prior to its acceptance by the lessee and immediately prior to scheduled return shipment. The results of such inspections and tests, and the inventories compiled, shall be incorporated in reports submitted to the lessor and to the lessee (and to DOE if DOE so requires). For any item of equipment which the lessor has failed to inspect, test, and inventory, or has failed to report as provided herein, the lessor agrees that the report submitted hereunder by a representative of the lessee shall be conclusive evidence of the condition as the date of inspection.

(e) *Excessive repairs.* DOE may require the lessee to deduct from payments otherwise due the lessor any amounts previously allowed the lessor under this agreement for repairs made at the lessee's expense which DOE finds to have been in excess of the requirements of this agreement.

Article VII—Protection of equipment—Steps to be taken in event of loss.

(a) The lessee shall take all reasonable and necessary precautions to safeguard and protect the equipment. Any loss of or damage to the equipment will be at the lessor's risk to the extent that such loss or damage is required to be covered by insurance under Article III(d) of this agreement.

Note.—When Article III(d) of the agreement provides that rental rates do not include any factor representing the cost of insurance or self-insurance covering loss of or damage to the equipment during rental periods, the following paragraph (a) shall be used:

"(a) The lessee shall take all reasonable and necessary precautions to safeguard and protect the equipment. Any loss of or damage to the equipment will be at the lessor's risk to the extent that such loss or damage is covered by any policy of insurance (or self-insurance)."

(b) Upon the happening of any loss or damage which is at the risk of the lessee under this agreement, the lessee shall immediately notify the lessor of the occasion and extent thereof, and the lessor shall thereupon, at the lessee's request, effect an assignment and subrogation in favor of the lessee or the Government of all the lessor's rights and claims (except those against the lessee or the Government) arising out of any such loss or damage, shall, if required by the lessee or the Government, authorize representatives of the lessee or the Government to settle or prosecute to final judgment any such claims, and shall furnish to the lessee or the Government on request all reasonable assistance in obtaining recovery.

Article VII—Liquidation of indebtedness. The lessor warrants full and complete title and right to possession of all the equipment, subject only to those liens, encumbrances or claims to title or possession securing the indebtedness detail on Schedule 1, Part 2. The lessor agrees to apply such portion of the rental payable hereunder as may be necessary for the prompt discharge of such indebtedness. If at any time, any person holding a lien, encumbrance, or claim against any item of the equipment shall submit to the lessee evidence that the lessor is not discharging the indebetedness secured thereby in accordance with the terms under which the indebtedness is payable or dischargeable, the lessee shall have the right upon three day's written notice to the lessor to impound such part of the unpaid rental hereunder as the lessee, with the approval of DOE, deems necessary until the rights of the lessor and any such person are determined and all just and proper claims of such person are satisfied, provided that nothing contained in this paragraph shall be construed to require the lessor to pay to such person any sum not required to be paid by the terms under which the indebtedness was incurred or to pay any sum prior to the time it becomes due.

Article IX—Taxes. Unless otherwise directed by DOE, the lessor shall at the lessor's own expense pay and discharge any and all taxes levied upon any item of equipment.

Article X—Definition. As used herein the term "DOE" means the U.S. Department of Energy or any duly authorized representative thereof, including the contracting officer under the construction contract.

In witness, thereof, the lessor and the lessee have executed this agreement as of the day and year above written.

(Lessor) _____
By _____
(Title) _____
(Lessee) _____
By _____
(Title) _____

Note.—*The following articles shall be inserted along with the required socio-economic articles:*

EXAMINATION OF RECORDS

COVENANT AGAINST CONTINGENT FEES

Schedule 1

Part 1—Items and Rental Rates

Item No. _____

_____

Item description (equipment No.; type of equipment; serial No.; manufacturer; year of model; original point of shipment; etc.) _____

_____

Description of any insurance coverage for loss or damage to equipment _____

_____

Item Rental Rates _____

_____

Attach certified copy of insurance policy.

(Continue, if necessary, on reverse side or on separate sheets.)

Part 2—Liens, Encumbrances and Claims

The following is a complete and correct statement of the amount of any and all indebtedness secured by liens or other encumbrances of any nature, legal or equitable, which are held by any person, firm or corporation against the equipment, items Nos. 1 through ———.

(Contractor) ————.
By ————.
(Title) ————.
Item No. _____

_____

Name and address of present creditor _____

_____

Present unpaid balance _____

_____

Amounts and date of future payments _____

_____

(Continue, if necessary, on the reverse side or on separate sheets.)

PART 937—SERVICE CONTRACTING

Subpart 937.2—Consulting Services

937.205 Management controls.

(b) DOE contracting personnel should familiarize themselves with the pertinent DOE Directives coverage before any acquisition involving consulting services is undertaken and shall comply with the appropriate DOE Directives. See DOE Orders 3304.1 and 4200.3.

(7) In accordance with FAR 37.205(b)(7), purchase requests for consulting services initiated in the fourth quarter of the fiscal year, must be approved at the second management level above that of the initiator or such equivalent level as the Head of Contracting Activity may designate.

(Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168)).

PART 942—CONTRACT ADMINISTRATION

Sec.

942.000 Scope of part.
942.001 General.
942.002 DOE policy and responsibilities.
942.003 Organizational structure.

Subpart 942.1—Interagency Contract Administration and Audit Services

942.101 Policy.

Subpart 942.2—Assignment of Contract Administration

942.202 Assignment of contract administration.

Subpart 942.7—Indirect Cost Rates

942.704 Billing rates.
942.705-1 Contracting officer determination procedure.
942.705-3 Educational institutions.
942.705-4 State and local governments.
942.705-5 Nonprofit organizations other than educational and state and local governments.
942.708 Quick closeout procedures.

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942.803 Disallowing costs after incurrence.

Subpart 942.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

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942.1402 Volume movements within the continental United States.
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942.7003 Types of services.
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942.7003-3 Accounting systems.

942.7003–4 Management systems.
942.7003–5 Financial analysis evaluations.
942.7003–6 CAS disclosure statements.
942.7003–7 CAS compliance.
942.7003–8 Estimating systems.
942.7003–9 Consultation and advice.
942.7004 Procedures.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy of 1954, as amended (42 U.S.C. 2168).

942.000 Scope of part.

This part discusses the requirements for and the management of activities that occur after the award of a contract.

942.001 General.

(a) Those government actions taken subsequent to award of a contract to monitor the performance of the contractor and the contractor's adherence to the terms and conditions thereof through completion of the contract are commonly referred to as contract management and administration. The specific actions included in this process are as generally defined in FAR 42.302. This post-award management is essential to ensure the purpose of the contract is achieved and is in accordance with the terms and conditions of the contractual instrument. Contract management is broad and involves the expertise of many specialists including technical (programmatic) legal, financial, administrative, acquisition, and others.

(b) Post-award contract management functions are executed by the various specialists assigned the responsibility and procedural guidance as to how to perform the required functions. Generally, acquisition personnel in the person of a contracting officer, act as the overall business manager for administering and maintaining the integrity of the contract. Such responsibility ensures that only a contracting officer modifies a contract, payments are prompt and represent reimbursements or payments for only allowable cost, funds are obligated in a timely manner, and contracts are officially closed.

942.002 DOE policy and responsibilities.

(a) It is the policy of the Department of Energy that the performance of its contractors be monitored to assure compliance with the terms and conditions of the contract instrument and products are received on time, at a reasonable cost which meet technical requirements and specifications.

(b) The responsibility for ensuring effective post-award management of DOE contractual programs involves many elements of the Department. The various procedures and policies that implement and support project and contract management systems are promulgated in various DOE Orders.

942.003 Organizational structure.

(a) The Department of Defense has initiated a formal system of independent organizations responsible for performance of post-award management functions. A field structure of Contract Administration Offices (CAO) responsible for contract management and administration of contracts for major defense contractors has been established. DOD agencies (Army, Navy, Air Force) have organized plant residencies of contract management specialists for specific DOD contractors and their various business units. The Defense Logistics Agency performs contract management functions both at onsite residencies of contractors not assigned to a service and on a mobile basis from centrally located management areas for other defense contractors. A complete listing of the DOD's contract administration service components is contained in the Defense Directory cited in FAR 42.102.

(b) Civilian agencies for the most part have not established formal, organizationally independent CAO's responsible for performance of contract management functions. The post-award contract management and administration functions performed by civilian agencies are performed by contracting, program and other staff (accounting, legal, etc.) personnel and specialists located in the contracting offices and/or Operational units in a less formal manner than the DOD. Sometimes such services may be acquired from a cognization Defense CAO, when dealing with a defense contractor.

(c) The DOE has no field or resident contract administration offices. Contract management of DOE contracts is performed by the contracting office or is obtained from a Department of Defense (DOD) Contract Administration Office (CAO) if the contract warrants requesting contract administration services from such an activity. There is no specific DOE rule or policy on requesting and assigning DOE contracts for DOD administration services. It is a matter of judgment of the contracting office. To the extent any functions cited in FAR 42.302 are required for proper post-award management of the contract, assignment to a DOD CAO or the requesting of certain supporting services (FAR 42.201) from the CAO should be considered if it is (1) beyond capability of the DOE office (2) cost effective (3) eliminates duplication of effort, and (4) would provide for consistent treatment of the contractor.

Subpart 942.1—Interagency Contract Administration and Audit Services

942.101 Policy.

(a) The Department of Energy has entered into cross-servicing contract management arrangements with:

(1) The Defense Logistic Agency

(2) The Air Force Contract Management Division

(3) The Office of Naval Research

(b) The above arrangements are established and maintained by the Business and Financial Policy Branch, Office of Policy, Procurement and Assistance Management Directorate, Headquarters. Questions concerning these agreements should be directed to that organization.

(c) The Department of Energy Inspector General has established a memorandum of understanding with the Defense Contract Audit Agency and the Office of Audit of the Department of Health and Human Services for providing audit support service (942.70) to the DOE in support of its procurement mission. Procedures for acquiring these services are discussed in 942.70.

Subpart 942.2—Assignment of Contract Administration

942.202 Assignment of contract administration.

(d)(5) Contracts assigned for administration support shall be entered and reported in the Procurement and Assistance Data System.

Subpart 942.7—Indirect Cost Rates

942.704 Billing rates.

(b) When the contracting officer or auditor responsible for establishing billing rates, in accordance with FAR 42.704, has not established such rates or such rates are not current for the performance periods (contractor FY) under contract, the DOE contracting officer responsible for administration of the contract shall establish an appropriate rate(s) for billing purposes. If the contractor holds more than one DOE contract covering that period of performance, the DOE office with the largest unliquidated obligations as of the beginning of that performance period shall take the lead in establishing the required billing rate for use on DOE contracts. Once appropriate billing rates are established by the responsible contracting officer designated by FAR 42.704, such rates shall be adopted by the contracting officer and all billings and payments shall be retroactively

revised to reflect the agreed upon rate(s).

942.705-1 Contracting officer determination procedure.

(a)(3) The Department of Energy shall use the contracting officer determination procedure for all business units for which it shall be required to negotiate final indirect cost rates. A listing of such business units is maintained by the Business and Financial Policy Branch, Office of Policy, Procurement and Assistance Management Directorate, Headquarters, and published as a separate publication in the DOE Order system.

(b)(1) The Department of Energy shall not require or direct contractors to submit their final indirect cost rate proposals reflecting actual cost experience during the covered period to the auditor. The DOE negotiating official shall request all needed audit service in accordance with the procedures in 942.70, Audit Services.

942.705-3 Educational institutions.

(a)(2) The negotiated rates established for the institutions cited in OMB circular No. A-88 are centrally maintained by the Business and Financial Policy Branch, Office of Policy, Procurement and Assistance Management Directorate, Headquarters.

942.705-4 State and local governments.

A list of cognizant agencies for State/local government organizations is maintained by the Office of Management and Budget (OMB) which is periodically published in the Federal Register. The responsible agencies are notified of such assignments. A listing of the cognizant agencies and the current negotiated rates for State/local government activities is maintained by the Business and Financial Policy Branch, Office of Policy, Procurement and Assistance Management Directorate, Headquarters.

942.705-5 Nonprofit organizations other than educational and state and local governments.

OMB Circular A-122 establishes the rules for assigning cognizant agencies for the negotiation and approval of indirect cost rates. The Federal agency with the largest dollar value of awards (contracts plus federal financial assistance dollars) will be designated as the cognizant agency. DOE is not currently assigned cognizance over any such nonprofit organizations. There is no published listing of assigned agencies. The Business and Financial Policy Branch, Office of Policy, Procurement and Assistance Directorate, Headquarters, does maintain a DOE central file of rates established by the cognizant agency.

942.708 Quick closeout procedures.

(a) Contracting officers shall use the quick-closeout procedure to finalize indirect expenses under any DOE contract when it appears appropriate to establish such expenses by means other than the formal negotiation procedures of FAR Subpart 42.7 and use of this procedure is agreeable to the contractor. The quick-closeout procedure is considered to include the establishment, of either indirect cost rates established for the closeout of a contract(s) or lump-sum indirect expenses dollars that shall be agreed to as chargeable to the contract. Such lump-sum amounts are appropriate for all categories of contractors—commercial, State/local governments, educational, and nonprofit organizations.

The contracting officer shall apply the quick-closeout procedure in closing DOE contracts in lieu of using the rates established in accordance with FAR 42.705, when:

(1) See FAR 42.708(a)(1)

(2) The amounts of indirect expense to be reimbursed by a single DOE contract will not exceed $250,000 per contractor fiscal year or the indirect expense amount reimbursed by all DOE contracts using the quick-closeout procedure will not exceed $1,000,000 per contractor fiscal year.

(3) Amounts of and the allowability of claimed or proposed indirect expenses will be readily determinable based on a review of the contractor's indirect cost experience (reviews may be made by the contracting officer with or without the assistance of a professional auditor).

(4) The contractor does not have a history of disputes, disallowed cost of any consequence, and there are no known potential cost issues of significance.

(5) There is a low potential (risk) for any significant over payment of indirect expense under the contract.

(6) Administrative cost of obtaining the annual negotiated final rate(s) is known to, or would be expected to, exceed any benefit of the final rates established in accordance with FAR Subpart 42.7.

(d) A decision to request audit assistance in applying the quick-closeout procedure should be decided on a case-by-case basis. The extent of any required services may vary. If possible, closeout rates or lump-sum expenses should be established with limited use of audit especially when acquiring the support service would defeat the quick-closeout approach by lengthening the evaluation and contract closeout process. Audits should not be requested if it is reasonably apparent that the audit would have little effect on the rates or expense finally agreed upon and any overpayments would be relatively insignificant.

Subpart 942.8—Disallowance of Costs

942.803 Disallowing costs after incurrence.

(a) Contracting officer receipt of vouchers. Vouchers and invoices submitted to DOE shall be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted therein, the contracting officer, shall:

(1) Hold informal discussion with the contractor as appropriate.

(2) Issue a notice (letter, memo, etc.) to the contractor advising of cost disallowed or to be disallowed and advising the contractor that it may:

(i) Submit a written claim as to why the cost should be reimbursed—if in disagreement with the disallowance.

(ii) File a claim under the disputes clause, which will be processed in accordance with disputes procedures in the event disagreements cannot be settled.

(3) Process the voucher or invoice for payment and advise the finance office to deduct the disallowed cost when scheduling the voucher for payment.

(c) *Auditor reports and other sources of questioned costs.* (1) From time to time reports are received from professional auditors that may question the allowability of an incurred cost. Such reports are received as the result of auditors, in their independent role under OMB Circular A-73 or their own charters, scheduling and conducting financial or compliance audits of government contracts or as the result of an independent request for auditor service, as discussed in 942.70 Audit Services.

(2) When auditor reports or other notifications question cost or consider them unallowable, the contracting officer shall follow up such reports and resolve all such cost issues promptly by determining, through discussions with the contractor and/or auditor within six months of the audit report date, or date of receipt if a non-Federal audit. One of the following courses of action shall be pursued:

(i) Accept and implement audit recommendations as submitted.

(ii) Accept the principle of the audit recommendation but reject the cost questioned amount.

(iii) Reject audit findings and recommendations.

(3) When implementing the accepted course of action, the contracting officer shall—

(i) Hold discussions with the auditor and contractor as appropriate.

(ii) Issue a notice in writing advising the contractor of the government's intent to disallow the cost questioned, if the contracting officer agrees with the auditor concerning the questioned costs.

(iii) Negotiate a mutual settlement of questioned costs if they are agreed with in principle but there is a difference of opinion as to a proper amount.

(iv) Negotiate a mutual settlement of questioned costs if the auditor recommendations are acceptable to the contracting officer but the contractor does not accept the finding or disallowance.

(v) Issue a final decision of the contracting officer disallowing the questionable cost where differences cannot be resolved, advising of the contractor's right to appeal the decision, and advising the procedure to be followed if it is decided to make such an appeal.

(vi) Initiate immediate recoupment actions for all disallowed cost owed the government by:

(A) Requesting the contractor to provide a credit adjustment (offset) against amounts billed the government on the next or future invoice(s) if such shall be submitted under a contract for which the disallowed cost applies.

(B) Deducting (offset) the disallowed cost from the next or future invoice(s) submitted under the contract; if the contractor provides no adjustment under the contract for which the disallowed cost applies; provided such reduction is deemed appropriate.

(C) Advising the contractor that a refund shall be directly payable to the government in situations where there are insufficient payments owed by the government to effect recovery via (A) or (B) above or an offset is otherwise inappropriate.

(vii) Promptly notify the appropriate finance office of refunds directly payable to the government to ensure proper billing and followup action for collection.

Subpart 942.10—Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs

942.1004 Location of negotiators in a central office.

The central office within the Department of Energy for negotiating independent research and development/bid and proposal (IR&D/B&P) advance agreements, as required in accordance with FAR 42.1004, is established in the Procurement and Assistance Management Directorate, Headquarters. DOE contracting officers should advise offerors, suppliers, potential contractors, and contractors that are required, or expect they will be required, to establish advance agreements for allowability of IR&D/B&P cost and where the DOE is to be the lead negotiating agency in accordance with FAR 42.1003, their IR&D/B&P proposals and/or other correspondence shall be submitted to: Business & Financial Policy Branch, Office of Policy, Procurement and Assistance Management Directorate, Department of Energy, 1000 Independence Avenue SW. Washington, D.C. 20585.

942.1008 Administrative appeals.

The official within the DOE to hear administrative appeals of a contracting officer's decision to reduce payment, as prescribed in FAR 42.1008, is the Procurement Executive.

Subpart 942.14—Traffic and Transportation Management

942.1401 General.

DOE contracting officers or designees will consult and coordinate with the Office of Operations and Traffic, Defense Programs, Headquarters, as required in 41 CFR Part 109-40 and implemented by DOE Order 1540.1.

942.1402 Volume movements within the continental United States.

(a)(2) DOE activities will be reported to the Office of Operations and Traffic, Defense Programs Headquarters.

942.1403-1 U.S. Government bills of lading.

(a) The Office of Operations and Traffic, Defense Programs Headquarters, has responsibility for prescribing DOE's shipping documents.

(c)(1) Any limited authority for the use of commercial forms and procedures to acquire freight or express transportation for small shipments of a recurring nature will be prescribed by the Office of Operations and Traffic, Defense Programs, Headquarters.

942.1403-2 Contractor-prepaid commercial bills of lading.

(a) Use of commercial bills of lading for movement of supplies should be on a limited manner. Shipments of questionable quantity should be discussed with the Office of Operations and Traffic, Defense Programs, Headquarters.

Subpart 942.70—Audit Services

942.7000 Scope of subpart.

This subpart prescribes policies and procedures for requiring and using audit support services in the post-award management of DOE contracts. Such services shall be obtained in accordance with the provisions of FAR Subpart 42.1 and this subpart.

942.7001 Definition.

Auditors are professional accountants who although organizationally independent are viewed as one of several sources of counsel to the contracting officer on accounting and other financial subjects. They are the principal advisors to contracting officers on audit matters and provide the contracting officers with various audit services.

942.7002 General.

Contract management practices require the review of a contractor's contract cost records and controls, billings, and claims to assure their completeness, accuracy, and compliance with contract requirements. Such services are available from and provided by independent government audit activities such as the Defense Contract Audit Agency, the Inspector General, and commercial audit firms. Such services are generally referred to as "Contract Audit." In addition to providing "Contract Audit" services in direct support of the contracting officer and other program officials, departmental audit activities, pursuant to Office of Management and Budget policies set forth in Circular A-73, Audit of Federal Operations and Programs, conduct their own independent economy and efficiency reviews of government contractors and performers. Their purpose is to determine whether the business entity is managing and utilizing its resources economically and efficiently and any causes of inefficiencies or uneconomical practices.

942.7003 Types of services.

An efficient and effective contract management and administration program requires that the contracting officer responsible for post award contract management and administration functions seek the service of the professional auditor in several areas. The primary areas of needed audit support and areas in which auditors have agreed to support the DOE acquisition mission are:

(a) Incurred cost audits (direct & indirect cost)

(1) Vouchers, billings, invoices, claims, and other settlement proposals

(2) Financial records, contract cost records, work-in-process costs, etc.

(b) Overhead rate reviews (establishment and verifications)

(c) Accounting systems reviews

(d) Management control systems reviews

(e) Financial analysis evaluations

(f) Review Cost Accounting Standards (CAS) Disclosure Statements

(g) Cost Accounting Standards compliance

(h) Estimating system reviews

(i) Consultation and advice

942.7003-1 Incurred cost.

(a) Financial audits of a contract's cost records and charges, particularly material and labor cost, shall be requested of the auditors as is considered warranted by the financial condition, integrity, and reliability of the contractor; prior audit experience; adequacy of the accounting system; and unaudited claims, vouchers, invoices, and billings. Audits of such cost should be requested when needed or desirable, but no less frequently than once yearly for any contract where such annual cost exceed $500,000 or $1,000,000 under all DOE contracts. Such audits should cover cost-reimbursement type contracts, including fixed-price contracts with cost-reimbursement portions, letter contracts with reimbursement provisions, time-and-materials contracts, and labor-hour contracts.

(b) Vouchers and invoices provisionally approved and paid may be submitted to the auditor for specific review and verification of the accounting records and for an opinion on the allowability of the cost when situations warrant.

942.7003-2 Indirect expenses (overhead cost).

Auditors look at indirect expenses (overhead cost) on an after-the-fact basis to review the incurred cost and to assist in the negotiation of a final overhead payment rate, when such rates are provided for in the contract. Auditors also assist the contracting officer in the administration of indirect cost by making appropriate recommendations concerning the establishment of before-the-fact overhead rates for billing purposes and/or establishing predetermined overhead rates. Contracting officers should seek the assistance of the auditor as they deem warranted or appropriate or as may be required by FAR 42.700 and 942.7.

942.7003-3 Accounting systems.

Auditors are available to advise the contracting officer on the adequacy of a contractor's accounting system and its suitability for administration of Government contracts. The contracting officer should always obtain such service to assure himself/herself of the contractor's financial competence or credit needs, unless prior experience or other available information shows the contractor to have financial integrity and acceptable accounting and cost control systems.

942.7003-4 Management systems.

Auditors are available to help the contracting activity and the contracting officer in a review, and assessment of a contractor's various management systems and systems of internal control. The objective of the reviews, is to assure cost effective and efficient methods of operations. Reviews should be requested as deemed warranted.

942.7003-5 Financial analysis evaluations.

Auditors are available to assist the contracting officer in a review and evaluation regarding a contractor's financial competence or credit needs. Such service may be helpful in determining the need for advance payments, loans, etc. When the contracting officer is aware of or is otherwise concerned about the financial viability of the contractor, financial reviews by the auditors should be requested as the contracting officer believes the situation warrants.

942.7003-6 CAS disclosure statements.

The audit activity is available and, in accordance with FAR 30, Cost Accounting Standards, is responsible for making recommendations to the contracting officer as to whether the CAS disclosure statement submitted by the contractor as a condition of the contract, adequately describes the actual or proposed cost accounting practices, and is in compliance with the Cost Accounting Standards required under the terms of the contract (required by Pub. L. 91-379, 50 U.S.C. APP 2168, for Defense contracts). The contracting officer shall request the auditor to review all Disclosure Statements submitted by a contractor or potential contractor.

942.7003-7 CAS compliance.

The audit activity also performs audits for contractor compliance with the standards of the Cost Accounting Standards Board, when such Standards are required to be followed under the terms of the contract; and, the audit activity advises whether a contractor or subcontractor has failed to comply with the applicable Standards or to follow consistently its disclosed cost accounting practices and whether the failure has resulted in or may result in any increased cost paid by the government. The auditors also review proposed price changes for contractor changes to disclosed or established cost accounting practices to assure that the changes are fair and reasonable.

942.7003-8 Estimating systems.

Many contractors, particularly where a large portion of the business is government work, have formal cost estimating systems used in the development of program estimates and/or the submittal of price/cost proposals to the Government. Other contractors which perform less Government work often have some type of system, too. Estimating systems are encouraged by the Government, but it should be recognized that systems will vary between contractors, and may vary between plants or divisions of a contractor due to differences in products, size and methods of operation (i.e., production versus research), and other factors. Advantages of estimating systems are that they: (a) Provide a greater degree of confidence in estimates, (b) expedite the negotiation process, (c) reduce the amount of detailed explanations that need be included in each proposal on the estimating procedural rationale used, and (d) reduce need for and scope of reviews by technical, financial and audit personnel. Auditors are available to assist the acquisition organization in reviewing a contractor's estimating systems or processes. The contracting officer shall decide whether an estimating system review should be undertaken as a team effort, including an auditor, or if the auditors can sufficiently perform a system check by themselves. It is not DOE policy to generally request such reviews.

942.7003-9 Consultation and advice.

Auditors are available for general consultation and advice to acquisition and supporting personnel (including counsel) with or without providing an audit.

942.7004 Procedures.

(a) The Department of Energy Inspector General (IG) has established formal cross-servicing arrangements with the Defense Contract Audit Agency (DCAA) and the Health and Human Services Inspector General. Audits are available to contracting officer pursuant to terms of these arrangements.

(b) The following procedures are to be followed by the contracting officer when requesting needed audit services:

(1) Upon award of a contract to an existing DOE or DOD contractor which is being audited by the DCAA, all requests for normal postaward audit services shall be directed to the cognizant DCAA office.

(2) Upon award of a contract to a contractor who is not currently being audited by DCAA, and/or for which the DCAA is not the cognizant audit activity, all requests for postaward audit services shall be directed to the DOE Assistant Inspector General for Audits.

(3) Requests to the DOE Assistant Inspector General for audit services shall be made to the appropriate Regional Office.

(c) In determining if DCAA is currently auditing a contractor or has audited it in the past, the contracting officer should refer to the contractor's pricing proposal or ask the contractor.

(d) In the event a contracting officer considers that an economy and efficiency system review or a program results audit will be beneficial to the Government's interest, the appropriate Regional office of the DOE Assistant Inspector General for Audits should be notified.

(1) Such request should be made to the IG's office even in situations where the DCAA or another audit activity is known to be cognizant for contract audit.

PART 943—CONTRACT MODIFICATIONS

943.170 Extension of contracts resulting from unsolicited proposals.

(a) Where additional time beyond the formal contract period is required to complete or continue the work undertaken as the result of the acceptance of an unsolicited proposal and award of a contract therefor, the Contractor should be instructed to submit six copies of an extension proposal to the contracting office in sufficient time to allow evaluation and possible processing before the date of expiration of the contract. This requirement does not apply to requests for no-cost extensions as may sometimes be needed to complete all details such as a final report of the project.

(b) The extension proposal should outline and justify a program and budget for the succeeding year(s), showing in detail the estimated cost for the additional period(s) requested. It should include the same type of information to the extent as was contained in the initial proposal. Any contemplated change in program or scope for the ensuing period(s) should be justified and explained clearly, and must remain consistent with the original method, approach or idea which was accepted as the basis for award by DOE as a result of the initial unsolicited proposal. This is not, however, intended to preclude a redirection based upon a discovery or breakthrough occurring under the contract to date.

(c) The extension proposal should include a financial profile of the existing contract including:

(1) Total project costs to date, indicating the amount chargeable to DOE;

(2) An estimate of the total costs to be incurred during the remainder of the current period, including a statement of unextended balance.

(d) All requests for extensions of contract work as a result of an unsolicited proposal should be evaluated by the appropriate program office in light of:

(1) Progress reports submitted by the Contractor;

(2) Research results published in scientific media;

(3) Field visits by technical personnel;

(4) Contractor's progress and potential for achieving desired results;

(5) Continued relevance to DOE's mission;

(6) Scientific and technical merit of the research;

(7) Availability of funds;

(8) Likelihood that competition at this stage in the project would hasten achieving the desired results.

(e) Requests for extensions of contract work originating from an unsolicited proposal should generally follow the same process of review and evaluation of technical aspects and funding, preparation and execution of contract, and administration as does a new project.

(f) When an extension request receives a favorable technical evaluation and a determination is made that similar conditions exist relative to those that justified acceptance of the initial unsolicited proposal, a justification for extension of the award shall be processed for review and approval as indicated in 915.506.

(g) As a minimum, extension justification should contain:

(1) A statement of the result of the technical evaluation (915.570–2).

(2) An evaluation of any contemplated change in the contract scope of work for the renewal period and a justification explaining why this change is consistent with the original method, approach or idea which was accepted as the basis for award by the DOE as a result of the initial unsolicited proposal.

(3) An assessment of the current status of the original circumstances and conditions which justified acceptance of the intitial unsolicited proposal identifying any changes that may have developed and providing rationale as to why such change(s) should not preclude renewal.

(h) If, after evaluation, it is decided that an extension period should not be supported on the basis of technical merit or other reasons, such as lack of funding, or changed mission relevance, the project officer should:

(1) Prepare a written statement setting forth the basis for rejection, submit one copy to the responsible program official for approval and transmittal to the proposer and retain one copy in the permanent file.

(2) Promptly notify the contracting officer in order that the current contract may be closed out.

(i) Under certain circumstances it may be in the Government's best interest to continue or complete the work begun under a contract awarded as a result of an unsolicited proposal but which is not appropriate for extension. Continuation or completion of the work shall be accomplished by means of competition, unless non-competitive acquisition can be justified in accordance with FAR 15.507(b).

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended 42 U.S.C. 2168).

PART 944—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 944.1—General

Sec.

944.101 Definitions.

Subpart 944.2—Consent to Subcontracts

944.202–1 Responsibilities.
944.202–2 Considerations.
944.203 Consent limitations.

Subpart 944.3—Contractors' Purchasing Systems Reviews

944.302 Requirements.
944.304 Surveillance.
944.305 Granting, withholding, or withdrawing approval.
944.305–1 Responsibilities.
944.307 Reports.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 944-1—General

944.101 Definitions.

"DOE cognizant contractors" refers to those contractors over which DOE has been assigned cognizance by the Office of Management and Budget, or those with which DOE has the preponderance of Government business. The term includes pilot and demonstration plant contractors.

"Industrial facilities" means property (other than material, special tooling, and special test equipment) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment.

Subpart 944.2—Consent to Subcontracts

944.202-1 Responsibilities.

(b) The responsible contracting officer shall—

(1) Promptly evaluate the contractor's requests for consent to subcontract;

(2) Obtain assistance in the evaluation from subcontracting, audit, pricing, technical, or other specialists as necessary;

(3) Withhold consent to subcontracts with subcontractors on the DOE consolidated List of Debarred, Suspended, Ineligible, and Voluntarily Excluded Awardees (DOE List) (see 10 CFR 1035.15) or the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors (GSA List), to the extent that the award falls within the scope of the suspension, proposed debarment, debarment, ineligibility, or voluntary exclusion unless the Procurement Executive determines in writing that there is a compelling reason for such action (see 10 CFR 1035.13 and 1035.13(c)); and

(4) Notify the contractor in writing of consent or the withholding of consent, including any changes or corrections required.

944.202-2 Considerations.

(a)(13) In addition to the considerations in FAR 44.202-2, the contracting officer responsible for consent shall review the request and supporting data and consider whether the proposed subcontractor or any proposed key person(s) is on the DOE List.

944.203 Consent limitations.

(d) For determining profit/fee objectives under negotiated subcontracts, the prime contractor should have considered use of and applied a weighted guidelines or a structured approach that distinguishes different levels of investment if the acquisition would be subject to the weighted guidelines under a prime DOE contract. If the acquisition falls into one of the exceptions to the DOE weighted guidelines applications as cited in 915.970-4, the prime contractor should have applied other techniques to establish profit objectives.

Subpart 944.3—Contractors' Purchasing Systems Reviews

944.302 Requirements.

(a) Heads of Contracting Activities shall consider whether the best interest of DOE would be served by the initiation of a Contractor Purchasing System Review (CPSR) for those contractors whose sales to DOE are expected to exceed $5,000,000 during the next 12 months and for which DOE is the cognizant Government agency for CPSR purposes. In exceptional circumstances, consideration of a CPSR may be warranted for contractors with sales to DOE of less than $5,000,000. When considering the initiation of a CPSR, such a review should not be conducted if the extent of the contractor's subcontracting program does not appear to justify the review.

(b) DOE contracting officers, or designees, will conduct CPSRs of DOE cognizant contractors. Other Federal Agencies/Departments may be requested to conduct CPSRs, as appropriate, for other than DOE cognizant contractors. DOE contracting officers shall normally recognize other Federal Agency/Department approvals of contractors' purchasing systems within the limitation identified by approving officials of such agencies.

(c) Initial, subsequent, and followup review teams should include appropriate representatives from DOE field offices; other Federal Agency participation may be additionally requested as appropriate. Generally, team composition should not consist exclusively of those who have a day-to-day relationship with the contractor regarding subcontract consent or approval.

(d) The Procurement Executive is responsible for the overall conduct of the DOE CPSR program.

944.304 Surveillance.

(b) The surveillance plan required by FAR 44.304(b) shall be approved by the Head of the Contracting Activity.

944.305 Granting, withholding, or withdrawing approval.

944.305-1 Responsibilities.

(a) Team findings and recommendations contained in a CPSR Report shall be approved by the Head of Contracting Activity before the contracting officer makes a determination to continue, grant, withhold, or withdraw approval.

944.307 Reports.

(b) Copies of CPSR reports; notifications granting, continuing, withholding, or withdrawing approval of a contractor's purchasing system; copies of recommendations for improvement of an approved system notifications (or contract modifications) altering the subcontract consent dollar thresholds; and information received from the contractor pursuant to 944.305-3(b) shall be transmitted to the Director, Procurement Management Review Division, Procurement and Assistance Management Directorate, Headquarters.

PART 945—GOVERNMENT PROPERTY

Sec.

945.000 Scope of part.

Subpart 945.1—General

945.101 Definitions.
945.102-70 Reporting of contractor-held property.
945.102-71 Maintenance of records.
945.104-70 Review and correction of contractors' property management systems.

Subpart 945.3—Providing Government Property to Contractors

945.303-1 Policy.
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Subpart 945.4—Contractor Use and Rental of Government Property

945.407 Non-Government use of plant equipment.

Subpart 945.5—Management of Government Property in the Possession of Contractors

945.501 Definitions.
945.502-70 Physical protection of property.
945.502-71 Control of sensitive items of property.
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945.505-5 Records of plant equipment.
945.505-11 Records of transportation and installation costs of plant equipment.
945.505-14 Reports of Government property.
945.506 Identification.
945.508 Physical inventories.
945.570 Motor vehicle and aircraft managment.
945.570-1 Classification of motor vehicles.
945.570-2 Acquisition of motor vehicles.
945.570-3 Selection of type of motor vehicles.
945.570-4 Identification of motor vehicles.
945.570-5 Utilization of motor vehicles.
945.570-6 Maintenance of motor vehicles.
945.570-7 Disposition of motor vehicles.
945.570-8 Reporting motor vehicle data.
945.570-9 Aircraft.

Subpart 945.6—Reporting, Redistribution, and Disposal of Contractor Inventory

945.601 Definitions.
945.603 Disposal methods.
945.603-70 Plant clearance function.
945.603-71 Disposal of radioactively contaminated personal property.
945.607-2 Recovering precious metals.
945.608-2 Standards screening.
945.608-3 Agency screening.
945.608-4 Limited screening.
945.608-5 Special items screening.
945.610-4 Contractor inventory in foreign countries.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

945.000 Scope of part.

This part and FAR Part 45 are not applicable to the management of property by operating and management contractors. In addition, the policies and procedures contained in FAR Part 45 governing the management, control, reporting, and disposal of special test equipment and special tooling are not followed by the DOE.

Subpart 945.1—General

945.101 Definitions.

"Personal property" as used in this part, means property of any kind or interest therein, except real property, records of the Federal Government, and nuclear and special source materials, atomic weapons, and by-product materials.

"Capital equipment" as used in this part means personal property items having a unit acquisition cost of $1,000 or more and an anticipated service life in excess of one year, regardless of type of funding, and having the potential for maintaining their integrity as capital items; i.e., not expendable due to use.

945.102-70 Reporting of contractor-held property.

Within 30 days after the end of each fiscal year, the Head of the Contracting Activity shall report the following information to the Director, Property and Equipment Management Division, Procurement and Assistance Management Directorate, Headquarters:

(a) Name and address of each contractor with DOE property in their possession, or in the possession of their subcontractors (do not include grantees, cooperative agreements, interagency agreements, or agreements with state or local governments).

(b) Contract number of each DOE contract with Government property.

(c) Date contractor's property management system was approved and by whom (DOE office, Defense Contract Administration Service, or the Office of Naval Research).

(d) Date of most current appraisal of contractor's property management system, who conducted the appraisal, and status of the system (satisfactory or unsatisfactory).

(e) Total dollar value of DOE property as reported on last semiannual asset report (including date of report), for each DOE contract administered by the contracting activity.

945.102-71 Maintenance of records.

The contracting activity shall maintain records of approvals and reviews of contractors' property management systems, the dollar value of DOE property as reported on the most recent semiannual financial report, and records on property administration delegations to other Government agencies.

945.104-70 Review and correction of contractors' property management systems.

DOE offices shall follow the provisions of this section in the review and approval of a contractor's property management system. If contracts are formally delegated to other Government activities for property administration, the DOE will accept their method of approving the contractor's system and document the file accordingly.

(a) *Initial review.* (1) The contracting officer, or his/her representative assigned the responsibility as property administrator, shall review contractors' property systems within six months after the execution of the contract to assure compliance with the Government property clauses of the contract.

(2) Appraisals of complex property management operations may require detailed tests and evaluations on-site over an extended period of time. However, an evaluation of a contractor's operation involving only small dollar amounts of property and simple property control methods can often be accomplished without an on-site visit or extensive testing by the property administrator, by utilizing the Off-Site Contractor's Property Management Self-Evaluation Questionnaire, telephone contacts, or other appropriate methods necessary to assure that the system is adequate.

(3) In those instances where a contractor has contracts with more than one DOE contracting office, the DOE office with the contract(s) having the largest dollar value of property should normally be responsible for making the necessary reviews and appraisals of the contractor's system. Contracting officers should determine if a contractor has multiple DOE contracts by inquiry of the Procurement and Assistance Data System (PADS).

(4) When the contractor's property management system has previously been approved and a new contract requires the expansion of existing, or the establishment of additional controls, the review should normally be limited to the new requirements. If the system is adequate, the property administrator shall record this fact. Notification to the contractor is not required. However, if the property administrator determines that the contractor's property management system does not adequately meet the new contract requirements, the contractor shall be notified in writing of the required changes.

(5) The property administrator shall examine the contractor's procedures to be used to determine the extent to which they meet the criteria for property management required by FAR Subparts 45.5 and 45.6 and Subparts 945.5 and 945.6 of this chapter. Necessary tests will be made of the contractor's system, as appropriate, and, as each functional area is analyzed, the acceptability of the procedures shall be appropriately noted or commented upon and used as the basis for preparation of the record of system evaluation. Worksheets should be maintained by the property administrator.

(6) Upon completion of the property administrator's review, an exist interview will be held with the contractor to discuss any areas of the contractor's property management controls or systems found to be defective, and to recommend corrective actions to be completed before an approval of the system can be granted. Agreement shall be reached as to corrective measures necessasry and a reasonable time schedule established for completion of the corrective actions.

(7) Following the exist interview, the property administrator shall prepare a written summary of findings to support approval of the system or the requirements for corrective action to be taken prior to such approval.

(8) The property administrator shall advise the contractor in writing when the contractor's property management system is considered acceptable.

(9) The property administrator shall notify the contractor in writing when its property management system is not acceptable, and request correction of the deficiencies within the agreed upon time schedule.

(10) Appropriate follow-up shall be taken by the property administrator to ensure that corrective actions are taken.

(11) If the contractor does not correct the deficiencies within the time period, the property administrator shall request action by the contracting officer administering the contract. The contracting officer shall notify the contractor in writing including the details specified at FAR 45.104(c). If the contractor also has contracts with other DOE contracting activities, the contracting officer shall notify the Property and Equipment Management Division, Headquarters.

(12) When the contract involves Government property at subcontractor facilities or prime contractor secondary locations, and the controls for the property at such locations have been determined to be adequate, the approval shall be expanded to include the procedures governing Government property at such locations.

(b) *Follow-up reviews.* Every two years after the initial approval of the contractor's system, the property administrator shall reappraise the contractor's property management operations in accordance with the provisions of paragraph (a) above.

Subpart 945.3—Providing Government Property to Contractors

945.303-1 Policy.

The DOE has established specific policies concerning special nuclear material requirements needed under DOE contracts for fabricating end items using special nuclear material, and for conversion or scrap recovery of special nuclear material. These special nuclear material needs means "uranium enriched in the isotope U233, U235 and plutonium other than PU238." The policies to be followed are:

(a) Special nuclear material will be furnished by the DOE for fixed-price contracts and subcontracts, at any tier, which call for the production of special nuclear products, including fabrication and conversion, for Government use. (The contractor or subcontractor must have the appropriate license or licenses to receive the special nuclear material. The Nuclear Regulatory Commission is the licensing agency.)

(b) Contracts and subcontracts for fabrication of end items using special nuclear material generally shall be of the fixed-price type. Cost-type contracts or subcontracts for fabrication shall be used only with the approval of the Head of the Contracting Activity. This approval authority shall not be further delegated.

(c) Contracts and subcontracts for conversion or scrap recovery of special nuclear material shall be of a fixed-price type, except as otherwise approved by the Head of the Contracting Activity.

945.304 Providing motor vehicles.

Additional guidance and information concerning the provision of motor vehicles are found at:

(a) 945.570 Motor vehicle and aircraft management.

(b) 908.11 Leasing of motor vehicles.

(c) 908.7101 Acquisition of motor vehicles.

(d) FAR 51.2 GSA Interagency Motor Pool System.

Subpart 945.4—Contractor Use and Rental of Government Property

945.407 Non-Government use of plant equipment.

The type of plant equipment and dollar threshold for non-Government use of DOE plant equipment will be determined by the Head of the Contracting Activity which awarded the contract. Approval of the Head of the Contracting Activity is required to authorize non-Government use exceeding 25% of operational use.

Subpart 945.5—Management of Government Property in the Possession of Contractors

945.501 Definitions.

"Government-furnished motor vehicles" are DOE-owned vehicles, vehicles leased from the General Services Administration Interagency Motor Pool System (GSA–IMPS), and vehicles leased from commercial sources.

"Precious metals," as used in this subpart, means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are silver, gold, and the platinum group metals—platinum, palladium, iridium, osmium, rhodium, and ruthenium.

"Sensitive items" as used in this subpart, means those items of property which are susceptible to being appropriated for personal use or which can be readily converted to cash. Examples are firearms, photographic equipment, binoculars, tape recorders, calculators, and power tools.

945.502-70 Physical protection of property.

(a) Controls such as property pass systems, memorandum records, marking of tools, regular or intermittent gate checks and perimeter fencing shall be implemented, recognizing the value of the property to prevent loss, theft, or unauthorized movement of Government property from the premises on which such property is located.

(b) Classified Government property will be handled in accordance with instructions of the contracting officer.

945.502-71 Control of sensitive items of property.

(a) The contractor shall assure that effective procedures and practices are established for the administrative and physical control of sensitive property items before and after issuance. Each contractor shall prepare a list of the types of property considered to be sensitive. This list, together with control procedures, shall be provided to the property administrator for review and approval.

(b) At a minimum, controls on sensitive property shall include property records, and memorandum receipts, bin or tool check systems, or combinations thereof. Procedures shall provide for physical inventories at least once each year, and methods for adjustment for inventory levels due to losses, thefts, and damage. More frequent inventories of sensitive property may be necessary where the value of the property, degree of security achieved, or loss experience indicates greater controls are required in order to protect the Government's interest. Such procedures and practices shall be subject to review and approval by the property administrator.

945.502-72 Management of precious metals.

(a) The contractor shall establish effective procedures and practices for the administrative and physical control of precious metals.

(b) At a minimum, procedures should provide for physical protection from theft or loss from time of receipt by the contractor to disposition.

(c) Responsible individuals will be designated as precious metals custodians. Records will be maintained of metals received, in use, in stock, and which have been issued or disposed of.

(d) Perpetual inventory records shall be maintained for each type of precious metals in terms of location, weight, and value. Metals consumed in use shall be removed from inventory records only after written certification by the custodian and higher level management official that they have been consumed or contaminated beyond recovery. The project consuming the metals shall be identified.

(e) Physical inventories of precious metals shall be taken at least semiannually, and either witnessed by independent observers or audited independently to verify the accuracy of the inventory. The results of the

inventory shall be promptly reported to the property administrator.

(f) All losses shall be promptly investigated and reported to the property administrator.

(g) Excess and termination inventory precious metals shall be reported to the DOE contracting officer for subsequent inclusion in the DOE precious metals pool.

945.505–5 Records of plant equipment.

The requirements of FAR 45.505–5 apply to plant equipment having a unit cost of $1,000 or more. The property record shall include the DOE asset type for reporting purposes.

945.505–11 Records of transportation and installation costs of plant equipment.

The requirements of FAR 45.505–11 apply to plant equipment having a unit cost of $1,000 or more.

945.505–14 Reports of Government property.

(a) The contractor shall prepare a semiannual report, as of February 28 and August 31 of each year, for each contract and subcontract thereunder, for the following property. The reports will be submitted to the property administrator, and are due not later than 45 days after the end of the reporting period.

(i) Capital equipment and real property acquired or disposed of during the period by asset type (see below).

(ii) Government-owned materials held in storage for issue when the balance on hand at the end of the reporting period amounts to $50,000 or more. Only the beginning and ending balance will be shown on the report.

(b) The report of physical inventory of capital equipment (see 945.508(b)) shall be submitted, as a minimum, with the fourth semiannual report after either the last physical inventory report or the inception of the contract.

DOE PLANT AND EQUIPMENT ASSET TYPES

Asset type code No.	Name and definition
401	*Land.* Includes the cost of land owned by the Government and under the control of DOE. The cost of land includes the purchase price, other acquisition costs, and removal costs less salvage realized in disposing of any facilities acquired with the land.
410	*Land Rights.* Includes the costs of rights, interests, and privileges relating to land such as leaseholds, easements, rights-of-way, water and waterpower rights, diversion rights, and submersion rights.
430	*Minerals.* Includes the cost of mineral rights and land containing mineral deposits owned by the Government.

DOE PLANT AND EQUIPMENT ASSET TYPES—Continued

Asset type code No.	Name and definition
440	*Timber.* Includes the cost and appraised value of timber and pulpwood; cost of reforestation program for the purpose of dust and soil erosion control, retention of water tables, etc.; cost of development and improvement of timber stand; and other forestry management costs. Use of this code is limited to the Savannah River Operations Office.
460	*Site Preparation, Grading and Landscaping.* Includes the cost of general clearing, grading and drainage not directly related to the erection of buildings and structures. All landscaping is included.
470	*Roads, Walks, and Paved Areas.* Includes the costs of roads, bridges, streets, walks, paved parking areas and paved open areas between buildings, including any related costs of clearing, grading, base, surfacing, storm sewers or drains, curbs, gutters, culverts, lighting service, and other related facilities.
480	*Fences and Guard Towers.* Includes the cost of security fences, guard towers and lighting service. Fences associated with specific facilities such as ball parks and substations are included with the facilities protected.
490	*Other Improvements to Land.* Includes the cost of improvements not includable under codes 460, 470, or 480, such as airports, playgrounds, tennis courts, and athletic fields.
501	*Buildings.* Includes the cost of buildings and permanently attached appurtenances, such as elevators, fire protection, lighting, plumbing, heating, ventilation, and built-in air-conditioning systems (excluding window or console air-conditioning units that require no duct work or cooling towers) and the cost of piping, conduit, and cable permanently attached to and made a part of the building and that cannot be removed without cutting into the walls, ceilings, or floors. The division between building costs and the costs of utility systems is generally to be at a point nominally 5 feet outside the building wall.
550	*Other Structures.* Includes the cost of such structures as dams, retention basins, reservoirs, swimming pools, pits, platforms, underground oil storage reservoirs, and stacks (when not a part of a building).
610	*Communication Systems.* Includes the cost of telephone, intercommunication and teletype equipment; telephone instruments and protective devices; lines, poles, cables and conduits; and stationary and associated portable radio transmitting and receiving equipment.
615	*Electric Generation, Transmission and Distribution Systems.* Includes the cost of all electric generation equipment; boiler plant equipment primarily used to supply steam to steam-electric generation equipment; transmission and distribution lines, poles, towers, grounding systems, substations, transformers, controls, cables, conduit, services, meters and protective devices; lightning fixtures, wire, poles, standards and related accessories supplying electric lighting service to roads, walks, and fences.
620	*Fire Alarm Systems.* Includes the cost of central office equipment necessary for receiving and transmitting alarms, including control wiring, both cable and open, and other associated overhead and underground equipment.
625	*Gas Production, Transmission and Distribution Systems.* Includes the cost of equipment involved in the production, storage, transmission and distribution of natural and artificial gas, including pipelines, services, and associated regulating and metering equipment of buildings served.
630	*Irrigation Systems.* Includes the cost of canals, ditches, waterways, flumes, pipelines and equipment used for irrigation purposes.
635	*Railroad Systems.* Includes the cost of railways, including bridges, trestles, culverts, crossing signals, clearing and grading, riprap, ties, ballast, rails, insulated joints, switches and accessories.

DOE PLANT AND EQUIPMENT ASSET TYPES—Continued

Asset type code No.	Name and definition
640	*Sewerage Systems.* Includes the cost of sewerage treatment and disposal facilities, including manholes, mains and lateral lines to point of tie-in with buildings served, and any septic tanks.
645	*Steam Generation and Distribution Systems.* Includes the cost of all equipment used for the generation and distribution of steam to the point of tie-in to buildings where such steam is utilized primarily for heating and for furnishing power to rotating equipment, including emergency turbo-generators. The cost of boiler plant equipment used primarily to supply steam to steam-electric generation equipment is included in code 615.
650	*Water Supply, Pumping, Treatment and Distribution Systems.* Includes the cost of wells, pumping and distributing facilities to the point of tie-in with buildings served.
655	*Nuclear Steam and Electric Generation and Transmission Systems.* Includes the cost of nuclear reactors and appurtenant equipment involved primarily and principally in the generation of steam for use in steam-electric generating equipment, fossil-fuel superheaters, electric generation equipment, and electric transmission facilities connecting the nuclear powerplant to the transmission or distribution network. The only reactors to be identified by this code are those which have significant electric generation.
660	*SPR Crude Oil Piping System.* Includes the cost of pipelines and metering devices between the oil transporting vehicle and the oil storage site.
665	*NPR Crude Oil Extraction and Distribution System.* Includes the cost of drilling equipment, piping, pumps, and storage facilities.
710	*Heavy Mobile Equipment.* Includes the cost of heavy mobile equipment (other then motor vehicles) such as concrete mixers, power shovels, cranes, compressors, rollers, road graders, tractors, farm implements, boats, and barges. The cost of trucks is included in code 725.
715	*Hospital and Medical Equipment.* Includes the cost of hospital, clinical, and dental equipment such as hospital beds, dentist chairs, instruments, sterilizers, and other scientific equipment used by dentists and doctors.
720	*Laboratory Equipment.* Includes the cost of laboratory equipment such as microscopes, analytical balances, electroanalyzers, oscillographs, refractometers, light sources, vibrometers, and other scientific equipment usually associated with laboratories. The cost of furniture and fixtures and shop equipment are included in codes 730 and 755.
725	*Motor Vehicles and Aircraft.* Includes the cost of passenger cars, trucks, buses, jeeps, trailers, and fire trucks.
730	*Office Furniture and Equipment.* Includes the cost of office furniture and equipment such as machines, desks, drafting sets, safes, photographic equipment, copy making equipment, printing equipment and other office equipment regardless of where located. The cost of automatic data processing equipment is included in code 770.
735	*Process Equipment.* Includes the cost of equipment used specifically in product manufacturing and processing, including associated measurement and control instruments.
740	*Railroad Rolling Stock.* Includes the cost of railroad rolling stock such as locomotives and cars.
745	*Reactors and Accelerators.* Includes the cost of reactors, proton synchrotrons, electron synchrotrons, cyclotrons, linear accelerators, Van De Graaff generators, and accessory equipment, including associated measurement and control instruments.
750	*Security and Protection Equipment.* Includes the cost of equipment used for security, police, and fire protection purposes, except that all associated automotive vehicles are included in code 725, and fire alarm systems are included in code 620.

DOE PLANT AND EQUIPMENT ASSET TYPES—Continued

Asset type code No.	Name and definition
755	*Shop Equipment.* Includes the cost of shop equipment such as lathes, drilling machines, rolling mills, hoists, grinders, forges, pipe cutting machines, presses, saws, shapers, and other equipment usually associated with shops, garages and service stations. Similar equipment used in laboratories and other areas for research purposes should also be identified by this code.
760	*Reserve Construction Equipment Pool.* Includes the costs of construction and automotive equipment held for the purpose of maintaining a reserve pool for use in emergencies as part of the DOE mobilization program, or for secondary use in future construction programs.
770	*Automatic Data Processing Equipment.* Includes the cost of all equipment used in automatic data processing, such as (1) punched card and/or tape equipment, whether used alone or in conjunction with electronic computers; (2) electronic computers and all peripheral or auxiliary equipment; (3) data transmission systems employing devices communicating or transmitting data from place to place for processing in an ADP system; (4) all other equipment that is used in automatic data processing in conjunction with punched card equipment or electronic computers, and (5) the initial package of software that is required to make the system operational. Equipment such as flexowriters, IBM typewriters, equipment reading the results of experiments, etc., shall be classified as ADP equipment when used primarily in conjunction with an ADP system. Excludes the cost of equipment such as analog computers, card and/or tape file cabinets, and air-conditioning for the processing room. Also, excludes the cost of automatic data recording or electronic control systems used to furnish operating guidance for control of machine tools, equipment used in process operations, reactors, accelerators, etc.
799	*Miscellaneous Equipment.* Includes the cost of furniture and fixtures for hotels, dormitories, and apartments; laundry equipment; restaurant, cafeteria, and canteen equipment; and other miscellaneous equipment not includable in other codes.
800	*Improvements to Property of Others.* Includes the cost of improvements made by DOE to land, buildings, structures, building services, and utility systems not owned by DOE. Plants, laboratories, and similar facilities constructed by DOE on land owned by others are not to be classified in this category.
900	*Unclassified Plant and Equipment.* Includes the cost of major construction projects or operative portions thereof that have been physically completed and placed in service for which the unitization and classification of costs into plant and equipment accounts have not been completed. Allocation to production, research, community, and general facilities and to asset types 401 through 800 will require approximation in some instances, particularly at year end when full allocation is required. (Year-end allocations may be reversed in October pending formal and more precise classifications.)

945.506 Identification.

The requirements of FAR 45.506 apply to Government property having a unit cost of $1,000 or more.

945.508 Physical inventories.

The frequency of physical inventories shall be as follows:

(a) Permanently affixed plant (such as buildings, utilities, and fences)—Not less frequently than every 10 years.

(b) Capital equipment—Not less frequently than every two years. (See 945.505–14)

(c) Sensitive items—Not less frequently than every twelve months.

(d) Materials (held under inventory control)—Not less frequently than every twelve months.

(e) Precious metals—Not less frequently than every six months.

945.570 Motor vehicle and aircraft management.

(a) Normally, motor vehicles will not be furnished to fixed price or cost-reimbursable contractors. Further, Government-furnished motor vehicles may be provided to or acquired by contractors only when *all* of the criteria of FAR 45.304 are met and approved in writing by the contracting officer.

(b) Government-owned motor vehicles and aircraft shall be maintained and utilized by contractors in the most practical and economical manner consistent with DOE program requirements, safety consideration, fuel economy, and applicable laws and regulations.

(c) Contractors shall conform fully to the average fuel economy standards established by law and these regulations in the selection of Government-furnished motor vehicles.

945.570–1 Classification of motor vehicles.

Because of differences in controls or limitations on possession and use, Government vehicles are classified as follows:

(a) Passenger vehicles.

(1) Sedans and station wagons (small, subcompact, compact, mid-size, and large).

(2) Ambulances.

(3) Buses.

(b) Trucks.

(1) Light, less than 8,500 GVWR (Gross Vehicle Weight Rating).

(i) 4 x 2

(ii) 4 x 4

(2) Light, 8,500 to 12,499 GVWR.

(i) 4 x 2

(ii) 4 x 4

(3) Medium, 12,500 to 23,999 GVWR.

(4) Heavy, 24,000 GVWR or more.

(c) Special purpose vehicles.

(1) Fire trucks.

(2) Construction vehicles.

(3) Other vehicles equipped for special purposes.

945.570–2 Acquisition of motor vehicles.

(a) The GSA Interagency Motor Pool System (GSA–IMPS) is the first source of supply for providing motor vehicles to contractors; however, contracting officer approval is required for contractors to utilize this service.

(b) Prior approval of GSA must be obtained before—

(1) Fixed-price contractors can use the GSA–IMPS;

(2) DOE-owned motor vehicles can be furnished to any contractor in an area served by a GSA–IMPS; and

(3) A contractor can commercially lease a motor vehicle for more than 60 days.

(c) GSA has the responsibility for acquisition of motor vehicles for Government agencies. All requisitions (GSA Form 1781) shall be processed in accordance with 41 CFR 101–26.501.

(d) Contractors shall submit all motor vehicle requirements to the contracting officer for approval.

(e) The acquisition of sedans and station wagons is limited to small, subcompact, and compact vehicles which meet Government fuel economy standards. The acquisition of light trucks is limited to those vehicles which meet the current fuel economy standards set by Executive Orders 12003 and 12375.

(f) Cost reimbursement contractors may be authorized by the contracting officer to utilize GSA Federal Supply Schedule 751, Motor Vehicle Rental, for short term rentals not to exceed 60 days, and are required to utilize available GSA consolidated leasing programs for long term (60 continuous days or longer) commercial leasing of passenger vehicles and light trucks.

(g) The Property and Equipment Management Division, Headquarters Procurement and Assistance Management Directorate (MA–422), shall certify all requisitions prior to submittal to GSA for the following:

(1) The acquisition of sedans and station wagons.

(2) The lease (60 continuous days or longer) of any passenger automobile.

(3) The acquisition or lease (60 continuous days or longer) of light trucks less than 8,500 GVWR.

(h) Purchase requisitions for other motor vehicles may be submitted directly to GSA when approved by the contracting officer.

(i) Contractors shall thoroughly examine motor vehicles acquired under a GSA contract for defects. Any defect shall be reported promptly to GSA, and repairs shall be made under terms of the warranty.

945.570–3 Selection of type of motor vehicles.

(a) All vehicles acquired for use, whether by purchase, rental, lease, forfeiture or transfer from another

agency, shall be limited to the minimum body size, engine size, maximum fuel efficiency, and only that operational equipment (if any) necessary to fulfill programmatic needs.

(b) The least expensive unit overall should be used, taking into consideration both acquisition and operating costs for units to be purchased, and rental rates for rented or leased units.

(c) Dual purpose vehicles capable of hauling both personnel and light cargo shall be used whenever appropriate to avoid the need for two vehicles when one can serve both purposes. However, truck-type or van vehicles shall not be acquired for passenger use merely to avoid limitations on the number of passenger vehicles which may be acquired.

945.570-4 Identification of motor vehicles.

(a) Except as indicated in 945.570-4(b), DOE-owned and commercially leased (for 60 continuous days or longer) motor vehicles shall have Government license tags and the following identification, which shall be furnished and displayed as specified by the DOE contracting officer.

"For Official Use Only
U.S. Government
Department of Energy"

(b) Security vehicles may be exempted from the above identification requirements by the contracting officer. All other exemptions require approval by the Procurement Executive.

945.570-5 Utilization of motor vehicles.

(a) Government-owned vehicles are to be used for official purposes only. Contracting officers may approve home-to-work or work-to-home transportation on a one-time exceptional basis. Home-to-work or work-to-home transportation on a continuing basis is discouraged; however, if justified, such use requires approval of the Head of the Contracting Activity and a determination that the facts sufficiently justify a conclusion of "official purpose." An authorization to use a motor vehicle for transportation between a domicile and place of employment shall be limited to a period of sixty days. Requests for renewals of authorizations shall be subject to the same justification as original requests, and must also show what attempts were made during the original period to eliminate the necessity for the request. Records, including full justification, of such approvals will be kept on file.

(b) The contractor shall prescribe and issue, subject to approval by the contracting officer, such local written guidelines regarding the use of motor vehicles or aircraft for "official purposes" as may be necessary and appropriate for particular operating situations.

(c) The contractor shall establish written procedures to ensure that all motor vehicle operators are informed concerning:

(1) The statutory requirement that motor vehicles shall be used only for "official purposes";

(2) Personal responsibility for safe driving and operation of motor vehicles, and for compliance with Federal, State, and local laws and regulations, and all accident reporting requirements;

(3) The penalties for unauthorized use of motor vehicles;

(4) Procedures for reporting accidents;

(5) The prohibition against picking up strangers or hitchhikers or transporting family members;

(6) Care and control of credit cards; and

(7) Any other duties and responsibilities assigned to motor vehicle operators with regard to the use, care, operation, and maintenance of motor vehicles.

(d) Individual motor vehicle utilization cannot always be measured or evaluated strictly on the basis of miles operated or against any Department-wide mileage standard as stated in 41 CFR 109-38.5002. Other measures of use will need to be considered. Accordingly, as an aid in achieving maximum feasible utilization, local use objectives which represent practical units of measurement for vehicle utilization and for planning and evaluating future vehicle requirements should be established. Such objectives should generally be initiated by the organization involved and reviewed and adjusted as appropriate, but not less often than annually. The objectives will take into consideration past performance, future requirements, and special operating conditions and should be consistent with the justifications used to obtain vehicle authorizations. Both Department-wide and local objectives should be used in such a manner that their use does not stimulate vehicle use for the purpose of meeting the objectives. The ultimate standard against which vehicle use must be measured is that the minimum number of vehicles will be retained to satisfy program requirements.

(e) Methods and practices for achieving maximum economical utilization of motor vehicles shall include but not be limited to—

(1) The maximum use of equipment pooling arrangements, taxicabs, or other common service arrangements;

(2) The minimum, practicable assignment of equipment to individuals, groups or specific organizational components;

(3) The careful selection of equipment types to permit the maximum appropriate use of multi-purpose equipment;

(4) The rotation of equipment between high and low mileage assignments where practicable to maintain the fleet in the best overall replacement age and mileage balance and operating economy, and

(5) The maintenance of individual equipment use records, such as trip tickets or vehicle logs, showing sufficiently detailed information to evaluate appropriateness of assignment and adequacy of use being made. If one-time use is involved, such as assignments from motor pools, the individual's trip records must, as a minimum, identify the vehicle and show the name of the operator, dates, destination, time of departure and return, and mileage.

945.570-6 Maintenance of motor vehicles.

(a) Contractors shall maintain Government-owned vehicles according to a systematic written procedure and in accordance with manufacturer's specifications and the terms of the warranty and 41 CFR 101-38.10. The requirement for a written procedure may be waived by the contracting officer if the contractor has less than 15 Government-owned vehicles.

(b) Special attention shall be devoted to the warranty on each motor vehicle to ensure that maximum benefits are realized from each warranty. Defective materials and workmanship on vehicles under warranty should be corrected under the terms of the warranty to avoid maintenance and repair of such vehicles at Government expense.

945.570-7 Disposition of motor vehicles.

(a) The contractor shall dispose of DOE-owned motor vehicles as directed by the contracting officer.

(b) DOE-owned motor vehicles may be disposed of as exchange/sale items when directed by the contracting officer; however, a designated DOE official must execute the Title Transfer forms.

945.570-8 Reporting motor vehicle data.

(a) Contractors conducting motor vehicle operations shall forward annually (on or before November 1) to the contracting officer their plan for acquisition of motor vehicles for the next fiscal year for review, approval and submittal to DOE Headquarters. This plan shall conform to the fuel efficiency standards for motor vehicles for the applicable fiscal year, as established by

Executive Orders 12003 and 12375 and as implemented by GSA and current DOE directives. Additional guidance for the preparation of the plan will be issued by the contracting officer, as required.

(b) Contractors operating DOE-owned and/or commercially leased (for 60 continuous days or longer) motor vehicles shall prepare and submit the following annual year-end reports to the contracting officer:

(1) DOE Report of Motor Vehicle Data (passenger vehicles).

(2) DOE Report of Truck Data.

945.570-9 Aircraft.

(a) Purchase of aircraft requires statutory authority. Contracting officers may authorize a lease, rental, hire, or loan of an aircraft if the period is less than 30 days. If longer than 30 days, approval must be obtained from the Procurement Executive.

(b) Aircraft shall be used for official purposes only.

Subpart 945.6—Reporting, Redistribution, and Disposal of Contractor Inventory

945.601 Definitions.

"Personal property" (See 945.101).

945.603 Disposal methods.

945.603-70 Plant clearance function.

If the plant clearance function has not been formally delegated to another Federal agency, the contracting officer shall assume all responsibilities of the plant clearance officer identified in FAR Subpart 45.6.

945.603-71 Disposal of radioactively contaminated personal property.

Special procedures regarding the disposal of radioactively contaminated property may be found at 41 CFR 109-45.50.

945.607-2 Recovering precious metals.

(b) Excess precious metals shall be promptly reported to the contracting officer for review, approval and reporting to the DOE precious metals pool. This includes all precious metals in any form, including shapes, scrap or radioactively contaminated, except for silver. Only high grade nonradioactively contaminated silver should be reported to the precious metals pool. The Oak Ridge Operations Office is responsible for maintaining the DOE pool. Precious metals scrap will be reported to the DOE precious metals pool, operated by NLO, Inc., P.O. Box 39158, Cincinnati, Ohio 45239.

945.608-2 Standard screening.

(b)(1) Prior to reporting excess property to GSA, all reportable property, as identified in Federal Property Management Regulations 41 CFR 101-43.4801, shall be reported to the contracting office. The contracting office shall transmit this information via terminal processing or hard copy to DOE Headquarters for centralized screening in the DOE Reportable Excess Automated Property System (REAPS). Agency screening will begin when the item is first included in the REAPS monthly catalog and will end upon the issuance of the following monthly catalog.

(i) REAPS requires the inclusion of a five character address code which identifies the reporting contractor. The address code will be assigned by DOE Headquarters upon receipt of a completed Address Notification form for the contractor or DOE office reporting the property as excess.

(ii) Excess screening documents and Address Notification forms shall be submitted to the Chief, Property and Supply Branch, REAPS, Office of Policy, Procurement and Assistance Directorate, Headquarters, by the contracting office.

945.608-3 Agency screening.

Items shall be reported to the contracting office and should be screened informally within the contracting office's complex of contractors and with other known users of the property at other DOE locations.

945.608-4 Limited screening.

(a) Prior to reporting to GSA, all nonreportable property, excluding scrap and salvage, shall be reported to the contracting office for a 15 day informal screening within the contracting office's complex of contractors and other appropriate DOE field locations.

945.608-5 Special items screening.

Prior to reporting to GSA, that property in FAR 45.608-5 (a), (b), and (d) shall be reported and screened within DOE in accordance with 945.608-2 and 945.608-3.

(c) *Printing equipment.* All printing equipment excess to requirements shall be reported to the Office of Administrative Services, Headquarters.

945.610-4 Contractor inventory in foreign countries.

Contractor inventory located in foreign countries will be utilized and disposed of in accordance with DOE-PMR 41 CFR 109-43.4, 44.3, and 45.51.

PART 947—TRANSPORTATION

Subpart 947.1—General

Sec.
947.102 Transportation insurance.
947.104-3 Cost-reimbursement contracts.

Subpart 947.5 Ocean Transportation by U.S. Flag Vessels

947.506 Procedures.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 947.1—General

947.102 Transportation insurance.

(c)(1) If special circumstances dictate the need for the Government to buy insurance coverage, the contracting officer, after coordination with appropriate local transportation personnel shall ascertain that (i) there is no statutory prohibition, and (ii) funds for insurance are available.

947.104-3 Cost-reimbursement contracts.

(d)(1) Include in contracts a statement requiring the contractor to use carriers providing services commensurate with DOE program needs, taking full advantage of special reduced rates where available.

Subpart 947.5—Ocean Transportation by U.S. Flag Vessels

947.506 Procedures.

For contract awards involving foreign suppliers which will necessitate ocean transportation, a copy of the award document is to be furnished to the Maritime Administration at the following address: Inter-Agency Liaison, Division of National Cargo, Office of Market Development, Maritime Administration, 400 7th Street, SW., Washington, D.C. 20590

PART 949—TERMINATION OF CONTRACTS

Subpart 949.1—General Principles

Sec.
949.101 Authorities and responsibilities.
949.106 Fraud or other criminal conduct.
949.108-4 Authorization for subcontract settlements without approval or ratification.
949.108-8 Assignment of rights under subcontracts.
949.111 Review of proposed settlements.
949.112-1 Partial payments.

Subpart 949.2—Additional Principles for Fixed-Price Contracts Terminated for Convenience

949.206-1 Submission of settlement proposals.
949.206-2 Bases for settlement proposals.

Subpart 949.3—Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience

949.303-1 Submission of settlement proposal.

Subpart 949.5—Contract Termination Clauses

949.501 General.
949.505 Other termination clauses.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 949.1—General Principles

949.101 Authorities and responsibilities.

The Procurement Executive shall be notified prior to taking any action to terminate (a) contracts for the operation of Government-owned facilities, (b) any prime contract or subcontract in excess of $10 million, and (c) any contract the termination of which is likely to provoke unusual interest.

949.105 Fraud or other criminal conduct.

Any evidence of fraud or other criminal conduct in connection with the settlement of a contract termination shall be reported in accordance with 909.406.

949.108-4 Authorization for subcontract settlements without approval or ratification.

The power to authorize a contractor to conclude settlements of its terminated subcontracts, when the amount of settlement is more than $10,000, but not more than $25,000, shall be exercised by contracting officers only with the approval of the Head of the Contracting Activity.

949.108-8 Assignment of rights under subcontracts.

The contracting officer's determination under FAR 49.108-8(b) that it is in the best interest of the Government to settle and pay directly a subcontractor's termination claim is subject to the approval of the Head of the Contracting Activity.

949.111 Review of proposed settlements.

(a) Heads of Contracting Activities shall establish settlement review boards for the review of each termination settlement or determination of amount due under the termination clause of a contract or approval or ratification of a subcontract settlement when the action involves $50,000 or more.

(b) Settlement review boards may be established for actions below $50,000 when considered desirable by the Head of the Contracting Activity or when specifically requested by the contracting officer.

(c) Proposed settlement agreements or determinations in excess of contractual authority of Heads of Contracting Activities will be transmitted to the Procurement Executive for review and approval.

(d) Contracting officers shall not conclude proposed settlement or determinations until the approvals required by this subsection have been obtained.

949.112-1 Partial payments.

(d) Protection of the Government's interest in partial payments, by means other than those specified in FAR 49.112-1(d), shall be subject to approval of the Head of the Contracting Activity.

Subpart 949.2—Additional Principles for Fixed-Price Contracts Terminated for Convenience

949.206-1 Submission of settlement proposals.

(c) When the standard forms are not appropriate for a particular contract, the Head of the Contracting Activity may authorize modification thereof. However, the certificate shall be substantially as set forth in the form.

949.206-2 Bases for settlement proposals.

(c) Settlement proposals shall not be submitted on any basis other than the inventory or total cost basis without the prior approval of the Head of the Contracting Activity.

Subpart 949.3—Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience

949.303-1 Submission of settlement proposal.

When necessary, the Head of the Contracting Activity may authorize modification of the form prescribed in FAR 49.602-1. However, the certificate shall be substantially as set forth in the form.

Subpart 949.5—Contract Termination Clauses

949.501 General.

The standard clauses set forth in FAR Subpart 49.5 are applicable as prescribed subject to the following:

(a) Cost principles referenced in the various termination articles shall be in accordance with Part 931.

949.505 Other termination clauses.

(f) The clause at 952.249-70 is suggested for use in cost-plus-fixed-fee Architect-Engineer contracts.

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 950.1—General

Sec.
950.104 Reports.

Subpart 950.70—Indemnification of DOE Contractors

950.7000 Scope of subpart.
950.7001 Applicability.
950.7002 Definitions.
950.7003 Statutory indemnity.
950.7004 Authority to negotiate statutory indemnity agreements.
950.7005 Substantial nuclear incident.
950.7006 Statutory indemnity contract article.
950.7007 Contractual assurance.
950.7008 "Representation" for use in subcontracts and purchase orders of prime contractor holding statuory indemnity agreement.
950.7009 Fees.
950.7010 Financial protection requirements.
950.7011 General contract authority indemnity.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 950.1—General

950.104 Reports.

The information required by FAR 50.104(b) for all actions taken under the extraordinary emergency authority shall be submitted to the Director, Contract Business Clearance Division, Headquarters no later than 30 days after the date of completion of processing the action. In the event no actions were taken under Pub. L. 85-804 during the preceding calendar year, a negative report should be submitted to the Director, Contract Business Clearance Division, Headquarters no later than January 20 of each year.

Subpart 950.70—Indemnification of DOE Contractors

950.7000 Scope of subpart.

This subpart describes the established policies concerning (a) indemnification of DOE contractors against public liability for a nuclear incident arising out of or in connection with the contract activity, and (b) indemnification of DOE contractors against liability for nonnuclear risks arising out of or in connection with the contract activity.

950.7001 Applicability.

(a) With respect to indemnification against public liability for a nuclear incident, the pertinent policies and procedures set forth in this subpart shall

be applicable in entering into indemnity agreements with:

(1) DOE contractors engaged in the operation of prodcution or utilization facilities; and

(2) DOE contractors whose work entails the risk of public liability for a substantial nuclear incident.

(b) With respect to indemnification against liability for nonnuclear risks, the pertinent policies and procedures set forth in this subpart shall be applicable in entering into indemnity agreements with any DOE contractors.

950.7002 Definitions.

"DOE contractor" means any DOE prime contractor, including any agency of the Federal Government with which DOE has entered into an interagency agreement.

"Construction contractor" means a DOE contractor who is constructing an installation for DOE which, when completed, will be a production or utilization facility.

"Nuclear incident" means:

(1) Any occurrence within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or by-product material; and

(2) Any such occurrence outside the United States, if such occurrence involves a facility or device owned by, and used by or under contract with, the United States.

"Person indemnified" means:

(1) With respect to a nuclear incident occurring within the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability; or

(2) With respect to any nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of activities under any contract with DOE or any project to which indemnification under the provisions of section 170d of the Atomic Energy Act 1954, as amended, has been extended, or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.

(3) With respect to a nonnuclear incident the person with whom an indemnity agreement is executed.

"Nuclear reactor" means an apparatus, other than an atomic weapon, designed or used to sustain nuclear fission in a self-supporting chain reaction.

"Production facility" means:

(1) Any nuclear reactor designed or used primarily for the formation of plutonium or uranium 233; or

(2) Any facility designed or used for the separation of the isotopes of uranium or the isotopes of plutonium, except laboratory scale facilities designed or used for experimental or analytical purposes only; or

(3) Any facility designed or used for the processing of irradiated materials containing special nuclear material, except laboratory scale facilities designed or used for experimental or analytical purposes only.

"Public liability" means any legal liability (including liability for loss of, or damage to, or loss or use of property which is located at the site of and used in connection with the contract activity arising out of or resulting from a nuclear incident) except: (1) Claims under State or Federal workmen's compensation acts of employees of persons indemnified, who are employed at the site of and in connection with the activity where the nuclear incident occurs, and (2) claims arising out of an act of war. "Public liability" also includes damage to property of persons indemnified, provided that such property is covered under the terms of any financial protection that may be required, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs.

"Utilization facility" means any nuclear reactor other than one designed or used primarily for the formation of plutonium or U 233.

950.7003 Statutory indemnity.

Section 170d of the Atomic Energy Act of 1954, as amended, authorized DOE "to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident." Contractors identified in 950.7001(a) are eligible for such statutory indemnity.

950.7004 Authority to negotiate statutory indemnity agreements.

(a) Heads of Contracting Activities are authorized to negotiate statutory indemnity agreements with contractors identified in 950.7001(a)(1).

(b) Pursuant to 950.7005, Heads of Contracting Activities may enter into a statutory indemnity agreement whenever it has been determined that a contractor in 950.7001(a)(2) is engaged in activities involving the risk of public liability for a substantial nuclear incident. Such a determination may be based upon either the risk of liability for the occurrence of a substantial nuclear incident in the course of performance of the contract work, or the risk of liability for a substantial nuclear incident caused by a product delivered to or for the DOE under the contract where such product is expected to be used in connection with a facility or device not covered by a statutory indemnity agreement. If, pursuant to 950.7005, a Head of a Contracting Activity determines that the maximum conceivable damage which could result from a nuclear incident arising in the course of a contractor's activities falls between $1 million and $60 million, they shall submit the proposed indemnification with a recommendation, and all supporting data, to the Head of the Agency, or designee, for appropriate action.

950.7005 Substantial nuclear incident.

(a) With respect to 950.7001(a)(2), and pursuant to the provisions of 950.7004, a Head of a Contracting Activity may be required to determine whether a contractor's activities involve the risk of public liability for a substantial nuclear incident and thus make the contractor eligible to obtain a statutory indemnity agreement from the DOE. The determination by a Head of a Contracting Activity shall be based on the criteria in paragraph (b) below.

(b) If, after a study of the maximum conceivable damage which can result from an incident arising out of or in connection with the contractor's activities, the Head of a Contracting Activity concludes that the maximum conceivable damage per incident to property and persons is $60 million or more, the contractor may be found to be under a risk of public liability for a substantial nuclear incident and the Head of the Contracting Activity is authorized to execute a statutory indemnity agreement under such a contract. If such a study of the maximum conceivable damage indicates a figure of $1 million or less, the contractor should not be considered to have a risk of public liability for a substantial nuclear incident, and therefore, shall not be made a party to a statutory indemnity agreement. If the study indicates that the maximum conceivable damage falls between $1 million and $60 million, the Head of a Contracting Activity will submit the proposed indemnification of such contractor to the Head of the Agency or designee with a

recommendation and all supporting data.

(c) The Head of the Agency or designee may take one of the following actions:

(1) Determine that the contractor is under risk of public liability for a substantial nuclear incident and that the contractor should be extended a statutory indemity agreement; or

(2) Determine that the contractor should not be extended a statutory indemnity.

(d) When statutory indemnity is not extended, the Head of the Agency or designee may authorize the Head of a Contracting Activity to authorize the contractor to purchase nuclear liability insurance or to offer the contractor a general authority indemnity agreement.

950.7006 Statutory indemnity contract article.

The contract clause contained in 952.250–70 shall be incorporated in all contracts in which a statutory indemnity agreement is to be included upon a determination that the contractor is under risk of public liability for the occurrence of a substantial nuclear incident in the course of performance of the contract work. The contract clause contained in 952.250–71 shall be incorporated in all contracts in which a statutory indemnity agreement is to be included upon a determination that the contractor is under risk of public liability only for a substantial nuclear incident caused by a product delivered to or for the DOE, under the contract where such product is expected to be used in connection with a facility or device not covered by a statutory indemnity agreement.

950.7007 Contractual assurance.

Heads of Contracting Activities are authorized to include assurances that the DOE will enter into a statutory indemnity agreement with the contractor who will operate a production or utilization facility on its completion. Such assurances may be authorized in contracts for:

(a) Architect-engineer services in connection with the construction of a production or utilization facility;

(b) Component parts for a production or utilization facility;

(c) Construction at a production or utilization facility, where the work does not entail the risk of a substantial nuclear incidences; or

(d) Equipment or services which would be a part of, or contribute to, or be used in connection with the constuction or operation of a production or utilization facility.

Assurances will be given only to those contractors and suppliers which might be held liable in connection with a substantial nuclear incident occurring after completion of the facility. The clause to be used to provide contractual assurance is found in 952.250–72.

950.7008 "Representation" for use in subcontracts and purchase orders of prime contractor holding statutory indemnity agreement.

(a) A DOE contractor with whom a statutory indemnity agreement has been executed in the form contained in 952.250–70 may include in any of its subcontracts and purchase orders a representation that the work under the prime contract is covered by a statutory indemnity agreement with the DOE, and that this indemnity covers all persons who may be liable for public liability for any nuclear incident arising out of or in connection with the activity under the prime contract. A suggested form of "representation" that may be provided to the contractor follows:

The contractor represents that there is included in its prime contract with DOE an indemnity agreement, entered into by DOE under the authority of Section 170 of the Atomic Energy Act of 1954, as amended by Public Law 85–256 (the "Price-Anderson Act"), a copy of which may be obtained from the contractor (or is attached hereto); that, under said agreement, DOE has agreed to indemnify the contractor and other persons indemnified, including the subcontractor, against claims for public liability (as defined in said Act) arising out of or in connection with the contractual activity; that the indemnity applies to covered nuclear incidents which (1) take place at a "contract location" (which term, as defined in the indemnity agreement, does not include the location of the subcontractor's plant and facilities); or (2) arise out of or in the course of transportation of source, special nuclear or nuclear by-product material to or from a "contract location;" or (3) involve items produced or delivered under the prime contract. The obligation of DOE to indemnify is subject to the conditions stated in the indemnity agreement.

(b) The DOE shall not approve the inclusion, in the subcontracts and purchase orders of an indemnified prime contractor, of any provision whereby the prime contractor indemnifies the subcontractor or supplier against public liability for a nuclear incident because any such liability will be covered by the statutory indemnity agreement of the prime contractor.

950.7009 Fees.

No fee will be charged a DOE contractor for a statutory indemnity agreement.

950.7010 Financial protection requirements.

(a) DOE contractors with whom statutory indemnity agreements under the authority of section 170d of the Atomic Energy Act of 1954, as amended, are executed will not normally be required or permitted to furnish financial protection by purchase of insurance to cover public liability for nuclear incidents, except: (1) That DOE contractors now covered by insurance against such liability, with the approval of the DOE, may continue to carry such insurance; and (2) with the approval of the Office of Industrial Relations, contractors engaged in the operation of DOE facilities may be required or permitted to furnish financial protection in an amount not to exceed $1 million.

(b) If nuclear liability insurance is carried by a contractor who is a Nuclear Regulatory Commission (NRC) licensee, the DOE will pay an equitable portion of the insurance premium under its contract (or would include such an item in the calculation of a fixed price), but normally a statutory indemnity agreement would not be granted under the contract.

950.7011 General contract authority indemnity.

(a) The DOE also has general contract authority to enter into indemnity agreements with its contactors. Under such authority a certain measure of protection is extended to the DOE contractor against risk of liability, but the assumption of liability by DOE will be expressly subject to the availability of appropriated funds. Prior to enactment of section 170 of the Atomic Energy Act 1954, as amended, this authority was exercised in a number of Atomic Energy Commission contracts and this type of indemnification remains in some DOE contracts.

(b) It is the policy of the DOE, subsequent to the enactment of section 170, to restrict indemnity agreements with DOE contractors, with respect to protection against public liability for a nuclear incident, to the statutory indemnity provided under section 170. However, it is recognized that circumstances may exist under which a DOE contractor may be exposed to a risk of public liability for a nuclear occurrence which would not be covered by the statutory indemnity.

(c) While it is normally DOE policy to require its contractors to obtain insurance coverage against public liability for nonnuclear risks, there may be circumstances in which a contractual indemnity may be warranted to protect

a DOE contractor against liability for uninsured nonnuclear risks.

(d) If circumstances as mentioned in paragraph (b) or (c) of this section do arise, it shall be the responsibilty of the Heads of Contracting Activities to submit to the Head of the Agency or designee for review and decision, all pertinent information concerning the need for, or desirability of, providing a general authority indemnity to a DOE contractor.

(e) Where the indemnified risk is nonnuclear, the amount of general authority indemnity extended to a fixed-price contractor should normally have a maximum obligation equivalent to the amount of insurance that the contractor usually carries to cover such risks in its other commerical operations or, if the risk involved is dissimilar to those normally encountered by the contractor, the amount that it otherwise would have reasonably procured to insure this contract risk.

(f) In the event that a DOE contractor has been extended both a statutory indemnity and a general authority indemnity, the general authority indemnity will not apply to the extent that the statutory indemnity applies.

(g) The provisons of this subsection do not restrict or affect the policy of DOE to pay its cost-reimbursement type contractors for the allowable cost of losses and expenses incurred in the performance of the contact work, within the maximum amount of the contract obligation.

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Subpart 951.1—Contractor Use of Government Supply Sources

Sec.

951.101 Policy.
951.102 Authorization to use Government supply sources.
951.103 Ordering from Government supply sources.

Subpart 951.2—Contractor Use of Interagency Motor Pool Vehicles

951.201 Policy.

Authority: Section 644 of the Department of Energy Organization Act, Pub L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 951.1—Contractor Use of Government Supply Sources

951.101 Policy.

(a) It is DOE policy that contractors performing under cost-reimbursement contracts should meet their requirements from Government sources of supply when these sources are available to them, and if it is economically advantageous or otherwise in the best interest of the Government.

951.102 Authorization to use Government supply sources.

(a) The Head of the Contracting Activity may authorize contractors performing under cost-reimbursement contracts and subcontractors performing under cost-reimbursement contracts, where all higher tier contracts and subcontracts are cost-type, to use Government supply sources in accordance with the requirements and procedures in FAR Part 51, DOE PMR 41 CFR 109-26, and any necessary approval from the agency involved. This authority may be redelegated to the level of contracting officer. Direct acquisition by the DOE, rather than by a contractor under cost-reimbursement contracts, shall be required where deemed necessary by the Head of the Contracting Activity in order to carry-out special requirements of appropriation acts or other applicable laws relating to particular items.

(c)(1) The DOE central point of contact for the assignment, correction, or deletion of FEDSTRIP activity address codes is the Property and Equipment Management Division, Office of Policy, Procurement and Assistance Directorate, Headquarters.

(e)(4)(iii) Materials, supplies, and equipment acquired from Government sources of supply under the procedures described herein must be used exclusively in connection with Government work, except as otherwise authorized by the Head of the Contracting Activity.

951.103 Ordering from Government supply sources.

(b) The Procurement Executive shall be informed of instances in which GSA sources of supply are not used because of the quality of the items available from GSA or when a Federal Supply Schedule contractor refuses to honor an order.

Subpart 951.2—Contractor Use of Interagency Motor Pool Vehicles

951.201 Policy.

(a) If it is in the Government's interest, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services, including: (1) Fuel and lubricants, (2) vehicle inspection, maintenance, and repair, (3) vehicle storage, and (4) commercially rented vehicles for short-term use under Federal Supply Schedule Industrial Group 751.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 952.0—General

Sec.

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952.216 Clauses related to types of contracts.
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952.216-15 Predetermined indirect cost rates.
952.217 Clauses related to special contracting methods.
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952.219-9 Small business and small disadvantaged business subcontracting plan.
952.223 Clauses related to environment, conservation, and occupational safety.
952.223-71 Safety and health (Government-owned or leased facility).
952.223-72 Radiation protection and nuclear criticality.
952.223-73 [Reserved]
952.223-74 Nuclear facility safety applicability.
952.223-75 Preservation of individual occupational radiation exposure records.
952.223-76 [Reserved]
952.224 Clause relating to protection of privacy and freedom of information.
952.224-70 Paperwork Reduction Act.
952.227 Provisions and clauses related to patents, technical data, and copyrights.
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952.227-71 Patent rights—small business firms or nonprofit organizations.
952.227-72 [Reserved]
952.227-73 Additional technical data requirements.
952.227-74 [Reserved]
952.227-75 Rights in technical data—long form.
952.227-76 Rights in data—special works.
952.227-77 Rights in technical data—short form.
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952.231-70 Date of incurrence of cost.
952.232 Clauses related to contract financing.
952.232-1 Payments.
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952.232-7 Payments under time-and-materials and labor-hour contracts.
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952.232-70 Payment due dates, invoice requirements and penalties.
952.232-71 Payment due dates and invoice requirements.
952.232-72 Fixed-price purchase order payment provisions.
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952.235-70 Key personnel.
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952.245 Clauses related to Government property.
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952.249 Clauses related to terminaton.
952.249-70 Termination clause for cost-reimbursement architect-engineer contract.
952.250 Clauses related to indemnification of contractors.
952.250-70 Nuclear hazards indemnity.
952.250-71 Nuclear hazards indemnity—product liability.
952.250-72 Indemnity assurance to architect-engineer or supplier prior to operation of a production or utilization facility.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

Subpart 952.0—General

952.000 Scope of part.

This part implements FAR Part 52 which sets forth contract clauses for use in connection with the acquisition of personal property and nonpersonal services (including construction), and supplements, as well as modifies, FAR Part 52 by prescribing certain modifications to be made to FAR clauses when used in DOE contracts and specifying certain DOE contract clauses to be used in addition to or in place of such FAR clauses.

952.001 General policy.

It is DOE policy to use the prescribed FAR and DOE contract clauses wherever practicable. Uniformity in the use of contract clauses helps to ensure impartial treatment of all contractors, expedites negotiation and contract review, and facilitates contract administration.

Supbart 952.1—Instructions for Using Provisions and Clauses

952.102-1 Incorporation by reference.

(a) Preprinted standard contract clauses (clause sets) and solicitation representations and certifications provisions will be maintained by the Office of Policy for use by DOE contracting activities during the initial Federal Acquisition Regulations System familiarization period. The clause sets contain the FAR and DEAR clauses required for specific contract types. Contracting Activities will be responsible for including necessary additions and alterations in individual contracts to ascertain that the clauses are current and appropriate to the circumstances of the individual contract. The concept of preprinted clause sets is designed to reduce the review burden on both the Contracting Activities and Department's contractors. Use of the preprinted clause sets reduces the review burden for an individual contract award since once the clause sets have been reviewed and understood for a particular contract type, individual contact reviews can be limited to examination of the alterations and additions used in conjunction with the preprinted clause sets. This practice eliminates the confusion and expense of the Department's contractors which would be caused were each contracting activity to pursue its own approach regarding contract clauses.

(b) At a later date, when the FAR and DEAR clause requirements are familiar to both DOE personnel and the Department's contractors, the Department will consider incorporation by reference. Incorporation by reference is the practice of reducing the bulk of contract documents by listing only the title, regulatory citation, and date of a particular clause rather than its full text. The full text of the clause can be obtained by referring to a copy of the Code of Federal Regulations, Title 48, Chapter 1 for FAR clauses or Title 48, Chapter 9 for DEAR clauses.

Subpart 952.2—Text of Provisions and Clauses

952.202 Clauses related to definitions.

952.202-1 Definitions.

(a) The contracting officer shall substitute the following for paragraph (a) of the clause at FAR 52.202-1.

(a) The term "Head of Agency" means the Secretary, Deputy Secretary or Under Secretary of the Department of Energy.

(b) The following shall be added as paragraph (d) except it will be designated paragraph (c) if Alternate I of the clause is used.

(d) The term "DOE" means the Department of Energy.

952.204 Clauses related to administrative matters.

952.204-2 Security requirements.

The following clause shall be included in contracts entered into under section 31 (research assistance) or 41 (ownership and operation of production facilities) of the Atomic Energy Act of 1954, as amended, and in other contracts and subcontracts, which involve or are likely to involve classified information.

Security (April 1984)

(a) Contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information, and protecting against sabotage, espionage, loss and theft, the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the Contractor of any classified matter is required after the completion or termination of the contract and such retention is approved by the contracting officer, the contractor will complete a certificate of possession to be furnished to DOE specifying the classified matter to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract will continue to be applicable to the matter retained. Special nuclear material will not be retained after the completion or termination of the contract.

(b) *Regulations.* The contractor agrees to conform to all security regulations and requirements of DOE.

(c) *Definition of classified information.* The term "classified information' means Restricted Data, Formerly Restricted Data, or National Security Information.

(d) *Definition of restricted data.* The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(e) *Definition of formerly restricted data.* The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.

(f) *Definition of National Security Information.* The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.

(g) *Definition of Special Nuclear Material (SNM).* SNM means: (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(h) *Security clearance of personnel.* The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.

(i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2100 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356).

(j) *Subcontracts and purchase orders.* Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

952.204-70 Classification.

The following clause shall be included in all contracts which involve classified information:

Classification (Apr. 1984)

In the performance of the work under this contract, the contractor shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all documents, material, and equipment originated or generated under the contract in accordance with classification regulations and guidance furnished to the contractor by the DOE. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, or equipment shall include a provision to the effect that in the performance of such subcontract or purchase order, the subcontractor or supplier shall ensure that an Authorized Original Classifier or Derivative Classifier shall assign classifications to all such documents, materials, and equipment in accordance with classification regulations and guidance furnished to such subcontractor or supplier by the contractor.

952.204-71 Sensitive Foreign nations controls.

In accordance with 904.404(d)(3), the contracting officer shall include the following clause:

Sensitive Foreign Nations Controls (Apr. 1984)

(a) In connection with any activities in the performance of this contract, the contractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements attached to this contract, relating to those countries, which may from time to time, be identified to the contractor by written notice as sensitive foreign nations. The contractor shall have the right to terminate its performance under this contract upon at least 60 days' prior written notice to the contracting officer if the contractor determines that it is unable, without substantially interfering with its polices or without adversely effecting its performance to continue performance of the work under this contract as a result of such notification. If the contractor elects to terminate performance, the provisions of this contract regarding termination for the convenience of the Government shall apply.

(b) The provisions of this clause shall be included in any subcontracts.

952.204-72 Disclosure of information.

This clause may be used in place of the clauses entitled "Security," 952.204-2, and "Classification," 952.204-70, in contracts with educational institutions for research involving nuclear technology which could but is not expected to produce classified information or restricted data:

Disclosure of Information (Apr. 1984)

(a) It is mutually expected that the activities under this contract will not involve classified information. It is understood, however, that if in the opinion of either party, this expectation changes prior to the expiration or terminating of all activities under this contract, said party shall notify the other party accordingly in writing without delay. In any event, the contractor shall classify, safeguard, and otherwise act with respect to all classified information in accordance with applicable law and the requirements of DOE, and shall promptly inform DOE in writing if and when classified information becomes involved, or in the mutual judgment of the parties it appears likely that classified information or material may become involved. The contractor shall have the right to terminate performance of the work under this contract and in such event the provisions of this contract respecting termination for the convenience of the Government shall apply.

(b) The contractor shall not permit any individual to have access to classified information except in accordance with the Atomic Energy Act 1954, as amended, Executive Order 12356, and DOE's regulations or requirements.

(c) The term "Restricted Data" as used in this article means all data concerning the design, manufacture, or utilization of atomic weapons, the production of special nuclear material or the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended.

952.204-73 Foreign ownership, control, or influence over contractor (Representation).

As prescribed in 904.7005(a), insert the following provision in all solicitations

for contracts subject to the provisions of 904.70.

Foreign Ownership, Control, or Influence Over Contractor (Apr. 1984)

(a) For purposes of this provision, a foreign interest is defined as any of the following:

(1) A foreign government or foreign government agency;

(2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;

(3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or

(4) Any person who is not a U.S. citizen.

(b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or significant quantity of special nuclear material as defined in 10 CFR Part 710 may result.

(c) If the offeror/bidder has not previously submitted responses to the following questions to DOE as part of the facility security clearance process, then it shall answer the following questions. Answer each question in either the "yes" or "no" column. If the answer is yes, furnish in detail on a separate sheet of paper all the information requested in parentheses. Copies of information which responds to these questions and which was submitted to other Government agencies may be submitted as responses to these questions if the earlier responses are accurate, complete, and current.

Question	Yes	No
1. Does a foreign interest own or have beneficial ownership in 5% of more of your organization's voting securities?		
(Identify the percentage of any class of shares or other securities issued which are owned by foreign interests, listed by country. If you answer "Yes" and have received from an investor a copy of Schedule 13D and/or Schedule 13G filed by the investors with the Securities and Exchange Commission, you are to attach a copy of Schedule 13D and/or Schedule 13G.)		
2. Does your organization own 10% or more of any foreign interest?		
(Furnish the name of the foreign interest, address by country, and the percentage owned. Include name and title of officials of your organization who occupy positions with the foreign interest, if any.)		
3. Do any foreign interests have management positions such as directors, officers, or executive personnel in your organization?		
(Furnish full information concerning the identity of the foreign interest and the position he/she holds in your organization.)		
4. Does any foreign interest control or influence, or is any foreign interest in a position to control or influence the election, appointment, or tenure of any of your directors, officers, or executive personnel?		
(Identify the foreign interest(s) and furnish full details concerning the control or influence.)		
5. Does your organization have any contracts, binding agreements, understandings, or arrangements with a foreign interest(s) that cumulatively represent 10% or more of your organization's gross income?		
(Furnish the name of the foreign interest, country, nature of agreement or involvement. Agreements include licensing, sales, patent exchange, trade secrets, agency, cartel, partnership, joint venture, proxy, etc. Give overall percentage by country as related to total income and type of services or products in general terms. If you answer "Yes" and have received from the foreign interest a copy of Schedule 13D and/or Schedule 13G filed by the foreign interest with the Securities and Exchange Commission, you are to attach a copy of Schedule 13D and/or Schedule 13G.)		
6. Is your organization indebted to foreign interests?		
(Furnish the amount of indebtedness as related to the current assets of the organization and identify the creditor. Include specifics as to the type of indebtedness and what, if any, collateral, including voting stock, has been furnished or pledged. If any debentures are convertible, specifics about the indebtedness, collateral, if any, and what will be received after conversion are to be furnished.)		
7. Does your organization derive any income from Communist countries included in Country Groups P, Q, W, Y, and Z in Supplement No. 1 in 15 CFR Part 370?		
(Discuss in detail any income derived from Communist countries, including percentage from each such country as related to total income, and the type of services or products involved.)		
8. Is 5% or more of any class of your organization's securities held in "nominee shares," in "street names", or in some other method which does not disclose beneficial owner of equitable title?		
(Identify each foreign institutional investor holding 5 percent or more of the voting stock. Identification should include the name and address of the investor and percentage of stock held. State whether the investor has attempted to, or has, exerted any management control or influence over the appointment of directors, officers, or other key management personnel, and whether such investors have attempted to influence the policies of the corporation. If you have received from the investor a copy of the Schedule 13D and/or Schedule 13G filed by the investor with the Securities and Exchange Commission, you are to attach a copy of Schedule 13D and/or Schedule 13G.)		
9. Does your organization have interlocking directors with foreign interests?		
(Include identifying data on all such directors. If they have a security clearance, so state. Also indicate the name and address of all other corporations with which they serve in any capacity.)		
10. Are there any citizens of foreign countries employed by, or who may visit, your offices or facilities in a capacity which may permit them to have access to classified information or a significant quantity of special nuclear material?		
(Provide complete information by identify the individuals and the country of which they are citizens.)		
11. Does your organization have foreign involvement not otherwise covered in your answers to the above questions?		
(Describe the foreign involvement in detail, including why the involvement would not be reportable in the preceding questions.)		

Certification

( ) The offeror/bidder certifies that the entries made above are accurate, complete, and current to the best of my knowledge and belief and are made in good faith.

( ) The offeror/bidder certifies that the information requested above has previously been submitted to DOE as required for a facility security clearance and that the information is accurate, complete and current.

Date Certified _____
By _____
Offeror/Bidder _____
Title _____
Address _____
Signature and Date _____

(d) Prior to award of a contract under this solicitation, the DOE must determine that award of the contract to the offeror/bidder will not pose an undue risk to the common defense and security as a result of its access to classified information or a significant quantity of special nuclear material in the performance of the contract. In making the determination, the contracting officer may consider a voting trust or other arrangements proposed by the offeror/bidder to mitigate or avoid FOCI. The contracting officer may require the offeror/bidder to submit such additional information as deemed pertinent to this determination.

(e) The offeror/bidder shall require any subcontractors having access to classified information or a significant quantity of special nuclear material to submit the certifications in (c) above directly to the DOE contracting officer.

(f) Information submitted by the offeror/bidder in response to the questions in (c) above is to be used solely for purposes of evaluating foreign ownership, control, or influence and shall be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.

952.204-74 Foreign ownership, control, or influence over contractor.

As prescribed in 904.7005(b), insert the following contract clause in new contracts and contract modifications to existing contracts subject to 904.70.

Foreign Ownership, Control, or Influence Over Contractor (Apr 1984)

(a) For purposes of this clause, a foreign interest is defined as any of the following:

(1) A foreign government or foreign government agency;

(2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;

(3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation or person; or

(4) Any person who is not a U.S. citizen.

(b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control, or influence over a

contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information, special nuclear material as defined in 10 CFR Part 710, may result.

(c) For purposes of this clause, subcontractor means any subcontractor at any tier and the term "contracting officer" shall mean DOE contracting officer. When this clause is included in a subcontract, the term "contractor" shall mean subcontractor and the term "contract" shall mean subcontract.

(d) The contractor shall immediately provide the contracting officer written notice of any changes in the extent and nature of FOCI over the contractor which would affect the answers to the questions presented in DEAR 952.204–73. Further, notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the contracting officer.

(e) In those cases where a contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the contracting officer shall consider proposals made by the contractor to avoid or mitigate foreign influences.

(f) If the contracting officer at any time determines that the contractor is, or is potentially, subject to FOCI, the contractor shall comply with such instructions as the contracting officer shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.

(g) The contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (g) in all subcontracts under this contract that will require access to classified information or a significant quantity of special nuclear material. Additionally, the contractor shall require such subcontractors to submit a completed certification required in DEAR 952.204–73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the contracting officer.

(h) Information submitted by the contractor or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.

(i) The requirements of this clause are in addition to the requirement that a contractor obtain and retain the security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.

(j) The contracting officer may terminate this contract for default either if the contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the contracting officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the contracting officer's judgment, the contractor creates an FOCI situation in order to avoid performance or a termination for default. The contracting officer may terminate this contract for convenience if the contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

952.208 Clauses related to required sources of supply.

952.208–7 Tagging of leased vehicles.

Insert the following clause when leasing commercial vehicles for periods in excess of 60 days.

Tagging of Leased Vehicles (Apr 1984)

(a) DOE intends to use U.S. Government license tags.

(b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the contractor shall furnish the DOE the documentation required by the State to acquire such tags.

952.208–70 Printing.

Title 44, United States Code, "Public Printing and Documents," establishes policies regarding public printing and documents within the Federal Government. It provides that public printing will be accomplished by the Government Printing Office, its regional offices or authorized departmental printing plants. It provides a limited exemption for contractors. Requirements exceeding that limitation are to be accomplished utilizing Government resources. To facilitate this, contracting officers shall furnish the necessary forms and instructions to contractors, as called for by DOE Order 1340.1, and include the following clause in all contracts:

Printing (Apr 1984)

The contractor shall not engage in, nor subcontract for, any printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single unit, or no more than 25,000 units in the aggregate of multiple units, will not be deemed to be printing. A unit is defined as one sheet, size 8½ by 11 inches one side only, one color. A requirement is defined as a single publication ducument.

(1) The term "printing" includes the following processes: composition, plate making, presswork, binding, microform publishing, or the end items produced by such processes.

(2) If fulfillment of the contract will necessitate reproduction in excess of the limits set forth above, the contractor shall notify the contracting officer in writing and obtain the contracting officer's approval prior to acquiring on DOE's behalf production, acquisition, and dissemination of printed matter. Such printing must be obtained from the Government Printing Office (GPO), a contract source designated by GPO or a Joint Committee on Printing authorized federal printing plant.

(3) Printing services not obtained in compliance with this guidance will result in the cost of such printing being disallowed.

(4) The Contractor will include in each of his subcontracts hereunder a provision substantially the same as this clause including this paragraph (4).

952.209 Clauses related to contractor's qualifications.

952.209–70 Organizational conflicts of interest—disclosure or representation.

Use the following solicitation provision under the circumstances described at 909.570.

Organizational Conflicts of Interest Disclosure or Representation (Apr 1984)

It is Department of Energy policy to avoid situations which place an offeror in a position where its judgment may be biased because of any past, present, or currently planned interest, financial or otherwise, the offeror may have which relates to the work to be performed pursuant to this solicitation or where the offeror's performance of such work may provide it with an unfair competitive advantage. (As used herein, "offeror" means the proposer or any of its affiliates or proposed consultants or subcontractors of any tier.) Therefore:

(a) The offeror shall provide a statement which describes in a concise manner all relevant facts concerning any past, present or currently planned interest (financial, contractural, organizational, or otherwise) relating to the work to be performed hereunder and bearing on whether the offeror has a possible organizational conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict.

(b) In the absence of any relevant interests referred to above, the offeror shall submit a statement certifying that to its best knowledge and belief no such facts exist relevant to possible organizational conflicts of interest. Proposed consultants and subcontractors are responsible for submitting information and may submit it directly to the contracting officer.

(c) The Department will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to the Department, will be used to determine whether an award to the offeror may create an organizational conflict of interest is found to exist, the Department may (1) impose appropriate conditions which avoid such conflict, (2) disqualify the offeror, or (3) determine that it is otherwise in the best interest of the United States to contract with the offeror by including appropriate conditions mitigating such conflict in the contract awarded.

(d) The refusal to provide the disclosure or representation and any additional information as required shall result in disqualification of the offeror for award. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for award, or if such nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated for default. The offeror may also be disqualified from subsequent related Department contracts, and be subject to such other remedial action as may be permitted or provided by law or in the resulting contract. The attention of the offeror in complying with this provision is directed to 18 U.S.C. 1001.

(e) Depending on the nature of the contract activities, the offeror may, because of possible organizational conflicts of interest, propose to exclude specific kinds of work from the statement, unless the solicitation specifically prohibits such exclusion. Any such proposed exclusion by an offeror shall be considered by the Department in the evaluation of proposals, and if the Department considers the proposed excluded work to be an essential or integral part of the required work, the proposal may be rejected as unacceptable.

(f) No award shall be made until the disclosure or representation has been evaluated by the Government. Failure to provide the disclosure or representation will be deemed to be a minor informality (FAR 14.405) and the offeror or contractor shall be required to promptly correct the omission.

952.209-71 Organizational conflicts of interest—general.

Insert the following contract clause under the circumstances described at 909.570.

Organizational Conflicts of Interest—General (Apr 1984)

(a) The contractor warrants that, to the best of his knowledge and belief, and except as otherwise disclosed, there are no relevant facts which could give rise to organizational conflicts of interest, as defined in 909.570 or that the contractor has disclosed all relevant information.

(b) The contractor agrees that, if after award, an organizational conflict of interest with respect to this contract is discovered, an immediate and full disclosure in writing shall be made to the Contracting Officer which shall include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The Department may, however, terminate the contract for its convenience if it deems such termination to be in the best interest of the Government.

(c) In the event that the contractor was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict to the contracting officer, the Government may terminate the contract for default.

(d) The provisions of this clause shall be included in all subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the Government's rights.

(e) Prior to a contract modification when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the contract are changed, the Department will request and the contractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.

952.209-72 Organizational conflicts of interest—special clause.

Insert the following contract clause under the circumstance described at 909.570.

Organizational Conflicts of Interest—Special Clause (Apr 1984)

(a) *Purpose.* The primary purpose of this clause is to aid in ensuring that the contractor (1) is not biased because of its past, present, or currently planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) *Scope.* The restrictions described herein shall apply to performance or participation by the contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "contractor") in the activities covered by this clause as a prime contractor, subcontractor, cosponsor, joint venturer, consultant, or in any similar capacity.

(1) *Technical consulting and management support services.*

(i) The contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the Contractor shall not perform any technical consulting or management support services work under this contract on any of its products or services or the products or services of another firm if the contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the contractor from competing for follow-on contracts for technical consulting and management support services.

(ii) If the contractor under this contract prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

(iii) Nothing in this paragraph shall preclude the contractor from offering or selling its standard commercial items to the Government.

(2) *Access to and use of information.*

(i) If the contractor, in the performance of this contract, obtains access to information, such as Department plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released or otherwise made available to the public, the contractor agrees that without prior written approval of the contracting officer it shall not: (a) use such information for any private purpose unless the information has been released or otherwise made available to the public; (b) compete for work for the Department based on such information for a period of six (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first; (c) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and (d) release such information unless such information has previously been released or otherwise made available to the public by the Department.

(ii) In addition, the contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.

(iii) The contractor shall have, subject to patent, data, and security provisions of this contract, the right to use technical data it first produces under this requirements of this contract have been met.

(c) *Disclosure after award.* (1) The contractor agrees that if after award it discovers an organizational conflict of interest with respect to this contract, an immediate and full disclosure shall be made in writing to the contracting officer which shall include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts.

The Department may, however, terminate the contract for convenience if it deems such termination to be in the best interest of the Government.

(2) In the event that the contractor was aware of an organizational conflict of interest prior to the award of this contract and did not disclose the conflict to the contracting officer,

the Department may terminate the contract for default.

(d) *Subcontracts.* (1) The contractor shall include this clause, including this paragraph, in subcontracts of any tier which involve performance or work of the type specified in (b)(1) above or access to information of the type covered in (b)(2) above. The terms "contract", "contractor" and "contracting officer" shall be appropriately modified to preserve the Government's rights.

(2) If a subcontract is to be issued for evaluation services or activities, technical consulting or management support services work as defined at 909.570, the contractor shall obtain for the Department a disclosure statement or representation, in accordance with DOE regulations in effect at the time, from each intended subcontractor or consultant. The contractor shall not enter into any subcontract nor engage any consultant unless the contracting officer shall have first notified the contractor that there is little or no likelihood that an organizational conflict of interest exists or that despite the existence of a conflict of interest the award is in the best interest of the Government.

(e) *Remedies.* For breach of any of the above restrictions or for nondisclosure or misrepresentation of any relevant facts required to be disclosed concerning this contract, the Government may terminate the contract for default, disqualify the contractor for subsequent related contractual efforts and pursue such other remedies as may be permitted by law or this contract.

(f) *Waiver.* Requests for waiver under this clause shall be directed in writing to the contracting officer and shall include a full description of the requested waive and the reasons in support thereof. If it is determined to be in the best interests of the Government, the contracting officer shall grant such a waiver in writing.

(g) *Modifications.* Prior to a contract modification when the statement of work is modified to add new work, the period of performance is significantly increased, or the parties to the contract are changed, the Department will request and the contractor is required to submit either an organizational conflict of interest disclosure or representation or an update of the previously submitted disclosure or representation.

952.212 Clauses related to contract delivery or performance.

952.212-70 Rated or authorized controlled material orders for energy programs.

As prescribed in 912.304(a), insert the following provisions in solicitations that will result in the award of a contract eligible for placement of rated orders or authorized controlled material orders for DOE atomic energy programs:

Rated or Authorized Controlled Material Orders (Atomic Energy) (Apr 1984)

Contracts or purchase orders awarded as a result of this solicitation shall be assigned a/——/ DO-Rating; /——/ DX-rating; or /——/ DMS allotment number in accordance with Defense Priorities System Regulation 1 and Defense Materials System Regulation 1. (*Contracting officer check appropriate box or boxes*).

Alternate I: As prescribed in 912.304(d), insert the following provision in solicitations that may result in a contract eligible for placement or rated orders or authorized controlled material orders for authorized energy programs:

Rated or Authorized Controlled Material Orders (Domestic Energy Supplies) (Apr 1984)

Contracts or purchase orders awarded as a result of this solicitation may be eligible for priorities and allocations support in accordance with 10 CFR 216 and Section 101(c) of the Defense Production Act of 1950, as amended.

952.212-71 Priorities, allocations, and allotments for energy programs.

As prescribed in 912.304(b), insert the following clause in orders and contracts that are placed in support of authorized DOE atomic energy programs:

Priorities, Allocations, and Allotments (Atomic Energy) (Apr 1984)

The Contractor shall follow the provisions of Defense Material System Regulation 1 or Defense Priorities System Regulation 1 (see 15 CFR Parts 330–354) and all other applicable regulations and orders of the DMS/DPS in obtaining controlled materials and other products and materials needed to fill this contract.

Alternate I: Certain contracts may be eligible for priorities and allocations support as described in 912.302 if their purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis. Guidance is provided by DOE Publication PR–0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. If the purpose of the contract is to maximize domestic energy resources, include the following clause:

Priorities, Allocations, and Allotments—(Domestic Energy Supplies) (Apr 1984)

(a) This contract may be eligible for priorities and allocations support, as provided for by Section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94–163, 42 U.S.C. 6201 *et seq.*) if its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis with the decision being jointly made by the Departments of Commerce and Energy.

(b) DOE Regulations regarding Material Allocation and Priority Performance under Contracts or Orders to Maximize Domestic Energy Supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

(c) Additional guidance is provided by DOE Publication PR–0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. Copies may be obtained by written request to: Department of Energy, Technical Information Center (TIC), Post Office Box 62, Oak Ridge, Tennessee 37830.

952.212-72 [Reserved]

952.212-73 Cost and schedule control systems criteria.

Certain DOE projects are of such significance and magnitude that responsible management calls for enhanced visibility of contractor cost and schedule performance as well as more formalized data to document their progress and to aid in decisions regarding their continuation. Any contract with a total estimated cost in excess of $50 million shall require full implementation of the DOE Cost and Schedule Control Systems Criteria. Selected projects between $2 million and $50 million may benefit from modified implementation of such a control system. In those instances where the DOE Cost and Schedule Control System Criteria are to be utilized, the contracting officer shall provide for this by including the "Cost and Schedule Control Systems Criteria for Contract Performance Measurement—Implementation Guide," Office of the Controller Publication CR–0015, in the solicitation and shall include the following clause in the contract:

Cost and Schedule Control Systems (Apr 1984)

(a) In the performance of this contract, the contractor shall establish, maintain, and use cost and schedule control systems (management control systems) meeting the criteria set forth in the contract and as described in detail in DOE/CR–0015, "Cost and Schedule Control Systems Criteria for Contract Performance Measurement—Implementation Guide," annexed hereto and hereinafter referred to as the "Guide." Prior to acceptance by the contracting officer and within —— calendar days after contract award, the contractor shall be prepared to demonstrate systems operation to the Government to verify that the proposed systems meet the designated criteria. As a part of the review procedures, the contractor shall furnish the Government a description of the cost and schedule control systems applicable to this contract in such form and detail as indicated by the Guide, or as required by the contracting officer. The contractor agrees to provide access to all pertinent records, data, and plans as requested by representatives of the Government for the conduct of systems review.

(b) The description of the management control systems accepted by the contracting officer, identified by title and date, shall be referenced in the contract. Such systems shall be maintained and used by the contractor in the performance of this contract.

(c) Contractor changes to the reviewed systems shall be submitted for review and approval as required by the contracting officer. When contracting officer approval is required, the contracting officer shall advise the contractor of the acceptability of such changes within sixty (60) days after receipt

from the contractor. When systems existing at the time of contract award do not comply with the designated criteria, adjustments necessary to assure compliance will be made at no change in contract price or fee.

(d) The contractor agrees to provide access to all pertinent records and data requested by the contracting officer, or duly authorized representative, for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to this contract. Deviations from the systems description identified during contract performance shall be corrected as directed by the contracting officer.

(e) The contractor shall require that each selected subcontractor, as mutually agreed to between the Government and the contractor and as set forth in the schedule of this contract, meet the criteria for cost and schedule control systems as set forth in subcontract and shall incorporate in all such subcontracts adequate provisions for review and surveillance of subcontractor's systems to be carried out by the prime contractor, or by the Government when requested by either the prime or subcontractor.

952.214 Clauses related to formal advertising.

952.214-27 Price reduction for defective cost or pricing data—modifications—formal advertising.

As prescribed in 914.201-7(b)(1), when contracting by formal advertising insert the clause at FAR 52.214-27, Price Reduction For Defective Cost or Pricing Data—Modifications—Formal Advertising, in solicitations and contracts unless this requirement is waived pursuant to FAR 14.201-7(b)(2).

952.215 Clauses related to contracting by negotiation.

952.215-18 Order of precedence.

Use this clause in place of the clause provided at FAR 52.215-18:

Order of Precedence (Apr 1984)

In the event of an inconsistency between provisions of this contract, the inconsistency shall be resolved by giving precedence as follows: (a) schedule; (b) contract clauses; or (c) other provisions of the contract, whether incorporated by reference or otherwise.

952.215-22 Price reduction for defective cost or pricing data.

As prescribed in 915.804-8(a), when contracting by negotiation, include the clause at FAR 52.215-22, Price Reduction for Defective Cost or Pricing Data, in contracts when certified cost or pricing data was obtained.

952.215-23 Price reduction for defective cost or pricing data—modifications.

As prescribed in 915.804-8(b), insert the clause at FAR 52.215-23, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when the clause at FAR 52.215-22 has not been included, unless the contractor will otherwise not be required to submit certified cost or pricing data pursuant to 915.804-2(a).

952.215-70 Required subcontractor representations and certifications.

In accordance with 914.201-5(b) or 915.406-5(b), include the following notice at Section L of the uniform contract format in solicitations which contemplate award of contracts expected to include any of the clauses entitled Small Business and Small Disadvantaged Business Concern Subcontracting Plan, FAR 52.219-9, Organizational Conflicts of Interest-General, 952.209-71 of this chapter, Organizational Conflicts of Interest-Special Clause, 952.209-72 of this chapter, Equal Opportunity, FAR 52.222-26, Clean Air and Water, FAR 52.223-1, Buy America Act-Supplies, FAR 52.225-3, or Buy America Act-Construction Materials, FAR 52.225-5.

Notice—Subcontractor Representations and Certifications

Bidders or offerors are required to obtain the representations and certifications listed below from subcontractors prior to the award of any subcontract for furnishing supplies or services under the prime contract:

(1) Small Business Concern Representation, FAR 52.219-1, Small Disadvantaged Business Concern Representation, FAR 52.219-2, if the prime contract contains the Small Business and Small Disadvantaged Business Subcontracting Plan clause from FAR 52.219-9;

(2) Organizational Conflicts of Interest Disclosure and Representation, DEAR 952.209-70, if the prime contract contains either of the clauses entitled Organizational Conflicts of Interest-General, DEAR 952.209-71, or Organizational Conflicts of Interest-Special Clause, DEAR 952.209-72;

(3) Certification of Nonsegregated Facilities, FAR 52.222-21, if the prime contract includes the clause entitled Equal Opportunity, FAR 52.222-26;

(4) Previous Contracts and Compliance Reports, FAR 52.222-22, if the prime contract contains the clause entitled Equal Opportunity, FAR 52.222-26;

(5) Clean Air and Water Certification, FAR 52.223-1, if the prime contract contains the clause entitled Clean Air and Water, FAR 52.223-2.

(6) Buy America Act Certification, FAR 52.225-1, if the prime contract contains either of the clauses entitled Buy America Act-Supplies, FAR 52.225-3, Buy America Act-Construction Materials, FAR 52.225-5.

952.216 Clauses related to types of contracts.

952.216-7 Allowable cost and payment.

Alternate I: If the contract is with a nonprofit organization, other than an educational institution; or a State or local government, modify the clause at FAR 52.216-7 Allowable Cost and Payment by deleting from paragraph (a) the phrase "Subpart 31.2" and substituting for it "Subpart 31.7."

Alternate II: When contracting with a commercial organization modify paragraph (a) of the clause at FAR 52.216-7 by adding the phrase "as supplemented by Subpart 931.2 of the Department of Energy Acquisition Regulations (DEAR)," after the acronym "(FAR)".

952.216-15 Predetermined indirect cost rates.

Alternate: As prescribed in 916.307(j), modify paragraph (c) of the clause at FAR 52.216-15, Predetermined Indirect Cost Rates, by deleting the words "Subpart 31.3" and substituting for them "Supbart 31.6" and insert the clause in solicitations and contracts when a cost-reimbursement research and development contract with a State or local government is contemplated and predetermined indirect cost rates are to be used.

952.217-70 Acquisition of real property.

Insert the following clause when required by 917.7403(c).

Acquisition of Real Property (Apr 1984)

(a) Notwithstanding any other provision of the contract, the prior approval of the contracting officer shall be obtained when, in performance of this contract, the contractor acquires or proposes to acquire use of real property by:

(1) Purchase, on the Government's behalf or in the contractor's own name, with title eventually vesting in the Government.

(2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.

(3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.

(b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the contracting officer.

(c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

952.219 Clauses related to small business.

952.219-9 Small business and small disadvantaged business subcontracting plan.

Alternate: When the clause at FAR 52.219-9 is used, modify it to substitute the following alternate paragraph (d)(10).

(d)(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form (SF) 294 only, (DOE contractors need not submit SF 295) on a quarterly basis as of

the last day of March, June, September and December, and upon contract completion, in accordance with the instructions on the form except the report shall be submitted quarterly rather than semiannually and additionally shall indicate at the remarks block the number and dollar amount of awards made to labor surplus area concerns to the extent such reporting is required by the terms of their contract, and (iv) ensure that its subcontractors agree to submit SF 294 in accordance with the instructions at (iii) above.

952.223 Clauses related to environment, conservation, and occupational safety.

952.223-71 Safety and health (Government-owned or leased facility).

The clause set forth at 970.5204-2 shall be included in all contracts and subcontracts for, and be made applicable to, work to be performed at a government-owned or leased facility where DOE has elected to assert its statutory authority to establish and enforce occupational safety and health standards applicable to the work conditions of contractor and subcontractor employees, and to the protection of the public health and safety.

952.223-72 Radiation protection and nuclear criticality.

The clause set forth herein 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).

Radiation Protection and Nuclear Criticality (Apr. 1984)

The contractor shall take all reasonable precautions in the performance of work under this contract to protect the safety and health of employees and of members of the public against the hazards of ionizing radiation and radioactive materials and shall comply with all applicable radiation protection and nuclear criticality safety standards and requirements (including reporting requirements) of DOE. The contractor shall submit a management program and implementation plan to the contracting officer for review and approval within 30 days after the effective date of this contract or modification. In the event that the contractor fails to comply with said standards and requirements of DOE, the contracting officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work. Thereafter, a start order for resumption of the work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

952.223-73 [Reserved]

952.223-74 Nuclear facility safety applicability.

The clause set forth in 970.5204-26 shall be included in all contracts and subcontracts for, and be made applicable to, work to be performed at or involving the construction, startup, operation, and decommissioning of DOE-owned nuclear facilities deemed to be exempt from nuclear regulatory licensing requirements. Any deviation in substance affecting the meaning, intent, or basic principles of this clause must be referred to the Procurement Executive for approval. Minor changes in wording which may become necessary in negotiations may be approved by the contracting officer after consultation with the General Counsel.

952.223-75 Preservation of individual occupational radiation exposure records.

This clause shall be included in all contracts containing the DOE standard clause entitled "Safety and Health" at 952.223-71 or "Radiation and Nuclear Criticality" at 952.223-72 or Nuclear Safety at 952.223-74.

Preservation of Individual Occupational Radiation Exposure Records (Apr 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the contractor until disposal is authorized by DOE or at the option of the contractor delivered to DOE upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

952.223-76 [Reserved]

952.224-70 Paperwork Reduction Act.

Insert the following clause if it is anticipated that information collection from 10 or more persons will be necessary under the contract.

Paperwork Reduction Act (Apr 1984)

(a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public interest, the Federal Reports Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

(b) The contractor shall request the required OMB clearance from the contracting officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the contracting officer. The contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the contracting officer.

952.227 Provisions and clauses related to patents, technical data and copyrights.

952.227-70 [Reserved]

952.227-71 Patent rights—small business firms or nonprofit organizations.

The following clause shall be used in contracts for research, development or demonstration work with small businesses or domestic nonprofit organizations as directed in 927.300(b).

Patent Rights—Small Business Firms or Nonprofit Organizations (March 1982)

(a) *Definitions.*

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code (U.S.C.).

(2) "Subject Invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at Section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement, contained in 13 CFR 121.3-8, and in subcontracting, contained in 13 CFR 121.3-12, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a))

or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) "Patent Counsel" means the Department of Energy (DOE) patent counsel assisting the DOE contracting activity.

(b) *Allocation of principal rights.* The contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title and filing of patent applications by contractor.*

(1) The contractor will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to contractor personnel responsible for the administration of patent matters. The disclosure to the Patent Counsel shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete technical detail to convey a clear understanding, to the extent known at the time of the disclosure of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Patent Counsel, the contractor will promptly notify the Patent Counsel of the acceptance of any manuscript describing the invention or of any on sale or public use planned by the contractor.

(2) The contractor will elect in writing whether or not to retain title to any such invention by notifying the Patent Counsel within twelve months of disclosure to the contractor; provided that in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title terminates sixty days prior to the end of the statutory period.

(3) The contractor will file its initial patent application on an elected invention within two years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The contractor will file patent applications in additional countries within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extention of the time for disclosure to the Patent Counsel, election, and filing, may, at the discretion of the Patent Counsel be granted.

(d) *Conditions* when the Government may obtain title.

(1) The contractor will convey the DOE, upon written request, title to any subject invention:

(i) If the contractor fails to disclose or elect the subject invention within the times specified in (c) above, or elects not to retain title.

(ii) In those contries in which the contractor fails to file patent applications within the times specified in (c) above; provided, however, that if the contractor has filed a patent application in a country after the times specified in (c) above but prior to its receipt of the written request of the Patent Counsel, the contractor shall continue to retain title in that country; or

(iii) In any country in which the contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to contractor.*

(1) The contractor will retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the contractor fails to disclose the subject invention within the times specified in (c) above. The contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a part and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with 10 CFR Part 781 and 41 CFR 101–4. This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with 10 CFR Part 781, any decision concerning the revocation or modification of its license.

(f) *Contractor action to protect Government's interest.*

(1) The contractor agrees to execute or to have executed and promptly deliver to the Patent Counsel all instruments necessary to:

(i) Establish or confirm the rights the Governement has throughout the world in those subject inventions for which the contractor retains title, and

(ii) Convey title to DOE when requested under (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under this contract in order that the contractor can comply with the disclosure provisions of (c) above and to execute all papers necessary to file patent applications on subject inventions. The disclosure format should require, as a minimum, the information requested by (c)(1) above. The contractor shall instruct such employees through the employee agreements or suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.

(3) The contractor will notify the Patent Counsel of any decision not to continue prosecution of a patent application, pay maintenace fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before the expiration of the response period required by the relevant patent office.

(4) The contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the Department of Energy. The Government has certain rights in this invention."

(5) The contractor agrees to:

(i) Provide a report prior to the close-out of the contract listing all subject inventions;

(ii) Provide notification of all subcontracts under this contract for experimental, developmental, demonstration, or research work, the identity of the patent rights clause therein, and copy of each subcontract upon request;

(iii) Provide promptly a copy of the patent application, filing date, serial number, patent number and issue date for any subject invention in any country in which the contractor has applied for a patent.

(g) *Subcontracts.*

(1) The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or a domestic nonprofit organization. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subcontract,

obtain rights in the subcontractor's subject inventions.

(2) The contractor will include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause of 41 CFR 9-9.107-5(a) or 9-9.107-6 as appropriate, modified to identify the parties.

(3) In the case of a subcontract at any tier, DOE, the subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(h) *Reporting on utilization of subject inventions.* The contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as DOE may reasonably specify. The contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. To the extent data or information supplied under this section is considered by the contractor, its licensee or assignee to be priviledged and confidential and is so marked, DOE agrees that, to the extent permitted by 35 U.S.C. 202(c)(5), it will not disclose such information to persons outside the Government.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The contractor agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in OMB Circular A-124 to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.*

If the contractor is a non profit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the contractor);

(2) The contractor may not grant exclusive licenses under United States patents or patent applcations in subject inventions to persons other than small business firms for a period in excess of the earlier of:

(i) Five years from first commercial sale or use of the invention; or

(ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, DOE approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will be deemed to end the exclusive period to different subsequent products covered by the invention;

(3) The contractor will share royalties collected on a subject invention with the inventor; and

(4) The balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education.

(l) *Communications.* The DOE central point of contact for communications or matters relating to this clause is the Patent Counsel.

952.227-72 [Reserved]

952.227-73 Additional technical data requirements.

The following clause shall be used in contracts for research, development, or demonstration work and in other contracts as directed in 927.402-3(b).

Additional Technical Data Requirements (Apr. 1984)

(a) In addition to the technical data specified elsewhere in this contract to be delivered, the contracting officer may at any time during the contract performance or within one year after final payment call for the contractor to deliver any technical data first produced or specifically used in the performance of this contract, except technical data pertaining to items of standard commercial design.

(b) The provisions of the Rights in Technical Data clause included in this contract are applicable to all technical data called for under this Additional Technical Data Requirements clause. Accordingly, nothing contained in this clause shall require the contractor to actually deliver any technical data, the delivery of which is excused by paragraph (e) of the Rights in Technical Data clause.

(c) When technical data are to be delivered under this clause, the contractor will be compensated for appropriate costs for converting such data into the prescribed form for reproduction, and for delivery.

952.227-74 [Reserved]

952.227-75 Rights in technical data—long form.

As directed by 927.402-3(e), the following clause shall be used in all contracts having as a purpose the conduct of research, development, or demonstration, or in contracts for supplies, or in any other contract where technical data are specified to be delivered in the contract, or where the contract contains the Additional Technical Data Requirements clause at 952.227-73.

Rights in Technical Data—Long Form (Apr. 1984)

(a) *Definitions.*

(1) "Technical data" means recorded information regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or demonstration, or engineering work, or be usable or used to define a design or process, or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists,

specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein do not include financial reports, cost analyses, and other information incidental to contract administration.

(2) "Proprietary data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(i) Are not generally known or available from other sources without obligation concerning their confidentiality;

(ii) Have not been made available by the owner to others without obligation concerning its confidentiality; and

(iii) Are not already available to the Government without obligation concerning the confidentiality.

(3) "Contract data" means technical data first produced in the performance of the contract in technical data which are specified to be delivered under the contract; technical data that may be called for under the Additional Technical Data Requirements clause of the contract, if any, or technical data actually delivered in connection with the contract.

(4) "Unlimited rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) *Allocation of rights.*

(1) The Government shall have:

(i) Unlimited rights in contract data except as otherwise provided below with respect to proprietary data;

(ii) The right to remove, cancel, correct or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder, if in response to a written inquiry by DOE concerning the propriety of the markings, the contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case, DOE will notify the contractor of the action taken;

(iii) No rights under this contract in any technical data which are not contract data.

(2) The contractor shall have:

(i) The right to withhold proprietary data in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this contract data it first produces in the performance of this contract, provided the data requirements of this contract have been met as of the date of the private use of such data. The contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the Contracting Officer.

(3) Nothing contained in this Rights of Technical Data clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(c) *Copyrighted material.*

(1) The contractor shall not, without prior written authorization of the Patent Counsel, establish a claim to statutory copyright in any contract data first produced in the performance of the contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf a royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to publish, distribute, translate, duplicate exhibit and perform any such data copyrighted by the contractor.

(2) The contractor agrees not to include in the technical data delivered under the contract any material copyrighted by the contractor and not to knowingly include any material copyrighted by others, without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) above. If such royalty-free license is unavailable and the contractor nevertheless determines that such copyrighted material must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the contractor shall obtain the written authorization of the Contracting Officer to include such copyrighted material in the technical data prior to its delivery.

(d) *Subcontracting.* It is the responsibility of the contractor to obtain from its subcontractors technical data and rights therein, on behalf of the Government, necessary to fulfill the contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the contractor shall:

(1) Promptly submit written notice to the Contracting Officer setting forth reasons for the subcontractor refusal and other pertinent information which may expedite disposition of the matter; and

(2) Not proceed with the subcontract without the written authorization of the Contracting Officer.

(e) *Withholding of proprietary data.* Notwithstanding the inclusion of the Additional Technical Data Requirements clause in this contract or any provision of this contract specifying the delivery of technical data, the contractor may withhold proprietary data from delivery, provided that the contractor furnishes in lieu of any such proprietary data so withheld technical data disclosing the source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements ("Form, Fit and Function" data, e.g., specification control drawing, catalog sheets, envelope drawings, etc.), or a general description of such proprietary data where "Form, Fit and Function" data are not applicable. The Government shall acquire no rights to any proprietary data so withheld except that such data shall be subject to the "inspection rights" provisions of paragraph (f), and, if included, the "Limited rights in proprietary data" provisions of paragraph (g) and the "Contractor licensing" provisions of paragraph (h).

(f) *Inspection rights.* Except as may be otherwise specified in this contract for specific items of proprietary data which are not subject to this paragraph, the Contracting Officer's representatives, at all reasonable times up to three years after final payment under this contract, may inspect at the contractor's facility any proprietary data withheld under paragraph (e) and not furnish under paragraph (g), if this contract includes such paragraph, for the purposes of verifying that such data properly fell within the withholding provision of paragraph (e), or for evaluating work performance.

Alternate I: Additional paragraph (g), limited rights. The following paragraph (d) shall be added to the basic clause at 952.227-75 above when it is determined in accordance with 927.402-3(e)(2) that delivery of proprietary data is necessary with limited rights in the Government.

(g) *Limited rights in proprietary data.* Except as may be otherwise specified in this contract as technical data which are not subject to this paragraph, the contractor shall, upon written request from the Contracting Officer at any time prior to three years after final payment under this contract, promptly deliver to the Government any "proprietary data" withheld pursuant to paragraph (e) of the Rights in Technical Data clause of this contract. The following legend and no other is authorized to be affixed on any "proprietary data" delivered pursuant to this provision, provided the "proprietary data" meets the conditions for initial withholding under paragraph (e) of the Rights in Technical Data clause. The Government will thereafter treat the "proprietary data" in accordance with such legend.

Limited Rights Legend (Apr 1984)

This technical data contains "proprietary data," furnished under "Contract No. ————" with the U.S. Department of Energy (and Purchase Order No. ———— if applicable) which may be duplicated and used by the Government with the express limitations that the "proprietary data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the contractor, except that further disclosure or use may be made solely for the following purposes:

(a) This "proprietary data" may be disclosed for evaluation purposes under the restriction that the "proprietary data" be retained in confidence and not further disclosed;

(b) This "proprietary data" may be disclosed to other contractors participating in the Government's program of which this contract is part, for information or use in connection with the work performed under their contracts and under the restriction that the "proprietary data" be retained in confidence and not be further disclosed; or

(c) This "proprietary data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "proprietary data" be

retained in confidence and not be further disclosed.

This legend shall be marked on any reproduction of this data in whole or in part.

Alternate II: Additional paragraph (h), contractor licensing. The following paragraph (b) shall be added to the basic clause at 952.227-75 above when it is determined in accordance with 927.402-3(e)(3) that the Government should obtain on behalf of third parties and itself limited license rights in and to proprietary contract data.

(h) *Contract licensing.* Except as may be otherwise specified in this contract as technical data not subject to this paragraph, the contractor agrees that upon written application by DOE, it will grant to the Government and responsible third parties, for purpose of practicing a subject of this contract, a nonexclusive license in any contract data which are proprietary data, on terms and conditions reasonable under the circumstances including appropriate provisions for confidentiality; provided, however, the contractor shall not be obligated to license any such data if the contractor demonstrates to the statisfaction of the Head of the Agency or designee that:

(1) Such data are not essential to the manufacture or practice of hardware designed or fabricated, or processes developed, under this contract;

(2) Such data, in the form of results obtained by their use, have a commercially competitive alternative available or readily introducible from one or more other sources;

(3) Such data, in the form of results obtained by their use, are being supplied by the contractor or its licensees in sufficient quantity and at reasonable prices to satisfy market needs, or the contractor or its licensees have taken effective steps or within a reasonable time are expected to take effective steps to so supply such data in the form of results obtained by their use; or

(4) Such data, in the form of results obtained by their use, can be furnished by another firm skilled in the art of manufacturing items or performing processes of the same general type and character necessary to achieve the contract results.

952.227-76 Rights in data—special works.

The following clause shall be included in contracts having as a principal purpose or task the production of copyrightable works as discussed in 927.402-3(f).

Rights in Data—Special Works (Apr. 1984)

(a) The term "Data" as used herein means recorded information regardless of form or characteristic, such as writings, sound recordings, pictorial reproductions, drawings, or other graphic representations, and works of similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term includes data such as management studies and data produced under support services contracts but does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All data first produced or composed in the course of or under this contract shall be the sole property of the Government. Except with the prior written permission of the contracting officer, the contractor agrees not to assert any rights at common law or in equity or establish any claim to statutory copyright in such data. The contractor shall not publish or reproduce such data in whole or in part or in any manner of form, or authorize others so to do, without the written consent of the Contracting Officer or until such time as the Government may have released such data to the public.

(c) The contractor hereby grants to or will obtain for the Government a royalty-free, nonexclusive and irrevocable license throughout the world (1) to publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data which are not first produced or composed in the performance of this contract but which are incorporated in the work furnished under this contract; and (2) to authorize others so to do.

(d) The contractor shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under this contract; or (2) based upon any libelous, defamatory, or other unlawful matter contained in such data.

(e) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

952.227-77 Rights in technical data clause—short form.

As discussed in 927.402-3(g), the following clause may be used in contracts for basic research with educational institutions and in contracts with consultants and in other contracts of a similar nature. The clause shall not be used in any contract where proprietary information of the contractor may be utilized in performance of work under the contract.

Rights in Technical Data—Short Form (Apr. 1984)

(a) *Definitions.* The definitions of terms set forth in DEAR 927.401 apply to the extent these terms are used herein.

(b) *Allocation of rights.*

(1) The Government shall have:

(i) Unlimited rights in technical data first produced or specifically used in the performance of this contract;

(ii) The right of the contracting officer or his representative to inspect at all reasonable times up to three years after final payment under this contract all technical data first produced or specifically used in the contract (for which inspection the contractor or its subcontractor shall afford proper facilities to DOE); and

(iii) The right to have any technical data first produced or specifically used in the performance of this contract delivered to the Government as the contracting officer may from time to time direct during the progress of the work, or in any event as the contracting officer shall direct upon completion or termination of this contract.

(2) The contractor shall have:

The right to use for its private purposes, subject to patent, security or other provisions of this contract, technical data it first produces in the performance of this contract provided the data requirements of this contract have been met as of the date of the private use of such data. The contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the contracting officer.

(c) *Copyrighted material.*

(1) The contractor agrees to, and does hereby grant to the Government, and to its officers, agents, servants and employees acting within the scope of their duties:

(i) A royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use, and dispose of and to authorize others to do so, all copyrightable material first produced or composed in the performance of this contract by the contractor, its employees or any individual or concern specifically employed or assigned to originate and prepare such material; and

(ii) A license as aforesaid under any and all copyrighted or copyrightable works not first produced or composed by the contractor in the performance of this contract but which are incorporated in the material furnished under the contract, provided that such license shall be only to the extent the contractor now has, or prior to completion or final settlement of the contract may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(2) The contractor agrees that it will not knowingly include any material copyrighted by others in any written or copyrightable material furnished or delivered under this contract without a license as provided for in paragraph (c)(1)(ii) hereof, or without the consent of the copyright owner, unless it obtains specific written approval of the contracting officer for the inclusion of such copyrighted material.

952.227-78 Rights in technical data—facility

As discussed in 970.2702 the following clause is to be used in contracts for the operation of Government-owned facilities (GOCO's).

Rights in Technical Data—Facility (Apr 1984)

(a) *Definitions.*

(1) "Technical data" means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental, or

demonstration, or engineering work or be usable or used to define a design or process or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, text in specifications or related performance or design type documents, or computer software (including computer programs, computer software data bases and computer software documentation). Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical data as used herein does not include financial reports, cost analyses, and other information incidental to contract administration.

(2) "Proprietary data" means technical data which embody trade secrets developed at private expense, such as design procedures or techniques, chemical composition of materials, or manufacturing methods, processes, or treatments, including minor modifications thereof, provided that such data:

(i) Are not generally known or available from other sources without obligation concerning their confidentiality;

(ii) Have not been made available by the owner to others without obligation concerning their confidentiality; and

(iii) Are not already available to the Government without obligation concerning their confidentiality.

(3) "Unlimited rights" means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to permit others to do so.

(b) *Allocation of rights.*

(1) The Government shall have:

(i) Ownership in all technical data first produced in the performance of the contract;

(ii) The right to inspect technical data first produced or specifically used in the performance of the contract at all reasonable times (for which inspection the proper facilities shall be afforded DOE by the contractor and its subcontractors);

(iii) The right to have all technical data first produced or specifically used in the performance of the contract delivered to the Government or otherwise disposed of by the contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this contract, provided that nothing contained in this paragraph shall require the contractor to actually deliver any technical data, the delivery of which is excused by this Rights in Technical Data clause;

(iv) Unlimited rights in technical data specifically used in the performance of this contract, except technical data pertaining to items of standard commercial design; the contractor agrees to leave a copy of such technical data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer; provided, that if such data are proprietary, the rights of the Government in such data shall be governed solely by the provisions of optional paragraph (e) hereof—"Limited Rights in Proprietary Data;"

(v) The right to remove, cancel, correct, or ignore any marking not authorized by the terms of this contract on any technical data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the contractor of the action taken.

(2) The contractor shall have:

(i) The right to withhold its proprietary data in accordance with the provisions of this clause; and

(ii) The right to use for its private purposes, subject to patent, security or other provisions of this contract, technical data it first produces in the performance of this contract, provided the data requirement of this contract have been met as of the date of the private use of such data. The contractor agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the contractor shall treat such data in accordance with any restrictive legend contained thereon, unless use is specifically authorized by prior written approval of the contracting officer.

(3) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

(c) *Copyrighted material.*

(1) The contractor shall not, without prior written authorization of the Patent Council establish a claim to statutory copyright in any technical data first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a royalty-free, nonexclusive, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the contractor.

(2) The contractor agrees not to include in the technical data delivered under the contract any material copyrighted by the contractor and not to knowlingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) above. If the contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data to be delivered, rather than merely incorporated therein by reference, the contractor shall obtain the written authorization of the contracting officer to include such material in the technical data prior to its delivery.

(d) *Subcontracting.*

(1) Unless otherwise directed by the contracting officer, the contractor agrees to use in subcontracts having as a purpose the conduct of research, development, and demonstration work or in subcontracts for supplies, the contract clause provisions in 48 CFR 952.227-75 in accordance with the policy and procedures of 48 CFR 927.402-1, 927.402-2 and 927.402-3.

(2) It is the responsibility of the contractor to obtain from its subcontractors technical data and rights therein, on behalf of the Government, necessary to fulfill the contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the contractor shall:

(i) Promptly submit written notice to the contracting officer setting forth reasons for the subcontractor's refusal and other pertinent information which may expedite disposition of the matter; and

(ii) Not proceed with the subcontract without the written authorization of the contracting officer.

952.227-79 Limited rights in proprietary data.

As discussed in 970.2702(c) the following paragraph may be used as a supplement to the clause at 952.227-78 where it is determined that delivery of proprietarty data is necessary with limited rights in the Government.

(e) Except as may be otherwise specified in this contract as technical data which are not subject to this paragraph, the contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive paid-up license and right to use by or for the Government, any proprietary data of the contractor specifically used in the performance of this contract; provided, however, that to the extent that any proprietary data when furnished or delivered is specifically indentified by the contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government, except as provided in the "Limited Rights Legend" set forth below. All such proprietary data shall be marked with the following "Limited Rights Legend":

Limits Rights Legend (Apr 1984)

This Technical data contains "proprietary data," furnished under contract No. ——— with the U.S. Department of Energy (and purchase order No. ——— if applicable) which may be duplicated and used by the Government with the express limitations that the "proprietary data" may not be disclosed outside of the Government or be used for purposes of manufacture without prior permission of the following purposes:

(a) This "proprietary data" may be disclosed for evaluation purposes under the restriction that the "proprietary data" be retained in confidence and not be further disclosed;

(b) This "proprietary data" may be disclosed to other contractors participating in the Government's program of which this contract is a part for information for use in connection with the work performed under their contracts and under the restriction that the "proprietary data" be retained in confidence and not be further disclosed; or

(c) This "proprietary data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "proprietary data" be retained in confidence and not be further disclosed.

This legend shall be marked on any reproduction of this data in whole or in part.

952.227-80 Technical data certification.

In soliciations which may involve the acquisition of technical data, obtain the following certification and include the legend at FAR 52.215-12 and, where appropriate, the provision at 952.227-83.

Technical Data Certification (Apr 1984)

(a) The offeror certifies that it has not delivered or is not obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in its offer, except as set forth below:

( ) none

( ) Contract No. (and Subcontract No., if applicable)

Agency name and place of delivery ———

(b) The work to be performed and the known requirements for technical data as set forth in the solicitation have been reviewed. To the best of my knowledge:

/ / There will be no technical data withheld from delivery as being proprietary data.

/ / The technical data listed on page —— of the proposal will likely be used in conjunction with the performance of work under the contract and is represented as being proprietary data to be protected from unauthorized use and disclosure and therefore to be withheld from delivery in a report not having a restrictive legend.

952.227-81 Royalty Payments Certification

If the nature of the acquisition suggests that royalty payments may be involved, include the following certification in the solicitation.

Royalty Payments (Apr 1984)

In order that DOE may be informed regarding royalty payments to be made by a contractor in connection with any acquisition, construction, or operation where the amount of the royalty payment is reflected in the contract price, or is to be reimbursed by the Government, check one of the following:

( ) The Contract price includes no amount representing the payment of royalty by the offeror directly to others in connection with the performance of the contract.

( ) The contract price includes an amount for royalty payment expected to be made in connection with the proposed award. The Offeror shall set forth below: (1) the amount of each payment, (2) the names of the licensor, (3) either the patent numbers involved or such other information as will permit identification of the patents and patent applications and the basis on which royalties will be paid.

952.227-82 Rights to proposal data.

Pursuant to 927.7002(d), include this clause in any contract which the decision to make the award included consideration of a technical proposal.

Rights to Proposal Data (Apr 1984)

Except for technical data contained on pages —— of the contractor's proposal dated —— which are asserted by the contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsover, the technical data contained in the proposal upon which this contract is based.

952.227-83 Rights in technical data solicitation representation.

Pursuant to 927.7004-1 and 927.7004-2, include this provision, the legend at FAR 52.215-12 and the certification at 952.227-80 in solicitations which may result in contracts for research, development, or demonstration work or contracts for supplies in which delivery of required technical data is contemplated.

Rights in Technical Data Solicitation Instruction (Apr 1984)

The section of this solicitation which describes the work to be performed also sets forth DOE's know requirements for technical data. The Additional Technical Data Requirements clause, if included in this solicitation, provides the Government with the option to order additional technical data, the requirements for which are not known at the time of contracting. There is, however, a built-in limitation on the kind of technical data which may be required. This limitation provides that the contractor may withhold delivery of proprietary data. Accordingly, it is necessary that your proposal state that the work to be performed and the known requirements for technical data as set forth in the solicitation have been reviewed, and either state that, to the best of your knowledge, not data will be withheld, or submit a list identifying the proprietary data which, to the best of your knowledge, will likely be used in the contract performance and will be withheld.

952.227-84 Notice of right to request patent waiver.

Pursuant to 927.7005, include this provision in all solicitations which may result in contracts calling for research, development, or demonstration work.

Right To Request Patent Waiver (Apr 1984)

Offerors and prospective contractors, in accordance with applicable statutes and the Department of Energy Acquisition Regulation, have the right to request, in advance of or within 30 days after the effective data of contracting, a waiver of all or any part of the rights of the United States in subject inventions. Small business firms and domestic nonprofit organizations normally will receive the Patent Rights clause of 952.227-71 which permits the contractor to retain title to subject inventions, except in contracts for management or operation of a Government-owned research or production facility and in contracts involving exceptional circumstances or intelligence activities. Therefore small business firms and nonprofit organizations normally need not request a waiver.

952.231-70 Date of incurrence of cost.

In accordance with 931.205-30, insert the following clause when advance understandings have been negotiated regarding costs incurred prior to the contract effective date:

Date of Incurrence of Cost (Apr 1984)

The Contractor shall be entitled to reimbursement for costs incurred in an amount not to exceed $ —— on or after —— which, if incurred after this contract has been entered into, would have been reimbursable under the provisions of this contract.

952.232 Clauses related to contract financing.

952.232-1 Payments.

As prescribed in 932.7107-2(a)(1), replace the word "upon" with "after" in the clause at FAR 52.232-1.

952.232-2 Payments under fixed-price research and development contracts.

As prescribed in 932.7107-2, replace the word "upon" with the word "after" in the clause at FAR 52.232-2.

952.232-3 Payments under personal service contracts.

As prescribed in 932.7107-2 replace the word "upon" with "after" in the clause at FAR 52.232-3.

952.232-4 Payments under transportation contracts and transportation-related services contracts.

As prescribed in 932.7107-2, replace the word "upon" with "after" in the clause at FAR 52.232-4.

952.232-5 Payments under fixed-price construction contracts.

As prescribed in 932.7107-2 modify paragraph (e) of the clause cited at FAR 52.232-5 by replacing the words "upon request" with "after receipt of a proper invoice".

952.232-6 Payments under communication service contracts with common carriers.

As prescribed in 932.7107-2, replace the word "upon" with "after" in the clause at FAR 52.232-6.

952.232-7 Payments under time-and-materials and labor-hour contracts.

As prescribed in 932.7107-2, modify the introductory sentence and paragraph (e) of the clause cited at FAR 52.232-7 by replacing the word "upon" with the word "after".

952.232-8 Discounts for prompt payment.

As prescribed in 932.7107-2, modify the clause cited at FAR 52.232-8 to substitute the word "proper" for the word "correct" in the seventh line and delete the last sentence and add the following sentence—"For the purpose of computing the discount earned, payment shall be considered to have been made on the date the Government check was dated or an electronic funds transfer payment was made."

952.232-10 Payments under fixed-price architect-engineer contracts.

As prescribed in 932.7107-2, modify paragraphs (b) and (c) of the clause cited at FAR 52.232-10 by replacing the words "upon" with "after".

952.232-70 Payment due dates, invoice requirements and penalties.

As prescribed in 932.7107(a)(1), insert the following clause in solicitations and contracts containing the clause at FAR 52.232-1, Payments, FAR 52.232-2, Payment under Fixed-Price Research and Development Contracts, or FAR 52.232-4, Payments under Transportation Contracts and Transportation-Related Services Contracts, all as modified by 932.7107-2;

Payment Due Dates, Invoice Requirements and Penalties (Apr 1984)

(a) Notwithstanding the payment provisions stated elsewhere in this contract, payment due dates, invoice requirements and penalties for overdue payment, if any, shall be determined under this contract as provided herein.

(b) Payments for complete delivered supplies, services or work accepted under this contrct shall be due on the *Calendar day after the later of:

(1) the date of actual receipt of a proper invoice by the Government office designated in this contract for invoice receipt; or

(2) The date the supplies, services or work were accepted by the Government.

(c) For purposes of determining payment due dates and for no other purpose, the Government agrees to inspect and determine the acceptability of items delivered under the terms of this contract within ** calendar days after the date of receipt or completion of work. If actual acceptance occurs later, constructive acceptance will be deemed to occur on the last day of the above stated inspection period.

(d) If a delivered item or completed work is rejected for failure to conform to the technical requirements of the contract, or for damage in transit or otherwise, the provisions of paragraph (c) will apply to the replacement item(s) delivered or be reapplied upon Contractor correction of the defect(s).

(e) Progress payments, if provided, shall be due on the * calendar day after the date of receipt of each progress payment request by the Government office designated for invoice receipt.

(f) Proper invoices shall be submitted in an original and *** copies to the Government office designated in this contract, and shall include the Contractor's name and invoice date; contract or order number; payment terms; other documentation or information as required by the contract; name (where practicable), title, phone number, office name and complete mailing address of the responsible official to whom payment may be made. Proper invoices for completed supplies, services or work shall also include the description, price and quantity of item(s) actually delivered or services rendered; and, if applicable, shipping terms.

(g) For complete delivered supplies, services or work, the Government shall pay an interest penalty when the payment check or electronic funds transfer is dated more than fifteen (15) calendar days after the payment due date as established by the provisions herein provided such delays are not due to contractor failure to provide proper payee designations in accordance with the requirements stated elsewhere in this contract; or a discount is taken after expiration of the discount period and the underpayment is not corrected within fifteen (15) calendar days of the expired period.

(h) Interest penalities due under the provisions of this clause shall be calculated in accordance with the provisions of the Prompt Payment Act (31 U.S.C. 3901 et seq.); based on the interest rate(s) established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611). Claims for failure to pay interest penalties may be filed under Section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605). Interest penalties under this clause shall not accrue for more than one year or after the timely filing of a claim for such penalties under the Contract Disputes Act.

(i) Claims concerning disputes, and any interest which may be payable with respect to the period while such dispute is being resolved, shall be subject to the provisions specified in the disputes clause of this contract.

(j) Interest penalties shall not apply when the contractor is notified that an invoice is defective or improper provided the Contractor is notified within fifteen (15) calendar days after actual invoice receipt or acceptance of delivered contract item, whichever is later, that payment is delayed because of a disagreement between the Government and the Contractor concerning contract compliance or amounts invoiced; or the penalty amounts to less than one dollar; nor are they required when payments are made for progress payment purposes, payments are made in advance, or for a period when amounts are withheld temporarily in accordance with the contract. In the event the Government fails to provide notification of a defective invoice within fifteen (15) calendar days, the due date for the corrected invoice will be the normal payment due date less the difference between the fifteenth (15) calendar day and the day notification was made.

**Contracting officer to insert appropriate number of days.*

***Contracting officer to insert a number of calender days which constitutes the estimated number of days necessary for inspection, acceptance, and other necessary action.*

****Contracting officer to insert required number of copies.*

Alternate I: For solicitations and contracts containing the clause at FAR 52.232-3, Payments under Personal Sevices Contracts, or FAR 52.232-7, Payments under Time-and-Materials and Labor-Hours Contracts, as modified by 932.7107-2 respectively, insert the basic clause and add the following paragraph (k):

(k) In the event of an overdue payment, interest penalties shall not be applied to payment of cost-reimbursement amounts, if any, claimed pursuant to the reimbursable cost provisions of this contract.

Alternate II: For solicitations and contracts containing the clause at FAR 52.232-5, Payments under Fixed-Price Construction Contracts, or FAR 52.232-10, Payments under Fixed-Price Architect-Engineer Contracts, as modified by 932.7102-2, respectively, insert the basic clause revised as follows:

(1) Replace paragraph (b) with

(b) Payments for complete delivered property, services or work accepted under this contract shall be due on the —* calendar day after the later of the date the property, services or work were accepted by the Government; the date of actual receipt of a proper invoice by the Government office designated in this contract for invoice receipt; or where applicable, the date the contractor's release of claims is received by the contracting officer.

(2) For a construction contract, add the following to revised paragraph (b):

Payment for reimbursement of premiums paid by the contractor for performance and payment bonds shall be due —* calendar days after the date of initial receipt of a proper invoice in the Government designated office or the date satisfactory evidence of full payment to the surety is received by the contracting officer, whichever is later.

Alternate III: For solicitations and contracts containing the clause at FAR 52.232-6, Payment under Communication Service Contracts with Common Carriers, as modified by 932.7107-2, insert the basic clause revised essentially as follows:

(1) Replace paragraph (b) with:

(b) Payments under this contract shall be due on the —* calendar day after the date of actual receipt of a proper invoice by the Government office designated in this contract for invoice receipt.;

(2) Delete paragraphs (c) through (e) and (g) through (j);

(3) Redesignate paragraph (f) as paragraph (c); and

(4) Add the following as paragraph (d):

(d) Overdue payments, if any, are subject to late payment charges established by tariffs or the applicable State Regulatory Commission(s).

952.232-71 Payment due dates and invoice requirements.

As precribed in 932.7107-1(b) insert the following clause in all cost-reimbursement contract solicitations and awards containing the clause at FAR 52.216-7, Allowable Cost and Payment, or FAR 52.216-13 Allowable Cost and Payment-Facilities:

Payment Due Dates and Invoice Requirements (Apr 1984)

(a) Payments pursuant to the provisions of the allowable cost and payment clause of this contract pursuant to the allowable cost and payment provision of this contract shall be due—* calendar days after the date of actual receipt of a proper invoice or public voucher by the Government office designated in this contract for invoice receipt, provided the amounts claimed are reimbursable in accordance with other terms and conditions of the contract.

(b) Final payment of any balance of allowable costs and that part of the fee, if any, not previously paid as included in the completion invoice or voucher submitted by the contractor shall be due —* calendar days after the later of the date that invoice or voucher is approved for payment by the contracting officer, or the date all the terms of this contract are complied with by the Contractor.

(c) When discounts for early payments are offered by the contractor, the discount period will be calculated from the date a proper invoice was actually received by the Government office designated for invoice receipt or the date the costs were incurred, whichever is the later.

(d) Payment will be considered to have been made on the date the Government check was dated or an electronic funds transfer payment was made.

(e) Notwithstanding any other directions pursuant to the allowable cost and payment clause of this contract, proper invoices or public vouchers shall be submitted in an original and —** copies to the Government office designated in this contract and shall include the Contractor's name and invoice date; contract number; cost amounts by elements of cost and fee amounts, if any, claimed currently; cumulative amounts of costs by element of cost and fee amounts claimed from inception of the contract through the current period; total estimated contract cost amount, fee amount, total contract amount and fee amount not subject to contract specified withholding, as appropriate; payment terms; other substantiating documentation or information required by the contract; and name (where practicable), title, phone number and complete mailing address of responsible official to whom payment may be made.

* *Contracting officer to insert appropriate number of days.*

** *Contracting officer to insert the number of copies required.*

952.232-72 Fixed-price purchase order payment provisions.

As prescribed in 932.7107-1(c), incorporate the following payment provisions in fixed price purchase orders and, if more than one (1) calendar day is required, specify the appropriate number of calendar days established for Government inspection/acceptance of deliverables:

Payment due dates—Unless otherwise provided herein, payments for accepted supplies or services shall be due thirty (30) calendar days after the later of the date of actual receipt of a proper invoice by the Government official designated herein for the receipt of invoices or the date the delivered items are accepted by the Government. For purposes of determining payment due dates and for no other purpose, constructive acceptance shall be deemed to occur on the date of receipt at the specified delivery point. If upon inspection a delivered item is found defective, the provisions of this paragraph will apply to the replacement item(s) or will be reapplied upon correction of the defect.

Discounts—In connection with any discount offered for early payment, time will be computed from date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of these points, or from the date a proper invoice is received in the office specified by the Government if the latter date is later than the date of delivery. For the purpose of computing the discount earned, payment shall be considered to have been made on the date the Government check was dated.

Vendor's billing instructions—Proper invoices shall include the vendor's name and invoice date; order number; description, price and quantity of item(s) actually delivered or services rendered; shipping and payment terms; and name (where practicable), title, phone number, office name and complete mailing address of responsible official to whom payment is to be made.

Bill of lading number and weight of shipping will be shown for shipments made on Government bills of lading. Prepaid shipping costs will be indicated as a separate item on the invoice. Where shipping costs exceed $10.00 (except for parcel post) the billing must be supported by a bill of lading or receipt.

Interest on overdue payments—Interest penalties determined in accordance with provisions of the Prompt Payment Act (31 U.S.C. 3901 et seq.) and Office of Management and Budget Circular A-125 shall be paid by the Government when the payment check is dated more than fifteen (15) calendar days after the payment due date as established by the provisions herein, or a discount is taken after the expiration of a discount period and the underpayment is not corrected within fifteen (15) calendar days of the expired discount period.

952.232-73 Payment methods.

As prescribed in 932.7107-1(d), insert the following clauses in all solicitations and contracts:

Payment Methods (Apr 1984)

(a) Payments due for amounts properly invoiced in accordance with the terms and conditions specified elsewhere in the contract shall be made either by Treasury check(s) payable to the contractor or designee or by electronic funds transfer(s) to a financial institution designated by the contractor for that purpose. The method of payment shall be determined by the Government at the time of payment in accordance with applicable Treasury Department requirements.

(b) After award but no later than fourteen (14) days before an invoice or bill is submitted for payment, the contractor shall designate a financial institution for the receipt of electronic funds transfer payments hereunder; and provide the appropriate Government representative (contracting officer or finance official as determined by the Government) with the name of the designated financial institution, financial institution's or correspondent financial institution's 9-digit American Bankers Association identifying number, telegraphic abbreviation of such financial institution, and account number at the designated financial institution to be credit with funds.

(c) In the event the contractor during the performance of this contract elects to designate a different financial institution for the receipt of any payment made using electronic funds transfer procedures, notification of such change and the information as specified in paragraph (b) above must be received by the appropriate Government representative thirty (30) days prior to the date such change is to become effective.

(d) The document furnishing the information required in paragraphs (b) and (c) above must be dated and contain the signature, title, and telephone number of the contractor official authorized to provide it, as well as the contractor's name and contract number.

(e) Contractor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

952.235-70 Key personnel.

In accordance with 935.070, insert this clause.

Key Personnel (Apr 1984)

The personnel specified in an attachment to this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be

made by the Contracting Officer: Provided, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. The attachment to this contract may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

952.236 Construction and architect-engineer contracts.

952.236-70 Administrative terms for architect-engineer contracts.

As prescribed at 936.702(a) the following additional terms shall be included in Standard Form 252, Item 6:

(a) *Description of project.* The contracting officer shall include. (As full a description as is feasible should be inserted. If the architect-engineer services are to be furnished for a construction project, describe the facilities involved, including any auxiliary facilities that may be required.)

(b) *Statement of architect-engineer services.* The contractor shall, within the time specified in the contract, or if not specified therein, in the shortest reasonable time, furnish for the construction project the architect-engineer services described below, subject to such further detailed requirements as may be appended to this contract by agreement of the parties.

Note A.—This form of contract provides for completion of the architect-engineer services "within the shortest reasonable time." The form may be modified to provide for completion of separable parts of the work at different times.

Note B.—When title I, II, or III services are to be furnished, the following language may be used to describe such services. Modifications in the text of the language may be made to omit inappropriate items or, where necessary, to meet particular circumstances.

Title I—Preliminary Services

(1) Conduct or arrange for, by subcontract or otherwise as approved by the Contracting Officer, and supervise all necessary topographical and other field surveys, the preparation of maps, and necessary test boring and other surface investigations.

(2) Consult and collaborate with DOE to determine the requirements which will govern the design of the project and to establish architectural and engineering criteria for such design.

(3) Conduct preliminary studies, and prepare preliminary sketches, drawings, layout plans, outline specifications, and reports showing features and characteristics of the design proposed to meet DOE's requirements. If more than three studies, including sketches, drawings, plans, outline specifications, or documents are required because of changes initiated by DOE, an equitable adjustment in the lump-sum compensation will be made in accordance with provisions of the Changes clause.

(4) The drawings, plans, and outline specifications and documents shall be prepared in such form and furnished in such quantity as directed by DOE.

Note.—Specific quantities of the drawings, plans, outline specifications, and documents should be indicated here or elsewhere in the contract.

(5) Prepare preliminary estimates of cost and time schedule for (i) completion of the design, working drawings, and specifications, and (ii) construction.

(6) Prepare preliminary estimates of material quantities required for construction.

Title II—Design Services

(1) Upon approval by DOE of preliminary plans and estimates, undertake the design of the construction project.

(2) Undertake restudy and redesign work due to minor deviations from the approved preliminary work as may be required by DOE.

(3) Prepare and revise, for the approval of DOE, and furnish complete sets of contract bidding documents, including working drawings, details, and specifications for construction, in such form and quantity and including such provisions as may be required by law or the directions of DOE.

Note.—Specific quantities of drawings and specifications should be indicated here or elsewhere in the contract.

(4) Prepare, or when directed by DOE, participate with others in the preparation of a detailed estimate of the cost of construction based on the approved design and working drawings and specifications.

(5) Assist DOE in securing, analyzing, and evaluating construction bids or proposals.

(6) When requested, consult with and advise DOE on any questions which may arise in connection with the architect-engineer services described in this contract.

Title III—Supervision of Construction

(1) Furnish and maintain governing lines and benchmarks to provide horizontal and vertical controls to which construction progress may be referred.

(2) Check approved or require revision of, all vendors' shop drawings to assure conformity with the approve design and working drawings and specifications.

(3) Inspect the execution of construction so as to assure adherence to approved working drawings and specifications.

(4) Inspect construction workmanship and materials, and equipment, and report to DOE as to their conformity or nonconformity to the approved working drawings and specifications.

(5) Make or acquire such field or laboratory tests of construction workmanship, materials, and equipment, as DOE may require or approve.

(6) Prepare estimates of reasonable amounts of increase or decrease in contract price and/or contract completion time for contract modification, evaluate proposal submitted by the constructor for such contract adjustment and make recommendations to the Contracting Officer for use in negotiating.

(7) Prepare reports and make recommendations on status of deliveries or materials and equipment as DOE may require or approve.

(8) Prepare monthly and other reports of the progress of construction, as may be required, and partial, interim, and final estimates and reports of quantities and values of construction work performed, for payment or other purposes.

(9) Furnish ——— set(s) of reproducible "as-built" records drawings of the type specified by DOE ——— set(s) of marked-up specifications, showing construction as actually accomplished.

952.236-71 Inspection in Architect-Engineer contracts.

As prescribed at 936.609-3 insert the following clause.

Inspection (Apr 1984)

The Government, through any authorized representatives, has the right at all reasonable times, to inspect, or otherwise evaluate the work peformed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

952.236-72 Nonrefundable fee for plans and specifications.

In accordance with the requirement at 936-202 include the following in solicitations for construction.

Nonrefundable Fee for Plans and Specifications (Apr 1984)

A fee of $——— is required for the plans and specifications referenced in this solicitation. Send check or money order to ———. The fee is not refundable. Plans and specifications need not be returned.

952.245 Clauses related to government property.

952.245-2 Government property (fixed-price contracts).

Modify FAR 52.245-2 by adding "and the DOE Acquisition Regulation Subpart 945.5," after the reference to FAR Subpart 45.5 in the first sentence of paragraph (e)(1) and (e)(2) of the clause.

952.245-5 Government property (cost reimbursement, time-and-materials, or labor-hour contracts.)

Modify FAR 52.245-5 by adding "and DOE Acquisition Regulation Subpart 945.5" after the reference to FAR Subpart 45.5 in paragraphs (e)(1) and (e)(2) of the clause.

952.247-70 Foreign travel.

When foreign travel may be required under the contract insert the following clause.

Foreign Travel (Apr 1984)

(a) Foreign travel, when charged directly, shall be subject to the prior approval of the contracting officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions.

(b) Request for approval shall be submitted at least 45 days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed soviet-bloc travel.

952.249 Clauses related to termination.

952.249-70 Termination clause for cost-reimbursement architect-engineer contracts.

In accordance with the provisions prescribed at 949.505 include the following clause in a cost-reimbursement architect-engineer contract.

Termination (Apr 1984)

(a) Notice of termination for default or convenience. The Contracting Officer may at any time terminate performance of the work under this contract in whole or from time to time in part for the default of the architect-engineer or for the convenience of the Government by written notice to the architect-engineer stating the ground for termination. Such termination shall be effective in the manner and upon the date specified in said notice and shall be without prejudice to any claims which the Government may have against the architect-engineer. Upon receipt of such notice and except as otherwise directed by the contracting officer, the architect-engineer shall:

(1) Stop work under the contract on the date and to the extent specified in the notice of termination;

(2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated; and

(3) Terminate all orders and subcontracts to the extent they relate to the performance of work terminated by the notice of termination.

(b) Termination for default.

(1) If the architect-engineer refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof; or fails to complete said work within such time; or if the architect-engineer fails to perform any of the other requirements of this contract, and does not cure such failure within a period of 10 days (or such longer period as the contracting officer may authorize in writing) after receipt of notice from the contracting officer specifying such failure, the contracting officer may terminate for default the architect-engineer's right to proceed with the work as to which there has been delay, provided that the performance of the work shall not be terminated for default because of any delays in the completion of work due to unforeseeable causes beyond the control and without the fault or negligence of the architect-engineer, including, but not restricted to, acts of God, or the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another architect-engineer in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delay of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the architect-engineer and subarchitect-engineers or suppliers; and if the architect-engineerwithin ten (10) days from the beginning of any such delay (unless the contracting officer grants a further period of time prior to the date of final settlement of the contract) notifies the contracting officer in writing of the causes of delay. The contracting officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal by the architect-engineer to the head of the agency or his designee in accordance with "Disputes" clause of this contract.

(2) If, after notice of termination of this contract for default under (1) above, it is determined for any reason that the architect-engineer was not in default pursuant to (1), or that the architect-engineer failure to perform or to make progress in performance is due to causes beyond the control and without the fault to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the architect-engineer pursuant to the provisions of this clause relating to excusable delays, the notice of termination shall be deemed to have been issued for the convenience of the Government under this clause, and the rights and obligations to the parties hereto shall in such event be governed accordingly.

(c) *Liability for costs on default.* If performance of the work under this contract is terminated for the default of the architect-engineer, the Government may complete or employ any other person or persons to complete the work, and the architect-engineer shall be liable to the Government for increased costs occasioned the Government by the default.

(d) *Terms of settlement.* Upon the termination of performance of work under this contract, full and complete settlement of all claims of the architect-engineer with respect to the terminated work shall be made as follows:

(1) *Assumption of contractor's obligations.* The Government shall have the right in its decision to assume all obligations, commitments, and claims that the architect-engineer may have theretofore in good faith undertaken or incurred in connection with the terminated work, the cost of which would be allowable in accordance with the provisions of this contract; and the architect-engineer shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers and take all such steps as the contracting officer may require for the purpose of fully vesting in the Government all the rights and benefits of the architect-engineer, related to such obligations, commitments, and claims.

(2) *Payments for allowable costs.* The Government shall treat as allowable costs all expenditures made in accordance with the clause herein entitled "Allowable cost and Payment," not previously so allowed or otherwise credited.

(3) *Payment for termination expense.* If performance of work under the contract is terminated for the convenience of the Government, the Government shall reimburse the architect-engineer for such further expenditures made after the date of termination for the protection of Government property and for such legal and accounting services in connection with settlement as are required or approved by the contracting officer.

(4) *Payments on account of fixed fee.* If performance work under the contract is terminated for the convenience of the Government, the architect-engineer shall be paid that portion of the fixed fee which the work actually completed, so determined by the contracting officer, bears to the entire work under this contract less payments previously made on account of the fee. If performance of the work under the contract is terminated for the default of the architect-engineer, no further payment beyond that amount due on completed work with appropriate fee payment, shall accrue on account of the fixed price.

(5) *Computation of amount due.* In arriving at the amount, if any, due the architect-engineer under this article, there shall be deducted from what would otherwise be due (i) all unliquidated advances and all other unliquidated payments on account theretofore made to the contractor, (ii) any claims of the Government against the contractor in connection with this contract, and (iii) all deductions due under the terms of this contract and not otherwise recovered by or credited to the Government.

(6) *Property accounting and release.* The architect-engineer shall furnish the accounting for Government-owned property required by the clause entitled "Property" and the assignment, closing financial statement, and release required by the clause entitled "Allowable Cost and Payments."

(e) *Rights and remedies of the Government.* The rights and remedies of the Government provided in this article are in addition to any other rights and remedies provided by law or under this contract.

952.250 Clauses related to indemnification of contractors.

952.250-70 Nuclear hazards indemnity.

In accordance with the provisions prescribed in Subpart 950.7 include the following clause in applicable contracts.

Nuclear Hazards Indemnity (Apr 1984)

(a) This clause is incorporated into this contract pursuant to the authority contained in subsection 170(d) of the Atomic Energy Act

of 1954, as amended (hereinafter called the Act.)

(1) The definitions set out in the Act shall apply to this article.

(2) The term "contract location" means any DOE facility, installation, or site at which contractual activity under this contract is being carried on, and any contractor-owned or controlled facility, installation, or site at which the contractor is engaged in the performance of contractural activity under this contract.

(3) The term "extraordinary nuclear occurrence" means an event which DOE has determined to be an extraordinary nuclear occurrence as defined in the Act. A determination of whether or not there has been an extraordinary nuclear occurrence will be made in accordance with the procedures in Subpart E of 10 CFR 140.

(b) Except as hereafter permitted or required in writing by DOE, the contractor will not be required or provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability. DOE may at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover public liability, arising out of or in connection with the contractual activity, provided that the costs of such financial protection will be reimbursed to the contractor by DOE.

(c)(1) To the extent that the contractor and other persons indemnified are not compensated by any financial protection, permitted or required by DOE or the Nuclear Regulatory Commission (NRC), DOE will indemnify the contractor and other persons indemnified against (i) claims for public liability as described in subparagraph (2) of this paragraph (c); and (ii) the reasonable cost of investigating and settling claims and defending suits for damage for such public liability, provided that DOE's liability, excluding such reasonable costs, under all indemnity agreements entered into by DOE under section 170 of the Act, including this contract, shall not exceed $500 million in the aggregate for each nuclear incident occurring within the United States or $100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in paragraph (c)(1) of this section is public liability which (i) arises out of or in connection with the contractual activity; and (ii) arises out of results from:

(A) A nuclear incident which takes place at a contract location; or

(B) A nuclear incident which takes place at any other location and arises out of or in the course of the performance of contractual activity under this contract by the contractor's employees, individual consultants, borrowed personnel or other persons for the consequence of whose acts or omissions the contractor is liable, provided that such incident is not covered by any other indemnity agreement entered into by DOE or the NRC pursuant to section 170 of the Act; or

(C) A nuclear incident which arises out of or in the course of transportation of source, special nuclear, or by-product materials to or from a contract location, provided such incident is not covered by any indemnity agreement entered into by DOE with the transporting carrier, or with a carrier's organization acting for the benefit of the transporting carrier, or with a licensee of NRC, pursuant to section 170 of the Act; or

(D) A nuclear incident which involves items (such as equipment, material, facilities, or design or other data) produced or delivered under this contract, provided such incident is not covered by any other indemnity agreement entered into by DOE or NRC pursuant to section 170 of the Act.

(d) In the event of an extraordinary nuclear occurrence which:

(1) Arises out of or results from or occurs in the course of the construction, possesson, or operation of a production or utilization facility, or

(2) Arises out of or results from or occurs in the course of transportation of source material, by-product material, or special nuclear material to or from a production or utilization faclility, or

(3) During the course of the contract activity, arises out of or results from the possession, operation, or use by the contractor or a subcontractor of a device utilizing special nuclear material or by-product material. DOE and the contractor on behalf of itself and other persons indemnified, insofar as their interests appear, each agrees to waive:

(i) Any issue or defense as to the conduct of the claimant or fault of persons indemnified, including, but not limited to:

(A) Negligence;

(B) Contributory negligence;

(C) Assumption of risk; or

(D) Unforeseeable intervening causes, whether involving the conduct of a third person or an act of God.

As used herein, "conduct of the claimant" includes conduct of persons through whom the claimant derives its cause of action;

(ii) Any issue or defense as to charitable or governmental immunity;

(iii) Any issue or defense based on any statute of limitations, if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have know, of his injury or change and the cause thereof, but in no event more than 20 years after the date of the nuclear incident. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waiver shall be judicially enforceable in accordance with its terms by the claimant against the person indemnified.

(e) The waivers set forth in paragraph (d) of this clause:

(1) Shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages;

(2) Shall not apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant;

(3) Shall not apply to injury to a claimant who is employed at the site of and in connection with the activity where the extraordinary nuclear occurrence takes place, if benefits therefore are either payable or required to be provided under any workmen's compensation or occupational disease law;

(4) Shall not apply to any claim for punitive or exemplary damages, provided, with respect to any claim for wrongful death under any State law which provides for damages only punitive in nature, this exclusion does not apply to the extent that the claimant has sustained actual damages, measured by the pecuniary injuries resulting from such death but not to exceed the maximum amount otherwise recoverable under such law;

(5) Shall not apply to any claim resulting from a nuclear incident occurring outside the United States;

(6) Shall be effective only with respect to those obligations set forth in this agreement and in insurance policies, contracts or other proof of financial protection; and

(7) Shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the limit of liability provisions under subsection 170e of the Atomic Energy Act of 1954, as amended, and (ii) the terms of this agreement and the terms of insurance policies, contracts, or other proof of financial protection.

(f) The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (c)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE, copies of all pertinent papers received by the contractor or filed with respect to such actions or claims. When DOE shall determine that the Government will probably be required to make indemnity payments under the provisions of (c) above, DOE shall have the right to, and shall collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right (1) to require the prior approval of DOE for the payment of any claim that DOE may be required to indemnify hereunder, and (2) to appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(g) The indemnity provided by this clause shall not apply to public liability arising out of, or in connection with, any activity that is performed at a licensed facility, and that is covered by a Nuclear Regulatory Commission indemnity agreement authorized by section 170 of the Act.

(h) The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligation under this contract and shall be unaffected by the death, disability, or termination of existence of the contractor, or

by the completion, termination or expiration of this contract.

(i) The parties to this contract enter into this clause upon the condition that this clause may be amended at any time by the mutual written agreement of DOE and the contractor, and that such amendment may, by its express terms, provide that it will apply to any nuclear incidents which occur thereafter.

(j) The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the Disputes clause provided, however, that the following provisions of the contract: Clause entitled, Covenant Against Contingent Fees; the clause entitled, Officials Not to Benefit; and the clause entitled, Examination of Records by Comptroller General; and any provisions later added to this contract which under applicable Federal law, including statutes, executive orders and regulations, are required to be included in agreements of the type contained in this article, shall apply to this clause.

Alternate I: The following paragraph will be included in for those contracts containing the indemnity clause executed under the general contract authority of DOE.

(k) To the extent that the Contractor is compensated by any financial protection, or is indemnified pursuant to this clause or is effectively relieved of public liability by an order or orders limiting same, pursuant to section 170e of the Atomic Energy of 1954, as amended, the provisions of clause providing General Authority Indemnity, shall not apply.

952.250-71 Nuclear hazards indemnity—product liability.

Include the following clause as prescribed by the provisions of Subpart 950.70.

Nuclear Hazards Indemnity—Product Liability (Apr. 1984)

(a) This clause is incorporated into this contract pursuant to the authority contained in section 170d of the Atomic Energy Act of 1954, as amended (hereinafter called the Act).

(1) The definitions set out in the Act shall apply to this article.

(2) The term "product delivered under the contract" means any material, equipment, device, drawing, specification, or technical data made, prepared, or acquired by the contractor in the course of performance of the contract and delivered to DOE or to any other persons as directed or approved by DOE.

(b) Except as hereafter permitted or required in writing by DOE, the contractor will not be required to provide or maintain, and will not provide or maintain at Government expense, any form of financial protection to cover public liability. DOE may at any time require in writing that the contractor provide and maintain financial protection of such a type and in such amount as DOE shall determine to be appropriate to cover public liability against which the contractor is indemnified hereunder, provided that the costs of such financial protection will be reimbursed to the contractor by DOE.

(c)(1) To the extent that the contractor and other persons indemnified are not compensated by any financial protection permitted or required by DOE or the Nuclear Regulatory Commission, (NRC), DOE will indemnify the contractor, and other persons indemnified, against (i) claims for public liability as described in subparagraph (2) of this paragraph (c); and (ii) the reasonable costs of investigating and settling claims, and defending suits for damages for such public liability, provided that DOE's liability, excluding such reasonable costs, under all indemnity agreements entered into by DOE under section 170 of the Act, including this contract, shall not exceed $500 million in the aggregate for each nuclear incident occurring within the United States or $100 million in the aggregate for each nuclear incident occurring outside the United States, irrespective of the number of persons indemnified in connection with this contract.

(2) The public liability referred to in subparagraph (1) of this section is public liability which (i) arises out of, or in connection with, the contractual activity; and (ii) arises out of, or results from, a product delivered under the contract, but does not include liability for a nuclear incident which is covered by any other indemnity agreement entered into by DOE or NRC pursuant to section 170 of the Act.

(d) The contractor shall give immediate written notice to DOE of any known action or claim filed or made against the contractor or other person indemnified for public liability as defined in paragraph (c)(2). Except as otherwise directed by DOE, the contractor shall furnish promptly to DOE copies of all pertinent papers received by the contractor or filed with respect to such actions of claims. When DOE shall determine that the Government will probably be required to make indemnity payments under the provisions or (c) above; DOE shall have the right to, and shall collaborate with, the contractor and any other person indemnified in the settlement or defense of any action or claim and shall have the right, (1) to require the prior approval of DOE for payment of any claim that DOE may be required to indemnify hereunder, and (2) to appear through the Attorney General on behalf of the contractor or other person indemnified in any action brought upon any claim that DOE may be required to indemnify hereunder, take charge of such action, and settle or defend any such action. If the settlement or defense of any such action or claim is undertaken by DOE, the contractor or other person indemnified shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

(e) The obligations of DOE under this clause shall not be affected by any failure on the part of the contractor to fulfill its obligations under this contract, and shall be unaffected by the death, disability, or termination of existence of the contractor or by the completion, termination, or expiration of this contract.

(f) The parties to this contract enter into this article upon the condition that this clause may be amended at any time by the mutual written agreement of DOE and the contractor and that such amendment may, by its express terms, provide that it will apply to any nuclear incidents which occur thereafter.

(g) The provisions of this clause shall not be limited in any way by, and shall be interpreted without reference to, any other clause of this contract, including the Disputes clause, provided, however, that the following provisions of the contract: Clause entitled, Convenant Against Contingent Fees; Clause entitled, Officials Not to Benefit; Clause entitled, Assignment of Claims; and Clause entitled, Examination of Records by Comptroller General; and any provisions later added to this contract which, under applicable Federal law, inlcuding statutes, executive orders, and regulations, are required to be included in agreements of this type contained in this clause, shall apply to this clause.

Alternate I: The following section will be added for in those contracts containing indemnity agreements executed under the general contract authority of DOE:

(h) To the extent that the contractor is compensated by any financial protection, or is indemnified pursuant to this clause, or is effectively relieved of public liability by an order or orders limiting same pursuant to section 170e of the Atomic Energy Act of 1954, as amended, the provisions of clause providing General Authority Indemnity, shall not apply.

952.250-72 Indemnity assurance to architect-engineer or supplier prior to operation of a production or utilization facility.

Include the following clause in accordance with the provisions of Subpart 950.70.

Indemnity Assurance to Architect-Engineer or Supplier Prior to Operation of a Production or Utilization Facility (Apr 1984)

(a)(1) The definitions set out in the Atomic Energy Act of 1954, as amended (hereinafter called the Act), shall apply to this clause.

(2) The services or supplies furnished under this agreement are intended to be used in connection with the construction and/or operation of a production or utilization facility.

(3) DOE will use its best efforts to include in any contract for the operation of such facility, an agreement based on the then current approved form of indemnity agreement under section 170d of the Atomic Energy Act of 1954, as amended, whereby DOE will indemnify all persons indemnified, including the contractor, against public liability for nuclear incidents arising out of or in connection with contractual activities under the contract for the operation of said facility in accordance with the authority provided in subsection 170d of the Act.

(4)(i) DOE will enter into an indemnity agreement in accordance with the authority provided in subsection 170d of the Act with the contractor, without further consideration from the contractor, at any time all of the following circumstances are present:

(A) The services or supplies furnished under this contract are being used in connection with any activity or situation

which involves a risk of substantial nuclear incident; and

(B) there is not in effect an indemnity agreement as described in subparagraph (3) of this clause; and

(C) DOE's authority to enter into agreements of indemnification under section 170(d) of the Act has not expired or been so amended as to deprive DOE of authority to enter into such an agreement.

(b) In that agreement, DOE will indemnify the contractor and other persons indemnified against public liability arising out of, or in connection with, the contractual activity of this contract.

(c) Such agreement will be based on the then current approved form of section 170d indemnity agreement used in contracts between DOE and its contractors, and shall further include an obligation to indemnify the contractor, and persons indemnified for such public liability arising out of, or resulting from, nuclear incidents occurring between the time when the services or supplies furnished under this contract are used in connection with any activity or situation which involves risk of a substantial nuclear incident and the time when such agreement is executed.

(d) The indemnity provided by DOE under all indemnity agreements entered into by DOE under section 170 of the Act, including this agreement, shall not exceed $500 million in the aggregate for each nuclear incident, without regard to the number of persons indemnified, excluding the reasonable costs of investigating and settling claims and defending suits for damages, provided, however, that with respect to incidents occurring outside the United States, such aggregate indemnity shall not exceed $100 million, including such reasonable costs.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

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970.5203–2 Examination of records by Comptroller General.
970.5203–3 Buy American Act.
970.5204 Clauses to be used in addition to or in place of the contract clauses set forth in FAR Part 52 and DEAR Part 952.
970.5204–1 Security.
970.5204–2 Safety and health (Government-owned or leased).
970.5204–3 Buy American Act—construction materials.
970.5204–4 [Reserved]
970.5204–5 Disclosure of information.
970.5204–6 Nuclear hazards indemnity.
970.5204–7 Nuclear hazards indemnity—product liability.
970.5204–8 Indemnity assurance to architect-engineer or supplier prior to operation of a production or utilization facility.
970.5204–9 Accounts, records, and inspection.
970.5204–10 Foreign ownership, control, or influence over contractors (FOCI).
970.5204–11 Changes.
970.5204–12 Contractor's organization.
970.5204–13 Allowable costs and fixed-fee (CPFF management and operating contracts).
970.5204–14 Allowable costs and fixed-fee (support contracts).
970.5204–15 Obligation of funds.
970.5204–16 Payments and advances.
970.5204–17 [Reserved]
970.5204–18 [Reserved]
970.5204–19 Printing clause for management and operating contracts.
970.5204–20 [Reserved]
970.5204–21 Property.
970.5204–22 Contractor procurement.
970.5204–23 Taxes.
970.5204–24 Subcontractor cost or pricing data.
970.5204–25 Workmanship and materials.
970.5204–26 Nuclear facility safety.
970.5204–27 Consultant or other comparable employment services of contractor employees.
970.5204–28 Assignment.
970.5204–29 Permits or licenses.
970.5204–30 Notice of labor disputes.
970.5204–31 Litigation and claims.
970.5204–32 Required bonds and insurance-exclusive of Government property (cost-type contracts).
970.5204–33 Priorities, allocations, and allotments.
970.5204–34 Sensitive foreign nations control.
970.5204–35 Controls in the national interest (unclassified contracts with educational institutions).
970.5204–36 Organizational conflicts of interest (contracts with universities where DOE has major investments in facilities but does not own or lease the land).
970.5204–37 Statement of work (management and operating contracts).
970.5204–38 Special clause for procurement of construction.
970.5204–39 [Reserved]
970.5204–40 [Reserved]
970.5204–41 Preservation of individual occupational radiation exposure records.
970.5204–42 Key personnel.
970.5204–43 Other Government contractors.
970.5204–44 [Reserved]
970.5204–45 Termination.
970.5204–48 [Reserved]
970.5204–50 Cost of schedule control systems.
970.5204–51 [Reserved]
970.5204–52 Foreign travel.

Subpart 970.70—Use of DOE Facilities for Work for Others

970.7000 Mission-oriented solicitation.

Authority: Section 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254); and section 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

970.0000 Scope of part.

This part provides Departmental requirements and provisions regarding award and administration of management and operating contracts as defined at FAR Subpart 17.6 and Subpart 917.6 of this chapter. Use of a management and operating contract must be authorized by the Secretary, Deputy or Undersecretary. For administrative convenience, the subparts of this part are arranged in the same numeric sequence as the parts of the FAR. Thus, for example, requirements regarding Small Business are found at 970.19 and guidance regarding Contract Clauses is found at 970.52. To the extent possible the same subpart section and subsection Titles of the FAR are applied in this part 970. There are some difference for convenience. When there is no specific guidance of a FAR part/ section or applicability of a FAR part/section to DOE management and operating contracts a subpart or section will not be included.

970.0001 Renewal of management and operating contracts.

(a) In accordance with applicable law, rules, or regulations and FAR 17.605, competition of existing management and operating contracts will be sought whenever it appears likely that the Government's position may be meaningfully improved in terms of cost or performance, unless it is determined that to change a contractor would be contrary to the best interest of the Government. Except in those cases where the contract specifically permits the Government to bring in a replacement contractor, it is not practical in most instances to compete a management and operating contract which includes major Government-owned facilities on contractor-owned or leased sites. In such cases, the alternatives would be to extend the contract or to allow the contract to expire and, if the work is to be continued, place all or some part of the work with another contractor at a different site.

(b) The following factors, as a minimum, shall effect whether an existing management and operating contract should be completed.

(1) Overall performance of an incumbent contractor including specific consideration of the contractor's administrative, environmental, safeguards and security, safety, health, site planning, maintenance and construction, facility management, energy conservation program considerations, cost, schedule and technical performance.

(2) Potential impact of change in contractors on programmatic activities.

(3) The likelihood that qualified industrial firms or other organizations will compete for the contract.

Subpart 970.03—Ethics

970.0304 Contingent fees.

The policies and requirements of FAR Subpart 3.4 shall be applied to all procurement activities of management and operating contractors.

Subpart 970.04—Administrative Matters

970.0404 Safeguarding classified information.

970.0404-1 Definitions.

"Classified Information" means any information or material that is owned by or produced for, or is under the control of the United States Government, and determined pursuant to provisions of Executive Order 12356, April 2, 1982 (47 FR 14874, April 6, 1982), or prior orders, or as authorized under the Atomic Energy Act of 1954, as amended, to require protection against unauthorized disclosure, and is so designated.

"Restricted Data" means data which is defined in section II, of the Atomic Energy Act of 1954, as amended, as "all data concerning: (1) Design, manufacture, or utilization of atomic weapons; (2) the production of specifical nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142."

970.0404-2 General.

(a) The basis of DOE's security requirements is the Atomic Energy Act of 1954, as amended.

(b) DOE regulations concerning national security information are codified at 10 CFR Part 1045 and Part 710. Supplemental security material is found in the DOE Directives and Orders system. Foreign ownership, control, or influence over contractors as it relates to security and discussed at 904.70 also applies to management and operating contracts Regulations pertaining to the protection of restricted data is found under 10 CFR Part 1016.

(c) Statutory requirements to be observed in connection with the release of Restricted Data to foreign governments are contained in the Atomic Energy Act of 1954, Sections 141 and 144.

(d) Section 148 of the Atomic Energy Act (42 U.S.C. 2168) prohibits the unauthorized dissemination of unclassified nuclear information with respect to the atomic energy defense programs pertaining to:

(1) The design of production facilities or utilization facilities;

(2) Security measures (including security plans, procedures, and equipment) for the physical protection of: (i) Production or utilization facilities, (ii) nuclear material contained in such facilites, or (iii) nuclear materials in transit; or

(3) The design, manufacture, or utilization of any atomic weapon or component if the design, manufacture, or utilization of such weapon or component was contained in any information declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act.

970.0404-3 Responsibilities of contracting officers.

(a) If access to Restricted Data may be required, during the solicitation process for a management and operating contract security clearances shall be obtained as noted in DOE Order 5631.2

(b) Management and operating contracts which may require the processing or storage of Restricted Data or Special Nuclear Material require application of the provisions of DOE Orders 5634.1; 5635.1; and 5632.2.

970.0404-4 Contract clauses.

(a) The security clauses to be used in DOE management and operating contracts are found at 970.5204. They are:

(1) *Security, 970.5204-1.* This clause is required in contracts under section 41 (ownership and operation of production facilities) of the Atomic Energy Act of 1954, as amended.

(2) *Classification, 970.5204-53.* This clause is to be used in all management and operating contracts which involve classified information.

(3) *Sensitive foreign nation controls, 970.5204-34.* This clause is required in all management and operating contracts.

(4) *Foreign ownership, control, or influence, 970.5204-10.* The clause is required in all management and operating contracts.

(b) The clause at 970.5204-4, Disclosure of Information may be used in place of the clauses entitled "Security" and "Classification" in contracts for work that are not likely to produce classified information or restricted data.

(c) Include the clause at 952.204-73 in a solicitation for a management and operating contract.

970.0407 Record retention requirements.

The requirements of FAR Subpart 4.7 do not apply to management and operating contractors and cost-reimbursement type subcontracts thereunder. The contract shall include clause at 970.5204-9.

Subpart 970.08—Required Sources of Supplies and Services

970.0801 Excess personal property.

The provisions of FAR Subpart 8.1, FPMR 41 CFR 101-43, and DOE-PMR 41 CFR 109-43 apply.

970.0803 Acquisition of utility services.

The requirements of FAR Subpart 8.3 shall be applied to management and operating contractors who are authorized to procure utility services.

(a) All utility services (except telecommunications) that are required for Government-owned and contractor-operated facilities shall generally be procured directly by DOE and not by the contractors that manage and operate these facilities for DOE.

(b) However, when it is economically advantageous or otherwise in the best interest of the Government, and subject to the provisions of 970.803-7(b), Heads of Contracting Activities may authorize a contractor that manages or operates a DOE facility to procure utility services on a subcontract basis. When a contractor is authorized to subcontract for utility services under the authority of this paragraph (b), a copy of the authorization, together with a statement of justification, shall be sent to the Project and Facilities Management Office, Headquarters. Heads of Contracting Activities shall require contractors which they authorize to subcontract for utility services to comply with the requirements of 970.803-7, dealing with the prior review of certain proposed acquisitions.

(c) Heads of Contracting Activities shall submit, to the utility element in the Office of Project and Facilities Management for Headquarters' review and approval, proposed contracts for utility services (except telecommunications), including proposed authorizations under applicable GSA area-wide contracts, and proposed memoranda of understanding for consolidated purchase, joint use, or cross-service by DOE with other Government agencies, when one of the circumstances described at FAR 8.307 applies or if the contract term is to exceed one year.

(d) Section 164 of the Atomic Energy Act of 1954 establishes special authorities relative to the acquisition of electric utility services for the Oak Ridge, Paducah, and Portsmouth installations.

970.0811 Leasing of motor vehicles.

The provisions of FAR 8.11 and 908.11 apply.

970.0870 Strategic and critical materials.

Management and operating contractors who use strategic and critical materials shall fulfill their requirements in accordance with 908.70.

970.0871 Procurement of special items.

The following items are to be procured by management and operating contractors in accordance with the provisions of the DEAR as shown.

Item	DEAR
(a) Motor vehicles	908.7101.
(b) Aircraft	908.7102.
(c) Office machines	908.7103.
(d) Office furniture and furnishings	908.7104.
(e) Filing cabinets	908.7105.
(f) Security cabinets	908.7106.
(g) Alcohol	908.7107.
(h) Helium	908.7108.
(i) Fuels and packaged petroleum products	908.7109.
(j) Coal	908.7110.
(k) Arms and ammunition	908.7111.
(l) Materials handling equipment replacement standards.	908.7112.
(m) Calibration services	908.7113.
(n) Wiretapping and eavesdropping equipment.	908.7114.
(o) Government forms	908.7115.
(p) Electronic data processing tapes	908.7116.
(q) Rental of post office boxes	908.7118.
(r) Precious metals	908.7121(b).
(s) Heavy water	908.7121(a).
(t) Lithium	908.7121(c).
(u) Products made in Federal penal and correctional institutions.	FPMR 41 CFR 101-26.702.
(v) Products and services of the blind and other severely handicapped.	FPMR 41 CFR 101-26.701.

970.0872 Purchase or lease determinations.

The guidelines in FPMR 41 CFR 101-25.5 for making purchase or lease determinations shall be applied to management and operating contractor acquisitions of all types of equipment. These guidelines shall be used in making lease-versus-purchase determinations at time of original acquisition, when lease renewals are being considered, or at other times as circumstances warrant.

Subpart 970.09—Contractor Qualifications

970.0902 Qualified products.

(a) Heads of Contracting Activities may authorize use of procedures in FAR Subpart 9.2 by contractors.

(b) Qualified products lists (QPL) shall be distributed to all management and operating contractors.

970.0905 Organizational conflicts of interest.

(a) All management and operating contracts shall contain an appropriate organizational conflict of interest clause. The disclosure or representation requirement of 909.5706 and an appropriate clause such as those found at 952.209-71 and 952.209-72 shall be included in solicitations and resulting contracts. The contracting officer shall consider provisions which assure appropriate restraints on intercorporate relations between the contractor's organization and personnel operating the Department's facility and its parent corporate body and affiliates, including personnel access to the facility, technical transfer of information from the facility, and the availability from the facility of other advantages flowing from performance of the contract. The subcontractors and consultants of management and operating contractors should be, to the extent feasible, made subject to the requirements of this subpart as if they were performing the work as prime contractors to the Department.

(b) FAR Subpart 9.5 and 909.570 of this chapter shall apply to procurements by management and operating contractors.

Subpart 970.10—Specifications, Standards and Other Statement of Work Descriptions

970.1001 General.

Department of Energy management and operation contracts provide for the operation, maintenance, or support, on behalf of the Department, Government-owned or controlled research, development, special production or testing facilities established wholly for or principally devoted to one or more major programs of the Department.

970.1002 Statement of work.

(a) While it is not feasible to set forth standard language which would apply to every contract situation, language must be designed for inclusion in a management and operating contract to describe clearly the work being undertaken; the controls, as appropriate, to be exercised by DOE over the performance of that work; and the relationship contemplated between the parties.

(b) The language shall also include the following with respect to subcontracting performance of the work described pursuant to (a) above: "The contractor shall, when directed by DOE and may, but only when authorized by DOE, enter into subcontracts for the performance of any part of the work under this clause".

(c) In management and operating contracts when the contractor is expected to perform no Davis-Bacon work with his own forces, the special clause in 970.5204-38 shall be included in the language.

(d) The provisions required above shall be set forth in a Statement of work clause to be included in the contract.

Subpart 970.15—Contracting by Negotiation

970.1508 Price negotiation.

(a) Management and operating contract prices (fee) and DOE obligations to support contract performance shall be governed by:

(1) The level of activity authorized and the amount of funds appropriated for DOE approved programs by specific program legislation;

(2) Congressional budget and reporting limitations;

(3) The amount of funds apportioned to DOE;

(4) The amount of obligational authority allotted to program officials and Approved Funding Program limitations; and

(5) The amount of funds actually available to the DOE operating activity as determined in accordance with applicable financial regulations and directives.

(b) Funds shall be obligated and made available by contract provision or modification after the funds become available for obligation for payment to support performance of DOE approved projects, tasks, work authorizations, or services.

(c) Management and operating contracts shall contain appropriate provisions to limit contractor expenditures to the overall amount of funds available and obligated. The clause at 970.5204-15 shall be used for this purpose.

970.1508-1 Cost or pricing data.

(a) The certification requirements of FAR 15.804-2, are not applied to DOE cost-reimbursement management and operating contracts.

(b) Management and operating contractors and their subcontractors shall be required to:

(1) Obtain certified cost or pricing data prior to the:

(i) Award of a negotiated subcontract at any tier when the subcontract price is expected to exceed $500,000; or

(ii) Modification of any subcontract when the modification is expected to exceed $500,000, unless unrelated and separately priced changes, for which certified cost of pricing data would not otherwise be required, are included.

(2) Incorporate appropriate contract provisions that provide for the reduction of a negotiated subcontract price by any significant amount that the subcontract price was increased because of submission of subcontractor defective cost or pricing data, at any tier.

(3) The exemptions to certified cost or pricing data identified by FAR 15.804-3

shall also apply in implementing the above cost/pricing data requirements.

(c) the clause at 970.5204-24 shall be included in subcontracts under management and operating contracts as described therein.

970.1509 Fees for management and operating contracts.

970.1509-1 Fee policy.

(a) DOE mangement and operating contractors, except educational institutions, may be paid a fee. The fee for a management and operating contract shall be an amount commensurate with the difficulty of the work and the level of required skills, demonstrated excellence in performance, and where applicable, an amount which recognizes contractor contributions or utilizations of their own facilities or other investment capital.

(b) Fee objectives and amounts are to be determined for each contract. Standard fees or across the board agreements will not be used or made. Due to the nature of funding management and operating contracts, it is anticipated that fees shall be established in accordance with the funding cycle; however, a longer period may be used, particulary for production efforts.

(c) Fee amounts payable on contracts for administration, management, operation, and on-site support of Government-owned facilities shall be established in accordance with this part. Amounts payable shall not exceed maximum amounts derived from the appropriate fee schedule established for this purpose. Request to pay fees in excess of the maximum will be sent to the Procurement Executive, for review and approval.

(d) Maximum fees for those management and operating contracts that provide support services shall be determined using the schedule(s) most closely related to the service(s) to be performed. This may be either the production and/or R&D schedules (in some cases this could be both schedules) or the maximum fee schedules for construction or construction management cited in 915.971. If architect-engineer services are involved, the weighted guidelines, profit-fee technique cited in 915.970 shall be applied.

(e) When a contract subject to this part requires a contractor to use its own facilities or equipment, or other resources to make its own cost investment for contract performance; e.g., when there is no letter-of-credit financing, consideration will be given to approval of fee amounts based on assigning weights to appropriate fee factors. The weighted guidelines factors developed in 915.970 may be applied for this purpose. However maximum fees as are discussed in 970.1509-1(c) and (d) shall not be exceeded without the Procurement Executives approval.

970.1509-2 Specal considerations—eductional institutions.

(a) DOE policy is generally not to pay fees for management and operating contracts with educational institutions.

(b) Notwithstanding paragraph (a) of this section it may be, under special circumstances, permissible to reimburse or pay a management allowance to any educational institution provided such allowance can be justified and has the approval of the Head of the Contracting Activity.

970.1509-3 Special consideration—nonprofit organizations (other than educational institutions).

(a) Unless there is reason to do otherwise, it is the general policy of DOE to pay fees for a mangement and operating contract with a nonprofit organization; however, it is a matter of negotiation whether a fee will be paid in a given case.

(b) In computing the amounts to be paid, the tax status of the nonprofit organization should be considered. It is difficult to establish the degree to which the fee contributes to an organization's overall net profit since the fee compensates for certain unallowable costs and certain general and administrative expenses. It should be assumed, however, there is an element of profit in the fees paid under management and operating contracts.

(c) In order to assure consideration of the tax benefits of nonprofit organizations the maximum payable fixed fee cited in the fee schedules of this subpart should be reduced by at least 25%. However, depending upon the circumstances and with appropriate justification, fees may be paid between this reduced amount and the fee amount established by the fee schedule.

970.1509-4 Considerations and techniques for determining fees.

(a) The intent of the fee policy stated in 970.1509-1 reflects recognition that a fee is remuneration to contractors for the entrepreneurial function of organizing and managing resources, the use of contractor resources (including capital resources), and the assumption of risk that all incurred costs (operating and capital) may not be reimbursable.

(b) Use of a purely cost-based structured approach for determining fee objectives and amounts for typical DOE management and operating contracts is inappropriate considering the limited level of contractor cost, capital goods, and operating capital outlays for performance of such contracts. Instead of being solely cost-based, the desirable approach calls for a structure that allows judgmental evaluation and consideration of such significant factors, as outlined below, and the selection of and assignment of appropriate fee values therefor:

(1) Management risk relating to performance, including: (i) The quality and diversity of principal work tasks required to do the job, (ii) the labor intensity of the job, (iii) the special control problems, and (iv) the advance planning, forecasting and other such requirements;

(2) The presence or absence of financial risk, including the type and terms of the contract;

(3) The relative difficulty of work, including consideration of technical and administrative knowledge, skill, experience and clarity of technical specifications;

(4) Degree and amount of contract work required to be performed by and with the contractor's own resources, including the extent to which the contractor contributes plant, equipment, computers, or working capital (labor, etc.);

(5) Duration of project;

(6) Size and operation (number of locations, plants, differing operation, etc.);

(7) Influence of alternative investment opportunities available to the contractor (i.e., the extent to which undertaking a task for the Government displaces a contractor's opportunity to make a profit with the same staff and equipment in some other field of activity).

(8) The relationship of a proposed fee to fees being paid for similar work;

(9) The extent to which the activity contemplated is fundamentally a service being furnished to the Government or is an activity in which the contractor has substantial independent interest, a factor especially pertinent to research work which is closely allied to a contractor's own program and to operations which involve furnishing research facilities which would otherwise not be available because of their large cost;

(10) Benefits which may accrue to the contractor from gaining experience and knowledge of how to do something, from establishing or enhancing a reputation, or from being enabled to hold or expand a staff whose loyalties are primarily to the contractor; and

(11) Other special considerations, including support of Government

programs such as those relating to small and minority business in subcontracting, energy conservation, etc.

(c) The fee objective and amount for a particular negotiation is established by judgmental considerations of the above factors, assigning fee values as deemed appropriate for each factor, and totaling the resulting amounts.

(d) In recognition of the complexities of this fee determination process, and to assist in promoting a reasonable degree of consistency and uniformity in its application, the fee schedules in 970.1509–5 set forth the maximum amounts of fee that contracting activities are allowed to award for a particular transaction without obtaining prior approval of the Procurement Executive. In addition the fee amount established in accordance with 970.1509–4 (a), (b) and (c) shall not be exceeded without prior approval of the Procurement Executive. To facilitate application of the schedules to a contract, the payable fee amounts thereunder are related to the total expected level of cost expenditures under the contract which is defined as the fee base.

§ 970.1509–5 Limitations.

(a) Fee schedules representing the maximum allowable fee to be paid under operating and management contracts have been established for the following management and operating contract tasks or efforts.

(1) Production/Manufacturing and

(2) Research and Development

(b) The applicable schedules and maximum fees are:

PRODUCTION EFFORTS

Fee base	Fee	Fee (percent)	Increment (percent)
Up to $1 million		7.00	7.00
1,000,000	$70,000	7.00	6.05
3,000,000	191,000	6.37	5.25
5,000,000	296,000	5.92	4.18
10,000,000	505,000	5.05	3.50
15,000,000	680,000	4.53	3.30
25,000,000	1,010,000	4.04	2.86
40,000,000	1,439,000	3.60	2.41
60,000,000	1,921,000	3.20	2.07
80,000,000	2,335,000	2.92	1.50
100,000,000	2,635,000	2.64	1.10
150,000,000	3,185,000	2.12	.60
200,000,000	3,485,000	1.74	.50
300,000,000	3,985,000	1.33	.40
400,000,000	4,385,000	1.10	.30
500,000,000	4,685,000	.94	
Over 500M	4,685,000	[1]+.30	

[1] Excess.

RESEARCH AND DEVELOPMENT EFFORTS

Fee base	Fee	Fee (percent)	Increment (percent)
$25,000	$2,500	10.00	9.74
50,000	4,938	9.87	8.97
100,000	9,420	9.42	8.22
200,000	17,640	8.82	7.64
400,000	32,920	8.23	7.28
600,000	47,480	7.91	6.92
800,000	61,320	7.67	6.69
1,000,000	74,700	7.47	6.38
3,000,000	202,300	6.74	6.11
5,000,000	324,500	6.49	5.53
10,000,000	601,000	6.01	4.82
15,000,000	842,000	5.61	4.15
25,000,000	1,257,000	5.03	3.60
40,000,000	1,797,000	4.49	3.10
60,000,000	2,417,000	4.03	2.40
80,000,000	2,897,000	3.62	1.88
100,000,000	3,273,000	3.27	1.12
150,000,000	3,833,000	2.56	.65
200,000,000	4,158,000	2.08	.55
300,000,000	4,708,000	1.57	.45
400,000,000	5,158,000	1.29	.35
500,000,000	5,508,000	1.10	
Over 500M	5,580,000	[1]+.35	

[1] Excess.

970.1509–6 Fee base.

(a) The fee base is an estimate of necessary allowable costs to which a fee factor has been applied to determine the maximum fee allowance. It represents the cost of the production or R&D work to be performed, exclusive of the cost of source and special nuclear materials; estimated costs of land, buildings and facilities whether to be leased, purchased or constructed; depreciation of Government facilities; and any estimate of effort for which a separate fee is to be negotiated.

(b) The fee base, in addition to the above adjustments, shall exclude:

(1) Any part of the following types of costs which are of such magnitude or nature as to distort the technical and management effort actually required of the contractor:

(i) Estimated cost of capital equipment (other than special equipment) which the contractor procures by subcontract;

(ii) Estimated cost or price of subcontracts and other major contractor procurements; and

(iii) Other simular costs.

(2) Special equipment as defined in 970.1509–7.

(3) Estimated cost of Government-furnished materials, services and equipment;

(4) All estimates of costs not directly incurred by or reimbursed to the operating contractor;

(5) Estimates of home office or corporate general and administrative expenses that shall be reimbursed through the operating contract;

(6) Estimates of any independent research and development cost or bid and proposal expenses that may be approved under the operating contract.

(c) In calculating the fee base for application of the production schedule, the estimated cost of research and development work and of process development work which goes beyond normal technical support required to ensure continuity of operation shall be excluded. The maximum fee for such R&D and process development work is calculated separately, starting at the beginning of the R&D schedule.

(d) The schedules in this part are not intended to reflect compensation for unusual architect-engineer or construction services provided by the management and operating contractor. Such services are normally covered by special agreements based on the policies applying to architect-engineer or construction contracts. Fees paid for such services shall be in addition to the operating fees and should be calculated using the provisions of 915.9 relating to architect-engineer or construction fees.

(e) The fee schedules provide the maximum fees payable within the authority of the Head of Contracting Activity. There may be times however, when the fee schedule does not reflect an adequate compensation to the contractor (such as the use of its own facilities and capital). Proposals to compensate a contractor in excess of the maximum fee schedules shall be submitted to the Procurement Executive. Requests should contain documentation and state specifically why the contractor is entitled to additional fees. (See also, 970.1509–1(c)).

970.1509–7 Special equipment purchases.

(a) Special equipment is sometimes procured in conjunction with management and operating contracts. When a contractor procures special equipment, the DOE negotiating official shall determine separate fees for the equipment and use the schedule in 915.971–5(f).

(b) In determining appropriate fees, factors such as complexity of equipment, ratio of procurement transactions to volume of equipment to be purchased and completeness of services should be considered. Where possible, the reasonableness of the fees should be checked by their relationship to actual costs of comparable procurement services.

(c) The maximum allowable fee for such services shall not exceed the fee schedule set forth in 915.971–5(f) for such services as performed by construction contractors. The fee is based on the estimated price of the equipment being purchased.

(d) For purposes of this part, special equipment is equipment for which the

purchase price is of such a magnitude compared to the cost of installation as to distort the amount of technical direction and management effort required of the contractor. Generally, special equipment is considered to be a capital-asset-type of equipment (typically equipment costing more than $1,000 and having a service life of more than two years) for which the cost of installation and handling (including unloading, hauling and warehousing) is 5%, or less, of the purchase price of the equipment. However, the determination of specific items of equipment in this category requires application of judgment and careful study of the circumstances involved in each project. This category of equipment would generally include:

(1) Major items of prefabricated process or research equipment.

(2) Major items of preassembled equipment such as packaged boilers, generators, machine tools, and large electrical equipment. In some cases, it would also include special apparatus or devices such as reactor vessels and reactor charging machines.

970.1509-8 Special considerations—award fee.

(a) When a management and operating contract is to be awarded on an award-fee basis, several special considerations are appropriate.

(b) In management and operating contracts, the base fee portion of the fee objective should not normally exceed 50% of the otherwise applicable fixed fee. However, the base amount may range from 0 to 50% of the fixed fee amount. In the event 50% is exceeded, appropriate documentation shall be entered into the contract file. In no event shall the base fee exceed 60% of the fixed fee amount.

(c) The base fee plus the amount included in the award fee pool should normally not exceed the fixed fee (as subjectively determined or as developed from the fee schedule) by more than 50%. However, in the event that the base fee is to be less than 50% of the fixed fee, the maximum potential award fee may be increased proportionately with the decreases in base fee amounts.

(d) The following maximum potential award fees shall apply in award fee contracts: (percent is stated as percent of fee schedule amounts).

Base fee (percent)	Award fee (percent)	Maximum total (percent)
50	100	150
40	120	160
30	140	170
20	160	180
10	180	190
0	200	200

(e) Prior approval of the Procurement Executive, is required for total fee (based plus award fee pool) exceeding the guidelines in paragraph (d), above. Additionally, in the event use of the award fee guidelines in (d), above, result in total fees which exceed or are expected to exceed the statutory limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b), prior approval of the Procurement Executive shall be obtained.

Subpart 970.19—Small Business and Small Disadvantaged Business Concerns

970.1901 General.

(a) The policies and procedures in the following FAR sections shall be applied to the acquisition activities of management and operating contractors.

19.301, 19.302, 19.502-2, 19.502-3, 19.508(b), 19.508(c), 19.508(d)

(b) Protests received by management and operating contractors regarding small business status or questions concerning small disadvantaged business shall be referred to the Small Business Administration through the DOE contracting officer.

(c) Procurements of $10,000 or less awarded through small purchase procedures shall be reserved exclusively for small business where there is a reasonable expectation that bids will be obtained from two or more responsible small business concerns that are competitive with market prices, quality and delivery.

(d) Acquisition by management and operating contractor of construction estimated to cost $3 million or less, including new construction, and repair and alteration of structures, shall be required to be set aside on a class basis for small business concerns. When, in the judgment of the contractor, a particular acquisition falling within these dollar limits is determined to be unsuitable for a small business set-aside, notification to SBA shall be made through the DOE contracting officer. Unless SBA appeals the decision, the contractor shall proceed to process the acquisition on an unrestricted basis. Small business set-aside preferences should be considered on a case-by-case basis, for acquisition of construction in excess of $3 million favoring the preferential participation of small business, whenever appropriate.

(e) Initiation of set-asides by contractors shall be made on a unilateral basis.

(f) Contracting activities shall require management and operating contractors to prepare quarterly reports on small business, small disadvantaged business, women-owned small business and contracts placed in labor surplus areas.

(g) To expand participation of small and small disadvantaged business sources, management and operating contractors shall publicize proposed actions of $100,000 and above in accordance with FAR subpart 5.2. This procedure will be followed unless approval by the contracting officer to waive the requirements of this provision is obtained.

(h) The clause at FAR 52.219-9 as modified by 952.219-9 shall be included in management and operating contracts.

Subpart 970.20—Labor Surplus Area Concerns

970.2001 General.

(a) Management and operating contractors shall be authorized to employ total labor surplus area (LSA) set-asides where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible LSA concerns so as to ensure that awards will be made at reasonable prices. The priorities set forth in FAR 19.504 shall be utilized in determining the type of set-aside to be employed.

(b) Protests received or questions raised by contractors regarding LSA status shall be handled with the Department of Labor through the DOE contracting officer.

(c) LSA set-aside acquisitions awarded by management and operating contractors shall be reported quarterly in accordance with "A Guide to Preparation of DOE Quarterly Procurement and Financial Assistance Reports."

(d) Initiation of set-asides by management and operating contractors shall be on a unilateral basis.

Subpart 970.22—Application of Labor Policies

970.2201 Basic labor policies.

(a) Contracting officers shall in appropriate circumstances, follow the guidance in FAR subpart 22.1 except as provided below in award and management of management and operating contracts.

(b) The extent of Government ownership of the nation's energy plant and materials, and the overriding concerns of national defense and

security, impose special conditions on personnel and labor relations in the energy program, namely, continuity of vital operations at DOE installations must be assured; DOE must retain absolute authority on all questions of security; DOE reviews labor expenses under management and operating contracts as a part of its responsibility for assuring judicious expenditure of public funds. It is the intent of DOE, that personnel and labor policies throughout the energy program should reflect the best experience of American industry in aiming to achieve the type of stable labor-management relations essential to the proper development of the energy program. The following enunciates the principles upon which the DOE policy is based:

(1) *Employment standards.* (i) Management and operating contractors are expected to bring experienced, proven personnel from their private operations to staff key positions on the contract work and to recruit other well-qualified personnel as needed. Such personnel should be employed and treated during employment without discrimination by reason of race, color, religion, sex, or national origin. Contractors shall be required to take affirmative action to achieve these objectives.

(ii) The job qualifications and suitability of prospective employees should be established by the contractor prior to employment by careful personnel investigations. Such personnel investigations should include, as appropriate: a credit check; verification of high school degree/diploma or degree/diploma granted by an institution of higher learning within the last 5 years; contacts with listed personal references; contacts with listed employers for the past 3 years (excluding employment of less than 60 days duration, part-time employments, and craft/union employments); and local law enforcement checks *when* such checks are not prohibited by state or local law, statute, or regulation, and when the individual had resided in the jurisdiction where the contractor is located. Where a security clearance will be required, the applicant's job qualifications and suitability must be established before a request is made to DOE for a security clearance. When an applicant is being hired specifically for a position which shall require a DOE security clearance, the applicant shall not be placed in that position prior to the security clearance being granted by the DOE unless an exception has been obtained from the Head of the Contracting Activity or designee.

(iii) The contractor is responsible for maintaining satisfactory standards for employee qualifications, performance, conduct, and business ethics under its own personnel policies.

(2) *Security.* On all matters of security at its installations, DOE retains absolute authority and neither the security rules nor their administration are matters for collective bargaining between management and labor. Insofar as DOE security regulations affect the collective bargaining process, the security policies and regulations will be made known to both parties. To the fullest extent feasible, DOE will consult with representatives of management and labor in formulating security rules and regulations that affect the collective bargaining process.

(3) *Wages, salaries, and employee benefits.* (i) Wages, salaries, and employee benefits shall be administered in a manner designated to adapt normal industry or university practices and conditions to the contract work and to provide for appropriate review by DOE. Area practices, valid patterns, and well-established commerical or academic practices of the contractors, as appropriate, form the criteria for the establishment and adjustment of compensation schedules.

(ii) The aspects of wages, hours, and working conditions which are the substance of collective bargaining in normal organized industries will be left to the orderly processes of negotiation and agreement between DOE contractor managements and employee representatives with maximum possible freedom from Government interference.

(4) *Employee relations.* The handling of employee relations on contract work, including such matters as the conduct and discipline of the work force and the handling of employee grievances, is part of the normal management responsibility of the contractor.

(5) *Collective bargaining.* (i) DOE review of collective bargaining practices will be premised on the view that management's trusteeship for the operation of the Government facilities includes the duty to adopt practices which are fundamental to the friendly adjustment of disputes, and which experience has shown promote orderly collective bargaining relationships. Practices inconsistent with this view may be objected to, if not found to be otherwise clearly warranted.

(ii) In line with the policy of assuring continuity of operation of vital facilities, all collective bargaining agreements at Government-owned energy installations should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption to normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations for the term of the agreement.

(iii) DOE expects its management and operating contractors and the unions representing contractor employees to cooperate fully with the Federal Mediation and Conciliation Service.

(6) *Personnel training.* DOE encourages and supports personnel training programs aimed at improving work efficiency or developing needed skills which are not otherwise obtainable.

(7) *Working conditions.* Accident, fire, health, and occupational hazards associated with DOE activities will be held to a practical minimum level and controlled in the interest of maintenance of health and prevention of accidents. To this end, contractors shall be required to maintain comprehensive continuous preventive and protective programs appropriate to the particular activities throughout all operations subject to DOE control. Appropriate financial protection in case of occupational disability must be provided employees on DOE projects.

(c) Title to payroll and associated records under certain contracts for the management and operation of DOE facilities, and for necessary miscellaneous construction incidental to the function of these facilities, shall vest in the Government. Such records are to be disposed of in accordance with DOE directions. For such contracts, the Solicitor of Labor has granted a tolerance from the Department of Labor Regulations to omit from the prescribed labor clauses the requirement for the retention of payrolls and associated records for a period of three years after completion of the contract. Under this tolerance, the records retention requirements for all labor clauses in the contract and the Fair Labor Standards Act is satisfied by disposal of such records in accordance with DOE directives.

970.2202 Convict labor.

The provisions of FAR Subpart 22.2 shall apply to procurement by management and operating contractors.

970.2203 Contract Work Hours and Safety Standards Act (other than construction contracts).

The requirements of FAR Subpart 22.3 shall apply to procurements by management and operating contractors to the same extent and under the same conditions such requirements apply to direct DOE procurements. Paragraph (c) of the clause in FAR 52.222–4 should be revised to provide for the withholding of moneys from the subcontractor by the contractor as directed by the contracting officer.

970.2204 Labor standards for contracts involving construction.

The requirements of FAR Subpart 22.4 apply to subcontracts involving construction awarded by DOE management and operating contractors to the same extent that they would if the subcontract had been directly awarded by DOE. Subpart 922.4 provides guidance, including examples of work situations, to assist in determining the applicability of these standards.

970.2206 Walsh-Healey Public Contracts Act.

(a) The requirements of FAR Subpart 22.6 and this section shall apply to procurements by management and operating contractors to the same extent and under the same conditions such requirements apply to direct DOE procurements.

(b) Because DOE has safety and health standards compatible with those of 41 CFR Part 50–204, the Department of Labor has agreed to accept DOE's program for inspection and evaluation of compliance, in lieu of establishing its own program of inspection and evaluation to the extent the Walsh-Healey safety and health standards are applicable to operations conducted for DOE at Government-owned and/or controlled sites and facilities.

970.2208 Equal employment opportunity.

The equal employment opportunity provisions of FAR Subpart 22.8 and Subpart 922.8 of this chapter, including E.O. 11246 and 41 CFR Part 60, are applicable to DOE management and operating contracts and to subcontracts awarded by DOE management and operating contractors as a result of the management or operating contracts. The DOE contracting officer shall furnish any needed assistance to assure that the management or operating contractor is familiar with these requirements and that its purchasing system extends these requirements to subcontracts.

970.2210 Service Contract Act.

(a) The Service Contract Act of 1965 is not applicable to contracts for the management and operation of DOE facilities. However, subcontracts awarded by contractors operating and managing DOE facilities are subject to the Act to the same extent and under the same conditions as contracts awarded directly by DOE, under which the contractor is acting on the Government's behalf.

(b) Subcontracts awarded by contractors operating and managing DOE facilities shall include the applicable clause in FAR 22.10 with such modifications as would otherwise be appropriate had this clause been included in the prime contract.

970.2213 Special disabled and Vietnam Era Veterans.

The provisions of FAR Subpart 22.13 shall apply to procurements by management and operating contractors.

970.2214 Employment of the handicapped.

The provisions of FAR Subpart 22.14 shall apply to procurement by management and operating contractors.

970.2270 Unemployment compensation.

(a) Each state has its own unemployment compensation system to provide payments to workers who become unemployed involuntarily and through no fault of their own. Funds are provided for unemployment compensation benefits through a payroll tax on employers. Most DOE contractors are subject to the unemployment compensation tax laws of the states in which they are located. It is the policy to assure, both in the negotiation and administration of cost-reimbursement type contracts, that economical and practical arrangements are made and practiced with respect to unemployment compensation.

(b) *Contract exempt from state laws.* (1) Some contractors are exempt from state unemployment compensation laws, usually on grounds that they are nonprofit organizations or subdivisions of State governments. Most states, however, permit such employers to elect unemployment compensation coverage on a voluntary basis. Under such circumstances, all existing or prospective cost-reimbursement contractors shall be encouraged to provide unemployment compensation coverage or equivalent substitutes.

(2) It is also DOE policy that, prior to the award or extension of a management and operating contract, exempt contractors or prospective contractors shall be required to submit to the contracting officer a statement that they will either elect coverage or provide equivalent substitutes for unemployment compensation, or in the alternative, submit evidence that it is impractical to do so. If any exempt contractor or prospective contractor submits that it is impractical to elect coverage or to provide an equivalent substitute, appropriate Headquarters Labor Relations staff shall review that position prior to recommending an award or extension of the contract. If there are substantial reasons for not electing coverage or for not providing equivalent substitutes, a contract may be awarded or extended. Headquarters' staff review and recommendation shall be based on such factors as:

(i) The specific provisions of the unemployment compensation law of the State;

(ii) The extent to which the establishment of special conditions on DOE work may have an adverse effect on the contractor's general policies and operating costs in its private operations;

(iii) The numerical relationship between the contractor's private work force and its employees performing only work for DOE;

(iv) The contractor's record with respect to work force stability and the general outlook with respect to future work force stability;

(v) In a replacement contractor situation, whether or not the prior contractor had coverage or suitable substitutes; and

(vi) The particular labor relations implications involved.

970.2271 Workers' compensation insurance.

(a) *Policies and Requirements.* (1) *Workers' compensation insurance protects employers against liability imposed by workers' compensation laws for injury or death to employees arising out of, or in the course of, their employment.* This type of insurance is required by state laws unless employers have acceptable programs of self-insurance.

(2) *Special requirements.* Certain workers' compensation laws contain provisions which result in limiting the protection afforded persons subject to such laws. The policy with respect to these limitations as they affect persons employed by, management and operating contractors is set forth below:

(i) *Elective provisions.* Some worker's compensation laws permit an employer to elect not to be subject to its provisions. It is DOE policy to require these contractors to be subject to workers' compensation laws in jurisdictions permitting election.

(ii) *Statutory immunity.* Under the provisions of some workers'

compensation laws, certain types of employers; e.g., nonprofit educational institutions, are relieved from liability. If a contractor has a statutory option to accept liability, it is DOE policy to require the contractor to do so.

(iii) *Limited medical benefits.* Some workers' compensation laws limit the liability of the employer for medical care to a maximum dollar amount or to a specified period of time. In such cases, a contractor's workers' compensation insurance policy should contain a standard extrastatutory medical coverage endorsement.

(iv) *Limits on occupational disease coverage; and employers' liability.* Some workers' compensation laws do not provide coverage for all occupational diseases. In such situations, a contractor's workers' compensation insurance policy should contain voluntary coverage for all occupational diseases.

(3) *Contractor "employees' benefit plan"—self-insurers.* The policies and requirements set forth in paragraph (2) apply where management and operating contractors purchase workers' compensation insurance. With respect to self-insured contractors, the objectives specified in paragraph (a)(2) also shall be met through primary or excess workers' compensation and employers' liability insurance policy(ies) or an approved combination thereof. "Employees' benefit plans" which were established in prior years may be continued to contrast termination at existing benefit levels.

(b) *Assignment of responsibilities.* (1) Headquarters' Labor Relations and other officials and Heads of Contracting Activities, consistent with their delegations of responsibility, shall assure management and operating contracts are consistent with the policies and requirements of (a), above.

(2) In discharging assigned responsibility, Heads of Contracting Activities shall:

(i) Periodically review workers' compensation insurance programs of management and operating contractors in the light of applicable workers' compensation statutes to assure conformance with the requirements of (a), above;

(ii) Evaluate the adequacy of coverage of "self-insured" workers' compensation programs;

(iii) Provide arrangements for the administration of any existing "employees' benefit plans until such plans" are terminated; and

(iv) Submit to the Office of Industrial Relations, Headquarters, all proposals for the modification of existing "employees' benefit plans."

(3) The Office of Industrial Relations, Headquarters, is responsible for approving management and operating contractor "employees' benefit plans."

970.2272 Conduct of employees and consultants of DOE management and operating contractors.

(a) *Scope of subsection.* This subsection establishes the policies for maintaining satisfactory standards of conduct on the part of employees and consultants employed on DOE contract work by its management and operating contractors. Contracts with colleges and universities, which have adopted conflict-of-interest policies consistent with ACE–AAUP standards and do not involve the operation of Government-owned facilities on Government-owned or Government-leased land, are governed by the "Policy of the Federal Council for Science and Technology Relating to Conflicts of Interest by Staff Members of Colleges and Universities" (adopted March 29, 1966), and are not subject to this subsection.

(b) *Applicability.* (1) These policies are applicable to DOE management and operating contractors to the extent that their contracts with DOE contain provisions making this subsection applicable; or instructions have been issued under appropriate provisions of their contracts with DOE directing compliance with this subpart.

(2) The contract clause contained in 970.5204–12 requiring the contractor to establish such procedures as are necessary to effectively implement the provisions of this subsection, subject to the approval of the Contracting Officer, shall be included in all new DOE management and operating contracts.

(3) The contract clause contained in 970.5204–27(a) concerning necessary approvals to be obtained by contractor employees before performing consultant or similar services for another DOE contractor shall be included in:

(i) All new DOE management and operating contracts except those identified in paragraph (b)(4) below; and

(ii) Major modifications (involving change in scope or other significant substantive changes) or extensions of existing contracts within the foregoing category.

(4) The contract clause contained in 970.5204–27(b) concerning necessary approvals to be obtained by contractor employees before performing consultant or similar services for another DOE contractor, or in the energy field for another organization, shall be included in:

(i) All new DOE management and operating contracts for research or operations of DOE program work where a substantial portion of the land or buildings used for such research or in such operations is owned or controlled by the Government; and

(ii) Major modifications (involving change in scope or other significant substantive changes) or extensions of existing contracts within the foregoing category.

(5) Exceptions to the requirements of paragraphs (b)(2), (3), and (4) will be permitted only with the approval of the Procurement Executive.

(c) *Gratuities.* A management and operating contractor or its employees or consultants shall not, under circumstances which might reasonably be interpreted as an attempt to influence the recipients in the conduct of their duties, accept any gratuity or special favor from individuals or organizations with whom the contractor is doing business, or proposing to do business, in accomplishing the work under the contract. Reference should be made to the provisions of 41 U.S.C. 51–54.

(d) *Use of privileged information.* Employees and consultants of a management and operating contractor shall not use for personal gain or make other improper use of privileged information which is acquired in connection with their employment on contract work. In this connection, the term "Privileged information" includes but is not limited to, unpublished information relating to technological and scientific developments; medical, personnel, or security records of individuals; anticipated materials' requirements or pricing action; possible new sites for DOE program operations; and knowledge of selections of contractors or subcontractors in advance of official announcement.

(e) *Outside employment of contractor employees.* Employees of a management and operating contractor are entitled to the same rights and privileges with respect to outside employment as other citizens. Therefore, there is no general prohibition against employees having outside employment. However, no employee of a contractor performing work on a full-time basis under a DOE management and operating contract may engage in employment outside official hours of duty or while on leave if such employment will:

(1) In any manner interfere with the proper and effective performance of the duties of the position;

(2) Appear to create a conflict-of-interest situation, or

(3) Appear to subject DOE or the contractor to public criticism or embarrassment.

(f) *Information statement concerning consultant or other employment service.* If a consultant or other outside employment service of the employee involves the use of information in the area of the employee's contract employment, the contractor will be responsible for requiring that the employee file with the contractor, an information statement containing such information concerning the outside employment as the contractor may prescribe. As a minimum, the information statement shall include a description of any patent agreements that may be involved and the following acknowledgement:

I acknowledge that I have read and am familiar with the published policy of the DOE contained in:

(a) Subpart 970.2273 "Conduct of employees and consultants of DOE management and operating contractors and

(b) DOE publication entitled, "Reporting Results of Scientific and Technical Work Funded by DOE," which states in part that significant new results produced in DOE-funded scientific and technical work agree not to withhold or delay reporting information acquired through my employment with ——— in favor of ——— with whom I have made or am contemplating making a consulting agreement. I have also read and am familiar with the requirements of my employer's contract with DOE relating to patents. To the best of my knowledge or belief, the activities to be performed under this consulting agreement will not conflict with the policy set forth in 970.5204–27, the patent provisions of my employer's contract with DOE, or with the responsibility of my employer to report fully and promptly to DOE all significant research and development information. If in the course of my activities under this consulting agreement, it appears that such a conflict may arise, I will promptly notify and consult with my primary employer ——— concerning such possible conflict.

(g) *Incompatibility between regular duties and private interests.* Employees and consultants of a management and operating contractor shall not be permitted to make or influence any decisions on behalf of the contractor which directly or indirectly affect the interest of the Government, if the employee's or consultant's personal concern in the matter may be incompatible with the interest of the Government. For example: (1) An employee or consultant of a contractor will not negotiate, or influence the award of, a subcontract with a company in which the individual has an employment relationship or significant financial interest; and (2) an employee or consultant of a contractor will not be assigned the preparation of an evaluation for DOE or for any DOE contractor of some technical aspect of the work of another organization with which the individual has an employment relationship, or significant financial interest, or which is a competitor of an organization (other than the contractor who is the individual's regular employer) in which the individual has an employment relationship or significant financial interest. The contractor shall be responsible for informing employees and consultants that they are expected to disclose any incompatibilities between duties performed for the contractor and their private interests and to refer undecided questions to the contractor.

970.2273 Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities.

(a) Particular work items falling within one or more of the following criteria normally will be classified as noncovered by the Davis-Bacon Act.

(1) Individual work items estimated to cost $2,000 or less. The total dollar amount of the operating contract is not a factor to be considered and bears no relation to individual work items classified as construction, alteration and/or repair, including painting and decorating. However, no item of work, the cost of which is estimated to be in excess of $2,000, shall be artificially divided into portions less than $2,000 for the purpose of avoiding the application of the Act.

(2) Work and services that are a part of operational and maintenance activities or which, being very closely and directly involved therewith, are more in the nature of operational activities than construction, alteration, and/or repair work. This includes work and services which would involve a material risk to continuity of operations, to life or property, or to DOE operating requirements, if performed by persons other than the operating contractor's regular production and maintenance forces. However, any decision that contracts or work items are noncovered for these reasons must be made by the Head of the Contracting Activity and the authority to make such a decision cannot be redelegated.

(3) Assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment. It should be noted, however, that these activities are covered if they are part of or would be a logical part of the construction of a facility, or if construction type work, other than defined as "incidental" in 922.403–71(c) is involved.

(4) Experimental development of equipment, processes, or devices including assembly, fitting, installation, testing, reworking, and disassembly. This refers to equipment, processes and devices which are assembled for the purpose of conducting a test or experiment. The design may be only conceptual in character, and professional personnel responsible for the experiment participate in the assembly. Specifically excluded from the category of experimental development are buildings and building utility services—as distinguished from temporary connections thereto. Also specifically excluded from this category is equipment to be used for continuous testing, e.g., a machine to be continuously used for testing the tensile strength of structural members. (See 922.403–7302 (g) and (h)).

(5) Experimental work in connection with peaceful uses of nuclear energy. This refers to equipment, processes and devices which are assembled and/or set in place and interconnected for the purpose of conducting a test or experiment. The nature of the test or experiment is such that professional personnel responsible for the test or experiment and/or data to be derived therefrom necessarily must participate in the assembly and interconnections. Specifically excluded from experimental work are buildings, building utility services, structural changes, drilling, tunneling, excavation, and back-filling work which can be performed according to customary drawings and specifications, and utility services of modifications to utility services—as distinguished from temporary connections thereto. Work in this category may be performed in mines or in other locations specifically constructed for tests or experiments. (See 922.403–7302 (g) and (h).)

(6) Emergency work to combat the effects of fire, flood, earthquake, equipment failure, accident or other casualties, and to restart the operational activity following the casualty. Work which is not directly related to restarting the activity or which involves rebuilding or replacement of structure or structural components or equipment is excluded from this category. (See 922.403–7302(g) and (h)).

(7) Decontamination, including washing, scrubbing, and scraping to remove contamination; removal of contaminated soil or other material; and painting or other resurfacing, provided that such painting or resurfacing is an intergral part of the decontamination activity and performed by the employees of the contractors performing the decontamination.

(8) Burial of contaminated soil waste or contained liquid; however, initial preparatory work readying the burial ground for use (for exmple, any grading or excavating that is a part of initial site preparation, fencing, drilling wells for continued monitoring of contamination, construction of guard or other office space) is covered. Likewise, work subsequent to burial which involves the placement of concrete or other like activity is covered.

(b) The calssification of a contract as a contract for operational or maintenance activities does not necessarily mean that all work and activities at the contract location are classifiable as outside Davis-Bacon Act coverage, since it may be necessary to separate out work which should be classified as covered. Therefore, Heads of Contracting Activities shall establish and maintain controls for the careful scrutiny of proposed work assignements under such a contract to assure that:

(1) Contractors whose contracts do not contemplate the performance of covered work with the contractor's own forces are neither asked nor authorized to perform work within the scope of the Davis-Bacon Act. If the actual work assignments do involve coverd work, the contract should be modified to include applicable provisions of the Davis-Bacon Act.

(2) Where covered work is performed by a contractor whose contract contains provisions required by the Davis-Bacon Act, such work is performed as required by law and the contract. After such contractor has been informed, as provided in paragraph (b)(3) of this section, that certain work is covered work, the Head of the Contracting Activity's responsibility to assure compliance is the same as it would be if the work were being performed under a separate construction contract.

(3) Controls provided for above include consideration by the Head of the Contracting Activity and the contractor, before work is begun or contracted out, of the relation of the Davis-Bacon Act to (i) the annual programming of work, (ii) the contractor's work orders, and (iii) work contracted out in excess of $2,000. The Head of the Contracting Activity may, if he concludes that it is consistent with DOE's responsibilities as described in this section, prescribe from time to time classes of work as to which applicability or nonapplicability of the Davis-Bacon Act is clear, for which he will require no further DOE determination on coverage in advance of the work. For all work, controls to be established by the Head of the Contractng Activity should provide for notification to the contractor before work is begun as to whether such work is covered.

The Head of the Contracting Activity is responsible for submitting to the Wage and Hours Division, Employment Standards Administration, Department of Labor, Washington, D.C. 20210, all DOE requests for project area or installation wage determinations, or individual determinations, or extensions or modification thereto. Requests for such determinations shall be made on Standard Form 308, at least 30 calendar days before they are required for use in advertising for bids or requests for proposals.

(c) *Experimental installations.* Within DOE programs, a variety of experiments are conducted involving materials, fuels, coolants, processes equipment. Certain types of situations where tests and experiments have sometimes presented coverage questions are described below.

(1) *Set-ups of device and/or processes.* The proving out of investigative findings and theories of a scientific and technical nature may require the set-up of various devices and/or processes at an early, pre-prototype stage of development. These may range from laboratory bench size to much larger set-ups. As a rule, these set-ups are made within established facilities (normally laboratories); required utility connections are made to services provided as a part of the basic facilities; and the activity as a whole falls within the functional purpose of the facility. Such set-ups are generally not covered. However, the erection of structures which are public works is covered if construction type work, other than an "incidental amount" as defined in 922.403–71(c) is involved. Preparatory work for the set-up requiring structural changes or modifications of basic utility services—as distinguished from connections thereto—is covered. Following are illustrations of noncovered set-ups of devices and/or processes:

(i) Assembly of piping and equipment within existing "hot cell" facilities for proving out a conceptual design of a chemical processing unit;

(ii) Assembly of equipment, including adaptation and modification thereof, in existing "hot cell" facilities to prove out a conceptual design for remotely controlled machining equipment;

(iii) Assembly of the first graphite pile in a stadium at Stagg Field in Chicago;

(iv) Assemby of materials and equipment for particular aspects of the direct current thermonuclear experiments to explore feasibility and to study other ramifications of the concept of high energy injection and to collect data thereon.

(2) *Loops.* Many experiments are carried on in equipment assemblies called loops in which liquids or gases are circulated under monitored and controlled conditions. For purposes of determining Davis-Bacon coverage, loops may be classed as loop facilities or as loop set-ups. Both of these classes of loops can include in-reactor loops and out-of-reactor loops. In differentiating between clearly indentified loop set-ups and loop facilities, an area exists in which there have been some questions of coverage, such as certain loops at the Material Test Reactor and at Engineering Test Reactor and the Idaho National Engineering Laboratory site. Upon clarification of this area, further illustrations will be added. In the meantime, the differentiation between loop set-ups and loop facilities must be made on a case-by-case basis, taking into account the total criteria set forth in this subpart.

(i) *Loop set-ups.* The assembly, erection, modification, and disassembly of a loop set-up is noncovered. A noncontroversial example of a loop set-up is one which is assembled in a laboratory, e.g., Oak Ridge National Laboratory, Argonne National Laboratory, or Lawrence Livermore National Laboratory, for a particular test and thereafter disassembled. However, preparatory work for a loop set-up requiring structural changes or modifications of basic utility services—as distinguished from connections thereto—is covered, as are material and equipment that are installed for a loop set-up which is a permanent part of the facility or which is use for a succession of experimental programs.

(ii) *Loop facilities.* A loop facility differs from a loop set-up in that it is of a more permanent character. It is usually, but not always, of greater size. It normally involves the building or modification of a structure. Sometimes it is installed as a part of construction of the facility. It may be designed for use in a succession of experimental programs over a longer period of time. Examples of loop facilities are the in-reactor "K" loops at Hanford and the large Aircraft Nuclear Propulsion loop at the Idaho National Engineering Laboratory site. The on-site assembly and erection of such loop facilities are covered. However, once a loop facility is completed and becomes operational, the criteria set forth above for operational and maintenance activities apply.

(3) *Reactor component experiments.* Other experiments are carried on by insertion of experimental components within reactor systems without the use of a loop assembly. An example of reactor facilities erected for such experimental purposes are the special power excursion test reactors (SPETRs) at the National Reactor Test Site which are designed for studying reactor behavior and performance characteristics of certain reactor components. Such a facility may consist of a reactor vessel, pressurizing tank, coolant loops, pumps, heat exchangers, and other auxiliary equipment as needed. The facility also may include sufficient shielding to permit work on the reactor to proceed following a short period of power interruption, and buildings as needed to house the reactor and its auxiliary

equipment. The erection and on-site assembly of such a reactor facility is covered, but the components whose characteristics are under study are excluded from coverage. To illustrate, one of the SPETRs planned for studies of nuclear reactor safety is designed to accommodate various internal fuel and control assemblies. The internal structure of the pressure vessel is designed so that cores of different shapes and sizes may be placed in the vessel for investigation, or the entire internal structure may be easily removed and replaced by a structure which will accept a different core design. Similarly, the control rod assembly is arranged to provide for flexibility in the removal of instrument leads and experimental assemblies from within the core.

(4) *Tests or experiments in peaceful uses of nuclear energy.* These tests or experiments are varied in nature and some are only in a planning stage. They consist of one or more nuclear or nonnuclear detonations for the purposes of acquiring data. The data can include seismic effects, radiation effects, amount of heat generated, amount of material moved and so forth. Some of these tests are conducted in existing mines, while others are conducted in facilities specifically constructed for the tests or experiments. In general, all work which can be performed in accordance with customary drawings and specifications, as well as other work in connection with preparation of facilities is treated as covered work. Such work includes tunneling, drilling, excavation and backfilling, erection of buildings or other structures, and installation of utilities. The installation of the nonnuclear material or nuclear device to be detonated, and the instrumentation and connection between such material or device and the instrumentation are treated as noncovered work.

(5) *Tests or experiments in military uses of nuclear energy.* As in 922.403–7302(h)(4), these tests or experiments can be varied in nature. However, under this category it is intended to include only detonation of nonnuclear material or nuclear devices. The material or devices can be detonated either underground, at ground level, or above the ground. These tests or experiments have been conducted in, on, or in connection with facilities specifically constructed for such tests or experiments. As in tests or experiments in peaceful uses of nuclear energy, all work which can be performed in accord with customary drawings and specifications, as well as other work in connection with preparation of facilities are treated as covered work. Such work includes building towers or similar structures, tunneling, drilling, excavation and backfilling, erection of buildings or other structures, and installation of utilities. The installation of the nonnuclear material or nuclear devices and instrumentation are treated as noncovered work.

(d) *Construction site contiguous to an established manufacturing facility.* As DOE-owned property sometimes embraces several thousand acres of real estate, a number of separate facilities may be located in areas contiguous to each other on the same property. These facilities may be built over a period of years, and established manufacturing activities may be regularly carried on at one site at the same time that construction of another facility is underway at another site. On occasion, the regular manufacturing activities of the operating contractor at the first site may include the manufacture, assembly, and reconditioning of components and equipment which in other industries would normally be done in established commmercial plants. While the manufacture of components and equipment in the manufacturing plant is noncovered, the installation of any such manufactured items on a construction job is covered.

Subpart 970.23—Environmental, Conservation, and Occupational Safety Programs

970.2303 Hazardous materials identification and material safety.

970.2303–1 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 consultation with appropriate environmental, safety and health program management personnel.

970.2303–2 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 970.5204–2 shall be used in such contract or subcontract and made applicable to the work if conditions (a)(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.

(b) The clause set forth in 952.223–72 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).

(c) The clause set forth at 970.5204–26 shall be included in all contracts and subcontracts for, and be made applicable to, work to be performed at or involving the construction, startup, operation, and decommissioning of DOE-owned nuclear facilities deemed to be exempt from Nuclear Regulatory Commission licensing requirements. Any deviation in substance affecting the meaning, intent, or basic principles of this clause must be referred to the Procurement Executive, for approval.

(d) The clause at 970.5204–41 shall be included in all contracts containing the DOE standard clause entitled "Safety and Health" at 970.5204–2 or "Radiation and Nuclear Criticality" at 952.223–72 or Nuclear Safety at 970.5204–26.

Subpart 970.25—Foreign Acquisitions

970.2501 Buy American Act.

Management and operating contractors are required, through the contract clauses prescribed at 970.5203–3 and 970.5204–3, to comply with the provisions of the Buy American Act. The list at FAR 25.108(d) lists excepted articles, materials, and supplies which have been determined to be unavailable in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

Subpart 970.27—Patents, Data, and Copyrights

970.2701 General.

(a) The provisions of 41 CFR 9–9.1 remain in effect for the management and operation of Government-owned research or production facilities.

(b) A management and operating contractor's obligations for protection of information and data received from DOE and other contractors or subcontractors, and for the contractor's private use of contract data first produced in the performance of the contract, are set forth in subparagraph (b)(2) of each Rights in Technical Data clause in 952.227. This subparagraph provides that the contractor may, subject to patent, security, or other provisions of the contract, use for its private purposes, contract data it first produces in the performance of the contract, provided that the contractor has met its data requirements (e.g., delivery of data in the form of progress

or status reports specified to be delivered) as of the date of private use of such data. It is not necessary that a "Final Report" be submitted in order to privately use data if all required progress and interim reports and other technical data than due have been delivered. Paragraph (b)(2) further provides that technical or other data received by the contractor in the performance of the contract must be held in confidence by the contractor in accordance with restrictions accompanying the data.

(c) Contractors should be aware that technical information which is reported to DOE by DOE contractors may be disseminated by DOE to others, subject to the restrictions included in the "Rights to Technical Data" clause.

(d) Employees of contractors operating DOE facilities may not be used to assist in the preparation of a proposal or bid for the performance of private commercial services similar or related to those being performed under the DOE contract unless such employee has been separated, with DOE approval, from performance of work under the DOE contract for such period as the Head of the Contracting Activity or designee shall direct consistent with the purpose of this section.

(e) Contractors operating DOE facilities and performing services as a part of their contract work for other Government agencies or private organizations should not be permitted to utilize information which is furnished by such customers for their own private activities unless it is generally available to others, or unless the customer authorizes such use.

970.2702 Procedures.

(a) *General.* It is essential that DOE maintain continuity in its programs which are implemented by contracts for the operation of Government-owned facilities. Contract data first produced or specifically used in the performance of such contracts must be considered as integral to and remaining with the facility or plant after termination of such contracts and thus available to DOE and its future contractors for the continued use of the facility or plant. However, it is recognized that these contracts by their nature cannot always be subject to one set of prescribed contract provisions which will always apply. Accordingly, the Rights in Technical Data-Facility clause set forth in 952.227–78 is to be used as a basic or minimal clause which may be modified or expanded with the concurrence of patent counsel to meet particular contract situations.

Whenever a contract has as a purpose the operation of a Government-owned research or production facility, the clause set forth at 952.227–78 shall normally be included in the contract. Inasmuch as this clause secures to the Government ownership, access to, and, if requested, delivery of all technical data first produced in the performance of the contract and access to and delivery of technical data which are specifically used in the performance of the contract, there is no need to include the Additional Technical Data Requirements Clause of 952.227–73.

(b) *Subcontracting.* Unless otherwise directed by the contracting officer, the contractor shall be required to follow the policy and procedures of 927.402–1, 927.402–2, and 927.402–3 and shall employ the provisions of the Additional Technical Data Requirements Clause of 952.227–73 and the Rights in Technical Data (Long Form) clause of 952.227–75, where appropriate, except in subcontracts for the design of special production plants or facilities or specially designed equipment for facilities or plants, in which instances contractors shall include the provisions of the Rights in Technical Data—Facility Clause of 952.227–78.

(c) *Optional clause—Limited rights in proprietary data.* In contracts where it is determined that delivery of proprietary data is necessary with limited rights in the Government, the Rights in Technical Data clause of this section shall be supplemented by the additional paragraph (e), set forth in 952.227–79. Paragraph (e) provides that technical data may be specified in the contract as being excluded from the delivery requirements thereof. Alternatively, paragraph (e) may be limited or made applicable to only those classes of proprietary data determined as being necessary for delivery with limited rights. In addition, when furnishing proprietary data with the limited rights legend, paragraphs (a), (b) and (c) thereunder may be modified as follows. When proprietary data is to be furnished only for evaluation, paragraph (a) of the limited rights legend shall be used, and paragraphs (b) and (c), if otherwise inapplicable, may be deleted. When there is a programmatic requirement that proprietary data be disclosed to other DOE contractors only for information or use in connection with work performed under their contracts, paragraph (b) of the limited rights legend shall be used, and paragraphs (a) and (c) may be deleted if otherwise inapplicable. In either of the foregoing examples, the contractor may, if it can show the possibility of a conflict of interest because of disclosure of such data to certain contractors or evaluators, exclude contractors or evaluators from paragraphs (a) or (b). If the data is required solely for emergency repair or overhaul, paragraph (c) of the limited rights legend shall be retained, and paragraphs (a) and (b) may, unless otherwise applicable, be deleted. In the event that it is determined that all of the paragraphs (a), (b) and (c) of the limited rights legend are to be deleted, the word "none" shall be inserted in the legend after the colon (:).

(d) For contracts involving access to certain categories of DOE-owned restricted data, as set forth in 10 CFR Part 725, see 927.402–1(h).

Subpart 970.28—Bonds and Insurance

970.2800 Scope.

Policies and procedures of FAR 28, shall be applied to procurements by management and operating contractors, except that the provisions of FAR 28.1 shall be applied only to construction subcontracts.

970.2801 Performance bonds.

(a) *Construction subcontracts.* A performance bond on Standard Form 25 (modified to name the contractor as well as the United States of America as obligees) shall be required for all fixed price and unit price construction subcontracts in excess of $25,000 and sub-subcontracts under cost-reimbursement type subcontracts. The penal amounts are set forth in FAR 28.102–2.

(b) *Other than construction subcontracts.* (1) Situations which may warrant requiring a performance bond are listed in FAR 28.103–2(a). Other such situations are:

(i) Where doubt exists as to the financial or technical ability of all possible suppliers.

(ii) Where the contractor's talent is overly concentrated in a few key personnel whose illness or departure could seriously impair the contractor's ability to perform the proposed work.

(iii) Where other commitments of the contractors might delay performance.

(iv) Where performance of the proposed work might disrupt other operations of the contractor and impair its overall efficiency; or

(v) Where the item being manufactured is a component for another article and is required by a particular date in order to avoid delay in delivery of the end product.

970.2803 Payment bonds.

(a) *Construction subcontracts.* A management and operating contractor shall be required to seek from the subcontracts, a payment bond on Standard Form 25A modified to name

the operating contractor (as well as the United States of America as obligees) required for all fixed-price and unit-price construction subcontracts in excess of $25,000. The management and operating contractor shall be required to include such a requirement in its cost reimbursement subcontract to apply to subcontracting in excess of $25,000. The penal amounts shall be set forth in FAR 28.102–2.

(b) *Other than construction subcontracts.* The contracting officer may make a determination that it is in the best interest of the Government on an individual subcontract to require payment bonds in connection with other than construction work, subject to the approval of Head of the Contracting Activity. In the case of either advertised or negotiated procurement, wherever the contracting officer has reason to believe that work under a proposed action might be delayed because of the concern of the subcontractor or supplier over the credit standing of the management and operating contractor, they should consider the advisability of requiring a payment bond.

970.2804 Execution and administration of bonds.

(a) *Bid bonds.* Prior to award of a construction subcontract, the contracting officer or, the contractor with contracting officer approval, shall obtain review of the bid bond furnished with the successful bid as to legal form and sufficiency and as to acceptability of the surety and adequacy of the bond.

(b) *Performance and payment bonds.* Prior to award of a construction subcontract, the contracting officer or the contractor with the contracting officer's approval, shall obtain review of the performance and payment bonds furnished with the successful bid as to legal form and sufficiency and as to aceptability of the surety and adequacy of the bonds.

(c) *Clauses.* The contract clause pertaining to bonds is set forth in 970.5204–32.

970.2805 Corporate co-sureties.

More than one corporate surety may be accepted as surety upon recognizance, stipulation, bond, or undertaking in connection with either construction or other contracts, provided that in no case will the liability of any such co-surety exceed the maximum penal sum in which the corporate surety is qualified to any one obligation. On bonds covering contracts other than construction contracts, where the amount of the bond is greater than the limitation of the corporate surety, the latter may reinsure with a corporation on the acceptable list of corporate sureties having the required underwriting capacity. Reinsurance agreements are not acceptable in connection with construction contracts. Corporate co-sureties need not obligate themselves for the full amount of the bond. Each corporate surety may, by setting forth the limit of its liability in the bond as a definite and specified sum, limit such liability. The co-sureties must, however, bind themselves "jointly and severally" for the purpose of allowing a joint action or actions against any or all of them.

970.2870 Indemnification.

(a) DOE Policies provide for indemnification of DOE management and operating contractors against public liability for a nuclear incident arising out of or in connection with operation of production or utilization facilities, and work which entails the risk of public liability for a substantial nuclear incident.

(b) Details of these policies are discussed at 950.70 Indemnification of DOE contractors.

(c) Section 170d of the Atomic Energy Act of 1954, as amended, authorizes DOE "to enter into agreements of indemnification with its management and operating contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident."

(d) Heads of Contracting Activities are authorized to negotiate statutory indemnity agreements with management and operating contractors following the procedures at 950.70. They may enter into a statutory indemnity agreement whenever it has been determined that a contractor that is engaged in activities involving the risk of public liability for a substantial nuclear incident.

(e) The contract clause contained in 970.5204–6 shall be incorporated in management and operating contracts in which a statutory indemnity agreements is to be included upon a determination that the contractor is under risk of public liability for the occurrence of a substantial nuclear incident in the course of performance of the contract work. The contract clause contained in 970.5204–7 shall be incorporated in management and operating contracts in which a statutory indemnity agreement is to be included upon a determination that the contractor is under risk of public liability for a substantial nuclear incident caused by a product delivered to or for DOE under the contract where such product is expected to be used in connection with a facility or device not covered by a statutory indemnity agreement.

(f) A DOE contractor with whom a statutory indemnity agreement has been executed in the form contained in 970.5204–6 may include in any of its subcontracts and purchase orders a representation that the work under the prime contract is covered by a statutory indemnity agreement with the DOE, and that this indemnity covers all persons who may be liable for public liability for any nuclear incident arising out of or in connection with the activity under the prime contract. A suggested form of "representation" that may be provided to the contractor follows:

Statutory Indemnity

The contractor represents that there is included in its prime contract with DOE an indemnity agreement, entered into by DOE under the authority of section 170 of the Atomic Energy Act of 1954, as amended by Public Law 95–256 (the "Price-Anderson Act"), a copy of which may be obtained from the contractor (or is attached hereto); that, under said agreement, DOE has agreed to indemnify the contractor and other persons indemnified, including the subcontractor, against claims for public liability (as defined in said Act) arising out of or in connection with the contractual activity; that the indemnity applies to covered nuclear incidents which (1) take place at a "contract location" (which term, as defined in the indemnity agreement, does not include the location of the subcontractor's plant and facilities); or (2) arise out of or in the course of transportation of source, special nuclear or by-product material to or from a "contract location;" or (3) involve items produced or delivered under the prime contract. The obligation of DOE to indemnify is subject to the conditions stated in the indemnity agreement.

(g) DOE shall not approve the inclusion, in the subcontracts and purchase orders of an indemnified management and operating contractor, of any provision whereby the management and operating contractor indemnifies the subcontractor or supplier against public liability for a nuclear incident because any such liability will be covered by the statutory indemnity agreement of the prime contractor.

(h) Management and operating contractors with whom statutory indemnity agreements under the authority of section 170d of the Atomic Energy Act of 1954, as amended, are executed will not normally be required or permitted to furnish financial protection by purchase of insurance to cover public liability for nuclear incidents, except (1) that DOE contractors now covered by insurance

against such liability, with the approval of the DOE, may continue to carry such insurance; and (2) with the approval of the Office of Industrial Relations, contractors engaged in the operation of DOE facilities may be required or permitted to furnish financial protection in an amount not to exceed $1 million.

Subpart 970.29—Taxes

970.2901 Exemptions from Federal excise taxes.

(a) The exemption respecting taxes on communication services or facilities has been held to extend to such services when furnished to DOE management and operating contractors who pay for such services or facilities from advances made to them by DOE under their contracts.

(b) Where it is considered that a request for an additional exemption in the performance of a management and operating contract would be justified, a recommendation that such a request be made should be forwarded to the Controller.

(c) Where tax exemption certificates are required in connection with the foregoing taxes, the Head of the Contracting Activity will supply standard Government forms (SF 1094, U.S. Tax Exemption Certificate) on request.

970.2902 State and local taxes.

It is DOE policy to secure those immunities or exemptions from state and local taxes to which it is entitled under the Federal Constitution or state laws. In carrying out this policy, Heads of Contracting Activities shall:

(a) Take all necessary steps to preclude payment of any taxes for which any of the foregoing immunities or exemptions are available. Advice of Counsel should be sought as to the availability of such immunities or exemptions;

(b) Acquire directly and furnish to contractors as Government furnished property, equipment, material, or services when, in the opinion of the Head of the Contracting Activity:

(1) Such direct acquisition will result in substantial savings to the Government, taking into consideration any additional administrative costs;

(2) Such direct acquisition will not have a substantial adverse effect on the relationship between DOE and its contractor; and

(3) Such direct acquisition will not have a substantial adverse effect on the DOE program or schedules.

970.2903 Contract clauses.

(a) Contracting officers shall include an appropriate clause in management and operating contracts and require a similar inclusion in cost-type subcontracts where the higher-tier contracts and subcontracts are cost-type which will require the contractor to take certain actions with regard to nonpayment, payment, protest, or other treatment of specific taxes. Such a clause is included in 970.5204–23.

(b) Contracting officers should assure that tax matters are appropriately treated in their review and approval of management and operating contractor's procurement system and in their review and approval of individual subcontracts by such contractor. An appropriate tax clause shall be required for inclusion in all fixed-price purchase orders and subcontracts and should contain provisions covering all tax matters which may require special consideration.

Subpart 970.30—Cost Accounting Standards

970.3001 General.

970.3001–1 Applicability.

The provisions of FAR Part 30 shall be followed for management and operating contracts.

970.3001–2 Limitations.

Cost of money as an element of the cost of facilities capital (CAS 414) and as an element of the cost of capital assets under construction (CAS 417) is not recognized as an allowable cost under contracts subject to 970 (See 970.3102–10).

Subpart 970.31—Contract Costs Principles and Procedures

970.3100 Scope and applicability of subpart.

The cost principles, procedures and general policy for the determination of reimbursable costs applicable to the administration of management and operating contracts are set for in this subpart. The terms "reimbursement" and "reimbursable" are used interchangeably in relation to "allowable costs" as a matter of editorial convenience. No "reimbursement" is actually involved in those situations where the cost-type contractor makes payments for "allowable cost" from Government funds advanced to him by the DOE.

970.3100–1 Definitions.

"Off-site work" is contract required work (under a contract covered by FAR Subpart 17.6) performed in contractor-owned facilities, such as a central or branch office.

"On-site work" (under a contract covered by FAR Subpart 17.6) is work performed at the Government-site.

"Direct costs" of a management and operating contract are defined as follows:

(a) With respect to on-site work, "direct costs" technically include all performance costs; that is, such costs are identified specifically for, or account of, the contract. However, in some circumstances it may be desirable or necessary because of the requirements of the contract to distinguish between direct and indirect types of costs. "Direct costs," when the foregoing circumstances apply, are those which are identified as having been incurred specifically for, or on account of a designated cost objective, such as a particular product (or groups of similar products), work order, job, project, program or contract. Materials, labors or expenses which relate specifically and solely to the manufacture of a particular product or to the performance of a distinct job or work are broad examples of direct costs. Direct costs are not limited to items incorporated in an end product.

(b) With respect to "off-site" work, "direct costs" are as defined in FAR 31.202 and discussed in other sections of this subpart.

"Indirect costs" of a management and operating contract are defined as follows:

(a) With respect to "on-site" work, when it is desirable or necessary to distinguish them from direct costs, "indirect costs" are those items of material, labor, and expenses not directly identified with a single final cost accumulation point, but identified with applicability to two or more objectives or with at least one intermediate cost objective.

(b) With respect to "off-site" work, "indirect cost" are as defined in FAR 31.203 and discussed in other sections of this subpart.

970.3100–2 Responsibilities.

(a) The Procurement Executive is responsible for developing and revising the policy and procedures for the determination of allowable costs reimbursable under a management and operating contract, and for seeing that they are properly coordinated with other Headquarters' offices having joint interests.

(b) The Head of the Contracting Activity is responsible for following the policy, principles and standards set forth herein in establishing the compensation provisions of contracts and subcontracts and for submission of

deviations for Headquarters consideration.

970.3100-3 Deviation.

Deviations from the policy and principles set forth in this subpart shall not be made unless such action is authorized by the Procurement Executive, on the basis of a written justification stating clearly the special circumstances involved. Where appropriate, any approved deviation shall be reflected in the compensation provisions of the contract.

970.3101 General policy.

The cost policies of the DOE regarding management and operating contracting are as discussed in this section:

970.3101-1 Actual cost basis.

(a) DOE shall reimburse its contractors for costs incurred in the performance of a management and operating contract in accordance with its terms and the provisions of this subpart. Such costs are those allowable costs provided for in the contract to the extent that they are necessary or incident, and either directly attributable or equitably allocable to the work under the contract. This broad expression of the DOE's cost-reimbursement policy is further developed and elaborated upon throughout this subpart.

(b) DOE uses retrospective or after-the-fact determination, usually called the actual cost basis, to establish the amount reimbursable. This general policy precludes the use of predetermined fixed percentage rates except for provisional payments.

(c) When a fixed compensation for any otherwise allowable cost is separately negotiated, the items of such costs covered by the fixed amount shall be identified with maximum clarity and set forth in an appropriate appendices to the contract as an amount otherwise excludable from other reimbursable costs (this is done in order to distinguish between those allowable costs subject to reimbursement and those costs which are covered by the negotiated fixed amount).

970.3101-2 Direct and indirect costs.

(a) Direct costs identified specifically with a management and operating contract are direct cost of performing that contract and are to be charged directly thereto. All costs specifically identified with other final cost objectives of the management and operating contractor are direct cost of those cost objectives and are not to be charged to the contract directly or indirectly. For reasons of practicality, any direct cost of minor dollar amount may be treated as an indirect cost if the accounting treatment—

(1) Is consistently applied; and

(2) Produces substantially the same results as treating the cost as a direct cost.

(b) Indirect cost are not subject to treatment as a direct cost and thus directly chargeable to a contract. After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated from an appropriate indirect cost accumulation account. The following principles and procedures shall apply to indirect costs to the extent that they are incurred under management and operating contracts.

(1) Indirect costs to the extent required to be or otherwise incurred in the accounting system of the operating contractor shall be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the cost objectives to which it is to be allocated. Generally, overhead and general and administrative (G&A) expenses are separately grouped. Similarly, the particular case may require subdivision of these groupings; e.g., building occupancy costs might be separable from those of personnel administration within a specific overhead group such as manufactoring overhead. This necessitates selecting a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the cost objectives. The number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(2) Once an appropriate base for distributing indirect costs has been accepted, it shall not be fragmented by removing individual elements. For example, when a cost input base is used for the distribution of G&A costs, all items that would properly be part of the costs input base, whether allowable or unallowable, shall be included in the base and bear their pro rata share or G&A costs.

(3) The method of allocating indirect costs shall be in accordance with generally accepted accounting principles which are consistently applied.

(4) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for distribution to work performed in that period.

970.3101-3 General basis for reimbursement of costs.

(a) The total reimbursable cost of a DOE management and operating contract is the sum of the allowable direct costs necessary or incident to the performance of the contract, plus any properly allocable portion of allowable indirect costs, (including corporate or home office G&A expense, or branch office indirect expenses), if any, less applicable income and other credits. In determining allowability and reimbursability of costs, the following shall be considered:

(1) Reasonableness, including the exercise of prudent business judgment;

(2) Allocability of a cost to management and operating contract. A cost is allocable if it is assignable or chargeable for work and performance of the contract in accordance with the relative benefits received or other equitable relationship;

(3) Application of generally accepted accounting principles and practices appropriate to identifying and measuring costs of performing the contract in accordance with this subpart;

(4) All exclusions of and limitations of types and amounts of items of cost set forth in the contract;

(5) Approvals by the contracting officer required under the contract terms; and

(6) Cost accounting standards if applicable.

970.3101-4 Cost determination based on audit.

(a) The amount reimbursable under management and operating contracts shall be determined in accordance with the principles set forth in this subpart and in accordance with the terms of the respective contract on the basis of audit. In the event that the contractual terms differ, or are inconsistent with (see 970.3100-3 for approval of deviations) the principles stated herein, the contractual terms control. It is expected however, contractual terms to be based on the principles therein. The audit may be performed directly by DOE (or by the cognizant Federal agency pursuant to arrangements made by the DOE). Contracting officers shall assure that management and operating contractors assume the responsibility for audit of subcontractors (and provide for the audit of lower tier subcontractors by the subcontractor immediately preceding in the contractual chain) except as noted in this paragraph. Exceptions may be made to this general principle of subcontractors being audited by the next higher-tier contractor, where the

latter, interrelated with the subcontractor involved, does not have the necessary audit facilities, or for other reasons, is not in a position to perform the subcontract audit in a manner satisfactory to the DOE. In the event of such exception, the subcontract audit responsibility shall rest with the successively higher-tier contractor (or ultimately DOE), but responsibility for determining the costs reimbursable to the subcontractor remains with the next higher-tier contractor on the basis of such audit.

(b) Where the amount of cost-type work to be performed for the DOE in a particular facility is less than that being performed at the same facility for other Federal agencies, arrangements may be made to have the cognizant agency perform the audit of the subcontract in support of DOE. These arrangements shall be made administratively between DOE and the other agency involved, and wherever possible, shall provide for the cognizant agency to audit against the DOE cost principles. In no case, however, shall the arrangements preclude determination by the DOE contracting officer of the allowable and unallowable costs in accordance with 970.5204–13 and 970.5204–14. Steps appropriate in the light of the magnitude and nature of the costs shall be taken by the contracting officer to ascertain that the audit results properly reflect the application of DOE cost principles (particularly as to types and amounts of items of cost including incidence, allocability, and equitable distribution thereof).

970.3101–5 Contractor's system of accounting.

(a) Careful DOE study of a management and operating contractor's usual accounting procedures shall be made prior to arriving at an understanding with the contractor as to the accounting system to be employed by the contractor during the period of contract performance.

(b) A contractor's customary accounting practices are usually accepted for management and operating contracts if they conform to generally accepted accounting principles, produce equitable results, are consistently applied, are not in conflict with the provisions of this subpart, are conducive to accurate costing of the contract work, and produce reports required by the DOE.

970.3101–6 Advance understandings on particular cost items.

(a) It is important that agreement between DOE and its management and operating contractors be reached in advance of the incurrence of costs in categories where reasonableness as to amounts or allocability to the management and operating contract are difficult to determine in order to avoid possible subsequent disallowance or dispute. Any such agreement should be incorporated in the contract. But the absence of such agreement on any element of cost will not, in itself, serve to make the element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

(1) Deferred maintenance costs;

(2) Precontract costs;

(3) Professional or technical counseling services;

(4) Reconversion costs;

(5) Research and development costs;

(6) Royalties;

(7) Selling and distribution costs;

(8) Unemployment insurance experience ratings; and

(9) Employee compensation, including amounts of money or percentage of payment authorized to be expended annually for groups of employees for all types of wage and salary increases, travel, relocation expenses and other personnel costs.

(b) DOE generally utilizes two basic methods of achieving and recording understandings with contractors as to the allowability of employee compensation, travel, relocation, and other personnel costs: (1) Negotiation of a personnel appendix to the contract, which sets forth the policies, programs, and schedules which are accepted as the basis for determining the allowability of costs; or (2) reviewing and reaching agreements on established policies, programs, and schedules (and any changes thereto during the contract term) applicable to contractor's private operations which are acceptable for contract work and which will be consistently followed throughout the contractor's organization. A personnel appendix to the contract setting forth advance understandings covering compensation for personal services shall be utilized in management and operating contracts (as defined in FAR 17.601) when one or more of the following circumstances exist: when policies, programs, and schedules are established specifically for contract work; when the contractor's work is predominantly or exclusively made up of negotiated Government contract work; when contract work is so different from the organization's private work that existing established policies, programs, and schedules cannot reasonably be extended to and consistently applied on contract work; or, when established policies, programs, and schedules proposed for contract work are not sufficiently definitive to permit a clear advance mutual understanding of allowable costs and to provide a basis for audit. The Head of the Contracting Activity is authorized to select the alternative method of achieving and recording advance understanding that they find most appropriate, after considering the facts of the particular contract situation. As used in this paragraph:

(c) With regard to the costs at (a)(9) above:

(1) Compensation for personal services includes wages and salaries, bonuses and incentives, premium payments, pay for time not worked, and supplementary compensation and benefits, such as pension and retirement, group insurance, severance pay plans, and other forms of compensation covered by 970.3102–2.

(2) Employee travel costs include transportation expenses incurred while on official business, within the U.S. or outside the U.S. as necessary. Travel of executive officers is covered in 970.3102–17. Contractor travel policies must be acceptable to the Department, and result in reasonable cost necessary for contract performance. To avoid disputes and to clearly state the treatment that applies to travel cost, advance understandings should be reached with the management and operating contractor. They should be sufficiently definitive to evidence the contractor's responsibility to minimize costs consistent with contract performance. The allowability to certain travel costs, such as air travel, are specifically limited by Department policy. For example, the added cost of first class air travel is prohibited as a reimbursable cost, except under stringent conditions, which must be justified in writing. Contractually enforceable understandings concerning the allowability and reimbursement of other potentially significant travel costs (such as the use of Government-furnished automobiles or Government-contract provided rental automobiles) should be reached with the contractor. A reasonable basis for such understandings is the Federal travel policy applicable to Government and directly paid contractor employees.

(3) Other personnel costs include:

(i) Morale, health, welfare, food service and dormitory costs covered in 970.3102–5;

(ii) Training and education costs covered in 970.5204–13 and 970.5204–14;

(iii) Relocation costs for relocating employees as discussed in 970.3102–16;

and special or mass personnel movement covered in 970.3102–2(i).

970.3102 Application of cost principles.

The incurred costs of performing management and operating contracts shall be reimbursed to the extent they are reasonable, allocable, and determined to be allowable under the provisions of this subpart and the terms of the contract. The DOE principles on allowability of selected items or classification of cost or situations expected to be associated with the performance of contract work as stated in this section.

970.3102–1 General and administrative expenses.

(a) For on-site work, the DOE considers that its fee allowance for management and operating contracts provides for the recognition of appropriate compensation for home or corporate office general and administrative expenses incurred in the general management of the contractor's business as a whole.

(b) The above policy is intended to preclude the payment of general and administrative expenses merely because they are incurred or accounted for at or by a contractor's home or corporate office and not the operating site. The DOE recognizes some benefit of such cost to the DOE program. The basis of recognition through fee allowance is associated with the difficulty of determining and assessing the dollar value of such expenses that might be applicable to or have benefit to a management and operating contract. Conventional allocation techniques; i.e., total operating costs, labor dollars or hours, etc., are generally not considered appropriate because they normally distribute such expenses over a base representative or contractor investment (in terms of its own resources, including labor, material, overhead, etc.). Contractor investments and home office contributions are minimal under DOE's operating and management contracts in as much as they are totally financed and supported by DOE advance payments under the letter-of-credit method and by DOE's provision of government-owned and project-exclusive facilities, property, and other needed resources.

(c) Notwithstanding the concept in (a) above, it is recognized that from time to time the fee amounts established for a management and operating contract, to meet the purpose cited in 970.1509–1 and consideration of the factors in 970.1509–4, may be considered insufficient to adquately recognize a contractor's general and administrative expenses incurred in general management and administration of the contractor's business as a whole and which appear to have a directly benefiting relationship to the DOE program. Such recognitions may be the basis of requesting fee amounts in excess of the limitations set forth in 970.1509–5 or alternatively, in any particular case, the contractor may be compensated on the basis of cost in accordance with 970.3101–1 if the Head of the Contracting Activity or other approving contract official authorizes or approves the procedure and a fair and reasonable amount can be agreed upon. Such amount shall normally be in addition to the applicable fee amounts.

(d) The DOE allows company general and administrative expenses under off-site architect-engineer, supply and research contracts with commercial contractors performing the work in their own facilities. Contractor's general and administrative expenses, may, however, be included for reimbursement under such DOE off-site architect-engineer, supply and research contracts, only to the extent that they are established, after careful examination, to be allowable in nature an properly allocable to the work. Work performed in a contractor's own facilities under a management and operating or construction contract may likewise be allowed to bear the properly allocable portion of allowable company general and administrative expense.

§ 970.3102–2 Compensation for personal services.

(a) *General.* Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance (except as otherwise provided for severance pay costs in paragraph (b)(4)(i) below and for pension cost in paragraph (b)(1) below). It includes, but is not limited to, salaries; wages; directors' and executive committee members' fees; bonuses (including stock bonuses); incentive awards; employee stock options, stock appreciation rights, and stock ownership plans; employee insurance; fringe benefits; contributions to pension, annuity, and management employee incentive compensation plans; and allowances for off-site pay, incentive pay, location allowances, hardship pay, severance pay, and cost of living differential.

(b) *Allowability.* Reimbursable costs for compensation for personal services are to be set forth in a personnel appendix in the contract as discussed at 970.3101–6. This personnel appendix shall be negotiated using the principles and policies of this 970.3102–2, and other pertinent parts of the DEAR. However, costs that are unallowable pursuant to other paragraphs of 970.3102 or contract terms shall not be allowable under this 970.3102–2 on the basis they constitute compensation for personnel services. Costs of compensation for personal services are reimbursable to the extent that:

(1) The compensation is for personal services work performed by the employee in the current year and must not represent a retroactive adjustment of prior year's salaries or wages (but see 970.3102 (i), (j), (l), (m), and (n));

(2) The compensation in total is reasonable for the work performed; however, specific restrictions on individual compensation elements must be observed where they are prescribed;

(3) The compensation is based upon and conforms to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment;

(4) Any approvals prescribed by this 970.3102–2 are obtained. No assumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor—

(i) Has not notified the cognizant contracting officer of the changes either before their implementation, or within a reasonable period after their implementation, and

(ii) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes.

(5) Costs that are unallowable under the contract terms or other paragraphs of this 970.3102 shall not be allowable under this 970.3102–2 solely on the basis that they constitute compensation for personal services.

(c) *Reasonableness.* Subject to 970.3102–2(d) of this section compensation for personal services will be considered reasonable if the total compensation conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area for similar services or work performed. This does not preclude the Government from challenging the reasonableness of an individual element of compensation where costs are excessive in comparison with compensation paid by other firms of the same size, same industry, or in the same geographic area for similar services. In administering this principle,

it is recognized that not every compensation case need be subjected in detail to the above tests. The tests need be applied only when a general review reveals amounts or types of compensation that appear unreasonable or unjustified. In questionable cases, the contractor has responsibility to support the reasonableness of compensation in relation to the effort performed. Compensation costs under certain conditions give rise to the need for special consideration. Among such conditions are the following:

(1) Compensation to (i) owners of closely held corporations, partners, sole proprietors, or members of their immediate families, or (ii) persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that salaries are reasonable for the personal services rendered rather than being a distribution of profits. Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits. For closely held corporations, compensation costs covered by this subparagraph shall not be recognized in amounts exceeding those costs that are deductible as compensation under the Internal Revenue Code and its regulations.

(2) Any change in a contractor's compensation policy that results in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in the treatment of allowability of specific types of compensation due to changes in Government policy. No presumption of reasonableness will exist where major revisions of existing compensation plans or new plans are introduced by the contractor; and the contractor—

(i) Has not notified the cognizant contracting officer of the change either before their implementation or within a reasonable period after their implementation; and

(ii) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the reasonableness of the changes.

(3) The contractor's business is such that its compensation levels are not subject to the restraints that normally occur in the conduct of competitive business.

(4) The contractor incurs costs for compensation in excess of the amounts which are deductible under the Internal Revenue Code and its regulations.

(d) *DOE Review and approval of compensation paid individual employees.* In determining the reasonableness of compensation, the compensation of each individual contractor employee normally need not be subjected to review and approval. Generally, the compensation paid individual employees should be left to the judgment of contractors subject to the limitations of DOE-approved compensation policies, programs, classification systems, and schedules, and amounts of money authorized for wage and salary increases for groups of employees. However, all compensation due an individual of $50,000 or more shall require the contracting officer's or designee's review and approval. In addition, it will often be necessary that employee compensation be subjected to review and approval on an individual basis at a level below $50,000, when the contracting officer finds it appropriate for the particular situation. The contract shall specifically provide for the approval by the contracting officer of the cost of compensating an individual contractor employee above the level determined by the contracting officer, if a total of 50 percent or more of such compensation is reimbursed under DOE cost-type contracts. For purposes of determining the level for individual review and approval, total compensation as used in this paragraph includes only the employee's salary and bonus or incentive compensation. As in the case of other personnel and compensation costs, it is intended that contracting officer review and approval of individual compensation normally will be prior to incurrence of costs.

(e) *Labor-management agreements.* Notwithstanding any other DOE requirements, costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in performing Government contracts, are determined to be unreasonable because they are either unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (e.g., work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (e.g., work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this paragraph (e) unless—

(1) The contractor has been permitted an opportunity to justify the costs; and

(2) Due consideration has been given to whether unusual conditions pertain to Government contract work, imposing burdens, hardships, or hazards on the contractor's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(f) *Salaries and wages.* Salaries and wages for current services include gross compensation paid to employees in the form of cash, stock (see paragraph (h)(2) below regarding valuation), products, or services, and are allowable.

(g) *Domestic and foreign differential pay.* (1) When personal services are performed in a foreign country, compensation may also include a differential that may properly consider all expenses associated with foreign employment such as housing, cost of living adjustments, transportation, bonuses, additional Federal, state, local or foreign income taxes resulting from foreign assignment, and other related expenses.

(h) *Bonuses and incentive compensation.* Incentive compensation and cash bonuses based on production, cost reduction or efficient performance, suggestion awards, and safety awards are to be treated as allowable, to the extent that the contractor's overall compensation plan is determined to be reasonable and such costs are paid or accrued, pursuant to an agreement entered into in good faith between the contractor and the employees before the services were rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payment (see 970.3101–6). In determining reasonableness, it will be necessary to take into account, not only bonuses and incentive compensation payments charged directly to the contract, but also payments charged indirectly to the contract through overhead. Bonuses, awards, and incentive compensation, when any of them are deferred, are to be treated as allowable to the extent provided in paragraph (m) of this section.

(1) Bonuses and incentive compensation paid to employees other than those whose pay is directly

reimbursed will not be made allowable in on-site construction and management and operating contracts, where home office general and administrative expense is unallowable.

(2) When the costs of bonuses and incentive compensation are paid in the stock of the contractor or of an affiliate, the following additional restrictions apply:

(i) Valuation placed on the stock shall be the fair market value on the measurement date (i.e., the first date the number of shares awarded is known) determined upon the most objective basis available; and

(ii) Accruals for the cost of stock before issuing the stock to the employees shall be subject to adjustment according to the possibilities that the employees will not receive the stock and that their interest in the accruals will be forefeited.

(3) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of subparagraph (h)(1) above and of paragraph (m) below.

(i) *Severance pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in paragraph (l)(6) below.

(2) Severance pay to be allowable must meet the general allowability criteria in paragraph (i)(2)(i) below, and, depending upon whether the severance is normal or abnormal, criteria in paragraph (i)(2)(ii) for normal severance pay or paragraph (i)(2)(iii) for abnormal severance pay also apply.

(i) Severance pay is allowable only to the extent that, in each case, it is required by (A) law, (B) employer-employee agreement, (C) established policy that constitutes, in effect, an implied agreement on the contractor's part, or (D) circumstances of the particular employment. Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable. Severance payments, or amounts paid in lieu thereof, are not allowable when paid to employees in addition to early or normal retirement payments.

(ii) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant, or where the contractor provides for accrual of pay for normal severances, that method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period and if amounts accrued are allocated to all work performed at the facility.

(iii) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis.

(3) Subject to paragraph (a) of this section, the following standards apply in determining allowability of costs for severance pay plans of management and operating contractors:

(i) Payments should be made only upon involuntary termination by reduction in force (RIF) of an employee which results in a permanent separation from the employment of the contractor. However, payments may also be made upon voluntary separation of an employee within a RIF grouping, but not otherwise scheduled for termination, which thereby eliminates the need for terminating another employee involuntarily.

(ii) Payments should be not provided for in the event of temporary layoffs; employment or offer of employment with a replacement contractor (employer) where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment; early or normal retirement; or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor. Contractor employees should not have the option of refusing employment to receive severance pay.

(j) *Backpay.*—(1) *Backpay resulting from violations of Federal labor laws or the Civil Rights Act of 1964.* Backpay may result from a negotiated settlement, order, or court decree that resolves a violation of Federal labor laws or the Civil Rights Act of 1964. Such backpay falls into two categories: one requiring the contractor to pay employees additional compensation for work performed for which they were underpaid, and the other resulting from other violations, such as when the employee was improperly discharged, discriminated against, or other circumstances for which the backpay was not additional compensation for work performed. Backpay resulting from underpaid work is compensation for the work performed and is allowable. All other backpay resulting from willful violation of Federal labor laws or the Civil Rights Act of 1964 is unallowable.

(2) *Other backpay.* Backpay may also result from payments to union employees (union and non-union) for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiations. Such backpay is allowable. Backpay to nonunion employee based upon results of union agreement negotiations is allowable only if (i) a formal agreement or understanding exists between management and the employees concerning these payments, or (ii) an established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payment.

(k) *Stock options, stock appreciation rights, and phantom stock plans.* (1) The cost of stock options awarded to employees to purchase stock of the contractor or of an affiliate will be treated as deferred compensation and must comply with the requirements of paragraph (m) below and with the allowability criteria contained in paragraph (k)(2) below. The allowable cost of stock appreciation rights, whether offered separately or combined with stock options, will be determined in the same manner as stock options.

(2) The allowable costs of stock options and stock appreciation rights will be limited to the difference between the option price or stock-appreciation-right price and the market price of the stock on the measurement date (i.e., the first date on which both the number of shares and the option or stock-appreciation-right price are known). Accordingly, when the option or stock-appreciation-right price is equal to or greater than the market price on the measurement date, then no costs are allowed for contract costing purposes.

(3) In phantom-stock-type plans, contractors assign or attribute contingent shares of stock to employees as if the employees own the stock, even though the employees neither purchase the stock nor receive title to it. Under these plans, an employee's account may be increased by the equivalent of dividends issued and any appreciation in the market price of the stock over the price of the stock on the measurement date (i.e., the first date the number of shares awarded is known). Such increases in employee accounts for

dividend equivalents and market price appreciation are unallowable.

(l) *Pension costs.* (1) A pension plan is a deferred compensation plan that is established and maintained by one or more employers to provide systematically for paying benefits to plan participants after their retirement, provided that the benefits are paid for life or are payable for life at the option of the employee. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees may be treated as pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs.

(2) Pension plans are normally segregated into two types of plans: defined benefit or defined contribution pension plans. Except as provided by other DOE directives, the cost of all defined benefit pension plans shall be measured, allocated, and accounted for in compliance with the provisions of CAS 412, Composition and Measurement of Pension Costs, and CAS 413, Adjustment and Allocation of Pension Cost. The costs of all defined contribution pension plans shall be measured, allocated, and accounted for in acordance with the provisions of CAS 412. Pension costs are allowable subject to directives issued by the Office of Labor Relations, Headquarters, the referenced standards and the cost limitations and exclusions set forth below in this subparagraph and in paragraphs (l)(3), (4), (5), (6), and (7) below.

(i) To be allowable in the current year, pension costs must be funded by the time set for filing the Federal income tax return or any extension thereof. Pension costs assigned to the current year, but not funded by the tax return time, shall not be allowable in any subsequent year.

(ii) Pension payments must be reasonable in amount and be paid pursuant to (A) an agreement entered into in good faith between the contractor and employees before the work or services are performed and (B) the terms and conditions of the established plan. The cost of changes in pension plans which are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future are not allowable.

(iii) Except as provided for early retirement benefits in subparagraph (l)(6) below, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in acordance with a policy or practice consistently followed.

(3) *Defined benefit pension plans.* This subparagraph covers pension plans in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the stated benefits. The cost limitations and exclusions pertaining to defined benefit plans are as follows:

(i) Normal costs of pension plans not funded in the year incurred, and all other components of pension costs (see CAS 412.40(a)(1)) assignable to the current accounting period but not funded during it, shall not be allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any part of a pension cost that is computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of the Employee's Retirement Income Security Act of 1974 (ERISA) (see CAS 412.50(c)(3)), will be allowable in those future accounting periods in which the funding does occur. The allowability of these deferred contributions will be limited to the amounts that would have been allowed had the funding occurred in the year the costs would have been assigned except for the waiver.

(ii) Any amount paid or funded before the time it becomes assignable and allowable shall be applied to future years, in order of time, as if actually paid and deductible in those years. The interest earned on such premature funding, based on the valuation rate of return, may be excluded from future years' computations of pension costs in accordance with CAS 412.50(a)(7).

(iii) Increased pension costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in CAS 413.50(c)(5). Determination of unallowable costs shall be made in accordance with the actuarial method used in calculating pension costs.

(iv) Allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA section 4062 or 4064 arising from terminating an employee deferred compensation plan will be considered on a case-by-case basis; provided that if insurance was required by the PBGC under ERISA section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate in the indemnification payment to the extent of its fair share.

(4) Defined contribution pension plans. This subparagraph covers those pension plans in which the contributions to be made are established in advance and the level of benefits is determined by the contributions made. It also covers profit sharing, savings plans, and other such plans provided the plans fall within the definition of a pension plan in paragraph (l)(1) above.

(i) The pension cost assignable to a cost accounting period is the net contribution required to be made for that period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of ERISA (see CAS 412.50(c)(3)) will be allowable in those future accounting periods when the funding does occur. The allowability of these deferred contributions will be limited to the amounts that would have been allowed had the funding been made in the year the costs would have been assigned except for the waiver.

(ii) Any amount paid or funded to the trust before the time it becomes assignable and allowable shall be applied to future years, in order of time, as if actually paid and deductible in such years.

(iii) The provisions of paragraph (l)(3)(vi) above concerning payments to PBGC apply to defined contribution plans.

(5) *Pension plans using pay-as-you-go methods.* A pension plan using pay-as-you-go methods is a plan in which the contractor recognizes pension cost only when benefits are paid to retired employees or their beneficiaries. Regardless of whether the payment of pension benefits contribution can or

cannot be compelled, allowable costs for these types of plans shall not exceed an amount computed as follows:

(i) Compute, by using an actuarial cost method, the plan's actuarial liability for benefits earned by plan participants. This entire liability is always unfunded for a pay-as-you-go plan.

(ii) Compute a level amount which, including an interest equivalent, would amortize the unfunded actuarial liability over a period of no less than 10 or more than 40 years from the inception of the liability.

(iii) Compute, by using an actuarial cost method, a normal cost for the period.

(iv) The sum of paragraphs (l)(5) (i), (ii), and (iii) of this subsection represents the amount of pension costs assignable to the current period. This amount, however, is limited to the amount paid in the year.

(v) For purposes of determining contract cost where a pay-as-you-go plan is initiated as either a supplemental plan or an additional but separate plan to a basic funded plan, the plans will be treated as one plan; e.g., the actuarial cost method, past service amortization period, etc., of the basic plan will be used on the supplemental or additional pay-as-you-go plan in determining the proper costs assignable to the current period. Any costs in excess of those determined by using the actuarial cost method and assumptions of the basic plan are unallowable. However, where assumption for salary progressions, mortality rates of the participants, and so forth are significantly different, the assumptions used for the basic and supplemental plan may be different.

(vi) The requirements of paragraphs (l)(3)(i) through (iv) above are also applicable to pay-as-you-go plans.

(6) *Early retirement incentive plans.* An early retirement incentive plan is a plan under which employees receive a bonus or incentive, over and above the requirement of the basic pension plan, to retire early. These plans normally are not applicable to all participants of the basic plan and do not represent life income settlements, and as such would not qualify as pension costs. However, for contract costing purposes, early retirement incentive payments are allowable subject to pension criteria contained in paragraphs (l)(3)(i) through (iv) provided—

(i) The costs are accounted for and allocated in accordance with the contractor's system of accounting for pension costs (see paragraph (l)(5)(v) above for supplemental pension benefits);

(ii) The payments are made in accordance with the terms and conditions of the contractor's plan;

(iii) The plan is applied only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and

(vi) The total of the incentive payments to any employee may not exceed the amount of the employee's annual salary for the previous fiscal year before the employee's retirement.

(7) *Employee stock ownership plans (ESOP).* (i) An ESOP is an individual stock bonus plan designed specifically to invest in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property. Costs of ESOP's are allowable subject to the following conditions:

(A) Contributions by the contractor in any one year may not exceed 15 percent (25 percent when a money purchase plan is included) of salaries and wages of employees partcipating in the plan in any particular year.

(B) The contribution rate (ratio of contribution to salaries and wages of participating employees) may not exceed the last approved contribution rate except when approved by the contracting officer based upon justification provided by the contractor. When no contribution was made in the previous year for an existing ESOP, or when a new ESOP is first established, and the contractor proposes to make a contribution in the current year, the contribution rate shall be subject to the contracting officer's approval.

(C) When a plan or agreement exists wherein the liability for the contribution can be compelled for a specific year, the expense associated with that liability is assignable only to that period. Any portion of the contribution not funded by the time set for filing of the Federal income tax return for that year or any extension thereof shall not be allowable in subsequent years.

(D) When a plan or agreement exists wherein the liability for the contribution cannot be compelled, the amount contributed for any year is assignable to that year provided the amount is funded by the time set for filing of the Federal income tax return for that year.

(E) When the contribution is in the form of stock, the value of the stock contribution shall be limited to the fair market value of the stock on the date that title is effectively transferred to the trust. Cash contributions shall be allowable only when the contractor furnishes evidence satisfactory to the contracting officer demonstrating that stock purchases by the ESOT are or will be at a fair market price; e.g., makes arrangements with the trust permitting the contracting officer to examine purchases of stock by the trust to determine that prices paid are at fair market value. When excessive prices are paid, the amount of the excess will be credited to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the excess price over fair market value shall be credited to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan. When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

(ii) Amounts contributed to an ESOP arising from either (A) an additional investment tax credit (see 1975 Tax Reduction Act-TRASOP's); or (B) a payroll-based tax credit (see Economic Recovery Tax Act of 1981) are unallowable.

(iii) The requirements of paragraphs (l)(3)(ii) above are applicable to Employee Stock Ownership Plans.

(m) *Deferred compensation.* (1) Deferred compensation is an award given by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of receipt of compensation by the employee. Deferred compensation does not include the amount of year-end accruals for salaries, wages, or bonuses that are paid within a reasonable period of time after the end of a cost accounting period. Subject to 970.3102–2(a), deferred awards are allowable when they are based on current or future services. Awards made in periods subsequent to the period when the work being remunerated was performed are not allowable.

(2) The costs of deferred awards shall be measured, allocated, and accounted for in compliance with the provisions of CAS 415, Accounting for the Cost of Deferred Compensation.

(3) Deferred compensation payments to employees under awards made before the effective date of CAS 415 are allowable to the extent they would have

been allowable under prior acquisition regulations.

(n) *Fringe benefits.* Fringe benefits are allowances and services provided by the contractor to its employees, as compensation, in addition to regular wages and salaries. Subject to the determination that total compensation is reasonable in accordance with this 970.3102–2, costs of fringe benefits such as pay for vacations, holidays, sick leave, military leave, employee insurance, pension, retirement plans, and supplemental unemployment benefit plans are to be treated as allowable, provided such fringe benefits meet the following conditions:

(1) The benefits contribute to the performance of contract work and are appropriate for reimbursement from public funds;

(2) Such benefit plans as exist in the contractor's private operations that are inconsistent with DOE published requirements are appropriately modified or disallowed;

(3) Employee benefit plans especially established to meet the particular needs of the contract are in conformity with published DOE policy and standards;

(4) Appropriate controls under the contract are established to assure that employees on contract work are treated no more or no less favorably than employees in the contractor's private operation, except to the extent that paragraphs (n)(2) and (3) of this section apply;

(5) To the fullest extent possible, definite limitations or terminal points are established for each of the various benefit plans, so that DOE's full liability with respect thereto is established under the contract; and

(6) DOE has access to all information necessary to complete understanding of the means of computing or determining the cost of the benefits afforded contract employees and their dependents under the benefit plans.

(o) *Training and education expenses.* See 970.5204–13 and 970.5204–14.

§ 970.3102–3 Cost of money.

Cost of money as an element of the (a) cost of facilities capital (CAS 414) and (b) cost of capital assets under construction (CAS 417) is not an allowable cost under DOE management and operating contracts. Under the provisions of CAS 414 and CAS 417, cost of money is an imputed cost applicable to contractor owned and financed tangible capital assets employed in contract performance or being constructed, fabricated, or developed for ultimate employment in contract performance. Cost of money is not applicable to DOE management and operating contracts since the Government provides for assets used, or under construction for use in performance of its contracts (such as through Government furnished or contractor-acquired Government property contract provisions and/or through granting cash advances, including letters-of-credit.)

§ 970.3102–4 Depreciation.

(a) Depreciation is allowable subject to the following:

(1) The charge represents normal depreciation on a contractor's plant and equipment used in performance of management and operating work.

(2) The charge to current operations is a distribution of the cost of acquisition of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset, in a systematic and logical manner.

(3) Any generally accepted accounting method consistently applied to assets concerned having the approval of the Internal Revenue Service for Federal income tax purposes, if subject to the Internal Revenue Code of 1954, as amended, may be used including:

(i) The straight-line method;

(ii) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in paragraph (a)(3)(i) of this section;

(iii) The sum-of-the-years digits method;

(iv) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used, had such allowances been computed under the method described in paragraph (a)(3)(ii) of this section.

(4) If a nonprofit or tax-exempt organization, the method shall be such that it could have had the approval of the Internal Revenue Service, had the organization been subject to the Internal Revenue Code of 1954, as amended.

(5) The contractor must use the same approved method of depreciation for costing its contract work as for costing its other work at the same facility.

(6) The method of depreciation shall produce equitable and reasonable results.

(b) Depreciation of the following is unallowable:

(1) Idle or excess facilities (machinery and equipment), other than reasonable standby facilities;

(2) Assets fully amortized or depreciated on the contractor's books;

(3) Unrealized appreciation of values of assets; and

(4) Accelerated amortization under Certificates of Necessity or other system in excess of normal depreciation, as computed under paragraph (a) of this section.

(c) In entering into contracts involving the use of "special facilities" under section 161 of the Atomic Energy Act of 1954, as amended (section 7 of Public Law 85–681 approved Aug. 19, 1958), the percentage of the total cost of such special facilities devoted to contract performance and chargeable to the DOE should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such facilities.

970.3102–5 Employee morale, health, welfare, food service, and dormitory costs.

(a) Employee morale, health, and welfare activites are those services or benefits provided by the contractor to its employees to improve working conditions, employer-employee relations, employee morale, and employee performance. These activities include such items as house or employee publications, health or first-aid clinics, recreation, employee counseling services and, for the purpose of this section, food service and dormitory costs. However, these activities do not include, and should be differentiated from compensation for personal services as defined in 970.3102–2. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities or site of the contract work.

(b) Except as limited by paragraph (c) of this section, the aggregate of costs incurred on account of all activities mentioned in paragraph (a) of this section, less income generated by all such activities, is allowable to the extent that the net aggregate cost of all such activities, as well as the net cost of each individual activity, is reasonable and allocable to the contract work. Additionally, advance understandings with respect to the costs mentioned in paragraph (a) of this section are to be reached prior to the incurrence of these costs as required in 970.3101–6.

(c) Losses from the operation of food or dormitory services may be included as costs incurred under paragraph (b) of this section, only if the contractor's objective is to operate such services at least on a break-even basis. Losses

sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to accomplishment of the above objective, are not allowable, except in those instances where the contractor can demonstrate that unusual circumstances exist, such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Typical examples of such unusual circumstances are: (1) Where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or (2) where it is necessary to operate a facility at a lower volume than the facility could economically support. Cost of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(d) In those situations where the contractor has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the contractor's plant, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (e) of this section).

(e) Contributions by the contractor to an employee organization, including funds set over from vending machines receipts or similar sources, may be included as cost incurred under paragraph (b) of this section, only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable, if incurred by the contractor directly.

970.3102-6 Facilities (plant and equipment).

(a) *Use of Government-owned facilities.* If the Government furnishes to the contractor, or the contractor acquires at Government expense, Government-owned equipment with which to do all or a significant amount of the work under the DOE contract, on which equipment the Government is bearing the expenses of depreciation, maintenance, insurance, and taxes, appropriate procedures must be established to avoid apportioning to DOE work performed with DOE-owned equipment, a share of the expenses of depreciation, maintenance, insurance and taxes on the contractor's equipment not used to perform such work. If the Government-owned equipment is placed in a segregated area, that area should be accounted for as a separate department. If the Government-owned equipment is not placed at the separate area, other steps must be taken to avoid what would amount to a double equipment burden on work performed with the Government-owned facilities. Such work shall be so accounted for as to be relieved of charges for expenses related to contractor's equipment not used in its performance.

(b) *Contractor's costs covering plant and equipment.* Charges relating to contractor-owned plant and equipment shall be restricted to the applicable costs, such as depreciation, maintenance, insurance, and taxes, and shall not be on a rental basis. (Compensation in excess of costs is covered by the fixed fee.) Rentals of plant or equipment owned by third parties are normally allowable, if the rates are reasonable in the light of the type, value, condition of the property involved, and option and other provisions of the lease agreement. However, where the plant and equipment used by the contractor is rented by the contractor under a sale and lease-back agreement, only the normal costs (such as depreciation, maintenance, insurance, and taxes) that would have been incurred if the contractor had retained title to the facilities, should be allowed. Allowances for plant and equipment rented under agreements that are not arms-length transactions should be similarly restrictive.

970.3102-7 Lobbying costs.

(a) Lobbying is defined as any activity or communication that is intended or designed (1) to directly influence members of the U.S. Congress or state and local legislatures, their staffs, or the staffs of committees of these bodies to favor or oppose pending, proposed, or existing legislation, appropriations, or other official actions of these bodies, their members, or their committees, or (2) to engage in any campaign to directly encourage others to do so. Except as provided in paragraph (c) below, lobbying includes, but is not limited to, appearances before any legislative committee or subcommittee and written or oral communications, including face-to-face decisions or conferences, telephone conversations, paid advertisements, and the sending of telegrams or letters.

(b) The costs of lobbying, including the applicable portion of the salaries and fees to those individuals engaged in lobbying efforts on behalf of a contractor, whether or not the individuals are registered as lobbyists under any applicable law, are unallowable.

(c) Legislative liaison activities, such as attendance at committee hearings and gathering information regarding pending legislation, are not lobbying and are allowable. In addition, written or oral communications, appearances before legislative committees and subcommittees, and meetings with legislative representatives are allowable legislative liaison activities when such efforts are undertaken in conjunction with a legislative public hearing or meeting in response to a public notice, or a specific invitation or request from a legislative source, and the notice, invitation, or request from a legislative source, and the notice, invitation, or request is documented. However, for the costs to be allowable, the contractor shall maintain and make available to the Government records and documentation sufficient to identify the costs and clearly establish the nature and purpose of the legislative liaison activity to which the costs relate.

970.3102-8 Membership in trade, business and professional organizations.

(a) The costs of memberships in trade, business and technical organizations are unallowable, except as approved by the contracting officer.

(b) In considering approval of membership dues, the contracting officer shall:

(1) Ensure that dues payments to an organization are clearly justified and provide necessary and specific agency benefit;

(2) Do not constitute payments for, or in support of partisan and political activity; and,

(3) Are solely for purposes of enhancing trade, business, or technical knowledge necessary for, and related to, performance of DOE contracts.

970.3102-9 Outside technical and professional consultants.

Technical and professional consultants, as used here, refer to private individuals acting in their own behalf, who make their services available on a fee or per diem basis. It does not refer to employees of firms acting in the firm's behalf whose services may be made available by the firm on, for example, a fixed rate basis. Consultant arrangements may permit bringing to contract work, the services of outstanding specialists who would not be available on a full-time basis, or whose employment on a full-time basis would not be economically feasible.

Costs of such outside consultant services are normally allowable (however, see 970.4204–13 and 970.5204–14 regarding compensation of an individual who is employed by another contractor and concurrently performing work on a full-time annual basis under a DOE cost-type contract), provided that the servies are essential to, and will make a material contribution to, the performance of contract work; the services may be performed more economically or more successfully by a consultant than by the contractor's regular personnel; the fee or per diem charged is reasonable; and, when approved by the contracting officer. If the cost of such services is charged directly to the DOE contract, the cost of like items properly chargeable only to other work of the contractor must be eliminated from indirect costs allocable to the DOE contract (see 970.3101–2).

970.3102–10 Overtime, shift, and holiday premiums.

(a) Overtime, shift, and holiday premiums are allowable only to the extent provided in the contract or approved by the contracting officer. The amount of such premiums charged to a management and operating contract shall be equitable in relation to the amount of such costs charged to other work currently performed in the contractor's plant and the factors which necessitate incurrence of the costs. When the necessity for overtime, shift, and holiday work arises from inadequacy of the contractor's plant or department to perform its total workload on a purely straight-time basis, inclusions in overhead for apportionment to all work of the plant or department, as the case may be, appears appropriate. When particular work, DOE or other, is being specially expedited to a point that its fair share of the contractor's purely straight-time efforts on a single-shift basis will not get the particular job completed within the time desired, direct charging of the related premiums appears appropriate.

(b) When premiums for overtime, shift, and holiday work are charged direct to the work concerned, if the operating overhead of the plant or related department is distributed on the basis of direct labor (cost or hours), the premiums should be excluded from the direct labor base for purposes of overhead distribution. That is, the direct labor base should be, as appropriate, direct labor straight-time cost or direct labor hours actually worked. While the premiums for authorized overtime, shift, and holiday work are acceptable as reimbursable costs, it is generally recognized that direct labor hours worked on an overtime, shift, or holiday basis should participate in indirect costs to the same extent as hours worked on a straight-time basis.

970.3102–11 Page charges in scientific journals.

It is a policy of the DOE to permit DOE contractors to budget for and pay page charges for scientific journal publication, as a necessary part of research costs, in all cases where:

(a) The research papers report work supported by the Government.

(b) The charges are levied impartially on all research papers published by the journal, whether by non-Government or by Government authors.

(c) Payment of such charges is in no sense a condition for acceptance of manuscripts by the journal.

(d) The journals involved are not operated for profit.

(e) The author does not receive an emolument from the journal for the research paper.

970.3102–12 Plant reconversion costs.

Plant reconversion costs are those incurred in the restoration of the contractor's facilities to approximately the same condition existing immediately prior to the commencement of the contract work, fair wear and tear excepted.

970.3102–13 Precontract costs.

Precontract costs are those incurred prior to the effective date of the contract directly pursuant to the negotiation and in anticipation of the award of the contract, where such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after effective the date of the contract. They do not include costs of preparing bids or of participation in the negotiation. The allowability of precontract costs is dependent upon appropriate coverage in the contract.

970.3102–14 Preparatory and make-ready costs.

Since indirect costs are usually apportioned to individual jobs wholly or substantially on the basis of the direct labor applied to the particular job, a contract will absorb no overhead by apportionment prior to the inception of the actual performance of direct work on the contract. The effort of the contractor's overhead organization in preparing for one job and in getting it underway, will thus be absorbed by jobs previously commenced and still being performed; later, the job, which in its initial stages of preparation and make-ready was relieved of expenses that were actually applicable to it, will partially absorb, through their apportionment as overhead, similar costs equally applicable in fact to other, subsequently undertaken jobs. This procedure is in accordance with generally accepted accounting practices and normally is reasonably equitable in its results. The initial advantages and subsequent disadvantages to the individual contract that result from consistent application of the procedure tend to offset each other and balance out. It is quite appropriate, however, to employ the direct charge method in connection with overhead costs in preparing for actual performance by segregating such preparatory and make-ready costs and identifying them specifically with the contract to which the effort actually pertains. However, if preparatory and make ready costs are charged direct to a DOE contract, care must be taken, as performance of the DOE contract work proceeds toward completion, to segregate subsequent indirect expenses similarly applicable to the preparation for, and commencement of, other jobs and to account for them as direct charges to those other jobs.

970.3102–15 Procurement: subcontracts and contractor-controlled sources.

(a) *Subcontracts.* Award and management policies for subcontracts placed under operating contracts when necessary to the performance of the required services and work efforts of the management and operating contractor are set forth in 970.44. The cost of performing such subcontracts shall be allowable under the DOE contract when (1) the award/approval is otherwise in accord with the contract terms and conditions and the provisions of 970.44 and (2) the reimbursement of subcontractor costs of the management and operating contractor is in accordance with the provisions of the DOE cost principles set forth in FAR 31, as appropriate to the type of subcontractor being selected; i.e., commercial, educational, state/local government, or nonprofit organization.

(b) *Procurement or transfer from contractor-controlled sources (See 970.4404).* Allowance for all equipment, materials, supplies, and services which are sold or transferred between any division, subsidiary, or affiliate of a management and operating contractor under a common control shall be on the basis of cost incurred in accordance with the terms of the contract; except, when it is the established practice of the transferring organization to price inter-organization transfers of equipment.

materials, supplies, and services at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, allowance may be at a price when:

(1) It is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public" in accordance with FAR 15.8 or

(2) It is the result of "adequate price competition" in accordance with FAR 15.8 and is the price at which an award was made to the affiliated organization, after obtaining quotations of an equal basis from such organization and one or more outside sources which normally produce the item or its equivalent in significant quantity, provided that in either case:

(i) The price is not in excess of the transferor's current sales price to its most favored customer (including any division, subsidiary, or affiliate of the contractor under a common control) for a like quantity under comparable conditions, and

(ii) The price is not determined to be unreasonable by the contracting officer, provided, however, that if the price is determined unreasonable, such determination must be supported by an enumeration of facts on which it is based and approved at a level above the contracting officer. The price determined in accordance with paragraph (a) of this section should be adjusted, when appropriate, to reflect the quantities being procured and may be adjusted upward or downward to reflect the actual cost of any modifications necessary because of contract requirements.

970.3102-16 Relocation costs.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. The following types of costs are allowable as noted, subject to provisions of paragraphs (b), (c), and (d) below.

(1) Costs of travel of the employee and members of his/her immediate family and transportation of household and personal effects to the new location.

(2) Costs of finding a new home, such as advance trips by employees and spouses to locate living quarters, and temporary lodging during the transition periods, not exceeding separate cumulative totals of 60 days for employees and 45 days for spouses and dependents, including advance trip time.

(3) Closing costs (i.e., brokerage fees, legal fees, appraisal fees, points, finance charges, etc.) incident to the disposition of actual residence owned by the employee when notified of transfer; Provided that closing costs when added to the continuing costs described in (a)(6) below shall not exceed 14% of the sales price of the property sold.

(4) Other necessary and reasonable miscellaneous expenses incident to relocation, such as disconnection and connecting household appliances; automobile registration; drivers license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(5) Costs incident to the acquisition of a home in a new location, except that these costs will not be allowable for existing employees or newly recruited employees who prior to the relocation were not homeowners and the total costs shall not exceed 5% of the purchase price of the new home.

(6) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, mortgage interest, etc., after settlement date or lease date of new permanent residence; Provided that when added to the closing costs described in (a)(3) above, the costs shall not exceed 14% of the sales price of the property sold.

(7) Mortgage interest differential payments, except that these costs are not allowable for existing or newly recruited employees who prior to the relocation were not homeowners, and the total payments are limited to an amount determined as follows:

(i) Difference between the mortgage interest rates of the old and new residence times the current balance of the old mortgage times 3 years; and

(ii) When mortgage differential payments are made on a lump sum basis and the employee leaves or is transferred again in less than 3 years, the amount initially recognized shall be proportionately adjusted to reflect payments only for the actual time of the relocation.

(8) Rental differential payments covering situations where relocated employees retain ownership of a vacated home in the old location and rent at the new location. The rented quarters at the new location must be comparable to those vacated, and the allowable differential payment may not exceed the actual rental costs for the new home, less the fair market rent for the vacated home times 3 years.

(9) Cost of canceling an unexpired lease.

(b) The costs described in (a) above must also meet the following criteria to be considered allowable.

(1) The move is for the benefit of the Government.

(2) Reimbursement must be in accordance with an established policy or practice and program that is consistently followed and is designed to motivate employees to relocate promptly and economically.

(3) Amounts to be reimbursed do not exceed the employee's actual expenses, except that for miscellaneous costs of the type discussed in (a)(4), a flat amount, not to exceed $1,000, may be paid in lieu of actual costs.

(c) The following types of costs are not allowable:

(1) Loss on sale of a home.

(2) Continuing mortgage principle payments on residence being sold.

(3) Cost incident to the acquisition of a home in a new location as follows:

(i) Real estate brokers fees and commissions;

(ii) Costs of litigation;

(iii) Real and personal property insurance against damage or loss of property;

(iv) Mortgage life insurance;

(v) Owner's title policy insurance when such insurance was not previously carried by the employees on the old residence (however, costs of a mortgage title policy is allowable) and;

(vi) Property taxes and operating or maintenance costs.

(4) Payments for employee's income taxes of FICA (social security taxes) incident to reimbursed relocation costs.

(5) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

(d) If relocation costs for an employee have been allowed and the employee resigns within 12 months for reasons within the employee's control, it is expected the contractor shall refund or credit the relocation costs to the Government.

(e) Contractor payments to an independent relocation assistance firm handling acquisitions and sales of houses of transferred employees are allowable in amounts which otherwise represent payment for itemized cost which are allowable in accordance with the provisions of this section.

970.3102-17 Travel costs.

(a) *Air travel.* It is the policy of the DOE to require the use of the lessor of the lowest available discount fare which serves the missions purpose or other less than first-class air accommodations

for all cost-reimbursed travel, except when less than first-class accommodiations are not reasonably available to meet necessary mission requirements. For example, less than first-class accommodations are considered not reasonably available where less than first-class accommodations would:

(1) Require circuitous routing.

(2) Require travel during unreasonable hours,

(3) Greatly increase the duration of the flight,

(4) Result in additional costs which would offset the transportation savings; or

(5) Offer accommodations which are not reasonably adequate for the medical needs of the traveler.

The difference in cost between first-class air accommodations and less than first-class accommodations (such as discount fares or other less than first class accommodations) is an unallowable cost, except as provided for in this section.

(b) *Government-owned or commercial rental vechicles.* Commercial rental automobile costs in excess of the cost of a Government-furnished automobile or, when a Government-furnished automobile is not available, the cost of a Government-contract rental automobile available under a GSA Federal Supply Schedule contract, is unallowable unless:

(1) A Government-furnished or a Government contract rental automobile is not reasonably available to the traveler, or

(2) The traveler's use and the cost of a commercial rental automobile are justified and authorized as more advantageous to the Government.

970.3102-18 Special funds in the construction industry.

Costs of special "funds," financed by employer contributions, in the construction industry for such purposes as methods and materials research, public and industry relations, market development, disaster relief, etc., are unallowable, execept as specifically authorized by the contracting officer and provided for in the contract.

970.3102 Contract clauses.

The appropriate cost principles clause at 970.5204-13 or 970.5204-14 shall be included in a management and operating contract.

Subpart 970.32—Contract Financing

970.3201 General.

It is the policy of the DOE to finance management and operating contracts through advance payments and use of Special Bank Accounts. Appropriate procedures for properly managing and controlling funds for obligation and expenditure under a management and operating contract are maintained by the Office of Controller.

970.3202 Advance payments.

(a) The Head of the Contracting Activity, shall authorize advance payments without interest; and approve the findings, determinations and the contract terms and conditions concerning advance payments in accordance with the procedures set forth in FAR Subpart 32.4, Advance Payments, as amended by Subpart 932.4.

(b) Advance payments shall be made under a letter-of-credit arrangement for deposit in a special bank account.

(c) Prior to providing any advance payments, the contracting officer shall enter into an agreement with the contractor and a financial institution, regarding a special bank account where the advanced funds are to be deposited by the Government. Such agreement shall (1) provide that DOE shall retain title to the unexpended balance of funds in the special bank account including revenues if any, deposited by the contractor; and that such title shall be superior to any claim or lien of the bank of deposit and (2) incorporate as necessary or appropriate, additional financial provisions required by Treasury or Departmental financial regulations.

(d) Deviations from these specified requirements cited in paragraph (c) above shall be considered a deviation requiring approval of the Head of the Contracting Activity.

(e) Letter-of-Credit arrangements shall be prepared in accordance with FAR 32.406, Letters of Credit, and shall be coordinated between the procurement and finance organizations.

970.3270 Clauses.

The clauses at 970.5204-16 shall be included in management and operating contracts when advances of funds are to be placed in a special bank account. They may be appropriately modified to incorporate any additional provisions that may be required by governing financial regulations of the Treasury Department or the Department.

970.3271 Special bank account agreement.

Note.—The following agreement shall be used with special bank accounts in accordance with 970.3202(c).

Agreement entered into this —— day of ———, 19 —, between the United States of America (hereinafter called the Government) represented herein by the Department of Energy (hereinafter called the "DOE"), and ——— (hereinafter called the "Contractor," a corporation under the laws of the State of ———, and ———, (hereinafter called the "Bank,") a banking corporation under the laws of ———, located at ———.

Recitals

(a) On the date of ———, 19 —, DOE and the Contractor entered into Contract(s) No. ———, or a supplemental agreement thereto, providing for the making of advances of Government funds to the contractor a copy of such advance provisions has been furnished to the Bank.

(b) DOE requires that amounts advanced to the Contractor under said contract or supplemental agreement be deposited in a Special Bank Account or accounts with a bank designated by the Treasury Department as depositary and financial agent of the Government (Section 10 of the Act of June 11, 1942, 56 Stat. 356; 12 U.S.C. 265), separate from any of the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(c) This Special Bank Account shall be designated "——— (Name of Contractor), ——— (Contract Number), Department of Energy Special Bank Account."

Covenants

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that,

(1) The Government shall have title to the credit balance in said account to secure the return of all advances made to the contractor, which title shall be superior to any lien or claim of the Bank or others with respect to such account.

(2) The Bank will be bound by the provisions of said contract or contracts relating to the deposit and withdrawal of funds in the above Special Bank Account, but shall not be responsible for the application of funds properly withdrawn from said account. After receipt by the Bank of written directions from the Contracting Officer, or from the duly authorized representative of the Contracting Officer, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions.

(3) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including, without limitation, the inspection or copying of such books and records and any and all memoranda, checks, correspondence, or documents pertaining thereto. Except as agreed upon by the Government and the Bank, all books and records pertaining to the Special Bank Account in the possession of the Bank relating to the Special Bank Account agreement shall be preserved by the Bank for a period of three (3) years after final payment under the contract to which the Special Bank Account agreement pertains or otherwise disposed of in such manners as may be agreed upon by the Government and the Bank.

(4) In the event of the services of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify the Head of Contracting Activity, DOE.

In witness whereof the parties hereto have caused this Agreement to be executed , as of the day and year first above written.

(Signatures and Official Titles) ———————

Subpart 970.36—Construction and A-E Contracts

970.3600 Scope of subpart.

This subpart sets forth contracting procedures applicable to construction work performed by management and operating contractors and their subcontractors. Provisions of FAR Part 36 and Part 936 of this chapter also apply.

970.3601 Government estimates.

A Government estimate of costs shall be prepared for all construction work to be subcontracted under operating and management contracts. The services of an architect-engineer, management and operating contractor, or construction contractor shall be used as appropriate in the preparation of Government estimates.

970.3602 Specifications.

Management and operating contractors are required to comply with the DOE publication entitled "Design Criteria," in preparing specifications for construction work.

970.3603 Labor standards.

The provisions of FAR Subpart 22.4 and Subpart 922.4 of this chapter shall be followed in determining whether a management and operating contractor's procurement actions involve work covered under the Davis-Bacon Act.

970.3604 Agreement for rental of third-party owned construction equipment.

When construction work under a management and operating contract requires the rental of construction equipment from a third party, the DOE agreement outlined at 936.7302 shall be used.

970.3605 Davis-Bacon Act.

Subcontracts subject to the Davis-Bacon Act under management and operating contracts shall include the applicable clauses and shall be modified to delete references to a prime contract subject to the Davis-Bacon Act.

970.3606 Special construction clause for operating contracts.

The clause in 970.5204–38 shall be used in management and operating contracts when the contractor will not perform covered work with its own forces but may procure construction by subcontract.

970.3607 Architect-engineer/construction services.

Combinations in or subcontracts for architect-engineer and construction services, which may result in self-inspection of construction work, tend to prevent a contractor from rendering unbiased decisions, or create difficulties in segregating costs between contracts, and should be avoided. However, it is recognized that sometimes it is advantageous under carefully circumscribed conditions for a management and operating contractor to obligate a single firm to perform both architect-engineer and construction management services which may include performance of a segment of the construction work with the contractor's own forces. Unless otherwise authorized by the Procurement Executive, the following combinations of subcontracts shall not be awarded by a management and operating contractor to the same firm or to affiliated companies:

(a) Both a cost-reimbursable contract and fixed-price contract if the performance of any portion of the work under either the cost-type or fixed-price contract will be performed on different projects concurrently and in the same general locations. This restriction applies to contracts for construction services, architect-engineer services, or construction and architect-engineer services.

(b) A fixed-price contract or contracts, for both architect-engineer and construction services on the same construction project, or a cost-type contract for architect-engineer services and a fixed-price contract for construction services on the same construction project. If a firm is to be responsible under such contractual arrangements for both design and construction services, title III architect-engineer services shall be performed by another organization selected by DOE.

(c) A cost-type contract for both architect-engineer and construction services on the same construction project (engineer-constructor contract). If this contractual arrangement is used, the contract shall provide for performance of the title III architect-engineer services by contractor's engineering personnel who are not responsible to the contractor's construction personnel, or the title III services shall be performed by another organization selected by DOE.

970.3608 Inspection.

(a) Inspection services may be performed by the architect-engineer responsible for the design. Inspection services may not be procured from a fixed-price construction contractor with respect to its own work. Under cost-reimbursement type subcontracts where the construction contractor and architect-engineer contractor are the same, some degree of self-inspection may be permitted, but shall not constitute final inspection and acceptance by the Government.

(b) When one contractor is to inspect the work of another, the inspecting contractor will be given written instructions defining its responsibilities and stating that it is not authorized to modify the terms and conditions of the contract, direct additional work, waive any requirements of the contract, or settle any claims or dispute. Copies of the instructions will be given to the contractor who is to be inspected, with a request to acknowledge receipt on one copy and return it to the contracting officer. In this manner, both contractors are on notice as to the authority and limitations on the authority of the inspecting contractor.

Subpart 970.44—Contractor procurement

970.4401 General.

Contracting activities of management and operating contractors shall be governed by contract requirements. The Federal Acquisition Regulation generally is not directly applicable. There are, however, requirements of certain Federal Laws, Executive Orders and regulations including Federal Acquisition Regulations which pertain to and are applicable to procurements by management operating contractors. These requirements, together with implementing DOE Acquisition Regulations which apply to management and operating contractor procurements are identified in this subpart and other subparts of 970.

970.4402 Responsibility of contracting officers.

Contracting officers are responsible for assuring that procurement by management and operating contractors conforms to contract requirements and provides effective and timely support to agency programs. In carrying out this responsibility, contracting officers shall: (a) Assure that management and operating contracts include those provisions required by law or regulations, and such other provisions as are appropriate to implement DOE

policies and requirements; (b) review contractor procurement systems including implementation of policies as required by 970.4403 and in accordance with the provisions of their contracts; (c) review individual procurement actions of certain types or above stated dollar level; and (d) make periodic appraisals of the contractor's management of the procurement function in accordance with criteria established by the Procurement Executive.

970.4403 Policies.

The following policies shall apply to the procurement practices of management and operating contractors. Within these policies it is expected that procurement systems and methods will vary according to the types and kinds of procurement to be made, the needs of the particular programs, and the experience, methods, and practices of the particular contractor.

(a) Procurement systems and methods used to support DOE management and operating contract work should be well defined, consistently applied, and follow good business practices appropriate for the requirement and amount of procurement involved.

(b) Procurement should be effected in the manner most advantageous to the Government—price, quality, and other factors considered. In order to assure this objective and the award of subcontracts on an impartial basis, procurement (from other than Government sources) shall be effected by methods calculated to assure such full and free competition as is consistent with securing the required supplies and services. Generally, procurement actions are carried out through one of the following methods:

(1) *Firm-Price Competitive offers or quotations and award.* The competitive offer or quotation and award method of procurement, which normally assures the greatest degree of fair and open competition, generally involves the following basic steps and objectives:

(i) Preparation of a solicitation document setting forth contract terms and conditions and describing the requirement clearly, accurately, and completely, avoiding unnecessarily restrictive specifications or requirements.

(ii) Publicizing such solicitations by distribution to a reasonable number of prospective offerors and by such other means as may be appropriate, in sufficient time to permit the preparation and submission of offers before the time set for receipt of offers. This time shall be uniform for all.

(iii) Handling solicitations in a manner which provides fair and equal treatment for all prospective contractors.

(iv) Making an award to the prospective contractor whose offer, in response to the solicitation, will be most advantageous to the Government, price and other factors considered. However, if upon evaluation, it is determined to be in the best interest of the Government to enter into negotiations with prospective contractors before award, such negotiations should be conducted in accordance with (b)(2) below with respect to according fair and equal treatment to prospective contractors.

(2) *Negotiation.* Procurement by this method normally should be conducted by competitive negotiations through the solicitation and evaluation of proposals, from an adequate number of qualified sources to assure effective competition, consistent with securing the required supplies or services. Negotiated procurement involves advance planning, description of procurement and delivery requirements, and consideration of the effect these requirements may have on prices and competition. Requests for proposals should describe the property or services required as completely as possible; allow sufficient time for submission of proposals; and establish a closing date for receipt of proposals. Proposals should be handled in a manner which provides fair and equal treatment to all prospective offerors.

(c) Price or cost analyses shall be performed in accordance with the requirements of FAR Subpart 15.8 and Subpart 915.8 of this chapter. Profit and fee and negotiation objectives shall be consistent with guidance in FAR Subpart 15.9 and Subpart 915.9 of this chapter. Allowable cost shall be determined in accordance with the cost principles of FAR Part 31 appropriate for the type of organization to which the subcontract is awarded.

(d) Supplies and services normally should be procured through the use of specifications standards, or purchase descriptions which clearly and accurately describe the supplies or services to be procured. If such specifications, standards, or purchase descriptions are not available and it is impractical and uneconomical to prepare them, "brand name or equal" descriptions may be used, provided the particular physical functions or other characteristics of the brand name item which are deemed essential are clearly identified and described.

(e) The need for access authorizations to classified information shall not be a limiting factor in obtaining competition except where time will not permit securing additional access authorizations.

(f) Awards shall be made only to responsible, responsive, prospective contractors. Proposed awards to firms or individuals on the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors or the DOE Consolidated List of Debarred, Suspended, Ineligible, and Voluntarily Excluded Awardees shall be submitted to DOE for approval.

(g) Selection of the type of contract to be used should be based on consideration of the nature of the supplies and services required and other circumstances surrounding the procurement. The cost-plus-a-percentage-of-cost system of contracting shall not be used in any event.

(h) Small purchases should be made by methods designed to (1) obtain fair and reasonable prices, (2) reduce administrative costs of making such purchases to the minimum required to establish the propriety of placing the order at the price paid with the supplier concerned, and (3) improve opportunities for small and minority business concerns within the local trade area to obtain a fair proportion of purchases.

970.4404 Procurement from contractor-controlled sources.

(a) When a management and operating contractor maintains a separate procurement function to support performance of work in DOE facilities on DOE sites, procurement from contractor-controlled sources (any division, subsidiary, or affiliate of the contractor under a common control) may be treated in the same manner as procurement from other sources provided the procurement is made:

(1) Under the same terms and conditions as would apply if the purchase were from a third party;

(2) In accordance with policies and procedures particularly designed to permit fair and open competition which have been approved by the contracting officer; and

(3) In a manner which results in legally enforceable terms and conditions.

(b) Subcontracts for performance of contract work itself (as distinguished from procurement of supplies and services needed in connection with the performance of work) require DOE authorization which may involve an adjustment of the contractor's fixed fee. If the contractor seeks authorization to have some part of the contract work performed by a contractor-controlled source, and the contractor's

performance of that work was a factor in the negotiated fixed fee, DOE approval would normally require (1) that the contractor-controlled source perform such work an a basis without profit, (2) an equitable downward adjustment to the contractor's (i.e., the contracting component's) fixed fee.

(c) Determination on cost of money allowance as prescribed in at FAR 31.205–10 shall be treated as follows:

(1) When a procurement from a contractor-controlled source with the provisions and conditions of (a) (1), (2), and (3) of this section, the contractor-controlled source may include cost of money as an allowable element of the costs of its goods or services provided to the contractor; *provided* (i) the procurement is based on cost as set forth in 970.3102–15 and (ii) the cost of money amount is computed in accordance with FAR 31.205–10 and related procedures (see 930.70).

(2) When a procurement from a contractor-controlled source is authorized in accordance with 970.4408 of this section, cost of money shall not be considered an allowable element of the cost of the contractor-controlled source procurement.

970.4405 Procedures for handling mistakes under management and operating contractor procurement.

(a) Heads of Contracting Activities may authorize the withdrawal of offers and the correction of mistakes in contracts awarded by contractors in accordance with this section.

(1) Contractors may permit the withdrawal of offers upon a showing of clear and convincing evidence of the alleged mistake.

(2) Contractors may correct obvious clerical errors in offers disclosed prior to award, regardless of amount.

(3) Except as provided in paragraph (a)(4) of this section, contractors may correct other mistakes in bids and contracts as provided in this section.

(4) The Head of the Contracting Activity approval shall be required for:

(i) Any corrections of mistakes which would cause the proposed contract price (A) to exceed that of the second low offer, or (B) to displace one or more lower acceptable offers;

(ii) Any corrections of mistakes in offers, other than obvious clerical errors, in procurement actions which require DOE approval;

(iii) Any correction of mistakes which exceed $10,000 disclosed after award; and

(iv) Any rescision of a contract.

(b) Corrections of mistakes are authorized under paragraph (a) (3) and (4) of this section when:

(1) There is clear and convincing evidence to support both the assertion of a mistake and the amount thereof;

(2) The mistake was made in good faith;

(3) The mistake is of such a nature that correction thereof is justified by consideration of fair dealings; and

(4) The mistake is of the type that would be corrected under the contractor's private procurement practices, or with respect to mistakes in excess of $10,000, or which require approval of the Head of the Contracting Activity, a determination is made that relief would be granted under applicable Federal law.

(c) The authority of this section may not be used to make a offer responsive.

(d) Where rescision is an appropriate remedy, the Head of the Contracting Activity may authorize a modification in a specific amount, or approve revisions in other terms and conditions, in lieu of rescision.

(e) Where a contract is executed or work is continued after assertion of a mistake, the alleged mistake may be considered on its merits as of the time it was asserted, provided the contract was executed or the work continued pursuant to an understanding that such action did not constitute a waiver of any rights.

(f) Corrections of mistakes or other remedial actions taken pursuant to this section shall be documented by a written statement setting forth the circumstances and basis for such action and shall be made a part of the procurement file.

(g) When correction of mistakes or other relief cannot be granted under the criteria of this section, the Head of the Contracting Activity may deny the request or forward the file to the Procurement Executive with recommendation for action.

970.4406 [Reserved]

970.4407 Review and approval.

(a) Heads of contracting activities shall require management and operating contractors to obtain the approval of the contracting officer before entering into any subcontracts or purchase orders within the following categories:

(1) *Specified contract types.* Approval shall be required before entering into cost reimbursement, labor-hour, and time-and-materials type subcontracts in excess of $500.

(2) *Specified dollar amounts.* Approval shall be required before entering into subcontracts or purchase orders that:

(i) Except as provided in paragraph (b) (1) and (2) of this section, exceed the following amounts:

(A) Construction and A–E, $10,000;

(B) R&D, $10,000; and

(C) All others, $25,000.

(ii) Exceed any lesser dollar limits established at the discretion of Heads of Contracting Activities, taking into consideration such factors as the nature of work under each contract, the estimated cost of work under the contract, the contractor's procurement organization, other controls exercised over the contractor's procurement operations, and policies with respect to approvals established by Headquarters or field offices.

(3) *Contracts entered into under section 41 of the Atomic Energy Act of 1954 relating to the operation of nuclear production facilities.* Prior approval shall be required for the subcontracting of any work a contractor is obligated to perform under a contract entered into under section 41 of the Atomic Energy Act of 1954, as amended.

(4) *Specified materials, equipment, or services.* Heads of Contracting Activities shall take such action as may be required to insure compliance with the procedure for purchase from contractor-controlled sources or the procurement of specific items, or classes of items which by the terms of the contract may require DOE approval.

(b) The following exceptions shall apply to the provisions of paragraph (a) above.

(1) In the event application of any of the dollar amount limitations established in paragraphs (a)(1) and (2) above would impair the DOE program or the field office or would be impracticable under the circumstances, or such higher levels would be in the Government's best interest, the Head of a Contracting Activity may, upon making such determination, establish a dollar amount in $100,000 subject to advance notification limitations set forth in 970.4408. Requests to establish dollar levels in excess of $100,000 shall be submitted to the Procurement Executive for approval and contain the applicable information required in 970.4408. Advance notification required in 970.44–8 shall be applicable to all such higher levels established.

(2) When a review has been made of the contractor's procurement system and the contractor's procurement system has been approved, the Head of the Contracting Activity may raise the dollar limitations in paragraph (a)(1) and (2) above as follows (subject to advance notification): To the lower of (A) limits established by the performing activity,

or (B) the amount of the Head of the Contracting Activities delegated authority, provided approval has been obtained as required.

(c) Heads of Contracting Activities may, up to the limits of their delegated authority, give oral approval (or approval by telephone or teletype) to any subcontract or purchase order requiring DOE approval in instances of compelling or unusual urgency, such as circumstances under which a DOE program would be seriously hampered or delayed if supplies or services are not obtained by a certain date and time does not permit the obtaining or formal approval. Such emergency approvals shall be confirmed in writing.

(d) Management and operating contractors shall be required to justify procurements in writing, setting forth the information and data used in determining that the procurements are in the best interest of the Government. The scope and detail of this documentation shall be consistent with the nature, dollar value, and complexity of the procurement.

(e) Contracting officers shall assure that the contractors establish and maintain procurement files which contain those documents essential to present an accurate and adequate record of the transaction.

(f) Field offices will establish files for the review and approval of contractor procurement actions, including among other necessary documentation, an appraisal of the proposed action and a copy of suggestions, deficiencies, or improvements forwarded to the contractor.

970.4408 Advance notification.

(a) This provision only applies to former AEC functions now being performed by DOE pursuant to section 602(d)13 of the Federal Property and Administrative Services Act of 1949, as amended. The limitation in section 304(b) of that act concerning advance notification is not applicable, provided the contractors procurement methods and systems have been reviewed and approved, except that advance notification shall be required for all proposed contracts or solicitations where the procurement is:

(1) Noncompetitive and over $25,000

(2) A intracompany transfer or payment over $10,000;

(3) Will result in direct reimbursement of costs over $500.

(4) For consulting work over $10,000.

(b) The advance notice shall contain, as a minimum, a description of work, estimated cost, type of contract or reimbursement provisions, and extent of anticipated competition, or justification for a noncompetitive procurement. The contracting officer may at any time request additional information that must be furnished promptly and prior to award of the subcontract.

970.4409 Nuclear material transfers.

(a) Management and operating contractors, in preparing contracts or other agreements in which monetary payments or credits depend on the quantity and quality of nuclear material, shall be required to assure that each such contract or agreement contains a:

(1) Description of the material to be transferred;

(2) Provision specifying the method by which the quantities are to be measured and reported;

(3) Provision specifying the procedures to be used in resolving any differences arising as a result of such measurements;

(4) Provision providing for the use of an umpire to settle unresolved differences in the analytical samples; and

(5) Provision specifying in detail which part shall bear the costs of resolving a difference and what constitutes such costs.

(b) The provisions providing for resolution of measurement differences must be such that resolution is always accomplished, while at the same time minimizing any advantage one party may have over the other.

Subpart 970.46—Quality Assurance

970.4601 General.

Contract provisions relating to inspection and acceptance as included, in subcontracts and purchase orders by management and operating contractors, should provide no less protection for the Government than are provided by the contract articles in prime contracts.

Subpart 970.49—Termination of Contracts

970.4901 General principles.

(a) All management and operating contracts, regardless of whether they are for production, research and development, or services, shall contain appropriate termination provisions.

(b) Subcontracts and purchase orders awarded by the management and operating contactor are required to include termination and settlement requirements of FAR Part 49.

§ 970.4902 Termination clause.

The clause at 970.5204–45 shall be inserted into management and operating contracts.

Subpart 970.51—Use of Government Sources by Contractors

970.5101 Use of Government supply sources.

(a) Management and operating contractors should meet their acquisition requirements from Government sources of supply, when these sources are made available to them and if it is economically advantageous or otherwise in the best interest of the Government.

(b) Contracting officers may authorize management and operating contractors and their subcontractors with cost-reimbursement type subcontracts, where all higher-tier subcontracts are cost-reimbursement types, to acquire materials and services directly from such Government sources of supply in accordance with the requirements of this subpart or the consent of agencies involved.

(c) Materials, supplies, and equipment procured from Government sources of supply under the procedures described herein must be used exclusively in connection with management and operating contract work, except as otherwise authorized by Heads of Contracting Activities.

(d) Many supply facilities and contracts of the Department of Defense are made available to DOE and its management and operating contractors. Accordingly:

(1) Requisitions or purchase orders shall be submitted directly to these sources, unless otherwise specified. Field offices will be notified by the Procurement Executive, or designee, when such contracts and facilities are made available. Inquiries in connection with these sources may be directed to the Procurement Executive.

(2) Contractor requisitions submitted to Defense Logistics Centers should include the following statement. "The consignee of the supplies and materials requisitioned herein is acting in behalf of and as agent for the Department of Energy with respect to the expenditure of Government funds." Orders submitted directly to DOD contractors shall be accompanied by an authorization substantially similar to that in FAR 51.103.

(e) Contracting officers, when reviewing the procurement systems and methods of contractors that have been authorized to use Government sources of supply, shall assure that provision is made for documenting the justification of procurements from commercial sources of items available from Government sources of supply.

(f) Direct procurement by DOE, rather than by a management and operating contractor, shall be required where deemed necessary by the Head of the Contracting Activity in order to carry out special requirements of appropriation acts or other applicable laws relating to particular items.

(g) The Procurement Executive, shall be informed of instances in which Government sources of supply are not used because of the quality of the items available or when a Federal Supply Schedule contractor refuses to honor an order.

970.5102 Use of interagency motor pool vehicles and related services.

The provisions of FAR subpart 51.2, FPMR 41 CFR 101–39, and DOE–PMR 41 CFR 109–39 apply.

Subpart 970.52—Contract Clauses for Management and Operating Contracts

970.5201 General policy.

Many of the clauses set forth in subparts of FAR Part 52 and Part 952 of this Chapter apply to management and operating contracts. The clauses in this subpart are to be used in addition to or in place of the FAR or the DEAR counterpart contract clauses where appropriate. Further modifications and notes to certain FAR clauses are also prescribed, in addition to those set forth in Part 952.

970.5202 Deviations.

Deviations from the standard contract clauses and modifications to FAR clauses set forth herein, as well as from the standard contract clauses prescribed in FAR Part 52 and Part 952 of this Chapter, shall be made only in accordance with the deviation procedures of Subpart 901.4. Minor changes in wording which may become necessary in the course of negotiations are not considered deviations, provided Counsel determines that the change is not prohibited by statue, executive order, or administrative regulation and does not alter the meaning, intent, or basic principles expressed in these clauses.

970.5203 Modifications and notes to FAR clauses.

970.5203–1 Covenant against contingent fees.

See FAR 52.203–5.

Note.—*Modify this clause by adding the following paragraph:*

"(c) Subcontracts and purchase orders. Unless otherwise authorized by the Contracting Officer in writing, the contractor shall cause provisions similar to the foregoing to be inserted in all subcontracts and purchase orders entered into under this contract."

970.5203–2 Examination of records by Comptroller General.

See FAR 52.215–1.

Note.—*The following paragraph (e) should be included in management and operating contracts when the clause at FAR 52.215–1 is required. It may be omitted only with the approval of the Procurement Executive, upon a specific determination, based on consultation with the Office of the Controller and the Office of the General Counsel, that nothing in the contract purports to preclude an audit by the General Accounting Office of any transaction thereunder.*

(e) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

970.5203–3 Buy American Act.

See FAR 52.225–3.

Note.—*Substitute* "used" *for* "delivered" *in paragraph (b).*

970.5204 Clauses to be used in addition to or in place of the contract clauses set forth in FAR 52 and DEAR 952.

970.5204–1 Security.

Use the clauses at 952.204–2, Security and 952.204–70, Classification.

970.5204–2 Safety and health (Government-owned or leased).

Safety and Health (Government Owned or Leased) (Apr 1984)

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the safety and health of employees and of members of the public and shall comply with all applicable safety and health regulations and requirements (including reporting requirements) of DOE. The contracting officer shall notify the contractor, in writing, of any noncompliance with the provisions of the clause and the corrective action to be taken. After receipt of such notice, the contractor shall immediately take corrective action. The contractor shall submit a management program and implementation plan to the contracting officer for review and approval within 30 days after the date of award of this contract. In the event that the contractor fails to comply with said regulations or requirements of DOE, the contracting officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter, a start order for resumption of the work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, such work stoppage.

970.5204–3 Buy American Act—Construction materials.

Include the clause at FAR 52.225–5 when the contract contains construction.

970.5204–4 [Reserved]

970.5204–5 Disclosure of information.

Clause located at 952.204–72 use as prescribed at 970.0404–4.

970.5204–6 Nuclear hazards indemnity.

See 952.250–70

970.5204–7 Nuclear hazards indemnity—product liability.

See 952.250–71

970.5204–8 Indemnity assurance to architect-engineer or supplier prior to operation of a production or utilization facility.

See 952.250–72

970.5204–9 Accounts, records, and inspection.

Accounts, Records, and Inspection (Apr. 1984)

(a) *Accounts.* The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting all allowable costs incurred, revenues or other applicable credits, fixed-fee accruals, and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

Note.—*If the contract includes the clause for* "Price Reduction for Defective Cost or Pricing Data" *set forth at FAR 52.215–22, paragraph (a) above should be modified by adding the words* "or anticipated to be incurred" *after the words* "allowable costs incurred."

(b) *Inspection and audit of accounts and records.* All books of account and records relating to this contract shall be subject to inspection and audit by DOE at all reasonable times, before and during the period of retention provided for in (d) below, and the contractor shall afford DOE proper facilities for such inspection and audit.

(c) *Audit of subcontractors' records.* The contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer.

(d) *Disposition of records.* Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, and other data evidencing costs allowable, revenues, and other applicable credits under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the

progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as provided in this contract, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.

(e) *Reports.* The contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the contracting officer may from time to time require.

(f) *Inspections.* The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time in such manner as it shall deem appropriate.

(g) *Subcontracts.* The contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through this paragraph (g) of this clause in all subcontracts (including fixed-price of unit-piece subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

Note.—*If the prime contract contains a "Defective Cost or Pricing Data" clause, this paragraph (g) shall be modified by adding the following:*

The contractor further agrees to include an audit clause, the substance of which is the "Audit" clause set forth at FAR 52.215–22, in each subcontract which does not include provisions similar to those in paragraph (a) through this paragraph (g) of this clause, but which contains a "defective cost or pricing data" clause.

(h) *Internal audit.* The contractor agrees to conduct an internal audit and examination satisfactory to DOE of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the contracting officer.

Note.—*This paragraph (h) shall be included in (a) all cost-type contracts (or subcontracts) involving an estimated cost exceeding $5 million and expected to run more than 2 years, and (b) any other cost-type contract (or subcontract) where deemed advisable by the Head of the Contracting Activity advisable by the Head of the Contracting Activity and wen the contactor (or subcontractor) already has an established internal audit organization.*

970.5204–10 Foreign ownership, control, or influence over contractors (FOCI).

(a) Insert the clause at 952.204–73 in a solicitation for a management and operating contract.

(b) Insert the clause at 925.204–74 in management and operating contracts as prescribed at 970.0404–4.

970.5204–11 Changes.

Changes (Apr 1984)

(a) *Changes and adjustment of fee.* The contracting officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of, or variation in, work covered by this contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work," an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the contractor of the notification of change; provided, however, that the contracting officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."

(b) *Work to continue.* Nothing contained in this clause shall excuse the contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

970.5204–12 Contractor's organization.

Contractor's Organization (Apr 1984)

(a) *Organization chart.* As promptly as possible after the execution of this Contract, the contractor shall furnish to the contracting officer a chart showing the names, duties, and organization of key personnel to be employed in connecting with the work, and shall furnish from time to time supplementary information reflecting changes therein.

(b) *Supervising representative of contractor.* Unless otherwise directed by the contracting officer, a competent full-time resident supervisory representative of the contractor satisfactory to the contracting officer shall be in charge of the work at the site at all times. This also applies to off-site work.

(c) *Control of employees.* The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to his employees as may be necessary. In the event the contractor fails to remove any employee from the contract work whom DOE deems incompetent, careless, or insubordinate, or whose continued employment on the work is deemed by DOE to be contrary to the public interest, the Government reserves the right to require the contractor to remove the employee.

Note.—*In contracts identified in 970.2273, the following paragraph shall be substituted for (c) above:*

(c) The contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. The contractor shall establish such standards and procedures as are necessary to implement effectively the provisions set forth in 970.2273, and such standards and procedures shall be subject to the approval of the contracting officer.

970.5204–13 Allowable costs and fixed-fee (CPFF management and operating contracts).

Allowable Costs and Fixed-Fee (Apr 1984) (CPFF Management and Operating Contracts)

(a) *Compensation for contractor's services.* Payment for the allowable costs as hereinafter defined, and of the fixed-fee, if any, as hereinafter provided, shall constitute full and complete compensation for the performance of the work under this contract.

(b) *Fixed-fee.* The fixed-fee payable to the contractor for the performance of the work under this contract is $———. There shall be no adjustment in the amount of the contractor's fixed-fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual costs for performance of that work.

Note.—*This provision to this paragraph may be appropriately changed to cover situations where the fee is for a period of time or different fees are allowed for various phases of the work.*

(c) *Allowable costs.* The allowable cost of performing the work under this contract shall be the costs and expenses that are actually incurred by the contractor in the performance of the contract work in accordance with its terms, that are necessary or incident thereto, and are determined to be allowable pursuant to this paragraph (c). The determination of the allowability of cost hereunder shall be based on: (1) Reasonableness, including the exercise of prudent business judgment; (2) consistent application of generally accepted accounting principles and practices that result in equitable charges to the contract work; and (3) recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of cost. Allowable costs shall not include the cost of any item described as unallowable in paragraph (e) of this clause except as indicated therein. Failure to mention an item of cost specifically in paragraph (d) or paragraph (e) shall not simply either that it is allowable or that it is unallowable.

(d) *Items of allowable cost.* Subject to the other provisions of this clause, the following items of cost of work done under this contract shall be allowable to the extent indicated:

(1) Bonds and insurance, including self-insurance, as provided in the clause entitled "Required Bonds and Insurance—Exclusive of Government Property."

(2) Communication costs, including telephone services, local and long-distance calls, telegrams, cablegrams, postage, and similar items.

(3) Consulting services (including legal and accounting), and related expenses, as

approved by the contracting officer, except as made unallowable by paragraphs (e)(16) and (e)(26).

(4) Litigation expenses, including reasonable Counsel fees, incurred in accordance with the clause of this contract entitled "Litigation and Claims."

(5) Losses and expenses (including settlements made with the consent of the contracting officer) sustained by the contractor in the performance of this contract and certified in writing by the contracting officer to be reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.

(6) Materials, supplies, and equipment, including freight transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use and disposition thereof, subject to approvals required under other provisions of this contract.

(7) Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions in this contract or as approved by the contracting officer, and preparation of invention disclosures, reports and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with any "Patent Rights" clause of this contract.

(8) Personnel costs and related expenses incurred in accordance with the personnel appendix which is hereby incorporated by reference and made a part of this contract. It is specifically understood and agreed that said personal appendix sets forth in detail personnel costs and related expenses to be allowable under this contract and is intended to document those personnel policies, practices and plans which have been found acceptable by the contracting officer. It is further understood and agreed that the contractor will advise DOE of any proposed changes in any matters covered by said policies, practices or plans which relate to this item of cost, and that the personnel appendix may be modified from time to time in writing by mutual agreement of the contractor and DOE without execution of an amendment to this contract for the purpose of effectuating any such changes in, or additions to, said personnel appendix as may be agreed upon by the parties. Such modifications shall be evidenced by execution of written numbered approval letters from the contracting officer or his representative. Types of personnel costs and related expenses to be incorporated into the personnel appendix, or amendments thereto, are as follows:

(i) Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time, including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (contractor) committees, provided, however, that the contracting officer's approval is required in each instance of total compensation to an individual employee at an annual rate of $——— or more, when it is proposed that a total of 50 percent or more or such compensation be reimbursed under DOE cost-type contracts. Total compensation, as used here, includes only the employee's base salary, bonus, and incentive compensation payments;

(ii) Legally required contributions to old-age and survivors' insurance, unemployment compensation plans, and workmen's compensation plans, (whether or not covered by insurance); voluntary or agree-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);

(iii) Travel (except foreign travel, which requires specific approval by the contracting officer on a case-by-case basis); incidental subsistence and other allowances of contractor employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects and the travel and subsistence of their dependents);

(iv) Employee relations, welfare, morale, etc.; programs including incentive or suggestion awards; employee counseling services, health or first-aid clinics; house or employee publications;

(v) Personnel training (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the Contracting Officer on a case-by-case basis); including apprenticeship training programs designed to improve efficiency and productivity of contract operations, to develop needed skills, and to develop scientific and technical personnel in specialized fields required in the contract work;

(vi) Recruitment of personnel (including help-wanted advertisement), including service of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the contractor for employment interviews; and

(vii) Net cost of operating plant-site cafeteria, dining rooms, and canteens attributable to the performance of the contract.

Note.—*In appropriate circumstances, the lead sentence in subparagraph (d)(8) may be changed to read as follows:*

"Personnel costs and related expenses incurred in accordance with established policies, programs, and schedules, and any changes thereto during the contract term, applicable to the contractor's private operations and consistently followed throughout his organization, as approved by the contracting officer, such as".

(9) Repairs, maintenance, inspection, replacement, and disposal of Government-owned property and the restoration or clean-up of site and facilities to the extent directed or approved by the contracting officer.

(10) Subcontracts and purchase orders, including procurements from contractor-controlled sources, subject to approvals required by other provisions of this contract.

(11) Subscriptions to trade, business, technical, and professional periodicals, as approved by the contracting officer.

(12) Taxes, fees, and charges levied by public agencies which the contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.

(13) Utility services, including electricity, gas, water, and sewerage.

(14) Indemnification of the Pension Benefit Guaranty Corporation, pursuant to the Employee Retirement Income Security Act of 1974, in accordance with FAR 31.205-6(j)(3)(iv).

(15) Establishment and maintenance of bank accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the contracting officer.

Note.—*The following additional examples apply when the contractor performs construction.*

(16) Camp operations, to the extent approved by the contracting officer.

(17) Maintenance, inspection, repair, replacement, and transportation of construction plant and equipment to the extent not covered by rentals or insurance and as provided in rental agreements approved by the contracting officer.

(18) Rental for (i) construction plant and equipment rented by the contractor from others at rates and under written agreements approved by the contracting officer, and (ii) construction plant and equipment owned and furnished by the contractor under this contract.

(e) *Items of unallowable costs.* The following items of costs are unallowable under this contract to the extent indicated:

(1) Advertising, except (i) help-wanted advertising, and (ii) other advertising (such as costs of participation in exhibits) approved by the contracting officer as clearly in furtherance of work performed under the contract.

(2) Bad debts (including expenses of collection) and provisions for bad debts arising out of other business of the contractor.

(3) Proposal expenses and costs of proposals.

(4) Bonuses and similar compensation under any other name, which (i) are not pursuant to an agreement between the contractor and employee prior to the rendering of the services or an established plan consistently followed by the contract or (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.

(5) Central and branch office expenses of the contractor, except as specifically set forth in the contract.

(6) Commissions, bonuses, and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the contractor for the purpose of obtaining Government business.

(7) Contingency reserves, provisions for.

(8) Contributions and donations.

(9) Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Code of 1954, as amended, including the straight-line declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight line method), or sum-of-the-years digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life.

(10) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profit.

(11) Entertainment costs, except the costs of such recreational activities for on-site employees as may be approved by the contracting officer or provided for elsewhere in this contract.

(12) Fines and penalties, including assessed interest, resulting from violations of, or failure of, the contractor to comply with Federal, state, or local laws or regulations, except when incurred in accordance with the written approval of the contracting officer or as a result of compliance with the provisions of this contract.

(13) Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of DOE applicable to transfers of such property to the contractor from others.

(14) Insurance (including any provisions of a self-insurance reserve) on any person where the contractor under the insurance policy is the beneficiary, directly or indirectly, and insurance against loss of or damage to Government property as defined in Clause ———.

(15) Interest, however represented (except interest incurred in compliance with the clause entitled "State and local taxes"), bond discounts and expenses, and costs of financing and refinancing operations.

(16) Legal, accounting, and consulting services and related costs incurred in connection with the preparation and issuance of stock, rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions of proposed actions of the United States, and prosecution or defense of patent infringement litigation.

(17) Losses (including litigation expenses, Counsel fees, and settlements) on, or arising from the sale, exchange, or abandonment of capital assets, including investments; losses on other contracts, including the contractor's contributed portion under cost-sharing contracts; losses in connection with price reductions to and discount purchases by employees and other from any source; and losses where such losses or expenses:

(i) Are compensated for by insurance or otherwise or which would have been compensated by insurance required by law or by written direction of the contracting officer but which the contractor failed to procure or maintain through its own fault or negligence;

(ii) Result from willful misconduct or lack of good faith on the part of any of the contractor's directors, corporate officers, or a supervising representative of the contractor, as defined in Clause ——— of this contract.

(iii) Represent liabilities to third persons from which the contractor has expressly accepted responsibility under other terms of this contract.

(18) Maintenance, depreciation, and other costs incidental to the contractor's idle or excess facilities (including machinery and equipment), other than reasonable standby facilities.

Note.—May be omitted when no contractor-owned equipment is being utilized in the performance of the contract.

(19) Membership in trade, business, and professional organizations, except as approved by the contracting officer.

(20) Precontract costs, except as expressly made allowable under the provisions in this contract.

(21) Research and development costs, unless specifically provided for elsewhere in this contract.

(22) Selling cost, except to the extent they are determined to be reasonable and to be allocable to the contract. Allocability of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such activities as technical, consulting, demonstration, and other services performed for such purposes as applying or adapting the contractor's product for agency use.

(23) Storage of records pertaining to this contract after completion of operations under this contract, irrespective of contractual or statutory requirement for the preservation of records.

(24) Taxes, fees, and charges in connection with financing, refinancing, or refunding operations, including listing of securities on exchanges, taxes which are paid contrary to the clause entitled "State and local taxes," federal taxes on net income and exess profits, special assessments on land which represent capital improvement and taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to Section 4971 or Section 4975 of the Internal Revenue Code of 1954, as amended, respectively.

(25) Travel expenses of the officers, proprietors, executives, administrative heads and other employees of the contractor's central office or branch office organizations concerned with the general management, supervision, and conduct of the contractor's business as a whole, except to the extent that particular travel is in connection with the contract and approved by the contracting officer.

(26) Salary or other compensation (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organizational and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with DOE, except to the extent that cash payment therefor is required pursuant to the provisions of this contract or procedure of DOE applicable to the borrowing of such an individual from another cost-type contractor.

(27) First-class air travel in excess of the cost of less than first-class air accommodations, except when less than first-class accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would:

(i) Require circuitous routing,

(ii) Require travel during unreasonable hours,

(iii) Greatly increase the duration of the flight,

(iv) Result in additional costs which would offset the transportation sayings, or

(v) Offer accommodations which are not reasonably adequate for the medical needs of the traveler.

(28) Special construction industry "funds" financed by employer contributions for such purposes as methods and materials research, public and industry relations, market development, and disaster relief, except as specifically provided elsewhere in this contract.

(29) Late premium payment charges related to employee deferred compensation plan insurance.

(30) Facilities capital cost of money. (CAS 414 and CAS 417).

(31) Lobbying cost.

(32) Commercial automobile rental expenses unless approved by the Contracting Officer.

970.5204-14 Allowable costs and fixed-fee (support contracts).

Allowable Costs and Fixed-Fee (Support Contracts) (Apr 1984)

(a) *Compensation for contractor's services.* Payment for the allowable cost as hereinafter defined, and of the fixed-fee, if any, as hereinafter provided, shall constitute full and complete compensation for the performance of the work under this contract.

(b) *Fixed-fee.* The fixed-fee payable to the contractor for the performance of the work under this contract is $. There shall be no adjustment in the amount of the contractor's fixed-fee by reason of differences between any estimate of cost for perfomance of the work under this contract and the actual cost for performance of that work.

Note: *This provision to this paragraph may appropriately be changed to cover situations where the fee is for a period of time, or different fees are allowed for various phases of the work.*

(c) *Allowable cost.* The allowable costs for performing the work under this contract shall be the costs and expenses that are actually incurred by the contractor, are applicable and properly chargeable, either as directly incident or as allocable through appropriate distribution or apportionment, to the performance of the contract work in accordance with its terms, and are determined to be allowable pursuant to this paragraph (c). The determination of the allowability of cost hereunder shall be based on (1) reasonableness, including the exercise of prudent business judgment, (2) consistent application of generally accepted accounting principles and practices that result in equitable charges to the contract work, and (3) recognition of all exclusions and limitations set forth in this clause or

elsewhere in this contract as to types or amounts of items of costs. Allowable cost shall not include costs of any item described as unallowable in paragraph (e) of this clause, except as indicated therein. Failure to mention an item of cost specifically in paragraph (d) or paragraph (e) shall not imply either that it is allowable or that it is unallowable.

(d) *Items of allowable cost.* Subject to the other provisions of this clause, the following items of cost of work under this contract shall be allowable to the extent indicated:

(1) Bonds and insurance (including self-insurance) as provided in the clause entitled "Required bonds and insurance—exclusive of Government property."

(2) Communication costs, including telephone services, local and long-distance telephone calls, telegrams, cablegrams, radiograms, postage, and similar items.

(3) Consulting services (including legal and accounting) and related expenses, as approved by the contracting officer, except as made unallowable by paragraph (e)(14) and (e)(23).

(4) Litigation expenses, including reasonable Counsel fees, incurred in accordance with the clause of this contract entitled "Litigation and Claims."

(5) Losses and expenses (including settlements made with the consent of the contracting officer) sustained by the contractor in performance of this contract and certified in writing by the Contracting Officer to be just and reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.

(6) Materials and supplies (including those withdrawn from common stores costed in accordance with any generally recognized method that is consistently applied by the contractor and productive of equitable results).

(7) Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions in this contract or as approved by the contracting officer; and preparation of invention disclosures, reports, and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with the Patent Rights clause of this contract.

(8) Personnel costs and related expenses incurred in accordance with the personnel appendix which is hereby incorporated by reference and made a part of this contract. It is specifically understood and agreed that said personnel appendix sets forth, in detail, personnel costs and related expenses to be allowable under this contract and is intended to document those personnel policies, practices and plans which have been found acceptable by the contracting officer. It is further understood and agreed that the contractor will advise DOE of any proposed changes in any matters covered by said policies, practices, or plans which relate to this item of costs, and that the personnel appendix may be modified from time to time in writing by mutual agreement of the contractor and DOE without execution of an amendment to this contract for the purpose of effectuating and such changes in, or additions to, said personnel appendix, as may be agreed upon by the parties. Such modifications shall be evidenced by execution of written numbered approval letters from the contracting officer or his representative. Examples of personnel costs and related expenses to be incorporated into the personnel appendix, or amendments thereto, are as follows:

(i) Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; nonwork time including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (contractor) committees, provided, however, that the contracting officer's approval is required in each instance of total compensation to an individual employee at an annual rate of $———— (See 970.3102–2) or more, when it is proposed that a total of 50 percent or more of such compensation be reimbursed under DOE cost-type contracts. Total compensation, as used here, includes only the employee's base salary and bonus and incentive compensation payments.

(ii) Legally required contributions to old-age and survivor's insurance, unemployment, compensation plans, and workmen's compensation plans (whether or not covered by insurance); voluntary or agreed-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);

(iii) Travel (except foreign-travel, which requires specific approval by the contracting officer on a case-by-case basis); incidental subsistence and other allowances of contractor employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects, and the travel and subsistence of their dependents);

(iv) Employee relations, welfare, morale, etc., programs, including incentive or suggestion awards, employee counseling services, health or first-aid clinics, and house or employee publications;

(v) Personnel training (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the contracting officer on a case-by-case basis) including services of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the contractor for employment interviews; and

(vi) Recruitment of personnel (including help-wanted advertisement) including services of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the contractor for employment interviews; and

(vii) Net cost of operating plant-site cafeterias, dining rooms, and canteens attributable to the performance of the contract.

Note.—*In appropriate circumstances that lead sentence in subparagraph (d)(8) may be changed to read as follows:*

Personnel costs and related expenses incurred in accordance with established policies, programs, and schedules, and any changes thereto during the contract term, applicable to the contractor's private operations and consistently followed throughout its organization, as approved by the contracting officer, such as:

(9) Rentals and leases of land, buildings, and equipment owned by third parties where such items are used in the performance of the contract, except that such rentals and leases directly chargeable to the contract shall be subject to approval by the contracting officer.

(10) Repairs, maintenance, inspection, replacement, and disposal of Government-owned property to the extent directed or approved by the contracting officer.

(11) Repairs, maintenance, and inspection of contractor owned property used in connection with the performance of this contract, including reasonable standby facilities, which are due to ordinary wear and tear from use and the action of the elements, provided such maintenance and repairs keep the property in efficient operating condition and do not add to its permanent value or appreciably prolong its intended useful life; and major repair (including replacement) to such property, as directed or approved by the contracting officer when charged directly to the contract.

(12) Special tooling, including jigs, dies, fixtures, molds, patterns, designs and drawings, tools, and equipment of a specialized nature generally useful to the contractor only in the performance of this contract.

Note.—*Itemize any additional special equipment which may be appropriate, such as loops, mockups, experimental setups, etc.*

(13) Subcontracts, purchase orders, and procurement from contractor-controlled sources, subject to approvals required by other provisions of this contract.

(14) Subscriptions to trade, business, technical, and professional periodicals, as approved by the Contracting Officer when charged directly to the contract.

(15) Taxes, fees, and charges levied by public agencies which the contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.

(16) Utility services, including electricity, gas, water, steam, and sewerage.

(17) Indemnification of the Pension Benefit Guaranty Corporation pursuant to the Employee Retirement Income Security Act of 1974, in accordance with FAR 31.205–6(j).

(e) *Items of unallowable costs.* The following examples of items of costs are unallowable under this contract to the extent indicated:

(1) Advertising, except (i) help-wanted advertising, and (ii) other advertising (such as costs of participation in exhibits) approved by the Contracting Officer as clearly in furtherance of work performed of this contract.

(2) Bad debts (including expenses of collection) and provisions for bad debts not

arising out of the performance of this contract.

(3) Bonuses and similar compensation under any other name, which (i) are not pursuant to an agreement between the contractor and employee prior to the rendering of the services or an established plan consistently followed by the contractor (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.

(4) Commissions, bonuses, and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the contractor for the purpose of obtaining Government business.

(5) Contingency reserves, provisions for (except provisions for reserves under a self-insurance program to the extent that the type, coverage, rates, and premiums would be allowable if commercial insurance were purchased to cover the same risk, as approved by the contracting officer).

(6) Contributions and donations.

(7) Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Service under the Internal Revenue Code of 1954, as amended, including the straight-line declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight-line method) or sum-of-the-years digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life. Amortization or depreciation of unrealized appreciation of values of assets or of assests fully amortized or depreciated on the contractors books of account is unallowable.

(8) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profits.

(9) Entertainment costs, except the costs of such recreational activities for on-site employees as may be approved by the contracting officer or provided for elsewhere in this contract.

(10) Fines and penalties, including assessed interest, resulting from violations of, or failure of, the contractor to comply with the Federal, state, or local laws, or regulations, except when incurred in accordance with written approval of the contracting officer or as a result of compliance with the provisions of this contract.

(11) Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of the DOE applicable to transfers of such property to the contractor from others.

(12) Insurance (including and provision of a self-insurance reserve) on any person where the contractor under the insurance policy is the beneficiary, directly or indirectly, and insurance against loss or damage to Government property.

(13) Interest, however represented (excepted interest incurred in compliance with the clause entitled "State and Local Taxes), bond discounts and expenses, and costs of financing and refinancing operations.

(14) Legal, accounting, and consulting services, and related costs incurred in connection with the preparation of prospectuses, preparation and issuance of stock rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions or proposed actions of the United States, and prosecution or defense of patent infringement litigation.

(15) Losses, including litigation expenses, Counsel fees, and settlement on, or arising from the sale, exchange, or abandonment of capital assets, including investments; losses on other contracts, including the contractor's contributed portion under cost-sharing contracts; losses in connection with price reduction to and discount purchases by employees and others from any sources; and losses where such losses or expenses:

(i) Are compensated for by insurance or otherwise, or which would have been compensated by insurance required by law or by written direction of the contracting officer, but which the contractor failed to procure or maintain through its own fault or negligence, or which could have been covered by permissible insurance in keeping with ordinary business practice, but which the contractor failed to secure or maintain;

(ii) Result from willful misconduct or lack of good faith on the part of any of the contractor's directors, corporate officers, or a supervising representative of the contractor.

(iii) Represent liabilities to third persons for which the contractor has expressly accepted responsibility under other terms of this contract.

(16) Maintenance, depreciation, and other costs incidental to the contractor's idle or excess facilities (including machinery and equipment) other than reasonable standby facilities.

(17) Membership in trade, business, and professional organizations except as approved by the contracting officer.

(18) Precontract costs, except as expressly made allowable under other provisions in this contract.

(19) Reconversion, alteration, restoration, or rehabilitation of the contractor's facilities, except as expressly provided elsewhere in this contract.

(20) Selling costs, except to the extent they are determined to be reasonable and to be allocable to the contract. Allocability of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such purposes as applying or adapting the contractor's product for agency use.

(21) Storage or records pertaining to this contract after completion of operations under this contract irrespective of contract or statutory requirement for the preservation of records.

(22) Taxes, fees, and charges in connection with financing, refinancing or refunding operations, including the listing of securities on exchanges; taxes which are paid contrary to the clause entitled "State and local taxes;" Federal taxes on net income and excess profits; special assessments on land which represent capital improvement and taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to section 4971 or section 4975 of the Internal Revenue Code of 1954, as amended, respectively.

(23) Salary or other compensation (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with DOE, except to the extent that cash payment thereto is required pursuant to the provisions of this contract or procedures of the DOE applicable to the borrowing of such an individual from another cost-type contractor.

(24) First-class air travel in excess of the cost of less than first-class air accommodations, except when less than first-class accommodations are not reasonably available to meet necessary mission requirements, such as, where less than first-class accommodations would:

(i) Require circuitous routing,

(ii) Require travel during unreasonable hours,

(iii) Greatly increase the duration of the flight,

(iv) Result in additional costs which would offset the transportation savings, or

(v) Offer accommodations which are not reasonably adequate for the medical needs for the traveler.

(25) Late premium payment charges related to employee deferred compensation plan insurance, in accordance with FAR 31.205-6(j).

(26) Research and development costs, unless specifically provided for elsewhere in this contract.

(27) Bidding expenses and costs of proposals.

(28) Facilities capital cost of money (CAS-414 and CAS-417).

(29) Lobbying costs.

(30) Commercial automobile rental costs unless approved by the contracting officer.

970.5204-15 Obligation of funds.

Obligation of Funds (Apr 1984)

(a) *Obligation of funds.* The amount presently obligated by the Government with respect to this contract is ——— dollars ($———). Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated revenues and receipts from others for work and services to be performed under this contract are not included in this amount ——— obligated with respect to this contract. Such revenues and receipts, to the extent actually received by the contractor shall be available and used for the payment of allowable costs as provided in the article entitled "Payments and Advances." Nothing in this paragraph (a) is to be construed as authorizing the contractor to exceed limitations stated in financial plans

established by DOE and furnished to the contrator from time to time under this contract.

(b) *Limitation on payment by the Government.* Except as otherwise provided in this contract and except for costs which may be incurred by the contractor pursuant to the article entitled "Termination," or costs of claims allowable under the contract occurring after completion or termination and not released by the contractor at the time of financial settlement of the contract is in accordance with the article entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fixed fee. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of (1) revenues and receipts deposited to the Government's account as provided in the article entitled "Payments and Advances," and (2) other funds with DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) *Notices—Contractor excused from further performance.* The contractor shall notify DOE in writing whenever the unexpended balance of funds (including revenues and receipts) available under paragraph (a) above, plus the contractor's best estimate of revenues and receipts to be received during the —— day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only —— days and to cover the contractor's unpaid fixed fee, and outstanding commitments and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of funds (including revenues and receipts) available under paragraph (a) above, less the amount of the contractor's fixed fee then earned but not paid, is in the contractor's best judgment either sufficient only to liquidate outstanding commitments and liabilities on account of costs allowable under this contract or is equal to zero, the contractor shall immediately notify DOE and shall made no further commitments or expenditures (except to liquidate existing commitments and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the article entitled "Termination."

(d) *Financial plans; cost and commitment limitations.* In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans or other directives issued to the contractor, establish controls on the costs to be incurred and commitments to be made in the performance of the contract work. Such plans and instruction may be amended or supplemented from time to time by DOE. The contractor hereby agrees to comply with the specific limitations (ceilings) on costs and commitments set forth in such plans and directives, to use its best efforts to comply with other requirements of such plans and directive, and to promptly notify DOE in writing, whenever it has reason to believe the authorized financial levels of costs and commitments will be exceeded or substantially underrun.

Note.—*This paragraph (d) may be omitted in contracts which expressly or otherwise provided a contractual basis for equivalent controls in a separate article.*

(e) *Government's right to terminate not affected.* The giving of any notice under this article shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the article entitled "Termination."

970.5204-16 Payments and advances.

Payments and Advances (Apr 1984)

(a) *Installments of fixed-fee.* Ninety percent (90%) of the fixed-fee shall become due and payable in periodic installments in amounts based on the proportion of the work then completed, as determined by the contracting officer, and the balance upon completion and acceptance of all work under this contract.

Note.—*Where a separate fixed-fee is provided for a separate item of work, this subparagraph should be modified to permit payment of the entire fixed-fee upon completion of that item.*

(b) *Payments on Account of Allowable Costs.* The contracting officer and the contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the contracting officer shall be made from advances of Government funds. When pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contribution are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.

(c) *Special bank account—use.* All advances of Government funds shall be withdrawn pursuant to a letter of credit in favor of the bank or, in the option of the Government, shall be made by check payable to the contractor, and shall be deposited only in the Special Bank Account referred to in the Agreement for Special Bank Account, which is attached hereto and incorporated into this contract as an appendix. The contractor shall likewise deposit in the Special Bank Account any other revenues received by the contractor in connection with the work under this contract. No part of the funds in the Special Bank Account shall be (1) mingled with any funds of the contractor or (2) used for a purpose other than that of making payments for costs allowable under this contract or payments for other items specifically approved in writing by the contracting officer. If the contracting officer shall at any time determine that the balance on such bank account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.

(d) *Title to funds advanced.* Title to the unexpended balance of any funds advanced and of any bank account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the bank of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

Note.—The following paragraph (e) shall be included in management and operating contracts with integrated contractors.

(e) *Review and approval of costs incurred.* The contractor shall prepare and submit annually as of September 30, a voucher for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the voucher, and DOE, after audit and appropriate adjustment, will approve such voucher. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

Note.—*It should be omitted in contracts with nonintegrated contractors.*

(f) *Financial settlement.* The Government shall promptly pay to the contractor the unpaid balance of allowable costs and fixed fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after (1) compliance by the contractor with DOE's patent clearance requirements, and (2) the furnishing by the contractor of:

(i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the clause entitled "Property;" and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents.

In arriving at the amount due the contractor under this clause, there shall be deducted, any claim which the Government may have against the contractor in connection with this contract, and deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the Special Bank Account may be applied to the amount due and any balance shall be returned to the Government forthwith.

(g) *Claims.* Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the contracting officer shall prescribe.

(h) *Discounts.* The contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the contracting officer finds that action is not in the best interest of the Government.

(i) *Revenues.* All revenues other than the contractor's fixed fee or fees, if any, accruing to the contractor in connection with the work under this contract shall be Government property and shall be deposited in the Special Bank Account to be available for payment of allowable cost under this contract.

(j) *Direct payment of charges.* The Government reserves the right, upon ten days written notice from the contracting officer to the contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the contractor therefor.

970.5204-17 [Reserved]

970.5204-18 [Reserved]

970.5204-19 Printing clause for management and operating contracts.

Printing (Apr 1984)

(a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.

(b) The term "Printing" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.

(c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.

(d) In all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations), the Contractor shall include a provision substantially the same as this clause.

970.5204-20 [Reserved]

970.5204-21 Property.

Property (Apr 1984)

(a) *Furnishing of Government property.* The Government reserves the right to furnish any property or services required for the performance of the work under this contract.

(b) *Title to property.* Except as otherwise provided by the contracting officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the contractor, for the cost of which the contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The contractor shall make such disposition of rejected items as the contracting officer shall direct. Title to other property, the cost of which is reimbursable to the contractor under this contract, shall pass to and vest in the Government upon (1) issuance for use of such property in the performance of this contract, or (2) commencement of processing or use of such property in the performance of this contract, or (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by the contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(c) *Identification.* To the extent directed by the contracting officer, the contractor shall identify Government property coming into the contractor's possession or custody, by marking and segregating in such a way, satisfactory to the contracting officer, as shall indicate its ownership by the Government.

(d) *Disposition.* The contractor shall make such disposition of Government property which has come into the possession or custody of the contractor or under this contract as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor may, upon such terms and conditions as the contracting officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the contractor as the fair value thereof. The amount received by the contractor as the result of any disposition, or the agreed fair value of any such property acquired by the contractor, shall be applied in reduction of cost allowable under this contract or shall be otherwise credited to account to the Government, as the contracting officer may direct. Upon completion of the work or the termination of this contract, the contractor shall render an accounting, as prescribed by the contracting officer, of all government property which had come into the possession or custody of the contractor under this contract.

(e) *Protection of government property—Classified Materials.* The contractor shall take all reasonable precautions, as directed by the contracting officer, or in the absence of such direction in accordance with sound industrial practice, to safeguard and protect government property in the contractor's possession or custody. Special measures shall be taken by the contractor in the protection of and accounting for any classified or special materials involved in the performance of this contract, in accordance with the regulations and requirements of DOE.

(f) *Risk of loss of government property.* The contractor shall be not liable for loss or destruction of or damage to government property in the contractor's possession unless such loss, destruction or damage results from willful misconduct or lack or good faith on the part of the contractor's managerial personnel, or unless such loss, destruction or damage results from a failure on the part of the contractor's managerial personnel to take all reasonable steps to comply with any appropriate written directive of the contracting officer to safeguard such property under paragraph (e) hereof. The term "contractor's managerial personnel" as used herein means the contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of (1) all or substantially all of the contractor's business; or (2) all or substantially all of the contractor's operation at any one plant or separate location at which this contract is being performed; or (3) a separate and complete major industrial operation in connection with the performance of this contract; or (4) a separate and complete major construction, alteration or repair operation in connection with performance of this contract.

(g) *Steps to be taken in event of loss.* Upon the happening of any loss or destruction of or damage to government property in the possession or custody of the contractor, the contractor shall immediately inform the contracting officer of the occasion and extent thereof, shall take all reasonable steps to protect the property remaining, and shall repair or replace the lost, destroyed, or

damaged property, if and as directed by the contracting officer, but shall take no action prejudicial to the right of the Government to recover therefor and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.

(h) *Government property for Government use only.* Government property shall be used only for the performance of this contract.

(i) *Property Management.* The contractor shall maintain and administer a property management system, subject to the approval of the contracting officer, of accounting for and control, utilization, maintenance, repair, protection and preservation of Government property in its possession under the contract. The contractor's property management system shall be maintained and administered in accordance with sound business practice, and in accordance with Department of Energy Property Management Regulations and such directives or instructions which the contracting officer may from time to time prescribe.

970.5204-22 Contractor procurement.

Contractor Procurement (Apr. 1984)

(a) DOE reserves the right at any time to require that the contractor submit for approval any or all procurements under this contract. The contractor shall not procure any item whose purchase is expressly prohibited by the written direction of DOE and shall use such special and directed procurement sources as may be expressly required by DOE. The contractor shall provide information concerning procurement methods, practices, and procedures used or proposed to be used and shall use methods, practices, and procedures which are acceptable to DOE. Procurement arrangements under this contract shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise administer, and coordinate the work of subcontractors) and shall be in such form and contain such provisions as are required by this contractor or as DOE may prescribe.

(b) In addition to, and without derogation of any rights under paragraph (a) of this clause and any other provision in this contract the contractor shall require subcontractors to furnish cost or pricing data, and shall include in such subcontracts the appropriate clause set forth in 970.5204-24 except as otherwise directed or approved by DOE.

(c) Procurement or transfer of equipment, materials, supplies, or services from a contractor-controlled source (any division or other organizational component of the prime contractor, exclusive of the contracting component, and any subsidiary or affiliate of the contractor under a common control) shall be considered a procurement for the purposes of this clause.

(d) Proposed awards to firms or individuals on either the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors or the DOE Consolidated List of Debarred, Suspended, Ineligible, and Voluntarily Excluded Awardees shall be forwarded to DOE for approval notwithstanding any prior procurement system approval.

Note A.—*When appropriate, the words,* "if required by the contracting officer," *may be inserted in the sentence of paragraph (a) after the word* "shall.

Note B.—*When appropriate, the words,* "shall be made in the name of the contractor, shall not bind nor purport to bind the Government" *may be inserted in the fourth sentence.*

970.5204-23 Taxes

State and Local Taxes (Apr 1984)

(a) The contractor agrees to notify the contracting officer of any State or local tax, fee, or charge levied or purported to be levied on or collected from the contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the contractor and constituting an allowable item of cost if due and payable, but which the contractor has reason to believe, or the contracting officer has advised the contractor, is or may be inapplicable or invalid;* and the contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Contracting Officer. Any State or local tax, fee, or charge paid with the approval of the contracting officer or on the basis of advice from the contracting officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.

**Requirement for notice may be broadened to include all State and local taxes which may be claimed as allowable costs when considered to be appropriate.*

(b) The contractor agrees to take such action as may be required or approved by the contracting officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the contracting officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the contractor. If the contracting officer directs the contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the contractor for a tax, fee, or charge it has refrained from paying in accordance with this article, the procedures and requirements of the article entitled "Litigation and Claims" shall apply and the costs and expenses incurred by the contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the contractor.

(c) The Government shall hold the contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

970.5204-24 Subcontractor cost or pricing data.

Subcontractor Cost or Pricing Data (Apr 1984)

(a) The following clause shall be inserted in all subcontracts where such subcontracts are over $500,000 and any modification over $500,000 to such subcontracts, even though the original amount of the subcontract is $500,000 or less:

Certified Cost or Pricing Data (Apr 1984)

(1) The subcontractor shall require under the situations described in (2) below, unless exempted under the exceptions set forth in (3) below, each sub-subcontractor under this subcontract to submit cost or pricing data and to certify that, to the best of his knowledge and belief, such cost or pricing data are accurate, complete and current.

(2) Except as provided in (3) below, certified cost or pricing data shall be submitted prior to (i) the award of each sub-subcontract, the price of which is expected to exceed $500,000, and (ii) the negotiation of the price of each change or modification to a sub-subcontract under this subcontract for which the price adjustment is expected to exceed $500,000.

(3) Certified cost or pricing data need not be furnished pursuant to this paragraph (a) where (i) the subcontractor has not been required to furnish cost or pricing data; or (ii) the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or the prices are set by law or regulation; and the subcontractor states in writing the basis for applying this exception.

(4) In submitting the cost or pricing data, the sub-subcontractor shall use the form of certificate set forth in paragraph (b) below and shall certify that the data are accurate, complete, and current. Such certificate and data (actual or identified, as provided in the certificate prescribed below) shall be submitted by sub-subcontractors to the next higher-tier sub-subcontractor or the subcontractor, as applicable, for retention.

(b) The certificates required by this clause shall be in the form set forth below.

Subcontractor's Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, cost or pricing data submitted in writing, or specifically identified in writing if actual submission of the data is impracticable (see FAR 15.804-6(d)), to the contractor in support of _____* are accurate, complete, and current as of _____**.

Firm _____
Name _____
Title _____
Date of execution*** _____

*Identify the proposal, quotation, request for price adjustment, or other submission involved.

**Insert the day, month, and year when price negotiations were concluded and price agreement was reached.

***Insert the day, month, and year of signing, which should be as close as

practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(c) For purposes of verifying that certified cost or pricing data submitted in conjunction with the negotiation of this subcontract change or other modification involving an amount in excess of $500,000 were accurate, complete, and current, DOE shall, until the expiration of 3 years from the date of final payment under this subcontract, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this subcontract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) If the original price of this subcontract exceeds $500,000 or the price of any change or other modification to this subcontract is expected to exceed $500,000, the subcontractor agrees to furnish the contractor certified cost or pricing data, using the certificate set forth in paragraph (b) above, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(e) The requirement for submission of certified cost or pricing data with respect to any change or other modification does not apply to any sub-subcontract change or other modification, at any tier, where the subcontract is firm fixed-price or fixed-price with escalation unless such change or other modification result from a change or modification to the subcontract, nor does it apply to a sub-subcontract change or modification, at any tier, where the subcontract is not firm fixed-price or fixed-price with escalation unless the price for such change or other modification becomes reimbursable under the subcontract.

(f) The subcontractor agrees to insert paragraph (c) without change and the substance of paragraphs (a), (b), (d), (e), and (f) of this clause in each sub-subcontract hereunder in excess of $500,000 and in each sub-subcontract of $500,000 or less, at the time of making a change or other modification thereto in excess of $500,000.

(g) If the prime contractor determines that any price, including profit or fee, negotiated in connection with this subcontract or any cost reimbursable under this subcontract was increased by any significant sums because the subcontractor, or any sub-subcontractor pursuant to this clause or any sub-subcontract clause herein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in the subcontractor's certificate of current cost or pricing data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(h) Failure of the contractor and the subcontractor to agree on any of the matters in paragraph (g) above shall be a dispute concerning a question of fact subject to the Disputes provisions of this subcontract.

Note.—*Since the subcontract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain sub-subcontracts, it is expected that the subcontractor may wish to include a clause in each such sub-subcontract requiring the sub-subcontractor to appropriately indemnify the subcontractor. It is also expected that any sub-subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by its lower-tier sub-subcontractors.*

(i) This clause may also be used for subcontracts of $500,000 or less for which a certificate of cost or pricing data is obtained and, if so used, the $500,000 amount stated in the clause should be appropriately modified.

(j) The Head of a Contracting Activity, for contracts estimated to be within the limits of delegated authority, may, without power of redelegation, approve the waiver cited in FAR 15.804–3(i).

970.5204–25 Workmanship and Materials.

Workmanship and materials (Apr 1984)

(a) *Grade of workmanship and materials.* Unless otherwise directed by the contracting officer or expressly provided for by specifications issued under this contract:

(1) All workmanship shall be first class; and

(2) All articles, equipment and materials incorporated in the work are to be:

(i) New and of the most suitable grade of their respective kinds for the purpose;

(ii) In accordance with any applicable drawings and specifications; and

(iii) Installed to the satisfaction and with the approval of the contracting officer.

Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the contracting officer shall decide the question of equality.

(b) *Samples and test results.* If the contracting officer so requires, the contractor shall submit for approval samples of or test results on any materials proposed to be incorporated in the work before making any commitment for the purchase of such materials.

970.5104–26 Nuclear facility safety.

In accordance with the provisions at 970.2303 insert the clause below in management and operating contracts.

Nuclear Safety (Apr 1984)

(a) The activities under this contract include the operation of nuclear facilities. The contractor recognizes that such operation involves the risk of a nuclear incident which, while the chances are remote, could adversely affect the public health and safety as well as the environment. Therefore, the contractor will exercise a degree of care commensurate with the risk involved.

(b) The contractor shall comply with all applicable regulations of DOE concerning nuclear safety and with those requirements (including reporting requirements and instructions) of DOE concerning nuclear safety of which it is notified in writing by the contracting officer.

(c) Prior to the initial startup of any nuclear facility under this contract and prior to any subsequent startup following a change which represents a significant deviation from the procedures, equipment, or analyses described in the safety analysis reports or other hazards summary reports for that facility, the contractor shall:

(i) Prepare a safety analysis report and detailed plans and procedures designed to assure the safe operations and maintenance of the facility in accordance with applicable DOE regulations and directives. For nuclear reactors and critical facilities, technical specifications shall also be provided.

(2) Establish nuclear safety control procedures to be used within the contractor's organization to insure competent independent review and internal approval of the safety analysis report and the detailed plans and procedures specified in (1) above.

(3) Submit to the contracting officer for his approval such procedures relating to nuclear safety as may be designated by him.

(4) Carry out a program of initial training and periodic requalification designed to assure that all personnel who will be engaged in nuclear operations or maintenance understand the approved plans and procedures for nuclear safety and are qualified to perform their assigned functions; and

(5) Obtain the approval of the contracting officer prior to start-up of the facility.

(d) In the operation and maintenance of any nuclear facility under this contract, the contractor shall:

(1) Use all reasonable efforts to assure that all operational and maintenance activities are performed by qualified and adequately trained personnel, and except as otherwise agreed in writing, are conducted under the supervision of personnel who are qualified and authorized to evaluate any emergency condition and take prompt effective action with respect thereto.

(2) Operate the facility within the technical specifications or operational safety requirements which are approved by the contracting officer.

(3) Follow strictly the procedures relating to nuclear safety approved by the contracting officer in (c)(3) above, and submit to the

contracting officer for his approval, any proposed changes in such procedures.

(4) Establish an auditable, well-defined, internal safety review and inspection system approved by the contracting officer (including review and inspection reports by competent technical personnel) that will: (i) Provide frequent and periodic checks of facility performance and of the qualifications and training of operating and maintenance personnel, and (ii) provide for investigation of any unusual or unpredicted conditions that might affect safe operation.

(5) Report promptly to the contracting officer any change in the physical condition of the facility or its operating characteristics that might, in the judgment of the contractor, affect the safe operation of the facility.

(6) Terminate operations at the facility immediately whenever so instructed by the contracting officer, or whenever, in the judgment of the contractor, the risk of a nuclear incident endangering persons or property warrants such action.

(7) Prepare, in cooperation with other services and facilities available at the site and with the approval of the contracting officer, a plan for minimizing the effects of a nuclear incident upon the health and safety of all persons of the site; participate as directed in the integration of the contractor's and contracting officer's emergency plans with the responsible state and local government's emergency plans for protection of the public off-site; instruct its personnel as to their participation in such plans and any personal risk to such personnel that may be involved; and participate in such practice exercises as may be desirable to assure the effectiveness of such plans.

(8) At an appropriate time as determined by the contracting officer, prepare and submit to the contracting officer for his approval, shutdown, decommissioning, decontamination and property management plans leading to orderly and safe program disposition of the nuclear facility and any associated nuclear wastes or other hazardous material.

(9) In the event that the contractor fails to comply with said standards and requirements of DOE, the contracting officer may, without prejudice to any other legal or contractual rights of DOE, issue an order stopping all or any part of the work; thereafter a start order for resumption of the work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of or in connection with such work stoppage.

970.5204-27 Consultant or other comparable employment services of contractor employees.

(a) The following clause shall be included in all cost-reimbursement type contracts identified in 970.2273(b)(3).

Consultant or Other Comparable Employment Services (Apr 1984)

The contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with DOE) on the contract work to disclose to the contractor all consultant or other comparable employment services which the employees propose to undertake for others. The contractor shall transmit to the contracting officer all information obtained from such disclosures. The contractor will require any employee who will be employed full-time on the contract to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another DOE contractor under its contract with DOE, except with the prior approval of the contractor.

(b) The following clause shall be included in all contracts identified in 970.2273(b)(4).

Consultant or Other Comparable Employment Services (Apr 1984)

The contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with DOE) on the contract work to disclose to the contractor all consultant or other comparable employment services which the employees propose to undertake for others. The contractor shall transmit to the contracting officer all information obtained from such disclosures. The contractor will require any employee who will be employed full-time on the contract work to agree, as a condition of his participation in such work, that he will not perform consultant or other comparable employment services for another DOE contractor in the same or related energy field or another organization except with the prior approval of the contractor. If the contractor believes, with respect to any employee who is employed full-time on the contract work, that any proposed consultant or other comparable employment service for an organization in the atomic energy field other than a DOE cost-type contractor may involve: (1) A rate of remuneration significantly in excess of the employee's regular rate of remuneration; (2) a significant question concerning possible conflict with DOE's policies regarding conduct of employees of DOE's contractors; (3) the contractor's responsibility to report fully and promptly to DOE all significant research and development information; or (4) the patent provisions of the contractor's contract with DOE, the contractor shall obtain the prior approval of the contracting officer for such consultant or other comparable employment service.

970.5204-28 Assignment.

Assignment (Apr 1984)

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the contractor except as expressly authorized in writing by the contracting officer.

970.5204-29 Permits or licenses.

Permits or Licenses (Apr 1984)

Except as otherwise directed by the contracting officer, the contractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this contract is performed.

970.5204-30 Notice of labor disputes.

Notice of Labor Disputes (Apr 1984)

Whenever an actual or potential labor dispute is delaying or threatening the performance of the work, the contractor shall immediately notify the contracting officer in writing. Such notice shall include all relevant information concerning the dispute and its background.

970.5204-31 Litigation and claims.

Litigation and Claims (Apr 1984)

(a) *Initiation of litigation.* The contractor may, with the prior written authorization of the contracting officer, and shall, upon the request of the Government, initiate litigation against third parties, including proceedings before administrative agencies, in connection with this contract. The contractor shall proceed with such litigation in good faith and as directed from time to time by the contracting officer.

(b) *Defense and settlement of claims.* The contractor shall give the contracting officer immediate notice in writing (1) of any action, including any proceeding before an administrative agency, filed against the contractor arising out of the performance of this contract, and (2) of any claim against the contractor, the cost and expense of which is allowable under the clause entitled "Allowable Costs and Fixed-Fee." Except as otherwise directed by the contracting officer, in writing, the contractor shall furnish immediately to the contracting officer copies of all pertinent papers received by the contractor with respect to such action of claim. To the extent not in conflict with any applicable policy of insurance, the contractor may with the contracting officer's approval, settle any such action or claim, shall effect at the contracting officer's request an assignment and subrogation in favor of the Government or all of the contractor's rights and claims (except those against the Government) arising out of such action or claim against the contractor, and if required by the contracting officer, shall authorize representatives of the Government to settle or defend any such action or claim and to represent the contractor in, or to take charge of, any action. If the settlement or defense of an action or claim against the contractor is undertaken by the Government, the contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. Where an action against the contractor is not covered by a policy of insurance, the contractor shall, with the approval of the contracting officer, proceed with the defense of the action in good faith and in such event the defense of the action

shall be at the expense of the Government, provided, however, that the Government shall not be liable for such expense to the extent that it would have been compensated for by insurance which was required by law or by the written direction of the contracting officer, but which the contractor failed to secure or maintain through its own fault or negligence.

970.5204-32 Required bonds and insurance-exclusive of Government property (cost-type contracts).

Required Bonds and Insurance—Exclusive of Government Property (Cost-Type Contracts) (Apr 1984)

The contractor shall procure and maintain such bonds and insurance as are required by law or by the written direction of the contracting officer. The terms and conditions of any such bonds and insurance shall conform to the directions of the contracting officer. In view of the provisions of the article entitled "Property" the contractor shall not procure or maintain for its own protection any insurance covering loss or destruction of or damage to Government-owned property.

970.5204-33 Priorities, allocations, and allotments.

(a) The following clause shall be used in management and operating contracts for military and atomic energy production and directly related activity, where the programs have been authorized pursuant to the Atomic Energy Act of 1954, as amended.

Priorities, Allocations, and Allotments (Apr 1984)

The contractor shall follow the rules, regulations, and procedures of the Defense Priorities System and the Defense Materials System, Regulation I, and all other applicable regulations and orders of the International Trade Administration, Department of Commerce, in obtaining controlled materials and other products and materials needed for contract performance.

(b) Management and operating contracts may be eligible for priorities and allocations support if their purpose maximizes domestic energy supplies. Eligibility is dependent on an executive decision on a case-by-case basis. Guidance is provided by DOE Publication PR-0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. If the purpose of the contract is to maximize domestic energy resources, include the following clause:

Priorities, Allocations, and Allotments—Special Clause (Apr 1984)

This contract may be eligible for priorities and allocations support, as provided for by Section 101(c) of the Defense Production Act of 1950, as amended by the Energy Policy and Conservation Act (Pub. L. 94-163, 42 U.S.C. 6201 *et seq.*) if its purpose is to maximize domestic energy supplies. Eligibility is dependent on an executive decision on a case by case basis with the decision being jointly made by the Departments of Commerce and Energy.

DOE regulations regarding material allocation and priority performance under contracts or orders to maximize domestic energy supplies can be found at Part 216 of Title 10 of the Code of Federal Regulations (10 CFR Part 216).

Additional guidance is provided by DOE Publication PR-0042, "Priorities and Allocations Support for Energy: Keeping Energy Programs on Schedule," dated August 1980, as it may from time to time be revised. Copies may be obtained by written request to: Department of Energy, Technical Information Center (TIC), Post Office Box 62, Oak Ridge, Tennessee 37830.

970.5204-34 Sensitive foreign nations control.

See 952.204-71

970.5204-35 Controls in the national interest (unclassified contracts with educational institutions).

Controls in the National Interest (Apr 1984)

The contractor agrees to comply with the requirements of DOE specified in Attachment ———— to this contract, and to such other DOE requirements of the same general nature as the parties may agree to from time to time; these requirements relate to unclassified work, and they shall not be construed to limit or affect in any way the contractor's obligation to conform to all security regulations and requirements of DOE pertaining to classified work.

970.5204-36 Organizational conflicts of interest (contracts with universities where DOE has major investments in facilities but does not own or lease the land).

Organizational Conflicts of Interest (Apr 1984)

The parties agree that the university has adopted policies and procedures, designed to avoid conflict-of-interest situations, which are in substantial conformance with the Joint Statement of the Council of American Association of University Professors and the American Council on Education of December 1964, entitled, "On Preventing Conflicts of Interest in Government-Sponsored Research at Universities," which policies and procedures will be applied in connection with this contract.

970.5204-37 Statement of work (management and operating contracts).

See 970.10

970.5204-38 Special Clause for procurement of construction.

In accordance with 970.2274 the following clause shall be used in operating and management contracts when the contractor is to perform no Davis-Bacon work with his own forces but may procure construction by subcontract:

Government Facility Subcontract Approval (Apr 1984)

Upon request of the contracting officer and acceptance thereof by the contractor, the contractor shall procure, by subcontract, the construction of new facilities or the alteration or repair of Government-owned facilities at the plant. Any subcontract entered into under this paragraph shall be subject to the written approval of the contracting officer and shall contain the provisions relative to labor and wages required by law to be included in contracts for the construction, alteration, and/or repair, including painting and decorating, on a public building or public work.

970.5204-39 [Reserved]

970.5204-40 [Reserved]

970.5204-41 Preservation of individual occupational radiation exposure records.

See 952.223-75

970.5204-42 Key personnel.

Key personnel (Apr 1984)

It having been determined that the employees whose names appear (below or in Appendix ——), or persons approved by the contracting officer as persons of substantially equal abilities and qualifications, are necessary for the successful performance of this contract, the contractor agrees to assign such employees or persons to the performance of the work under this contract and shall not reassign or remove any of them without the consent of the contracting officer. Whenever, for any reason, one or more of the aforementioned employees is unavailable for assignment for work under the contract, the contractor shall, with the approval of the contracting officer, replace such employee with an employee of substantially equal abilities and qualifications.

970.5204-43 Other Government contractors.

Other Government Contractors (Apr 1984)

The Government may undertake or award contracts for work or services. The contractor agrees to fully cooperate with such other contractors and Government employees and carefully fit its own work to such other work as may be directed by the contracting officer. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees.

970.5204-44 [Reserved]

970.5204-45 Termination.

The following clause is suggested for use in management and operating contracts:

Termination (Apr 1984)

(a) This contract shall continue until ———— unless sooner terminated in accordance with the provisions which follow:

(1) The performance of work under this contract may be terminated by the Government in whole, or from time to time in

part, (i) whenever the contractor shall default in performance, and shall fail to cure the fault or failure within such period as the contracting officer may allow after receipt from the contracting officer or a notice specifying the fault or failure, or (ii) whenever, for any reason, the contracting officer shall determine any such termination is for the best interest of the Government. Termination of the work hereunder shall be effected by delivery of a notice of termination specifying whether termination is for default of the contractor or for the convenience of the Government, the extent to which performance of work under the contract shall be terminated, and the date upon which such termination shall become effective. Any such termination shall be without prejudice to any claim which either party may have against the other. If, after notice of termination under the provisions of (a)(1)(i) above, it is determined for any reason that the contractor was not in default, such notice of default shall be deemed to have been issued pursuant to (a)(1)(ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(2) Upon receipt of notice of termination, in accordance with (1) above, the contractor shall, to the extent directed in writing by the contracting officer, discontinue the terminated work and the placing of orders for materials, facilities, supplies, and services in connection therewith, and shall proceed, if, and to the extent required by the contracting officer, to cancel promptly and settle with the approval of the contracting officer, existing orders, subcontracts, and commitments insofar as such orders, subcontracts, and commitments pertain to this contract.

(b) Upon the termination of this contract, full and complete settlement of all claims of the contractor and of DOE arising out of this contract shall be made as follows:

(1) The Government shall have the right in its discretion to assume sole responsibility for any or all obligations, commitments, and claims that the contractor may have undertaken or incurred, the cost of which are allowable in accordance with the provisions of this contract; and the contractor shall, as a condition of receiving the payments mentioned in this article, execute and deliver all such papers and; take all such steps as the contracting officer may require for the purpose of fully vesting in the Government any rights and benefits the contractor may have under or in connection with such obligations, commitments, or claims.

(2) The Government shall treat as allowable costs all expenditures made in accordance with and allowable under the clause entitled "Allowable Costs and Fixed Fee," not previously so allowed or otherwise credited for work performed prior to the effective date of termination, together with expenditures as may be incurred for a reasonable time thereafter with the approval of, or as directed by, the contracting officer.

(3) The Government shall treat as allowable costs, to the extent not included in (b)(2) above, the costs of settling and paying claims arising out of the termination of work under orders, subcontracts, and commitments as provided in (a)(2) above.

(4) The Government shall treat as allowable costs the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the termination of the contract and for the termination and settlement of orders and subcontracts thereunder, together with such further expenditures made by the contractor after the date of termination for the protection or disposition of Government property as are approved or required by the contracting officer; provided, however, that if the termination is for default of the contractor, there shall not be included any amount for preparation of the contractor's settlement proposal.

(5) If performance of work under this contract is terminated in whole by the Government, the fixed fee of the contractor shall be prorated to and including the effective date of such termination. In addition, if the termination is for the convenience of the Government, the contractor shall be paid a fixed fee in an amount to be agreed upon as compensation for its services in closing out the work under this contract after the effective date of such termination. The additional fixed fee is to be negotiated as soon as practicable after service of notice of termination, shall take into account the estimate of the cost of the services and managerial effort to be rendered under this clause after the effective date of termination, and shall be provided for in a supplement or amendment to this contract prior to final settlement hereunder. Pending agreement as to the amount of such fee, the contractor shall diligently proceed with the performance of the services required under this clause. No additional fee will be paid if the contract is terminated due to the default of the contractor. In the event of a partial termination by the Government, an equitable adjustment shall be made in the fixed fee if such termination results in a material decrease in the level of the contractor's management effort. Any failure to agree on the right to or the amount of any adjustment shall be deemed a dispute within the purview of the clause hereof entitled "Disputes."

(6) The obligation of the Government to make any of the payments required by this clause or any other provisions of this contract shall be subject to any unsettled claims in connection with this contract which the Government may have against the contractor.

(c) Prior to final settlement, the contractor shall furnish a release as required in the clause entitled "Payments and Advances" and account for Government-owned property as may be required by the contracting officer; provided, however, that unless the contracting officer requires an inventory, the maintenance and disposition of the records of Government-owned property in accordance with the clause entitled "Accounts, Records and Inspection" shall be accepted by the contracting officer as full compliance with all requirements of this contract pertaining to an accounting for such property.

970.5204-48 [Reserved]

970.5204-50 Cost and schedule control systems.

See 952.212-73.

970.5204-51 [Reserved]

970.5204-52 Foreign Travel.

See 952.247-70.

Subpart 970.70—Use of DOE Facilities for Work for Others

970.7000 Mission-oriented solicitation.

Contractors shall be required to promptly advise the DOE contracting officer of any advance notices of, or solicitations for, requirements which would logically involve DOE facilities or resources operated or managed by the contractor, received from other agencies pursuant to FAR 34.005. Management and operating contracts shall provide that the contractor shall not respond or otherwise propose to participate in response to the requirements of such solicitations unless the contractor shall have first obtained the written approval of the DOE manager of the field activity having cognizance over the contract. Such approval shall not be given except in compliance with DOE directives and with the concurrence of the appropriate Senior Program Official.

PART 971—HEADQUARTER'S REVIEW AND APPROVAL OF CONTRACT ACTIONS

Sec.

971.000 Scope of part.

Subpart 971.1—Headquarters Review and Notification Requirements

971.100 Scope of subpart.
971.101 Requirements—general.
971.102 Requirement—long-term contracts.
971.103 Documentation submittals.

Subpart 971.2—Contracting Activity Review Requirements

971.200 Scope of subpart.
971.201 Requirements.
971.202 Responsibilities.
971.203 Review functions.

Subpart 971.3—Procurement Management Systems Reviews

971.300 Scope of subpart.
971.301 Review of procurement management systems.

Authority: Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254); and sec. 148 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2168).

971.000 Scope of part.

This part sets forth the administrative requirements for review and approval of certain solicitations and contract awards and a notification of Headquarters procurement system reviews.

Subpart 971.1—Headquarters Review and Notification Requirements

971.100 Scope of subpart.

This subpart establishes a requirement for Headquarters review of certain solicitations and contract awards made by DOE contracting activities.

971.101 Requirements—general.

Solicitations and contract awards which are in excess of authority delegated to Heads of Contracting Activities, likely to provoke unusual public interest, or of a new or unusual nature shall be submitted to the Procurement Executive or designee for appropriate review and approval. Contract actions are those actions relating to the letting of contracts, subcontracts, agreements with other governmental agencies, and subsequent modifications, extensions, and settlements of terminations thereof. Questions of contract policy or procedure which arise in the course of negotiation and administration of such contract actions shall be submitted for advance Headquarters review and approval.

971.102 Requirement—long-term contracts.

Heads of Contracting Activities shall notify the Controller, with a copy to the Procurement Executive, or any intent to utilize the long-term contract authority provided by subsection U, section 161 of the Atomic Energy Act of 1954, as amended by Pub. L. 85–681 (72 Stat. 633). Such advance notice should be provided at an early stage of planning on any such proposed contract action.

971.103 Documentation submittals.

(a) When contract awards require review and/or approval by Headquarters, (See 971.101) the following documentation is to be submitted to the Business Clearance Division, Headquarters, at the times set forth below:

(1) *Prior to negotiations.* Prior to the start of formal negotiations concerning contract awards the following documents are required for review:

(i) Five copies of the prenegotiation plan and draft contract (six copies in the case of operating and on-site service contracts which contain a personnel appendix).

(ii) One copy of the determinations and findings, as required by FAR 15.302.

(iii) If applicable, one copy of the justification for noncompetitive procurement (JNCP) or justification for acceptance of unsolicitated proposals (JNCP) should be provided.

(iv) One copy of documentation (including audits and technical evaluation of costs) to support a pricing action.

(2) *After completing negotiation.* If there were significant departures from the objectives of the prenegotiation plan, or new and significant issues were developed which were not addressed in the prenegotiation plan, one copy of the post negotiation summary shall be submitted for Headquarters' review and approval. In the event all of the prenegotiation objectives were substantially met, one information copy is to be submitted.

(b) When solicitations require review and approval by Headquarters, two copies of the solicitation shall be submitted to the Business Clearance Division, Headquarters, in sufficient time prior to the planned release to allow a comprehensive review.

(c) The following information should also be provided with the documentation submitted to Headquarters:

(1) Name and telephone number of the cognizant Headquarters program official.

(2) The supporting documentation should include a copy of the local independent review, if any, conducted in accordance with 971.102.

Subpart 971.2—Contracting Activity Review Requirements

971.200 Scope of subpart.

This subpart sets forth the administrative requirement for an independent Contracting Activity review of contracts to be awarded by that activity and subcontracts to be awarded by a prime or operating and management contract under a cost-reimbursement contract.

971.201 Requirements.

Prime contracts and subcontracts under cost-reimbursement contracts shall be reviewed, based on dollar thresholds to be established by Heads of Contracting Activities.

971.202 Responsibilities.

Each Head of Contracting Activity shall establish procedures, providing for an independent review by that activity prior to award of proposed contract and subcontract actions and to review termination settlements.

971.203 Review functions.

Responsibility for conducting the independent review of contract and subcontract actions shall be assigned to a contract review board or where it is impracticable to establish a contract review board, under appropriate alternate independent review procedures. The mode of conduct of the review is not prescribed herein in order to permit discretionary judgment in determining the depth to which significant areas are examined. The results of the review shall be documented showing the scope and extent of the review and written recommendations submitted to Heads of Contracting Activities (or to such other approving officials as may be appropriate) on each proposed contract or subcontract action reviewed. In the event the approving official departs from the recommendation of the review board, the basis for such action shall be appropriately documented in the files.

Subpart 971.3—Procurement Management System Reviews

971.300 Scope of subpart.

This subpart advises Contracting Activites of the Headquarters responsibility for oversight and review of Procurement Systems by contracting activities.

971.301 Review of procurement management systems.

The Procurement Executive is responsible for establishing and maintaining a program for the review of DOE procurement management systems. Review will be conducted in accordance with the procedures prescribed for that program. A review schedule will be published and maintained. Each contracting activity will be notified at least 60 days in advance of its review.

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