

# **PART 923 — ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

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### **Subpart 970.9 — Contractor Compliance with Environmental Management Systems**

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### **Subpart 923.70 — Environmental, Energy and Water Efficiency, Renewable Energy Technologies, and Occupational Safety Programs.**

923.7001 Nuclear Safety.

923.7002 Worker Safety and Health.

923.7003 Contract clauses.

Authority: 42 U.S.C. 7101 et seq., and 50 U.S.C. 2401 et seq..

Source: 49 FR 11936, Mar. 28, 1984, unless otherwise noted.

#### **923.002 Policy.**

(a) Requirement.

FAR 23.002 and Section 3(e) of Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management, require contracts for the operation of Government-owned facilities or Government-owned motor vehicle fleets to include provisions that obligate the contractor to comply with the requirements of Executive Order 13423 to the same extent as the Federal agency would be required to comply if the agency operated the facility or fleet.

(b) Contract clause.

Insert the clause at 970.5223-6, Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management, in contracts for Contractor operation of a DOE facility or motor vehicle fleet.

[75 FR 57690, Sep. 22, 2010]

### **Subpart 923.1 -- Sustainable Acquisition**

#### **923.101 Policy.**

#### **923.102 Applicability to contractors.**

#### **923.103 Contract clauses.**

#### **923.101 Policy.**

The Department has promoted energy efficient products as well as products with recycled or biobased content as these products have become more common and the market has become more

energy and resource aware. All of these products and services and others with environmentally preferable attributes are captured in the DOE Sustainable Acquisition Program. Guidance on all these products may be found at: <http://www.hss.energy.gov/pp/epp/>.

### **923.102 Applicability to contractors.**

Many of the Department's major facilities are operated by contractors. Provisions regarding those contracts may be found at Part 970 of this Regulation. At other locations, the Department makes significant use of contractors to operate and maintain its facilities. As such, the Department encourages the greatest possible use of energy efficient and environmentally sustainable products and services by its facility support contractors. The DOE Sustainable Acquisition Program is to be followed by all contractors operating DOE facilities or motor vehicle fleets.

### **923.103 Contract clauses.**

Insert the clause at 952.223-78, Sustainable Acquisition Program, or its Alternate I, in all contracts under which the contractor operates Government-owned facilities or Government-owned fleets or performs construction at a Government-owned facility. All such contracts should also include the following clauses: FAR 52.223-2, Affirmative Procurement of Biobased Products under Service and Construction Contracts; FAR 52.223-10, Waste Reduction Program; FAR 52.223-XX, Compliance with Environmental Management Systems (see 923.903 regarding the applicability of this clause to specific DOE contracts); FAR 52.223-15, Energy Efficiency in Energy Consuming Products; and FAR 52.223-17, Affirmative Procurement of EPA-designated Items in Service and Construction Contracts. [75 FR 57690, Sep. 22, 2010]

## **Subpart 923.5 — Drug-Free Workplace**

### **923.500 Scope of subpart.**

For contracts performed at DOE sites, in lieu of 48 CFR subpart 23.5, contracting activities shall use 923.570, Workplace Substance Abuse Programs at DOE Sites.

[75 FR 69012, Nov. 10, 2010]

### **923.570 Workplace Substance Abuse Programs at DOE Sites.**

(a) The Department of Energy (DOE), as part of its overall responsibilities to protect the environment, maintain public health and safety, and safeguard the national security, has established policies, criteria, and procedures for contractors to develop and implement programs that help maintain a workplace free from the use of illegal drugs.

(b) Regulations concerning DOE's contractor workplace substance abuse programs are promulgated at 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.

#### **923.570-1 Applicability.**

The policies, criteria, and procedure specified in 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites, apply to contracts for work performed at sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, where such work—

(a) Has a value of \$25,000 or more; and

(b) Has been determined by DOE to involve—

- (1) Access to or handling of classified information or special nuclear materials;
- (2) High risk of danger to life, the environment, public health and safety or national security; or
- (3) The transportation of hazardous materials to or from a DOE site.

[57 FR 32676, July 22, 1992; 57 FR 41974, Sept. 14, 1992; 74 FR 36358, Jul. 22, 2009; 75 FR 69012, Nov. 10, 2010]

#### **923.570-2 Solicitation provision and contract clause.**

(a) The contracting officer shall insert the provision at 970.5223-3, Agreement Regarding Workplace Substance Abuse Programs at DOE Sites, in solicitations where the work to be performed by the contractor will occur on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 923.570-1, Applicability.

(b) The contracting officer shall insert the clause at 970.5223-4, Workplace Substance Abuse Programs at DOE Sites, in contracts where the work to be performed by the contractor will occur on sites owned or controlled by DOE and operated under the authority of the Atomic Energy Act of 1954, as amended, as specified in 923.570-1, Applicability.

[62 FR 42072, Aug. 5, 1997, 65 FR 80994, Dec. 22, 2000; 74 FR 36358, Jul. 22, 2009]

#### **923.570-3 Suspension of payments, termination of contract, and debarment and suspension actions.**

(a) The contracting officer shall comply with the procedures of FAR 23.506 regarding the suspension of contract payments, the termination of the contract for default, and the debarment and suspension of a contractor relative to failure to comply with 970.5223-4, Workplace Substance Abuse Programs at DOE Sites.

(b) For purposes of 10 CFR part 707, the specific causes for suspension of contract payments, termination of the contract for default, and debarment and suspension of the contractor are—

(1) The contractor fails to either comply with the requirements of 10 CFR part 707 or perform in a manner consistent with its approved program;

(2) The contractor has failed to comply with the terms of the clause at 970.5223-4, Workplace Substance Abuse Programs at DOE Sites; or,

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes for violations occurring on the DOE-owned or DOE-controlled site, as to indicate that the contractor has failed to make a good faith effort to provide a drug free workplace.

[62 FR 42072, Aug. 5, 1997, 65 FR 80994, Dec. 22, 2000; 74 FR 36358, Jul. 22, 2009]

#### **Subpart 923.9 -- Contractor Compliance with Environmental Management Systems**

##### **923.903 Contract clause.**

The FAR Environmental Management Systems clause at 52.223-XX should be used in contracts where the contractor operates a DOE site or portion thereof. Some DOE sites have a single Environmental Management System for the site while others have separate Environmental Management Systems for various portions of the site which may be operated by different contractors.

Check with local environmental management personnel regarding the applicability of the FAR 52.223-XX clause to a specific contract. [75 FR 57690, Sep. 22, 2010]

## **Subpart 923.70 — Environmental, Energy and Water Efficiency, Renewable Energy Technologies, and Occupational Safety Programs.**

### **923.7001 Nuclear safety.**

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 producing machines.

[49 FR 12003, Mar. 28, 1984; 74 FR 36358, Jul. 22, 2009]

### **923.7002 Worker safety and health.**

(a)(1) Except when the clause prescribed at 970.1504-8(c) is used, the clauses entitled “952.223-76, Conditional Payment of Fee or Profit – Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health” or “952.223-77, Conditional Payment of Fee or Profit – Protection of Worker Safety and Health” implement the requirements of section 234C of the Atomic Energy Act for the use of a contract clause that provides for an appropriate reduction in the fee or amount paid to the contractor under the contract in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker safety and health concerns. The clauses, in part, provide for reductions in the amount of fee, profit, or share of cost savings that is otherwise earned by the contractor for performance failures relating to worker safety and health violations under the Department’s regulations.

(2) The clauses provide for reductions of fee or profit that is earned by the contractor depending upon the severity of the contractor’s failure to comply with contract terms or conditions relating to worker safety and health concerns. When reviewing performance failures that would otherwise warrant a reduction of earned fee, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clauses. Some of the mitigating factors that must be considered are specified in the clauses.

(3) The contracting officer must obtain the concurrence of the Head of the Contracting Activity

(i) Prior to effecting any reduction of fee or amounts otherwise payable to the contractor in accordance with the terms and conditions of the clause entitled “Conditional Payment of Fee or Profit – Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health” or of the clause entitled “Conditional Payment of Fee or Profit – Protection of Worker Safety and Health”;

(ii) For determinations that no reduction of fee is warranted for a particular performance failure(s) that would otherwise warrant a reduction.

(4) Section 234C of the Atomic Energy Act provides that DOE shall either pursue civil penalties (implemented at 10 CFR part 851) for a violation under section 234C of the Atomic Energy Act (42 U.S.C. 2282c) or a contract fee reduction, but not both.

(5) The contracting officer must coordinate with the Office of Price Anderson Enforcement within the Office of the Assistant Secretary for Health, Safety, and Security (or with any designated successor office) before pursuing a contract fee reduction in the event of a violation by the contractor or any

contractor employee of any Departmental regulation relating to the enforcement of worker health and safety concerns.

[68 FR 68771, Dec. 10, 2003; 74 FR 36358, Jul. 22, 2009]

### **923.7003 Contract clauses.**

(a) A decision to include or not include environmental, safety and health clauses in DOE contracts shall be made by the contracting officer in consultation with appropriate Office of Health, Safety and Security personnel.

(b) When work is to be performed at a facility where the DOE will exercise its statutory authority to enforce occupational safety and health standards applicable to the working conditions of the contractor and subcontractor employees at such facility, the clause at 952.223-71, Integration of Environment, Safety, and Health into Work Planning and Execution, shall be used in such contract or subcontract if conditions (b)(1) through (3), are satisfied—

- (1) DOE work is segregated from the contractor's or subcontractor's other work;
- (2) The operation is of sufficient size to support its own safety and health services; and
- (3) The facility is government-owned, or leased by or for the account of the government.

(c) In facilities not meeting the requirements of paragraph (b) of this section and which are a production or utilization facility where there is use or possession of source, special nuclear, or byproduct materials, DOE policy is not to enforce radiological safety and health standards pursuant to the contract or subcontract but rather to rely upon Nuclear Regulatory Commission (NRC) licensing requirements (including agreements with States under section 274 of the Atomic Energy Act). Pursuant to this policy, neither the clause found at 952.223-71, Integration of Environment, Safety, and Health into Work Planning and Execution, nor 952.223-72, Radiation Protection and Nuclear Criticality, is to be incorporated in the contracts or subcontracts for work at such facilities. Notwithstanding this general policy with respect to facilities not meeting the requirements of paragraph (b) of this section, the Secretary or his designee may determine in special cases, that DOE needs to enforce radiological safety and health standards pursuant to the contract or subcontract (see paragraph (d) of this section). When such a determination is made, the clause found at 952.223-72, Radiation Protection and Nuclear Criticality, shall be included in the contract or subcontract.

(d) In facilities not meeting the requirements of paragraph (b) or (c) of this section and where there is a machine capable of producing ionizing radiation, it is DOE policy not to regulate such activity where it is adequately regulated by a State or other Federal agency. In such cases, neither clause 952.223-71, Integration of Environment, Safety, and Health into Work Planning and Execution, nor 952.223-72, Radiation Protection and Nuclear Criticality, shall be incorporated in the contract. Where the contracting officer, with appropriate environmental, safety and health advice determines that no State or other Federal agency exists to adequately regulate the operation and/or use of such machines, the clause found at 952.223-72, Radiation Protection and Nuclear Criticality, shall be included in the contract. The Assistant Secretary for Health, Safety and Security (or designee) shall be consulted to determine if a non-agreement State or a facility located in a non-agreement State has been reviewed by any other DOE office to establish that the State agency has the essential authority and resources for enforcing the radiation protection standards. This is to assure reasonable consistency in the assessment of radiation protection in non-agreement States and subsequent use of 952.223-72.

(e) In a situation where the contractor or subcontractor is performing DOE work at more than one

location, inclusion of either, or both, 952.223-71, Integration of Environment, Safety, and Health into Work Planning and Execution, and 952.223-72, Radiation Protection and Nuclear Criticality, may be appropriate. In such cases, the contract or subcontract must include language to specify the extent of applicability of each clause used. For example, with a parenthetical: (Applicable only to work performed at a contractor site which has 952.223-71 or 952.223-72 clause in its contract or subcontract).

(f) Except as prescribed in 970.1504-8(c), the contracting officer shall insert the clause at 952.223-76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health, in all contracts that contain both the clause at 952.204-2, Security Requirements, and the clause at 952.250-70, Nuclear Hazards Indemnity Agreement.

(g) Except as prescribed in 970.1504-8(c), the contracting officer shall insert the clause at 952.223-77, Conditional Payment of Fee or Profit —Protection of Worker Safety and Health, in all contracts that do not contain the clause at 952.204-2, Security Requirements, but that do contain the clause at 952.250-70, Nuclear Hazards Indemnity Agreement.

(h) The contracting officer shall insert the clause at 952.223-75, Preservation of Individual Occupational Radiation Exposure Records, in contracts containing 952.223-71, Integration of Environment, Safety, and Health into Work Planning and Execution, or 952.223-72, Radiation Protection and Nuclear Criticality.

[49 FR 12003, Mar. 28, 1984; 62 FR 2310, Jan. 16, 1997; 68 FR 68771, Dec. 10, 2003; 74 FR 36358, Jul. 22, 2009; 75 FR 69012, Nov. 20, 2010]