

DEPARTMENT OF ENERGY**48 CFR Chapter 9**

RIN 1991-AB62

Department of Energy Acquisition Regulation: Technical Amendment

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to make technical and administrative changes to the DEAR, including changes to conform to the Federal Acquisition Regulation (FAR), typographical errors, and correct other minor errors or omissions. Today's final rule does not alter substantive rights or obligations under current law.

DATES: *Effective Date:* This rule is effective August 21, 2009.

FOR FURTHER INFORMATION CONTACT: Barbara Binney at (202) 287-1340 or by e-mail at barbara.binney@hq.doe.gov.

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I. Background

The DEAR has typographical errors, outdated citations, missing words, acronyms that need to be spelled out, and other errors of a technical nature. The objective of today's rule is to correct errors and omissions in the existing DEAR and to conform the DEAR to the Federal Acquisition Regulation (FAR) naming and numbering conventions. None of these changes are substantive or of a nature to cause any added expense for DOE or its contractors.

II. Description of the Technical Amendments

Where appropriate throughout the DEAR, the authority citations have been

revised to reflect current statutory authorities including National Nuclear Security Administration (NNSA) authority in 50 U.S.C. 2401, *et seq.*

Sections have been redesignated to conform DEAR section numbering with FAR section numbering.

Cross references in section headings that appear in the format "(DOE coverage * * *)" have been removed because in many instances the references have become outdated.

References to NNSA positions have been added in instances where NNSA may exercise acquisition authority independent of DOE.

Subpart headings have been added to maintain consistency with the FAR subpart headings. These subpart headings do not contain text and do not add any substantive changes.

Outdated or incorrect cross references to DEAR sections and clauses have been corrected. Where appropriate, outdated section or clause titles have been updated. Cross references to superseded DOE directives have been updated. Punctuations and capitalizations have been revised throughout for consistency. Titles and addresses have been updated.

In certain instances sections of the DEAR required so many corrections that we determined that for accuracy and simplicity it would be better to revise the entire section. Following are the detailed editing instructions for sections: 904.702, 923.7003, 933.103, 942.270-2, 952.216-7, 952.225-70, 970.0404-1, 970.1100-1, 970.5242-1, and 970.5244-1.

Subpart 904.702(b) is amended to add the complete clause title for 952.223-71, "Integration of Environment, Safety, and Health into Work Planning and Execution," and to delete the reference to the clause titled "Nuclear Safety." The reference to 952.223-74, Nuclear Safety, clause was removed as it no longer exists.

Section 923.7003(a) is amended after "appropriate" by removing "environmental safety and health program management" and adding in its place "Office of Health, Safety and Security."

Section 923.7003(b) is amended by adding the clause title Integration of Environment, Safety, and Health into Work Planning and Execution after "952.223-71" and changing punctuation.

Section 923.7003(c) is amended by removing "923.7002(b)" and adding in its place "923.7003(b)" to correct the citation.

Section 923.7003(c) is amended by adding the two clause titles for 952.223-71 by adding "Integration of Environment, Safety, and Health into

Work Planning and Execution,"; and in two places after "952.223-72" by adding "Radiation Protection and Nuclear Criticality,".

Section 923.7003(d) is amended by removing "either 923.7002(b) or 923.7002(c)" and adding in its place "923.7003(b) or 923.7003(c)" to correct the citations.

Section 923.7003(d) is amended by adding the two clause titles for 952.223-71, "Integration of Environment, Safety, and Health into Work Planning and Execution,"; and in two places after "952.223-72" by adding "Radiation Protection and Nuclear Criticality,".

Section 923.7003(d) is amended by removing "Environment, Safety and Health" and adding in its place "Health, Safety, and Security."

Section 923.7003(e) is amended by adding clause titles for 952.223-71, "Integration of Environment, Safety, and Health into Work Planning and Execution,"; and for 952.223-72, "Radiation Protection and Nuclear Criticality."

Sections 923.7003(f) and 923.7003(g) are amended by removing "48 CFR" in both of these paragraphs in four places each; in paragraph (g) by removing "970.1504-5(c)" and adding in its place "970.1504-8(c)"; in paragraph (g) by adding "Requirements," after "952.204-2, Security"; and capitalizing the first letter in each word for the clause title "Nuclear Hazards Indemnity Agreement".

Section 933.103(f) is amended by removing the first paragraph in (f); by redesignating paragraph (i)(1) as (i); by redesignating subparagraphs (i)(1)(i) through (iii) as (1), (2) and (3) respectively; and by removing subparagraph (i)(2). The first paragraph (f) is removed because it repeats a requirement from FAR 33.101(f).

Section 933.103(i) is amended in paragraph (i) by removing "Head of Contracting Activity" and adding in its place "HCA".

Section 933.103(j) is amended by removing the fourth sentence; and in the fifth sentence, remove "parties" and add in its place "the protester and the Department." These changes are made to remove an internal procedure and to clarify who the parties are.

Section 933.103(k) is amended in the first sentence by redesignating "(iii)" as "(iv)"; by removing the second sentence; and in the third sentence by removing the "(1)." The second sentence is removed because it is an internal procedure.

Section 942.270-2 is amended in the section title by using a lower case "c" for "clause"; and in the first sentence,

by adding “Technical Direction,” after “952.242–70.”

Section 952.216–7, Allowable cost and payment Alternate I, is removed. This duplicates FAR 16.307(a)(1) fourth sentence.

Section 952.225–70 clause in paragraph (b) is amended by adding after “shall” in the first sentence “—” and a line return; in subparagraph (1), capitalize the “C” in “consider; in paragraph (b)(1), changing the punctuation and adding a line return after “or”; and in paragraphs (b)(2), (b)(2)(i), and (b)(2)(ii), capitalize the first letter of the first word in each subparagraph.

In section 970.0404–1 the *Classified Information* definition is amended by removing reference to Executive Order 12356 and updating it with the current Executive Order 12958, Classified National Security Information, April 17, 1995, as amended.

Section 970.1100–1(a) is amended in the second sentence, by adding “The” before “Office”; in the second sentence, by adding “s” after “Policy”; in the second sentence, by removing “Letter 91–2” and adding in its place “Seven Steps to Performance-Based Acquisition located at Web site http://www.acquisition.gov/comp/seven_steps/home.html”; and in the third sentence, by making the “D” in “describe” lower case after “:”. These changes are made for grammatical reasons and to update the Office of Federal Procurement Policy (OFPP) information on performance-based acquisition.

Section 970.5242–1 clause is amended in paragraphs (c)(2), (d) and (e)(3), by changing punctuation; in paragraph (c)(2)(i), (c)(2)(ii), (c)(2)(iii), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), (e)(3)(i), and (e)(3)(ii), by capitalizing the first letter of the first word in each paragraph; in paragraph (c)(2)(ii), by removing “Department’s” and adding in its place “Civilian”; and in paragraph (e), adding “—” after “when”.

Section 970.5244–1 introductory text is amended by removing “48 CFR 970.4402–5” and adding in its place “970.4403”.

Section 970.5244–1 clause is amended in paragraphs (e)(1), (e)(1)(i), and (r) by changing punctuation; and in paragraphs (e)(1), (i), (e)(1)(ii), (r)(1), (r)(2), and (r)(3), by capitalizing the first letter of the first word in each paragraph.

Section 970.5244–1 clause in paragraph (e)(4) is amended in the second sentence, by removing “48 CFR 970.3102–3–21(b)” and adding in its place “48 CFR 31.205–26(e)”.

Section 970.5244–1 clause in paragraph (g) is amended in the first

sentence, by removing “48 CFR 52.225–3” and adding in its place “48 CFR 52.225–1”; and in the first sentence, by removing “48 CFR 52.225–5” and adding in its place “48 CFR 52.225–9”.

Section 970.5244–1 clause in paragraph (q) is amended by adding after “980.71” “, Federal Management Regulation 41 CFR chapter 102,”; in paragraph (q)(5), and by removing “48 CFR 908.7108” and adding in its place “48 CFR subpart 8.5”. These changes conform to the FAR convention and updates the Federal Management Regulation reference.

Section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) permits an agency to omit notice and comment from a rulemaking when the agency finds “good cause” to do so. Good cause exists when the agency finds that notice and comment would be “impracticable, unnecessary, or contrary to the public interest.” Today’s rule is intended to correct non-substantive errors, remove typographical errors, correct out-dated references and citations, and to improve stylistic consistency. None of the amendments in this notice of final rulemaking are intended to alter substantive rights or obligations under current law. Nothing in this rule imposes or alters existing requirements on DOE contractors or other members of the public. Consequently, DOE has determined that notice and comment is unnecessary.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today’s regulatory action has been determined not to be a “significant regulatory action” under Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Accordingly, this rulemaking is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a),

section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel’s Web site at <http://www.gc.doe.gov>.

Today’s technical amendments do not alter any substantive rights or obligations. Today’s rule makes corrections and updates references in the DEAR that apply to public contracts. No substantive rights or obligations are altered by today’s technical amendment. Neither the Administrative Procedures Act nor any other law that requires this rule be proposed for public comment. Consequently, this rule is exempt from the requirements of the Regulatory Flexibility Act.

D. Review Under the Paperwork Reduction Act

This final rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Existing burdens associated with the collection of certain contractor data have been cleared under OMB control number 1910-4100.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132, 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order requires agencies to have an accountability process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires a Federal agency to perform a

written assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or tribal governments, or to the private sector, of \$100 million or more. This rulemaking makes technical amendments that do not alter any substantive rights or obligations. This rule does not impose any mandates.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rulemaking will have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to Office of Information and Regulatory Affairs of the Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order, (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency

pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department will report to Congress promulgation of this rule. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Approval by the Office of the Secretary of Energy

Issuance of this rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 48 CFR Parts 901, 903, 904, 905, 906, 908, 909, 911, 912, 913, 914, 915, 916, 917, 922, 923, 925, 928, 931, 932, 933, 935, 936, 939, 941, 942, 947, 950, 951, 952, and 970

Government procurement.

Issued in Washington, DC, on July 13, 2009.

Edward R. Simpson,

Director, Office of Procurement and Assistance Management, Department of Energy.

David O. Boyd,

Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

■ 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.

■ 1. Authority citations are revised:

■ a. For parts 901, 903, 904, 905, 906, 908, 909, 912, 913, 914, 915, 916, 917, 922, 923, 925, 928, 931, 932, 933, 935, 936, 939, 941, 942, 947, 951, and 952, the authority citations are revised to read as follows:

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

■ b. For parts 911, 950 and 970, the authority citations are revised to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. Section 901.602-3 is amended by revising the section heading to read as follows:

901.602-3 Ratification of unauthorized commitments.

* * * * *

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**903.104-3 [Redesignated as 903.104-1]**

- 3. Redesignate 903.104-3 as 903.104-1.
- 4. Amend the introductory text of newly designated section 903.104-1 by removing the reference “48 CFR (FAR) 3.104-4(d)—” and adding in its place “48 CFR 3.104-2(b)(3)—”.

903.104-10 [Redesignated as 903.104-7]

- 5. Redesignate 903.104-10 as 903.104-7.
- 6. Amend newly designated section 903.104-7 by revising the section heading to read as follows:

903.104-07 Violations or possible violations.

* * * * *

- 7. Remove “48 CFR 3.104-10” wherever it occurs in newly designated 903.104-7 and add in its place “48 CFR 3.104-7”.
- 8. Add in newly designated 903.104-7, first sentence, commas, after “(2)” and “Policy Act”.
- 9. Add in newly designated 903.104-7 “the General Counsel for National Nuclear Security Administration (NNSA),” in the second sentence, after “Naval Reactors Offices;”.

903.408-1 [Redesignated as 903.405]

- 10. Redesignate section 903.408-1 as 903.405.
- 11. Newly redesignated section 903.405 is amended by revising the section heading to read as follows:

903.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

* * * * *

903.502 [Amended]

- 12. Section 903.502 is amended by removing the paragraph (b) designation at the beginning of the paragraph.
- 13. Revise the heading for subpart 903.9 to read as follows:

Subpart 903.9—Whistleblower Protections for Contractor Employees**903.901, 903.902, and 903.903 [Redesignated 903.900, 903.901 and 903.902]**

- 14. Redesignate sections 903.901, 903.902, and 903.903 as sections 903.900, 903.901 and 903.902, respectively.

- 15. Newly designated section 903.900 is amended by revising the heading to read as follows:

903.900 Scope of subpart.

* * * * *

PART 904—ADMINISTRATIVE MATTERS

- 16. Section 904.402 is amended by:
 - a. Removing in paragraph (a), “DOE’s” and adding in its place “Department of Energy’s (DOE)”;
 - b. Revising the last sentence in paragraph (c)(1);
 - c. Removing “The clause” in paragraph (c)(2), at the beginning of the first sentence, and adding in its place “The 952.204-76 clause” and removing “and the clause”, in the first sentence, and adding in its place “and the 952.223-76 clause”;
 - d. Removing the “:” at the end of the introductory text of paragraph (c)(3) and adding “—” in its place; and
 - e. Adding in paragraph (c)(3)(i), “952.204-76” before the first usage of “clause” and, adding “952.223-76” before the second usage of “clause”.

The revision reads as follows:

904.402 General.

* * * * *

(c)(1) * * * The clause prescribed at 904.404(d)(6) (952.204-76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information) or the clause prescribed at 923.7003(f) (952.223-76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health) shall be used for this purpose unless the clause prescribed at 970.1504-5(b)(1) (970.5215-3, Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts) is used.

* * * * *

- 17. Section 904.404 is amended by:
 - a. Revising the section heading;
 - b. Removing “DOE N 142.1.” in paragraph (d)(3), second sentence, and adding in its place “DOE Order 142.3 or its successor.”; and
 - c. Revising paragraph (d)(6).
The revisions read as follows:

904.404 Solicitation provision and contract clause.

(d) * * *

(6) Except as prescribed in 970.1504-5(b), the contracting officer shall insert the clause at 952.204-76, 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 the clause at 952.204-2, Security, but that do not contain the clause at 952.250-70, Nuclear Hazards Indemnity Agreement.

* * * * *

- 18. Section 904.702 is revised to read as follows:

904.702 Applicability.

(b) Contracts containing the clause at 952.223-71 Integration of Environment Safety, and Health into Work Planning and Execution, or the Radiation Protection and Nuclear Criticality clause at 952.223-72, 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 applicable DOE Directives in the records management series, rather than those found at 48 CFR subpart 4.7.

- 19. The heading for subpart 904.8 is revised to read as follows:

Subpart 904.8—Government Contract Files**904.803 [Amended]**

■ 20. Section 904.803 is amended by removing the word “procurement” and adding in its place the word “acquisition”.

- 21. Add a new section 904.804 to read as follows:

904.804 Closeout of contract files.

■ 22. Section 904.804-1 is amended by revising the section heading and adding “(HCA)” in paragraph (a) after the word “Activity” to read as follows:

904.804-1 Closeout by the office administering the contract.

* * * * *

- 23. Revise section 904.805 to read as follows:

904.805 Storage, handling, and disposal of contract files.

Contract files shall be disposed of in accordance with applicable DOE Order 243.1. (See current version.)

- 24. Revise the section heading for section 904.7000 to read as follows:

904.7000 Scope of subpart.

* * * * *

904.7002 [Amended]

- 25. Section 904.7002 is amended by:
 - a. Removing “following:” at the end of the introductory text of the definition of “foreign interest” and adding in its place “following—”; and
 - b. Removing “person,” in paragraph (3) of the definition of “foreign interest”, and adding in its place “person;” .

904.7003 [Amended]

- 26. Section 904.7003 is amended by:
 - a. Adding “Facility Clearance,” in paragraph (c), second sentence after “952.204–73”;
 - b. Removing the punctuation “:” in paragraph (d), first sentence, after the word “unless” and adding in its place “_”;
 - c. Removing “48 CFR 952.204–73,” in paragraph (d)(1) and adding in its place “952.204–73, Facility Clearance;” and
 - d. Removing “48 CFR” in the paragraph (d)(2).

904.7101 [Amended]

- 27. Section 904.7101 is amended by:
 - a. Removing the last sentence in the definition of *Entity controlled by a foreign government*, and adding in its place “See subpart 925.7 for a statement of the prohibition on certain foreign purchases.”
 - b. Removing the “,” at the end of the sentence in paragraph (4), in the definition of *Proscribed information*.

904.7102 [Amended]

- 28. Section 904.7102 is amended by:
 - a. Removing the “:” in paragraphs (a) introductory text, and (b) introductory text, last sentences, and adding in its place “—”; and
 - b. Removing “DEAR 952.204–73” in paragraph (e), and adding in its place, “952.204–73, Facility Clearance”.

904.7103 [Amended]

- 29. Section 904.7103 is amended by:
 - a. Removing “48 CFR” in paragraphs (a) and (b);
 - b. Adding “, Facility Clearance.” after “952.204–73” in paragraph (a); and
 - c. Adding “, Security.” after “952.204–2” in paragraph (b).

904.7201 [Amended]

- 30. Section 904.7201 is amended by adding “, Public Affairs,” after “952.204–75.”
- 31. The heading for subchapter B is revised to read as follows:

Subchapter B—Competition Acquisition Planning

PART 908—REQUIRED SOURCES OF SUPPLIES AND SERVICES

- 32. Section 908.802 is amended by revising the section heading and removing “48 CFR 952.208–70.” in paragraph (b) and adding in its place, “952.208–70, Printing, in all contracts.”
- The revision reads as follows:

908.802 Policy.

* * * * *

- 33. Section 908.1104 is amended by revising the section heading,

redesignating paragraph (e) as (f), and removing “48 CFR” in newly designated paragraph (f).

The revision reads as follows:

908.1104 Contract clauses.

* * * * *

908.7105 [Amended]

- 34. Section 908.7105 is amended by removing “DOE–PMR 41 CFR 109–25.302–2.” at the end of the sentence and adding in its place “DOE–PMR 41 CFR 109–25.302.”

908.7106 [Amended]

- 35. Section 908.7106 is amended by removing “DOE–PMR 41 CFR 109–25.302–2.” in paragraph (a) at the end of the sentence and adding in its place “DOE–PMR 41 CFR 109–25.302.”; and removing “FPMR 41 CFR 101–26.407 and” in paragraph (b).

908.7108 [Removed and Reserved]

- 36. Section 908.7108 is removed and reserved.

908.7111 [Amended]

- 37. Section 908.7111 is amended by removing “Commanding General, Headquarters, U.S. Army Materiel Development and Readiness Command, 5001 Eisenhower Avenue, Alexandria, VA 22333.” in paragraph (c), and adding in its place “Commanding General, Headquarters, U.S. Army Materiel Command, 9301 Chapek Road, Fort Belvoir, VA 22060–5527.”

- 38. Section 908.7113 is revised to read as follows:

908.7113 Calibration services.

Orders for calibration services may be placed with the National Institute of Standards and Technology, 100 Bureau Drive, Stop 2300, Gaithersburg, MD 20899–2300, 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 National Institute of Standards and Technology, Attention: “Calibration Services.”

- 39. Section 908.7115 is amended by revising paragraph (a) to read as follows:

908.7115 Forms.

(a) DOE forms shall be obtained by DOE offices in accordance with the DOE Guide 242.1–1, DOE Forms Management, for use with DOE Order 200.1, Information Management Program.

* * * * *

PART 909—CONTRACTOR QUALIFICATIONS

- 40. Add a new section 909.104 to subpart 909.1 to read as follows:

909.104 Standards.

909.104–1 [Amended]

- 41. Section 909.104–1, paragraph (h) is amended by removing “48 CFR”.
- 42. Section 909.104–3 is amended by revising the section heading and removing “DOE” in paragraph (e) at the beginning of the paragraph, and adding in its place, “*Guaranteeing corporate entities*. The Department of Energy (DOE)”.

The revision reads as follows:

909.104–3 Application of standards.

* * * * *

909.400 [Amended]

- 43. Section 909.400 is amended by removing the “,” at the end of paragraph (a) and adding in its place a “;”.

909.403 [Amended]

- 44. Section 909.403 is amended by:
 - a. Adding “*Debarring and suspending official*, for the DOE, the designees are:” after the introductory paragraph;
 - b. Removing the words “*Debarring Official*. The” and adding in its place “(1) *Debarring Official* means the”; and
 - c. Removing the words “*Suspending Official*. The” and adding in its place “(2) *Suspending Official* means the”.

- 45. Section 909.406–2 is amended by:
 - a. Revising the section heading to read as set forth below;
 - b. Removing “DOE” in the introductory text of paragraph (c);
 - c. Removing “; and” in paragraph (c)(1) after “subcontract” and adding in its place a period; and
 - d. Removing the “;” at the end of the sentence in paragraph (d)(1), after “9.406–3(c)”, and adding in its place a period.

909.406–2 Causes for debarment.

* * * * *

- 46. Section 909.406–3 is amended by revising the section heading to read as follows:

909.406–3 Procedures.

* * * * *

909.406–6 [Redesignated 909.406–70]

- 47. Section 909.406–6 is redesignated as 909.406–70, and newly designated 909.406–70 is amended by removing “48 CFR (DEAR)” in paragraph (b), two occurrences.
- 48. Add a new section 909.407 to subpart 909.4 to read as follows:

909.407 Suspension.

- 49. Section 909.407–2 is amended by:
 - a. Revising the section heading;
 - b. Removing the “:” at the end of the introductory text of paragraph (d) and adding in its place “—”;
 - c. Removing “48 CFR (DEAR)” in paragraphs (d)(1) and (d)(2);
 - d. Removing the “.” in paragraph (d)(1) and adding in its place a semicolon; and
 - e. Removing the “.” at the end of the sentence in paragraph (d)(2) and adding in its place “; or”.

The revision reads as follows:

909.407–2 Causes for suspension.

* * * * *

- 50. Section 909.407–3 is amended by revising the section heading, removing the “:” after “shall” in paragraph (b)(3) and adding in its place “—”; and removing “48 CFR (DEAR)” in paragraphs (b)(1), (b)(2) and (e)(1)(iv).

The revision reads as follows:

909.407–3 Procedures.

* * * * *

- 51. Section 909.503 is revised to read as follows:

909.503 Waiver.

Heads of Contracting Activities are delegated the authorities in 48 CFR 9.503 regarding the waiver of organizational and consultant conflicts of interest requirements.

- 52. Section 909.504 is amended by revising the section heading and by removing “48 CFR” in paragraph (e).

The revision reads as follows:

909.504 Contracting officer responsibilities.

* * * * *

- 53. Section 909.507–1 is amended by revising the section heading and removing “48 CFR” in paragraph (e).

The revision reads as follows:

909.507–1 Solicitation provisions.

* * * * *

909.507–2 [Amended]

- 54. Section 909.507–2 is amended by removing “48 CFR” in paragraphs (a)(1), (a)(2) and (b).

PART 911—DESCRIBING AGENCY NEEDS**911.604 [Amended]**

- 55. Section 911.604(b) is amended by adding a “,” after “Energy”.

PART 912—ACQUISITION OF COMMERCIAL ITEMS

- 56. Section 912.302 is revised to read as follows:

912.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) The waiver required by 48 CFR 12.302(c) shall be in writing and approved by the local procurement manager or individual appointed for that purpose by the local procurement manager.

PART 913—SIMPLIFIED ACQUISITION PROCEDURES

- 57. Section 913.307 is amended by revising the section heading to read as follows:

913.307 Forms.

* * * * *

PART 914—SEALED BIDDING

- 58. Add a new section 914.404 to subpart 914.4 to read as follows:

914.404 Rejection of bids.**914.404–1 [Amended]**

- 59. Section 914.404–1, paragraph (c), is amended by removing “Procurement Executive has” and adding in its place “Senior Procurement Executives have”.

914.407–3 [Amended]

- 60. Section 914.407–3(e) is amended in the first and second sentences by removing “Procurement Executive has,” and add in its place “Senior Procurement Executives have”.

914.407–4 [Amended]

- 61. Section 914.407–4 is amended by removing “Procurement Executive has” and adding in its place “Senior Procurement Executives have” in the first sentence; and adding “appropriate Senior” before the word “Procurement” in the second sentence.

914.408–2 [Redesignated]

- 62. Section 914.408–2 is redesignated as 914.409–2.

PART 915—CONTRACTING BY NEGOTIATION

- 63. Section 915.200 is revised to read as follows:

915.200 Scope of subpart.

The 48 CFR subpart 15.2 is not applicable to Program Opportunity Notices for Commercial Demonstrations (See subpart 917.72) or Program Research and Development Announcements (See subpart 917.73).

- 64. Add a new section 915.207 to subpart 915.2 to read as follows:

915.207 Handling proposals and information.

- 65. Section 915.207–70 is amended by revising the section heading and removing “DOE” in paragraph (f)(3), in the last sentence and adding in its place “Senior”.

The revision reads as follows:

915.217–70 Handling proposals and information during evaluation.

* * * * *

- 66. Section 915.305 is amended by revising the section heading to read as follows:

915.305 Proposal evaluation.

* * * * *

- 67. Add a new section 915.404 to subpart 915.4 to read as follows:

915.404 Proposal analysis.

- 68. Section 915.404–2 is amended by revising the section heading, removing “48 CFR” in paragraph (c)(1), and redesignating paragraphs (c)(2) as (c)(2)(i) and (e)(6) as (c)(2)(ii).

The revision reads as follows:

915.404–2 Information to support proposal analysis.

* * * * *

915.404–2–70 [Amended]

- 69. Section 915.404–2–70 is amended by removing the “:” in paragraph (a), and adding in its place “—”.

- 70. Section 915.404–4 is amended by revising the section heading to read as follows:

915.404–4 Profit.

* * * * *

915.404–70–2 [Redesignated 915.404–4–70–2]

- 71. Section 915.404–70–2 is redesignated as 915.404–4–70–2 and paragraphs (a) and (b) are amended by removing “48 CFR”.

915.404–4–70–4 [Amended]

- 72. Section 915.404–4–70–4 is amended by removing the “:” in paragraph (b) introductory text, and adding in its place “—”; and removing “48 CFR” in paragraph (d), and adding in its place “subpart”.

915.404–4–70–5 [Amended]

- 73. Section 915.404–4–70–5(d) is amended by removing “48 CFR”.

915.404–4–70–6 [Amended]

- 74. Section 915.404–4–70–6 is amended by removing “48 CFR”.

915.404-4-70-7 [Amended]

■ 75. Section 915.404-4-70-7 is amended by removing “48 CFR” in paragraphs (a) and (b).

915.404-4-71-1 [Amended]

■ 76. Section 915.404-4-71-1 is amended by removing the “,” in paragraph (a)(1) and adding in its place a “;”; adding a “;” in paragraph (a)(2) after the word “performance”; and removing the word “for” in paragraph (b) before the word “thereunder”.

915.404-4-71-3 [Amended]

■ 77. Section 915.404-4-71-3 is amended by removing “48 CFR” in paragraphs (a) and (d); removing the “.” in paragraph (b) introductory text, and adding in its place “—”; adding “—” in paragraph (b)(1), at the end of the sentence; and removing the “,” in paragraphs (b)(1)(i), (ii) and (iii), and adding in its place a “;”.

915.404-4-71-4 [Amended]

■ 78. Section 915.404-4-71-4(a) is amended by removing “48 CFR”.

915.404-4-71-5 [Amended]

■ 79. Remove “48 CFR” in 915.404-4-71-5, all occurrences, in paragraphs (a), (e)(1), and (e)(3).

915.404-4-71-6 [Amended]

■ 80. Section 915.404-4-71-6 is amended by removing “(See 48 CFR 936.70.)” in paragraph (b)(4); removing “as defined in 48 CFR 936.7201” in paragraph (b)(6); and removing “48 CFR” in paragraph (c).

915.404-4-72 [Amended]

■ 81. Section 915.404-4-72 is amended by removing “48 CFR” in all occurrences in paragraphs (a) introductory text, (a)(1), and (b).

■ 82. Add a new section 915.408 to subpart 915.4 to read as follows:

915.408 Solicitation provisions and contract clauses.

■ 83. Section 915.408-70 is amended by revising the section heading and removing “48 CFR” in all occurrences.

The revision reads as follows:

915.408-70 Key Personnel clause.

* * * * *

915.602 [Amended]

■ 84. Section 915.602 is amended by removing paragraph (b).

■ 85. Section 915.603 is amended by revising the section heading and redesignating paragraph (e) as (f).

The revision reads as follows:

915.603 General.

* * * * *

■ 86. Section 915.605 is amended by revising the section heading and in paragraph (b)(5) removing “48 CFR” and adding in its place “subpart”.

The revision reads as follows:

915.605 Content of unsolicited proposals.

* * * * *

■ 87. Section 915.606 is amended by revising the section heading; removing “Coordinator” from paragraph (b) and adding in its place “Manager”; and removing “(PGH)” from paragraph (b) and adding in its place “P.O. Box 10940, MS 921-107”.

The revision reads as follows:

915.606 Agency procedures.

* * * * *

■ 88. Section 915.607 is revised to read as follows:

915.607 Criteria for acceptance and negotiation of an unsolicited proposal.

(c) DOE’s cost participation policy, at subpart 917.70, shall be followed in determining the extent to which the DOE will participate in the cost for the proposed effort.

PART 916—TYPES OF CONTRACTS**916.307 [Amended]**

■ 89. Section 916.307 is amended by redesignating paragraph (j) as paragraph (g); and removing “The contracting officer shall insert” at the beginning of the sentence, and adding in its place “Insert”.

916.404-2 [Redesignated as 916.405-2]

■ 90. Redesignate section 916.404-2 as 916.405-2.

■ 91. Add a new section 916.405 to read as follows:

916.405 Cost-reimbursement incentive contracts.

■ 92. The heading for section 916.504 is revised to read as follows:

916.504 Indefinite-quantity contracts.

* * * * *

■ 93. Section 916.505 is amended by revising it to read as follows:

916.505 Ordering.

(b)(6)(i) The Director, Office of Contract Management, Office of Procurement and Assistance Management, is designated as the DOE Ombudsman for task and delivery order contracts in accordance with 48 CFR 16.505(b)(6). The Director, Office of Acquisition and Supply Management, is the designated NNSA Ombudsman for task and delivery order contracts in accordance with 48 CFR 16.505(b)(6).

(ii) The Heads of Contracting Activities shall designate a senior manager to serve as the Contracting Activity Ombudsman for task and delivery order contracts. If, for any reason, the Contracting Activity Ombudsman is unable to execute the duties of the position, the Head of the Contracting Activity shall designate an Acting Contracting Activity Ombudsman.

(iii) The Contracting Activity Ombudsman shall—

(A) Be independent of the contracting officer who awarded and/or is administering the contract under which a complaint is submitted;

(B) Not assume any duties and responsibilities pertaining to the evaluation or selection of an awardee for the issuance of an order under a multiple award, task or delivery order contract;

(C) Review complaints from contractors awarded a task or delivery order contract;

(D) Collect all facts from the cognizant organizations or individuals that are relevant to a complaint submitted to ensure that the complainant and all contractors were afforded a fair opportunity to be considered for the order issued in accordance with the procedures set forth in each awardees’ contract;

(E) Maintain a written log to track each complaint submitted from receipt through disposition;

(F) Ensure that no information is released which is determined to be proprietary or is designated as source selection information; and

(G) Resolve complaints at the contracting activity for which they have cognizance.

(iv) If, upon review of all relevant information, the Contracting Activity Ombudsman determines that corrective action should be taken, the Contracting Activity Ombudsman shall report the determination to the cognizant contracting officer. Issues which cannot be so resolved should be forwarded to the DOE Ombudsman.

916.601 [Removed and Reserved]

■ 94. Section 916.601 in subpart 916.6 is removed and reserved.

PART 917—SPECIAL CONTRACTING METHODS

■ 95. Section 917.600, paragraph (a) is revised and paragraph (b) is amended by removing “48 CFR”.

The revision reads as follows:

917.600 Scope of subpart.

(a) This subpart implements 48 CFR subpart 17.6, Management and

Operating Contracts. Departmental policies, procedures, provisions and clauses to be used in the award and administration of management and operating contracts that either implement or supplement the Federal Acquisition Regulation and parts 901 through 952 of this chapter are contained in part 970.

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917.7200 [Amended]

■ 96. Section 917.7200(a) is amended by removing the word “non-nuclear” and adding in its place “non nuclear”.

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

922.103-4 [Amended]

■ 97. Section 922.103-4(d) is amended by:

■ a. Removing the introductory heading “*Approvals.*” at the beginning of the paragraph;

■ b. Removing “DOE” and adding in its place “Department of Energy (DOE)” in paragraph (d)(1) introductory text;

■ c. Removing the “:” and adding in its place “—” at the end of paragraph (d)(1) introductory text;

■ d. Removing the word “means” and adding in its place “means—” in paragraph (d)(1)(i), second sentence; and

■ e. Removing “advance,” and adding in its place “advance;” in paragraph (d)(1)(i)(A).

922.103-5 [Amended]

■ 98. Section 922.103-5 is amended in the last sentence by adding the word “subpart” after the word “See”.

922.802 [Removed and Reserved]

■ 99. Section 922.802 is removed and reserved.

■ 100. The heading for Part 923 is revised to read as follows:

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

■ 101. Section 923.405 is amended by revising the section heading to read as follows:

923.405 Procedures.

* * * * *

■ 102. The heading for subpart 923.5 is revised to read as follows:

Subpart 923.5—Drug-Free Workplace

923.570-1 [Amended]

■ 103. Section 923.570-1 is amended by removing the “:” and adding in its place “—” in paragraph (a) introductory text; removing the “;” in paragraph (a)(1), and adding in its place a “;” and removing the “;” at end of sentence; and removing the “:” in paragraph (a)(2), and adding in its place “—”.

923.570-2 [Amended]

■ 104. Section 923.570-2 is amended in paragraphs (a) and (b) by removing “48 CFR” in three places.

923.570-3 [Amended]

■ 105. Section 923.570-3 is amended by removing “48 CFR” in paragraph (a) and (b)(2); removing the “:” in paragraph (b), and adding in its place “—”; and removing “the provision at 970.5204-57; or” in paragraph (b)(2), and adding in its place “the clause at 970.5223-4, Workplace Substance Abuse Programs at DOE Sites; or”.

■ 106. Subpart 923.70 is amended by revising the subpart heading to read as follows:

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

923.7001 [Amended]

■ 107. Section 923.7001 is amended by removing the paragraph designation “(a)”.

■ 108. Section 923.7002 is amended by revising the section heading, the first sentence in paragraph (a)(1) and by removing in paragraph (a)(5), “Environment, Safety and Health” and adding in its place “Health, Safety and Security”.

The revisions read as follows:

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. * * *

* * * * *

■ 109. Section 923.7003 is revised to read as follows:

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.

PART 925—FOREIGN ACQUISITION

925.102 [Redesignated as 925.103]

- 110. Redesignate 925.102 as 925.103.
- 111. Revise newly designated 925.103 to read as follows:

925.103 Exceptions.

(a) Contracting officers may make the determination required by FAR 25.103(a), provided such determination is factually supported in writing. If the contract is estimated to exceed \$1 million, the Head of the Contracting Activity shall approve the determination.

925.105 and 925.108 [Removed]

- 112. Sections 925.105 and 925.108 in subpart 925.1 are removed.

925.204 [Removed]

- 113. Section 925.204 in subpart 925.2 is removed.
- 114. The heading of subpart 925.7 is revised to read as follows:

Subpart 925.7—Prohibited Sources

925.702 [Redesignated as 925.701–70]

- 115. Redesignate section 925.702 as 925.701–70.
- 116. Revise newly designated section 925.701–70 to read as follows:

925.701–70 Prohibited sources.

No contract may be awarded to a company owned by an entity controlled by a foreign government if performance of the contract will require access to proscribed information. See subpart 904.71 for additional guidance.

925.7003 [Amended]

- 117. Section 925.7003 is amended by removing the “:” in paragraph (a) introductory text and adding in its place “—”; removing the “;” in paragraph (a)(1) and adding in its place “;”; and removing the “:” in paragraph (b) introductory text and adding in its place “—”.

PART 928—BONDS AND INSURANCE

- 118. The heading for subpart 928.1 is revised to read as follows:

Subpart 928.1—Bonds and Other Financial Protections

- 119. Add a new section 928.101 to subpart 928.1 to read as follows:

928.101 Bid guarantees.

- 120. Add a new section 928.103 to subpart 928.1 to read as follows:

928.103 Performance and payment bonds for other than construction contracts.

928.301 [Amended]

- 121. Section 928.301 is amended by adding “part” before “950”.

928.370 [Amended]

- 122. Section 928.370(b) introductory text is amended by removing the “:” and adding in its place “—”.

PART 931—CONTRACT COST PRINCIPLES AND PROCEDURES

- 123. Add a new section 931.205 to subpart 931.2 to read as follows:

931.205 Selected costs.

- 124. Section 931.205–19 is amended by revising the section heading; redesignating paragraph (h) as (f); removing “48 CFR”; and adding “, Insurance-litigation and claims,” after “952.231–71”.

The revision reads as follows:

931.205–19 Insurance and Indemnification.

* * * * *

931.205–32 [Amended]

- 125. Section 931.205–32 is amended by removing the word “Precontract”, in the section heading, and paragraphs (b)(1) and (b)(4), and adding in its place “Pre-contract”; and by removing the word “precontract” in paragraphs (a), (b) introductory text, (b)(2), and (b)(4), and adding in its place “pre-contract”.

- 126. Section 931.205–33 is amended by revising the heading to read as follows:

931.205–33 Professional and consultant service costs.

* * * * *

- 127. Section 931.205–47 is amended by revising the heading and removing the “;” in paragraph (h)(2) introductory text and adding in its place “—”.

The revision reads as follows:

931.205–47 Costs related to legal and other proceedings.

* * * * *

PART 932—CONTRACT FINANCING

- 128. Add a new section 932.006 to part 932 to read as follows:

932.006 Reduction or suspension of contract payments upon finding of fraud.

- 129. The heading in subpart 932.1 is revised to read as follows:

Subpart 932.1—Non-Commercial Item Purchase Financing

■ 130. Section 932.102 is amended by revising the heading to read as follows:

932.102 Description of contract financing methods.

* * * * *

■ 131. Add a new section 932.304 to subpart 932.2 to read as follows:

932.304 Procedures.

■ 132. Add a new section 932.501 to subpart 932.5 to read as follows:

932.501 General.**932.605 [Amended]**

■ 133. Section 932.605(b) is amended in the first sentence by removing “DOE” and adding in its place “Department of Energy (DOE)”.

932.7003 [Amended]

■ 134. Section 932.7003(e) introductory text is amended by removing the “:” and adding in its place “—”.

932.7004–3 [Amended]

■ 135. Section 932.7004–3 introductory text is amended by removing the “:” and adding in its place “—”.

PART 933—PROTESTS, DISPUTES, AND APPEALS**Subpart 933.1—Protests**

■ 136. Section 933.102 is amended by revising the section heading; and in paragraph (b), adding “(HCA)” after “Activities”.

The revision reads as follows:

933.102 General.

* * * * *

■ 137. Section 933.103 is revised to read as follows:

933.103 Protests to the agency.

(i) Protests filed with the contracting officer before or after award shall be decided by the HCA except for the following cases, which shall be decided by the Senior Procurement Executive:

(1) The protester requests that the protest be decided by the Senior Procurement Executive.

(2) The HCA is the contracting officer of record at the time the protest is filed, having signed either the solicitation where the award has not been made, or the contract, where the award or nomination of the apparent successful offeror has been made.

(3) The HCA concludes that one or more of the issues raised in the protest have the potential for significant impact on Department of Energy (DOE) acquisition policy.

(j) The Department of Energy encourages direct negotiations between an offeror and the contracting officer in an attempt to resolve protests. In those situations where the parties are not able to achieve resolution, the Department favors the use of alternative dispute resolution (ADR) techniques to resolve protests. A protest requesting a decision at the Headquarters level shall state whether the protester is willing to utilize ADR techniques such as mediation or nonbinding evaluation of the protest by a neutral party. Both the protester and the Department must agree that the use of such techniques is appropriate. If the parties do not mutually agree to utilize ADR techniques to resolve the protest, the protest will be processed in accordance with the procedures set forth in paragraph (k).

(k) Upon receipt of a protest lodged with the Department, the contracting officer shall prepare a report similar to that discussed in FAR 33.104(a)(3)(iv). The Senior Procurement Executive (for protests at the Headquarters level or those specific HCA protests cited in paragraph (i) of this section) or an HCA (for protests at the contracting activity level) will render a decision on a protest within 35 calendar days, unless a longer period of time is determined to be needed.

■ 138. Section 933.104 is amended by revising the section heading; removing “GAO” in paragraph (b) (first occurrence) and adding in its place “Government Accountability Office (GAO)”; and removing “Head of the Contracting Activity” in paragraphs (b), in two places, and (c), and adding in its place “HCA”.

The revision reads as follows:

933.104 Protests to GAO.

* * * * *

933.106 [Amended]

■ 139. Section 933.106 is amended by removing “48 CFR” in paragraphs (a), (b), and (c).

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING**935.010 [Amended]**

■ 140. Section 935.010(c) is amended by removing after “thereto,” the remainder of the first sentence and adding in its place “electronically to the Department of Energy (DOE) Energy Link System (E-link) at <http://www.osti.gov/>.”

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**936.202 [Amended]**

■ 141. Section 936.202 is amended by removing, in paragraph (d) “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” and adding in its place “internal financial procedures”; and removing “therefor” in paragraph (e) after “payments”.

936.602–70 [Amended]

■ 142. Section 936.602–70 is amended by removing “required by 936.601,” in the introductory paragraph; removing the “:” in paragraph (a) in the first line and adding in its place “—”; removing the “:” in paragraph (a)(7) and adding in its place “; or”; and removing the “:” in paragraph (b)(1) introductory text and adding in its place “—”.

Subpart 936.7—[Removed and Reserved]

■ 143. Subpart 936.7 consisting of 936.702 is removed and reserved.

PART 939—ACQUISITION OF INFORMATION TECHNOLOGY**939.7001 [Removed and Reserved]**

■ 144. Section 939.7001 is removed and reserved.

939.7002 [Amended]

■ 145. Section 939.7002 is amended by removing “48 CFR” in paragraph (b), second sentence; removing the “:” at the end of paragraph (c) introductory text and adding in its place “—”; and removing the “,” in paragraph (c)(1) and adding in its place “;”.

PART 941—ACQUISITION OF UTILITY SERVICES**941.201–71 [Amended]**

■ 146. Section 941.201–71 is amended by removing “48 CFR”.

PART 942—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 147. Part 42 title is revised to read as set forth above.

■ 148. Section 942.270–2 is revised to read as follows:

942.270–2 Contract clause.

The clause at 952.242–70, Technical Direction, or a clause substantially the same, may be inserted in solicitations and contracts when a designated Contracting Officer's Representative will

issue technical direction to the contractor under the contract.
 ■ 149. Add a new section 942.705 to subpart 942.7 to read as follows:

942.705 Final indirect cost rates.

■ 150. Section 942.705-1 is amended by revising the heading to read as follows:

942.705-1 Contracting officer determination procedure.

* * * * *

■ 151. Section 942.705-3 is amended by revising the heading to read as follows:

942.705-3 Educational institutions.

* * * * *

942.705 [Amended]

■ 152. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the words in the right column:

Section	Remove	Add
942.705-1(a)(3)	“Policy”	“Procurement and Assistance Policy”
942.705-3(a)(2)	“Policy”	“Procurement and Assistance Policy”
942.705-4	“Policy”	“Procurement and Assistance Policy”
942.705-5	“Policy”	“Procurement and Assistance Policy”

PART 947—TRANSPORTATION

Subpart 947.5—[Removed]

■ 153. Subpart 947.5 is removed.

947.7001 [Amended]

■ 154. Section 947.7001 is amended by removing “DOE Order 551.1” and adding in its place “DOE Order 551.1C, or its successor”.

947.7002 [Amended]

■ 155. Section 947.7002 is amended by removing “48 CFR”.

■ 156. The heading for part 950 is revised to read as follows:

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

950.7000 [Amended]

■ 157. Section 950.7000 is amended by removing “DOE” and adding in its place “the Department of Energy (DOE)”.

950.7002 [Amended]

■ 158. Section 950.7002 is amended by removing the “:” following the introductory text of the definition of *Person indemnified* and adding in its place “—”.

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

951.101 [Amended]

■ 159. Section 951.101 is amended by removing “DOE” and adding in its place “Department of Energy (DOE)”.

951.102 [Amended]

■ 160. Section 951.102 is amended by removing in paragraph (c)(1) “Property” and adding in its place “Resource”.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

952.000 [Amended]

■ 161. Section 952.000 is amended by removing the first “DOE” and adding in its place “Department of Energy (DOE)” and removing the second “DOE contract” and adding in its place “Department of Energy Acquisition Regulation”.

952.203-70 [Amended]

■ 162. Section 952.203-70 introductory text is amended by removing “48 CFR”.

952.204-2 [Amended]

■ 163. Section 952.204-2 clause is amended by:

■ a. Revising the date of the clause to read as set forth below; and

■ b. Removing “in effect on the date of award.” in paragraph (b) and adding in its place “as incorporated into the contract.”; and adding “, Facility Clearance,” in paragraph (l) in the second sentence after “DEAR 952.204-73”.

The revision reads as follows:

952.204-2 Security requirements.

* * * * *

SECURITY (AUG 2009)

* * * * *

952.204-72 [Amended]

■ 164. Section 952.204-72 is amended by removing “Classification” and adding in its place “Classification/Declassification”.

952.204-73 [Amended]

■ 165. Section 952.204-73 is amended by adding a “,” after “Interests” in the introductory text; and removing the “:” in paragraphs (b)(1) introductory text and (c) introductory text and adding in its place “—”.

952.204-75 [Amended]

■ 166. Section 952.204-75 introductory text is amended by removing “48 CFR”.

952.204-76 [Amended]

■ 167. Section 952.204-76 is amended by removing “48 CFR DEAR” in the introductory text; and removing the word “Restricted” in clause paragraph (a)(3) and adding in its place “restricted”.

952.204-77 [Amended]

■ 168. Section 952.204-77 clause is amended by removing the “,” in paragraph (b) introductory text and adding in its place “—”; and removing the “,” in paragraph (b)(1).

952.209-8 [Amended]

■ 169. Section 952.209-8 introductory text is amended by removing “48 CFR”.

952.209-72 [Amended]

■ 170. Section 952.209-72 is amended by:

■ a. Revising the date of the clause to read as set forth below;

■ b. Adding, in clause paragraph (b)(1)(i), an “e” to “therefor” and removing “DEAR 9.507-2” and adding in its place “48 CFR 909.507-2”;

■ c. Removing the “:” at the end of clause paragraph (b)(2)(i) introductory text and adding in its place “—”.

■ d. Removing “FAR part 13” in Alternate I, paragraph (f)(1) and adding in its place “48 CFR part 13”;

■ e. Removing “FAR 37.201” in Alternate I, paragraph (f)(1) and adding in its place “48 CFR 2.101”; and

■ f. Removing “DEAR 909.507-1” in Alternate I, paragraph (f)(2) and adding in its place “48 CFR 909.507-1”.

The revision reads as follows:

952.209-72 Organizational conflicts of interest.

* * * * *

ORGANIZATIONAL CONFLICTS OF INTEREST (AUG 2009)

* * * * *

952.211-70 [Amended]

■ 171. Section 952.211-70 introductory text is amended by removing the “.” at the end of the introductory paragraph and adding in its place “;” and removing “officer” in the clause and adding in its place “Officer.” removing “(End of clause)” at the end of the provision and adding in its place “(End of provision)”.

952.211-71 [Amended]

■ 172. Section 952.211-71 introductory text is amended by removing the “.” at the end of the introductory paragraph and adding in its place “:”

952.215-70 [Amended]

■ 173. Section 952.215-70 is amended by:

■ a. Removing “48 CFR” in the introductory text; and
 ■ b. Removing in clause paragraph (a) “48 CFR” and adding in its place “DEAR”.

■ 174. Section 952.216-7 is revised to read as follows:

952.216-7 Allowable cost and payment.

As prescribed in 916.307(a), 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 FAR subpart 31.2.

952.216-15 [Amended]

■ 175. Section 952.216-15 clause is amended by:

■ a. Revising the date of the clause alternate to read as set forth below; and
 ■ b. Removing “(j)” after “916.307” and adding in its place “(g)”; and removing “31.3” and adding in its place “31.4”.

The revision reads as follows:

952.216-15 Predetermined indirect cost rates.

* * * * *

Alternate (AUG 2009):

* * * * *

■ 176. The section heading for 952.223 is revised to read as follows:

952.223 Clauses related to environment, energy and water efficiency, renewable energy technologies, occupational safety, and drug-free workplace.

952.223-71 [Amended]

■ 177. Section 952.223-71 introductory text is amended by removing “923.7002” and adding in its place “923.7003”; and removing “48 CFR”.

952.223-72 [Amended]

■ 178. Section 952.223-72 introductory text is amended by removing “923.7002” and adding in its place “923.7003”.

952.223-75 [Amended]

■ 179. Section 952.223-75 introductory text is amended by removing, “The contracting officer shall insert this” and adding in its place “As prescribed at 923.7003(h), insert the”.

952.223-76 [Amended]

■ 180. Section 952.223-76 is amended by:

■ a. Revising the date of the clause to read as set forth below;

■ b. Removing in the introductory text “48 CFR (DEAR) 923.7002(f)” and adding in its place “923.7003(f)”.

■ c. Removing “data” in clause paragraph (a)(3) and adding in its place “Data”;

■ d. Removing “48 CFR 952.223-76 (b)(2)” in clause paragraph (b)(1) and adding in its place “paragraph (b)(2) of this clause”.

■ e. Removing “48 CFR 923.7001(b)” in clause paragraph (b)(1) and adding in its place “48 CFR 923.7002(a)(2)”;

■ f. Removing “WS&H only” in clause paragraph (b)(1) in the last sentence and adding in its place “worker safety and health (WS&H) only”.

The revision reads as follows:

952.223-76 Conditional payment of fee or profit—safeguarding restricted data and other classified information and protection of worker safety and health.

* * * * *

CONDITIONAL PAYMENT OF FEE OR PROFIT—SAFEGUARDING RESTRICTED DATA AND OTHER CLASSIFIED INFORMATION AND PROTECTION OF WORKER SAFETY AND HEALTH (AUG 2009)

* * * * *

952.223-77 [Amended]

■ 181. Section 952.223-77 is amended by:

■ a. Revising the date of the clause to read as set forth below; and

■ b. Removing in the introductory text “48 CFR (DEAR) 923.7002(g)” and adding in its place “923.7003(g)” and removing “48 CFR 952.223-77 (b)(2)” in paragraph (b)(1) and adding in its place “paragraph (b)(2) of this clause”.

The revision reads as follows:

952.223-77 Conditional payment of fee or profit—protection of worker safety and health.

* * * * *

CONDITIONAL PAYMENT OF FEE OR PROFIT—PROTECTION OF WORKER SAFETY AND HEALTH (AUG 2009)

* * * * *

952.224-70 [Removed]

■ 182. Section 952.224-70 is removed.

952.225-70 [Amended]

■ 183. Section 952.225-70 paragraph (b) is revised to read as follows:

952.225-70 Subcontracting for nuclear hot cell services.

* * * * *

(b) In selecting a competitive offer for a first-tier subcontract acquisition of nuclear hot cell services, the contractor shall—

(1) Consider neither costs related to the decommissioning of nuclear waste facilities nor costs related to the storage and disposal of nuclear waste; or

(2) Add these costs to offers of foreign companies, if—

(i) One or more of the offers is submitted by a United States company and includes costs related to the decommissioning of nuclear facilities and costs related to the storage and disposal of nuclear waste because it is subject to such cost; and

(ii) One or more of the offers is submitted by a foreign company and does not include these types of costs. (A foreign company might not be subject to such costs or might not have to include these types of cost in its offer if the firm is subsidized in decommissioning activity or storage and disposal of nuclear waste, or a foreign government is performing the activities below the actual cost of the activity.)

* * * * *

952.231-71 [Amended]

■ 184. Section 952.231-71 is amended by:

■ a. Revising the date of the clause to read as set forth below;

■ b. Removing in the introductory text, “48 CFR 931.205-19” and adding in its place, “931.205-19(f)”.

■ c. Removing, in the clause heading, “Insurance-Litigation” and adding in its place “Insurance—Litigation”

■ d. Removing the “,” in paragraph (h)(1) and (h)(2) and adding in its place a “;”;

■ e. Removing “unreimbursable” in paragraph (k) and adding in its place “non-reimbursable”.

The revision reads as follows:

952.231-71 Insurance-litigation and claims.

* * * * *

INSURANCE-LITIGATION AND CLAIMS (AUG 2009)

* * * * *

952.233-2 [Amended]

■ 185. Section 952.233-2 is amended by removing “48 CFR” in the introductory text; and removing “General Accounting” in paragraph (c) and adding in its place “Government Accountability”.

952.233-4 [Amended]

■ 186. Section 952.233-4 clause is amended by:
 ■ a. Revising the date of the provision to read as set forth below; and
 ■ b. Removing “General Accounting” in paragraph (a) and adding in its place “Government Accountability”.
 The revision reads as follows:

952.233-4 Notice of protest file availability.

* * * * *

NOTICE OF PROTEST FILE AVAILABILITY (AUG 2009)

* * * * *

952.233-5 [Amended]

■ 187. Section 952.233-5 is amended by removing “48 CFR” in the introductory text; and adding “48 CFR” before “933.103” in the clause.

952.235-70 [Removed]

■ 188. Section 952.235-70 is removed.

952.235-71 [Amended]

■ 189. Section 952.235-71 is amended by:
 ■ a. Removing “48 CFR Part” in the introductory text;
 ■ b. Removing the “:” in clause paragraph (c) in the first sentence and adding in its place “—”;
 ■ c. Adding “of Energy (DOE)” in clause paragraph (c) introductory text after “Department”; and
 ■ d. Removing the “,” in clause paragraph (c)(3) after “or”.

952.242-70 [Amended]

■ 190. Section 952.242-70 is amended by removing “48 CFR” in the introductory text; and removing the “:” in paragraphs (c) introductory text and (e) introductory text and adding in its place “—”.

952.247-70 [Amended]

■ 191. Section 952.247-70 is amended by:
 ■ a. Revising the date of the clause to read as set forth below; and
 ■ b. Removing “48 CFR” in the introductory text; and removing “DOE Order 551.1,” in the clause and adding

in its place “Department of Energy (DOE) Order 551.1C, or its successor”.
 The revision reads as follows:

952.247-70 Foreign travel.

* * * * *

FOREIGN TRAVEL (AUG 2009)

* * * * *

952.250-70 [Amended]

■ 192. Section 952.250-70 clause is amended by removing the “:” in paragraphs (e)(2)(iv)(A) introductory text and (e)(3) introductory text, and adding in its place “—”.

952.251-70 [Amended]

■ 193. Section 952.251-70 is amended by:
 ■ a. Revising the date of the clause to read as set forth below;
 ■ b. Removing “48 CFR 951.70” in the introductory text and adding in its place “951.7002”; and
 ■ c. Removing “Military Traffic Management Command (MTMC)” in clause paragraph (e), first sentence, and adding in its place “Surface Deployment and Distribution Command (SDDC)”.
 The revision reads as follows:

952.251-70 Contractor employee travel discounts.

* * * * *

CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (AUG 2009)

* * * * *

■ 194. In the table below, for introductory text for each section indicated in the left column, remove the punctuation indicated in the middle column from where it appears in the section, and add the punctuation in the right column:

Section	Re-move	Add
952.204-2	:
952.204-70	:
952.204-71	:
952.204-72	:
952.204-73	:
952.204-75	:
952.204-76	:
952.217-70	:
952.208-7	:
952.208-70	:
952.211-70	:
952.211-71	:
952.223-72	:
952.223-75	:
952.223-76	:
952.223-77	:
952.225-70	:
952.236-71	:
952.236-72	:
952.242-70	:
952.250-70	:
952.251-70	:

■ 195. Add “(End of provision)” after the following provisions: 952.204-73, 952.233-2, 952.233-4, and 952.233-5.
 ■ 196. Add “(End of clause)” at the end of the following clauses: 952.204-2, 952.204-70, 952.204-71, 952.204-72, 952.208-7, 952.208-70, 952.217-70, 952.223-72, 952.223-75, 952.225-70, 952.231-70, 952.236-71, 952.237-70, and 952.251-70.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

970.0100 [Amended]

■ 197. Section 970.0100 is amended by removing in the third sentence, “48 CFR”; and removing “DEAR” in the third sentence before “Part 970”.

970.0309-1 [Amended]

■ 198. Section 970.0309-1 is amended by removing “48 CFR”.

970.0370-1 [Amended]

■ 199. Section 970.0370-1 is amended by:
 ■ a. Removing “DOE” in paragraph (a) and adding in its place “the Department of Energy (DOE)”;
 ■ b. Removing “48 CFR” in paragraph (b) and (d);
 ■ c. Removing the “:” in paragraph (b) introductory text and adding in its place “—”;
 ■ d. Adding “and” in paragraph (b)(8), after “;”;
 ■ e. Removing the “;” in paragraph (b)(9), and adding in its place “.”; and
 ■ f. Removing paragraph (b)(10).

970.0371-9 [Amended]

■ 200. Section 970.0371-9 is amended by removing “48 CFR” in both places.
 ■ 201. In section 970.0404-1, revise the definition for *Classified Information* to read as follows:

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 12958, Classified National Security Information, April 17, 1995, as amended, 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.

* * * * *

970.0404-2 [Amended]

■ 202. Section 970.0404-2 is amended by adding “(DOE)” in paragraph (a) in the first sentence, after “Energy”;

adding “subpart” before “904.4”, “904.70” and “904.71” in paragraph (a); and removing “48 CFR” in paragraph (c) in the first sentence.

970.0404-3 [Amended]

■ 203. Section 970.0404-3(b) is amended by removing “48 CFR” and adding in its place “subpart”.

970.0404-4 [Amended]

■ 204. Section 970.0404-4(b) is amended by removing “48 CFR” in both places.

970.0407-1-2 [Amended]

■ 205. Section 970.0407-1-2 is amended by removing “48 CFR”.

970.0407-1-3 [Amended]

■ 206. Section 970.0407-1-3 is amended by removing “48 CFR”.

970.0470-1 [Amended]

■ 207. Section 970.0470-1(d) is amended by removing “48 CFR”.

970.0470-2 [Amended]

■ 208. Section 970.0470-2 is amended by removing “DEAR” in the first sentence.

970.0801-1 [Redesignated as 970.0801-2]

■ 209. Redesignate 970.0801-1 as 970.0801-2.

■ 210. Revise newly designated section 970.801-2 to read as follows:

970.0801-2 Policy.

The provisions of 48 CFR subpart 8.1, 41 CFR 101-43 (Federal Property Management Regulation), and 41 CFR 109-43, (Department of Energy (DOE) Property Management Regulation) apply to DOE’s management and operating contracts.

■ 211. Section 970.0808 is revised to read as follows:

970.0808 Acquisition of printing and related supplies.

970.0808-1 [Redesignated]

■ 212. Redesignate 970.0808-1 as 970.0808-00.

■ 213. Amend newly designated section 970.0808-00 by revising the section heading to read as follows:

970.0808-00 Scope.

* * * * *

■ 214. The heading for subpart 970.09 is revised to read as follows:

Subpart 970.09—Contractor Qualifications

970.0905 [Amended]

■ 215. Section 970.0905 is amended by revising the section heading; and removing “48 CFR” in the paragraph.

The revision reads as follows:

970.0905 Organizational and consultant conflicts of interest.

* * * * *

970.0970-1 [Amended]

■ 216. Section 970.0970-1 is amended by removing “DOE” in paragraph (b) in the first sentence and adding in its place “The Department of Energy (DOE)”.

970.0970-2 [Amended]

■ 217. Section 970.0970-2 is amended by removing “48 CFR”.

■ 218. Section 970.1100-1 is amended by revising paragraph (a) to read as follows:

970.1100-1 Performance-based contracting.

(a) It is the policy of the Department of Energy (DOE) to use, to the maximum extent practicable, performance-based contracting methods in its management and operating contracts. The Office of Federal Procurement Policy’s Seven Steps to Performance-Based Acquisition located at Web site http://www.acquisition.gov/comp/seven_steps/home.html provides guidance concerning the development and use of performance-based contracting concepts and methodologies that may be generally applied to management and operating contracts. Performance-based contracts: Describe performance requirements in terms of results rather than methods of accomplishing the work; use measurable (i.e., terms of quality, timeliness, quantity) performance standards and objectives and quality assurance surveillance plans; provide performance incentives (positive or negative) where appropriate; and specify procedures for award or incentive fee reduction when work activities are not performed or do not meet contract requirements.

* * * * *

970.1170-1 [Amended]

■ 219. Section 970.1170-1 is amended by removing “NNSA” and adding in its place “the National Nuclear Security Administration (NNSA) Senior”.

970.1170-2 [Amended]

■ 220. Section 970.1170-2 is amended by removing “48 CFR”.

970.1504-1-2 [Amended]

■ 221. Section 970.1504-1-2 is amended by removing the “,” in paragraph (e)(2) introductory text and adding in its place “—”; and removing “48 CFR” in paragraphs (f) and (h).

970.1504-1-3 [Amended]

■ 222. Section 970.1504-1-3 is amended by:

■ a. Removing, in paragraph (b)(1), “48 CFR 970.31” and adding in its place “subpart 970.31”;

■ b. Removing “48 CFR” in paragraph (b)(2) in three places; and

■ c. Removing “48 CFR” in paragraphs (c)(1), (c)(2), and (c)(3), both occurrences.

970.1504-1-4 [Amended]

■ 223. Section 970.1504-1-4 is amended by adding “subpart” after “48 CFR” in paragraphs (a) in the first sentence, and (e) in the second sentence and removing “48 CFR” in paragraphs (b), in the second sentence, (c)(3), and (f).

970.1504-1-5 [Amended]

■ 224. Section 970.1504-1-5 is amended by removing “48 CFR” in paragraph (b) and removing the “:” in paragraphs (b) introductory text and (b)(3) introductory text and adding in its place “—”.

970.1504-1-6 [Amended]

■ 225. Section 970.1504-1-6 is amended by removing the “:” in paragraph (b) introductory text and adding in its place “—”.

970.1504-1-7 [Amended]

■ 226. Section 970.1504-1-7 is amended by:

■ a. Removing the “:” in paragraph (b) introductory text and adding in its place “—”;

■ b. Removing “48 CFR” in paragraph (b)(4);

■ c. Removing “48 CFR 91504-1-5” in paragraph (d) in the third sentence and adding in its place “915.404-4-71-5”; and

■ d. Removing “48 CFR” in paragraphs (d), in the last sentence, and (e), in two places.

970.1504-1-8 [Amended]

■ 227. Section 970.1504-1-8 paragraphs (a) and (c) are amended by removing “48 CFR”.

970.1504-1-9 [Amended]

■ 228. Section 970.1504-1-9 is amended by removing the “:” in paragraphs (e)(1) introductory text, (e)(2) introductory text, and (e)(3)

introductory text, and adding in its place “—”; and removing “48 CFR” in paragraph (h).

970.1504–1–10 [Amended]

■ 229. Section 970.1504–1–10 is amended by removing “48 CFR” in two places.

970.1504–1–11 [Amended]

■ 230. Section 970.1504–1–11 is amended by removing “48 CFR” before “970”.

970.1504–2 [Amended]

■ 231. Section 970.1504–2 is amended in paragraph (a)(4) by removing “obligational” and adding in its place, “obligation”, and in paragraph (c) by removing “48 CFR” in both places.

970.1504–5 [Amended]

■ 232. Section 970.1504–5 is amended by removing “48 CFR” in paragraphs (a) introductory text, (b)(1), (b)(2), (c), and (d).

970.1707–2 [Amended]

■ 233. Section 970.1707–2 is amended by removing the “:” in the introductory text and adding in its place “—”; and removing the “,” after “and” in paragraph (d).

970.1707–3 [Amended]

■ 234. Section 970.1707–3 is amended by:
 ■ a. Removing the “:” in paragraph (b) introductory text and adding in its place “—”;
 ■ b. Removing the “,” after “and” in paragraph (b)(3);

■ c. Removing the “:” in paragraph (c) introductory text and adding in its place “—”; and
 ■ d. Removing the “,” after “; and” in paragraph (c)(1) at the end of the paragraph.

970.2200 [Amended]

■ 235. Section 970.2200 is amended by adding “(DOE)” after “Energy”.

970.2201–2–2 [Amended]

■ 236. Section 970.2201–2–2 is amended by removing “48 CFR”.

970.2204–1–1 [Amended]

■ 237. Section 970.2204–1–1 is amended by:
 ■ a. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

Section	Remove	Add
970.2204–1–1(a) introductory text and (a)(2)	“noncovered”	“non-covered”.
970.2204–1–1 (c)(1) introductory text, (c)(2)(i), (c)(4), and (c)(5)	“noncovered”	“non-covered”.
970.2204–1–1 (d)	“noncovered”	“non-covered”.

And

■ b. Removing in paragraphs (c)(1)(i), (c)(1)(ii) and (c)(1)(iii), the “;” and adding in its place a “.”.

970.2210 [Amended]

■ 238. Section 970.2210 is amended by removing “48 CFR” and adding “(x)” after “970.5244–1”.

970.2270 [Amended]

■ 239. Section 970.2270(b)(2) introductory text is amended by removing the “:” at the end of the paragraph and adding in its place “—”.

■ 240. The heading for subpart 970.23 is revised to read as follows:

Subpart 970.23—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety and Drug-Free Work Place

970.2303–1 [Redesignated as 970.2303–2–70]

■ 241. Redesignate 970.2303–1 as 970.2303–2–70.

■ 242. Amend newly designated 970.2303–2–70 by adding “970.5215–3,” before “Conditional” in the first sentence of paragraph (c)(1); and by removing “Environment, Safety and Health” from paragraph (c)(2)(ii) and adding in its place “Health, Safety and Security”.

970.2303–2 [Redesignated as 970.2303–3]

■ 243. Redesignate 970.2303–2 as 970.2303–3.

■ 244. Amend newly designated 970.2303–3(a) introductory text by removing the “:” and adding in its place “—”.

■ 245. The section heading for 970.2304 is revised to read as follows:

970.2304 Use of recovered materials and biobased products.

■ 246. Section 970.2304–2 is amended by removing “48 CFR (DEAR)” in the first and second sentences and removing “:” at the end of the introductory text and adding in its place “—”.

970.2305–4 [Amended]

■ 247. Section 970.2305–4(a) is amended by removing “48 CFR”.

970.2306 [Amended]

■ 248. Section 970.2306 is amended by removing “48 CFR” in paragraph (a) before “970.5223–4” and removing “48 CFR” in paragraph (b)(2).

970.2803–1 [Amended]

■ 249. Section 970.2803–1 is amended by:

- a. Removing “extrastatutory” in paragraph (a)(2)(iii), and adding in its place “extra-statutory”;
- b. Removing “Office of Contract and Resource Management” in paragraphs (b)(1) introductory text, (b)(2)(iv), and

(b)(3) and adding in its place, “Office of Resource Management”; and
 ■ c. Removing the “:” in paragraph (b)(2) introductory text and adding in its place “—”.

970.2803–2 [Amended]

■ 250. Section 970.2803–2 is amended by removing “48 CFR”.

970.2902–1 [Redesignated as 970.2902–3]

■ 251. Redesignate 970.2902–1 as 970.2902–3 and revise the section heading to read as follows:

970.2902–1 Other Federal tax exemptions.

* * * * *

■ 252. Amend newly designated section 970.2902–3 by removing the first “DOE” from paragraph (a) and adding in its place “the Department of Energy (DOE)”; and by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) respectively.

970.2903–1 [Redesignated as 970.2903–2]

■ 253. Redesignate section 970.2903–1 as 970.2903–2 and revise the section heading to read as follows:

970.2903–2 Application of State and local taxes to the Government.

* * * * *

■ 254. Amend newly designated 970.2903–2 by removing the “:” from the introductory text and adding in its place “—”; by adding “and” after “exemptions;” in paragraph (a); and by

removing the “:” and adding in its place “—” in paragraph (b) introductory text.

■ 255. Section 970.2904–1 is amended by revising paragraph (a) and removing “48 CFR” in paragraph (b).

The revision reads as follows:

970.2904–1 Management and operating contracts.

(a) Pursuant to 48 CFR 29.401–4(b), the clause at 48 CFR 52.229–10, State of New Mexico Gross Receipts and Compensating Tax, is applicable to management and operating contracts that meet the three conditions stated. The contracting officer shall modify paragraph (b) of the clause to replace the phrase “Allowable Cost and Payment” with the phrase “Payments and Advances.”

* * * * *

■ 256. The heading for subpart 970.30 is revised to read as follows:

970.30 Cost Accounting Standards Administration.

■ 257. Section 970.3002–1 is amended by revising the heading to read as follows:

970.3002–1 CAS applicability.

* * * * *

■ 258. Section 970.3101–9 is amended by revising the heading to read as follows:

970.3101–9 Advance agreements.

* * * * *

■ 259. Section 970.3101–10 is amended by revising the heading and removing “48 CFR” in paragraphs (a) and (b).

The revision reads as follows:

970.3101–10 Indirect cost rate certification and penalties on unallowable costs.

* * * * *

970.3102–3–70 [Amended]

■ 260. Section 970.3102–3–70 is amended by removing “48 CFR” in paragraphs (a) introductory text and (a)(3)(i) and removing the “:” in paragraph (a)(3) introductory text and adding in its place “—”.

■ 261. Section 970.3102–05 is amended by revising the heading to read as follows:

970.3102–05 Selected costs.

* * * * *

■ 262. Section 970.3102–05–4 is amended by revising the heading and removing “48 CFR” from paragraph (d).

The revision reads as follows:

970.3102–05–4 Bonding costs.

* * * * *

■ 263. Section 970.3102–05–6 is amended by revising the heading to read as follows:

970.3102–05–6 Compensation for personal services.

* * * * *

■ 264. Section 970.3102–05–18 is amended by revising the heading to read as follows:

970.3102–05–18 Independent research and development and bid and proposal costs.

* * * * *

970.3102–05–19 [Amended]

■ 265. Section 970.3102–05–19 is amended by removing “48 CFR”.

■ 266. Section 970.3102–05–22 is amended by revising the heading to read as follows:

970.3102–05–22 Lobbying and political activity costs.

* * * * *

■ 267. Section 970.3102–05–28 is amended by revising the heading to read as follows:

970.3102–05–28 Other business expenses.

* * * * *

970.3102–05–30 [Redesignated as 970.3102–05–30–70]

■ 268. Redesignate 970.3102–05–30 as 970.3102–05–30–70.

■ 269. Amend newly designated 970.3102–05–30–70(b) introductory text by removing the “:” and adding in its place “—”.

■ 270. Add a new section 970.3102–05–30 to subpart 970.31 to read as follows:

970.3102–05–30 Patent costs.

■ 271. Section 970.3102–05–33 is amended by revising the heading to read as follows:

970.3102–05–33 Professional and consultant service costs.

* * * * *

■ 272. Section 970.3102–05–46 is amended by revising paragraph (a)(5) to read as follows:

970.3102–05–46 Travel costs.

(a) * * *

(5) An advance agreement (see 48 CFR 31.109 and 970.3101–9) with respect to compliance with paragraphs (a)(2) and (a)(3) of this subsection may be useful and desirable.

* * * * *

■ 273. Section 970.3102–05–47 is amended by revising the heading to read as follows:

970.3102–05–47 Costs related to legal and other proceedings.

* * * * *

970.3102–05–70 [Amended]

■ 274. Section 970.3102–05–70 is amended by removing “48 CFR”.

970.3170 [Amended]

■ 275. Section 970.3170 is amended by removing “48 CFR” from the introductory text.

970.3200 [Amended]

■ 276. Section 970.3200 is amended by removing “DOE” and adding in its place “the Department of Energy (DOE)”.

970.3200–1–1 [Amended]

■ 277. Section 970.3200–1–1 is amended by removing “48 CFR”.

970.3204–1 [Amended]

■ 278. Section 970.3204–1 is amended by adding “for Non-Commercial Items” after “Advance Payments” in paragraph (a) and removing the “:” in paragraph (c) introductory text and adding in its place “—”.

970.3270 [Amended]

■ 279. Section 970.3270 is amended by removing “48 CFR” before “970” in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (b)(1), and (b)(2) and adding “— Modifications” after “Data” in paragraph (a)(2) in the second sentence.

970.3400–1 [Amended]

■ 280. Section 970.3400–1 is amended by removing “DOE” (first occurrence) and adding in its place “the Department of Energy (DOE)”.

970.3500 [Amended]

■ 281. Section 970.3500 is amended by adding “(DOE)” after “Energy”.

970.3501–1 [Amended]

■ 282. Section 970.3501–1 is amended by removing “48 CFR” in paragraph (c)(2); and removing “nonsponsor” in paragraph (b)(3), and adding in its place, “non-sponsor”.

970.3501–2 [Amended]

■ 283. Section 970.3501–2 is amended by removing “nonsponsor” and adding in its place, “non-sponsor”.

970.3501–3 [Amended]

■ 284. Section 970.3501–3 is amended by removing “48 CFR 970.1702–1(b)” in paragraph (b) introductory text and adding in its place “970.1706–1(b).”

970.3501–4 [Amended]

■ 285. Section 970.3501–4 is amended by removing “48 CFR”.

970.3605-1 [Amended]

■ 286. Section 970.3605-1 is amended by removing “in” before “48 CFR” and adding in its place “at”.

970.3605-2 [Amended]

■ 287. Section 970.3605-2 is amended by removing “in 48 CFR” and adding in its place “at”.

970.3770-1 [Amended]

■ 288. Section 970.3770-1 is amended by removing the first “DOE” and adding in its place “the Department of Energy (DOE)”.

970.4102-1 [Amended]

■ 289. Section 970.4102-1 is amended by:

- a. Removing the first “DOE” in paragraph (a) and adding in its place “the Department of Energy (DOE)”;
- b. Removing “directives in subseries 4540 (Public Services).” in paragraph (b) in the second sentence and adding in its place “Order 430.2, or its successor.”; and
- c. Revising paragraph (c) to read as follows:

970.4102-1 Policy.

* * * * *

(c) The requirements of 48 CFR part 41, this section, and DOE Order 430.2, or its successor, shall be applied to a subcontract level acquisition for furnishing utility services to a facility owned or leased by DOE.

970.4207-03-02 [Amended]

■ 290. Section 970.4207-03-02 is amended by:

- a. Removing “48 CFR” wherever it appears in paragraph (a) introductory text;
- b. Removing the “,” in paragraph (a)(2) introductory text and adding in its place “—”;
- c. Removing “Department’s” in paragraph (a)(2)(ii) and adding in its place “Civilian”; and
- d. Removing “was” in paragraph (a)(2)(iii), and adding in its place “Was”.

970.4207-03-70 [Amended]

■ 291. Section 970.4207-03-70 is amended by removing “48 CFR”.

■ 292. Section 970.4207-05-01 is amended by revising the section heading and removing the “,” in paragraph (b)(4) introductory text and adding in its place “—”.

The revision reads as follows:

970.4207-05-01 Contracting officer determination procedure.

* * * * *

970.4302-1 [Amended]

■ 293. Section 970.4302-1 is amended by removing “48 CFR”.

970.4401-1 [Amended]

■ 294. Section 970.4401-1 is amended by adding “(DOE)” after “Energy” in paragraph (a); and removing the “:” in paragraphs (b) introductory text and (b)(4) introductory text and adding in its place “—”.

970.4401-2 [Amended]

■ 295. Section 970.4401-2 is amended by removing the “:” in paragraph (a) introductory text and adding in its place “—”.

970.4401-3 [Amended]

■ 296. Section 970.4401-3 is amended by removing the “:” in paragraph (a)(1) introductory text and adding in its place “—”.

970.4402-2 [Amended]

■ 297. Section 970.4402-2 is amended by removing the “:” in paragraphs (d) introductory text and (d)(2) introductory text and adding in its place “—”.

970.4402-3 [Amended]

■ 298. Section 970.4402-3 is amended by:

- a. Removing the “:” in paragraphs (a) introductory text, (b) introductory text, and (c)(1) introductory text and adding in its place “—”;
- b. Removing “therefor” in paragraph (a)(3) in the second sentence, and adding in its place “therefore”;
- c. Removing the “,” in paragraph (b)(1) and adding in its place a “;”;
- d. Removing “48 CFR 970.3102-3-21” in paragraph (c)(1)(i) and adding in its place “48 CFR 31.205-26(e);”;
- e. Removing “48 CFR” the second occurrence in paragraph (c)(1)(ii).

970.4402-4 [Amended]

■ 299. Section 970.4402-4 is amended by removing the “:” in paragraph (a) introductory text and adding in its place “—”.

■ 300. The heading to subpart 970.50 is revised to read as follows:

Subpart 970.50—Extraordinary Contractual Actions and the Safety Act**970.5004 [Redesignated as 970.5001]**

■ 301. Redesignate section 970.5004 as 970.5001.

970.5004-1 [Redesignated as 970.5001-4]

■ 302. Redesignate section 970.5004-1 as 970.5001-4.

■ 303. Amend newly designated 970.5001-4 by adding “Alternate I,” after “85-804.”

970.5070-1 [Amended]

■ 304. Section 970.5070-1 is amended by removing “DOE” from paragraph (a) and adding in its place “the Department of Energy (DOE)”;

970.5070-2 [Amended]

■ 305. Section 970.5070-2 is amended by adding a “—” after “be” at the end of the introductory text; and removing the “,” in paragraph (a) and adding in its place a “;”.

970.5070-3 [Amended]

■ 306. Section 970.5070-3 is amended in paragraph (a), in two places, and in paragraph (b) by removing “48 CFR”.

970.5203-1 [Amended]

■ 307. Section 970.5203-1 is amended by removing “48 CFR” in both places in the introductory text, and in clause paragraph (a)(4), in the last sentence, by adding “48 CFR” before “970.5232-3”.

970.5203-2 [Amended]

■ 308. Section 970.5203-2 introductory text is amended by removing “48 CFR”.

970.5203-3 [Amended]

■ 309. Section 970.5203-3 is amended by removing “48 CFR” in the introductory text.

970.5204-1 [Amended]

■ 310. Section 970.5204-1 introductory text is amended by removing “48 CFR” in three places.

970.5204-2 [Amended]

■ 311. Section 970.5204-2 introductory text is amended by removing “48 CFR”.

970.5204-3 [Amended]

■ 312. Section 970.5204-3 introductory text is amended by removing “48 CFR”.

970.5208-1 [Amended]

■ 313. Section 970.5208-1 introductory text is amended by removing “48 CFR”.

970.5209-1 [Amended]

■ 314. Section 970.5209-1 introductory text is amended by removing “48 CFR”.

970.5215-1 [Amended]

■ 315. Section 970.5215-1 is amended by:

- a. Removing “48 CFR” in the introductory text;
- b. Removing the “:” at the end of clause paragraphs (d)(1) introductory text and (d)(3) introductory text and adding in its place “—”;
- c. Removing in paragraph (d)(1)(i), “prior” and adding in its place, “Prior”;

- d. Removing in paragraph (d)(1)(ii) “not” and adding in its place, “Not”;
- e. Removing in paragraphs (d)(3)(i) and (d)(3)(ii), “of such” and adding in its place, “Of such”;
- f. Removing in paragraph (d)(3)(iii) “if” and adding in its place, “If”; and
- g. Removing “48 CFR” in the introductory text for Alternate paragraphs I, II, III and IV.

970.5215–3 [Amended]

■ 316. Section 970.5215–3 is amended by:

- a. Revising the date of the clause and the two alternates to read as set forth below;
- b. Removing “48 CFR 970.1504–5(c)(1)” in the introductory text and adding in its place “970.1504–5(b)(1)”;
- c. Removing “48 CFR 970.1504–5(c)(2)” in the introductory text of Alternate I and adding in its place “970.1504–5(b)(2)”;
- d. Removing “48 CFR 970.1504–5(c)(3)” in the introductory text of Alternate II and adding in its place “970.1504–5(b)(3)”;
- e. Removing the “:” in clause paragraphs (a)(1) introductory text, (b)(4)(v) introductory text and Alternate II (e)(1) introductory text and adding in its place “—”;
- f. Removing “232.1A” in clause paragraph (c)(3)(i) and adding in its place “231.1–2”; and
- g. Removing “in contracts awarded on a cost plus award fee, incentive fee or multiple fee basis” in Alternate II introductory text.

The revision reads as follows:

970.5215–3 Conditional payment of fee, profit, and other incentives—facility management contracts.

* * * * *

CONDITIONAL PAYMENT OF FEE, PROFIT, AND OTHER INCENTIVES—FACILITY MANAGEMENT CONTRACTS (AUG 2009)

* * * * *

Alternate I (AUG 2009)

* * * * *

Alternate II (AUG 2009)

* * * * *

970.5215–4 [Amended]

■ 317. Section 970.5215–4 is amended by:

- a. Revising the date of the clause to read as set forth below;
- b. Removing “48 CFR 970.1504–5(d)” from the introductory text and adding in its place, “970.1504–5(c)”;
- c. Removing the “:” in paragraph (b), at the end of the introductory text of the *Shared Net Savings* definition, and adding in its place “—”;

- d. Removing the “a” at the beginning of paragraphs (b)(1) and (b)(2) of the *Shared Net Savings* definition and adding in its place “A”;
- e. Removing the “:” in paragraphs (c)(2) introductory text, (d) introductory text, and (e) introductory text and adding in its place “—”; and
- f. Removing “rewardable” and “rewarded” in paragraph (j) and adding in their places “awardable” and “considered”, respectively.

The revision reads as follows:

970.5215–4 Cost reduction.

* * * * *

COST REDUCTION (AUG 2009)

* * * * *

970.5215–5 [Amended]

■ 318. Section 970.5215–5 introductory text is amended by removing “48 CFR 970.1504–5(e)”, and adding in its place “970.1504–5(d)”.

970.5217–1 [Amended]

■ 319. Section 970.5217–1 is amended by:

- a. Removing “48 CFR (DEAR)” in the introductory text;
- b. Removing the “:” in clause paragraphs (c) introductory text and (c)(9) introductory text and adding in its place “—”; and
- c. Adding “(End of clause)” after the clause 970.5217–1.

970.5222–1 [Amended]

■ 320. Section 970.5222–1 introductory text is amended by removing “48 CFR”.

970.5222–2 [Amended]

■ 321. Section 970.5222–2 is amended by removing “48 CFR” in the introductory text; and removing the “:” in paragraphs (c) introductory text, and (c)(5) introductory text and adding in their places “—”.

970.5223–1 [Amended]

■ 322. Section 970.5223–1 is amended by removing “48 CFR 970.2303–2(a)” in the introductory text and adding in its place “970.2303–3(b)”;

and removing the “:” in clause paragraph (c) introductory text and adding in its place “—”.

■ 323. The section heading for 970.5223–3 is revised to read as follows:

970.5223–3 Agreement regarding Workplace Substance Abuse Programs at DOE sites.

* * * * *

970.5223–4 [Amended]

■ 324. Section 970.5223–4 is amended by removing “48 CFR” in the

introductory text; and removing “prime contractor” in clause paragraph (c)(2), two occurrences and adding in its place, “Prime Contractor”.

970.5228–1 [Amended]

■ 325. Section 970.5228–1 is amended by:

- a. Revising the date of clause to read as set forth below;
- b. Removing “48 CFR” in the introductory text.
- c. Removing the “,” in clause paragraphs (e)(1), (h)(1) and (h)(2) and adding in its place a “;”;
- d. Removing “unreimbursable” in clause paragraph (k) and adding in its place “non-reimbursable”.

The revision reads as follows:

970.5228–1 Insurance—litigation and claims.

* * * * *

INSURANCE—LITIGATION AND CLAIMS (AUG 2009)

* * * * *

970.5229–1 [Amended]

■ 326. Section 970.5229–1 is amended by removing “48 CFR” in the introductory text; and removing “Insurance-Litigation” in clause paragraph (b), last sentence, and adding in its place, “Insurance—Litigation”.

970.5231–4 [Amended]

■ 327. Section 970.5231–4 introductory text and the Alternates I and II introductory text are amended by removing “48 CFR”.

■ 328. The section heading for 970.5232–1 is revised and in the introductory text by removing “48 CFR”.

The revision reads as follows:

970.5232–1 Reduction or suspension of advance, partial, or progress payments.

* * * * *

970.5232–2 [Amended]

■ 329. Section 970.5232–2 is amended by:

- a. Removing “48 CFR” in Alternate I and in the introductory text of Alternates II, III, and IV;
- b. Removing “therefor” in clause paragraphs (b) in the second and third sentences, and in clause paragraph (i) in the second sentence, and add in its place, “therefore”;
- c. Removing the “:” in clause paragraphs (e) introductory text, (e)(2) introductory text, and (e)(2)(iv) and adding in its place “—”;
- d. Removing the “,” in clause paragraphs (e)(1), and (e)(3)(i) and adding in its place a “;”;

- e. Removing the “,” in clause paragraph (e)(3)(ii);
- f. Revising the last sentence of paragraph (e)(2)(iv)(B);
- g. Removing the “,” in clause paragraph (e)(3) introductory text and adding in its place “—”; and
- h. Adding “(End of clause)” after clause 970.5232–2, and before Alternate I.

The revision reads as follows:

970.5232–2 Payments and advances.

* * * * *

- (e) * * *
- (2) * * *
- (iv) * * *

(B) * * * In addition, the contractor shall provide prompt notice to the contracting officer of all potential claims under this clause, whether in litigation or not (see Contract Clause, 48 CFR 970.5228–1, Insurance—Litigation and Claims);

* * * * *

970.5232–3 [Amended]

■ 330. Section 970.5232–3 is amended by:

- a. Revising the date of the clause to read as set forth below;
- b. Removing “48 CFR 970.3270(a)(2)”, in the introductory text and adding in its place, “970.3270(a)(2)”;
- c. Removing in clause paragraph (d), last sentence, “ownership of records” and adding in its place, “Ownership of Records”;
- d. Removing “General Accounting” in clause paragraph (h)(3) introductory text and adding in its place “Government Accountability”;
- e. Removing the “:” at the end of clause paragraph (i)(1) introductory text and adding in its place “—”;
- f. Removing in the last sentence of clause paragraph (j), “970.5242–1” and adding in its place “48 CFR 970.5242–1” and removing “unallowable costs” and adding in its place “Unallowable costs”; and
- g. Removing in Alternate I, introductory paragraph, “48 CFR 970.3270(a)(2)(i),” and adding in its place, “970.3270(a)(2),” and adding “—Modifications” after “Data”.

The revision reads as follows:

970.5232–3 Accounts, records, and inspection.

* * * * *

ACCOUNTS, RECORDS AND INSPECTION (AUG 2009)

* * * * *

970.5232–4 [Amended]

■ 331. Section 970.5232–4 is amended by:

- a. Removing in the introductory text, “48 CFR 970.3270(a)(3),” and adding in its place, “970.3270(a)(3),”;
- b. Removing the “:” at the end of paragraph (b) introductory text and adding in its place “—”;
- c. Removing “contract,” at the end of clause paragraph (b)(1), and adding in its place “contract;”;
- d. Removing “agrees” at the end of clause paragraph (d) introductory text and adding in its place, “agrees—”;
- e. Removing “directives,” in clause paragraphs (d)(1) and (d)(2) and adding in its place “directives;”;
- f. Removing “to” at the beginning of clause paragraphs (d)(1), (d)(2), and (d)(3), and adding in its place, “To”; and
- g. Removing in Alternate I, “48 CFR 970.3270(a)(3)(i),” and adding in its place, “970.3270(a)(3)”.

■ 332. The sections 970.5232–5, 970.5232–6, 970.5232–7 and 970.5232–8 are amended by removing in the introductory text, “48 CFR”.

■ 333. The following sections are amended by adding at the end of each clause, “(End of clause)”, 970.5217–1, 970.5232–2, 970.5232–5, 970.5232–6, 970.5232–7, and 970.5232–8.

970.5235–1 [Amended]

■ 334. Section 970.5235–1 is amended by removing “48 CFR 970.3501–4,” in the introductory text, and adding in its place, “970.3501–4,” and adding “(DOE)” after the first use of “Energy” in clause paragraph (a).

970.5236–1 [Amended]

■ 335. Section 970.5236–1 introductory text, is amended by removing “in 48 CFR 970.3605–2,” and adding in its place “at 970.3605–2,”.

■ 336. Section 970.5242–1 is revised to read as follows:

970.5242–1 Penalties for unallowable costs.

As prescribed in 970.4207–03–70, insert the following clause:

PENALTIES FOR UNALLOWABLE COSTS (AUG 2009)

(a) Contractors which include unallowable cost in a submission for settlement for cost incurred, may be subject to penalties.

(b) If, during the review of a submission for settlement of cost incurred, the Contracting Officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the Contracting Officer shall assess a penalty.

(c) Unallowable costs are either expressly unallowable or determined unallowable.

(1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law,

regulation, or this contract, is specifically named and stated to be unallowable.

(2) A cost determined unallowable is one which, for that contractor—

(i) Was subject to a contracting officer’s final decision and not appealed;

(ii) The Civilian Board of Contract Appeals or a court has previously ruled as unallowable; or

(iii) Was mutually agreed to be unallowable.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its submission for settlement of cost incurred is—

(1) Expressly unallowable, then the Contracting Officer shall assess a penalty in an amount equal to the disallowed cost allocated to this contract plus interest on the paid portion of the disallowed cost. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92–41 (85 Stat. 97); or

(2) Determined unallowable, then the Contracting Officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(e) The Contracting Officer may waive the penalty provisions when—

(1) The Contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;

(2) The amount of the unallowable costs allocated to covered contracts is \$10,000 or less; or

(3) The Contractor demonstrates to the Contracting Officer’s satisfaction that—

(i) It has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the Contractor’s submission for settlement of costs; and

(ii) The unallowable costs subject to the penalty were inadvertently incorporated into the submission.

(End of clause)

970.5243–1 [Amended]

■ 337. Section 970.5243–1 introductory text is amended by removing “48 CFR”.

■ 338. Section 970.5244–1 is revised to read as follows:

970.5244–1 Contractor purchasing system.

As prescribed in 970.4403 insert the following clause:

CONTRACTOR PURCHASING SYSTEM (AUG 2009)

(a) *General.* The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause and 48 CFR subpart 970.44. The Contractor’s purchasing system and methods shall be fully documented, consistently applied, and acceptable to the Department of Energy (DOE) in accordance with 48 CFR 970.4401–1. The Contractor shall maintain

file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the Contractor submit for approval any or all purchases under this contract. The Contractor shall not purchase any item or service, the purchase of which is expressly prohibited by the written direction of DOE, and shall use such special and directed sources as may be expressly required by the DOE Contracting Officer. DOE will conduct periodic appraisals of the Contractor's management of all facets of the purchasing function, including the Contractor's compliance with its approved system and methods. Such appraisals will be performed through the conduct of Contractor Purchasing System Reviews in accordance with 48 CFR subpart 44.3, or, when approved by the Contracting Officer, through the Contractor's participation in the conduct of the Balanced Scorecard performance measurement and performance management system. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (y) of this clause.

(b) *Acquisition of utility services.* Utility services shall be acquired in accordance with the requirements of 48 CFR subpart 970.41.

(c) *Acquisition of Real Property.* Real property shall be acquired in accordance with 48 CFR subpart 917.74.

(d) *Advance Notice of Proposed Subcontract Awards.* Advance notice shall be provided in accordance with 48 CFR 970.4401-3.

(e) *Audit of Subcontractors.* (1) The Contractor shall provide for—

(i) Periodic post-award audit of cost-reimbursement subcontractors at all tiers; and

(ii) Audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.

(2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the contractor or next higher-tier subcontractor. The Contractor shall provide, in appropriate cases, for the timely involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability.

(3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE Contracting Officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the Contractor.

(4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of 48 CFR Part 31, appropriate for the type of

organization to which the subcontract is to be awarded, as supplemented by 48 CFR part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 48 CFR 970.4402-3 and 48 CFR 31.205-26(e).

(f) *Bonds and Insurance.* (1) The Contractor shall require performance bonds in penal amounts as set forth in 48 CFR 28.102-2(a) for all fixed-priced and unit-priced construction subcontracts in excess of \$100,000. The Contractor shall consider the use of performance bonds in fixed-price non-construction subcontracts, where appropriate.

(2) For fixed-price, unit-priced and cost reimbursement construction subcontracts in excess of \$100,000, a payment bond shall be obtained on Standard Form 25A modified to name the Contractor as well as the United States of America as obligees. The penal amounts shall be determined in accordance with 48 CFR 28.102-2(b).

(3) For fixed-price, unit-priced and cost-reimbursement construction subcontracts greater than \$25,000, but not greater than \$100,000, the Contractor shall select two or more of the payment protections at 48 CFR 28.102-1(b), giving particular consideration to the inclusion of an irrevocable letter of credit as one of the selected alternatives.

(4) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.

(g) *Buy American.* The Contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR 52.225-1 and 48 CFR 52.225-9. The Contractor shall forward determinations of non-availability of individual items to the DOE Contracting Officer for approval. Items in excess of \$100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the Contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of non-availability for individual items valued at \$100,000 or less.

(h) *Construction and Architect-Engineer Subcontracts.* (1) *Independent Estimates.* A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) *Specifications.* Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."

(3) *Prevention of Conflict of Interest.* (i) The Contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a "turnkey" subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The Contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) *Contractor-Affiliated Sources.* Equipment, materials, supplies, or services from a contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR 970.4402-3.

(j) *Contractor-Subcontractor Relationship.* The obligations of the Contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, 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). Subcontracts shall be in the name of the Contractor, and shall not bind or purport to bind the Government.

(k) *Government Property.* Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of 48 CFR part 45, 48 CFR part 945, the Federal Property Management Regulations, 41 CFR chapter 101, the DOE Property Management Regulations, 41 CFR chapter 109, and their contracts.

(l) *Indemnification.* Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Senior Procurement Executive.

(m) *Leasing of Motor Vehicles.* Contractors shall comply with 48 CFR subpart 8.11 and 48 CFR subpart 908.11.

(n) [Reserved]

(o) *Management, Acquisition and Use of Information Resources.* Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.

(p) *Priorities, Allocations and Allotments.* Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.

(q) *Purchase of Special Items.* Purchase of the following items shall be in accordance with the following provisions of 48 CFR subpart 8.5, 48 CFR subpart 908.71, Federal Management Regulation 41 CFR part 102, and the Federal Property Management Regulation 41 CFR chapter 101:

- (1) Motor vehicles—48 CFR 908.7101
- (2) Aircraft—48 CFR 908.7102
- (3) Security Cabinets—48 CFR 908.7106
- (4) Alcohol—48 CFR 908.7107
- (5) Helium—48 CFR subpart 8.5

- (6) Fuels and packaged petroleum products—48 CFR 908.7109
- (7) Coal—48 CFR 908.7110
- (8) Arms and Ammunition—48 CFR 908.7111
- (9) Heavy Water—48 CFR 908.7121(a)
- (10) Precious Metals—48 CFR 908.7121(b)
- (11) Lithium—48 CFR 908.7121(c)
- (12) Products and services of the blind and severely handicapped—41 CFR 101-26.701

(r) *Purchase versus Lease Determinations.* Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease versus purchase determinations. Such determinations shall be made—

- (1) At time of original acquisition;
- (2) When lease renewals are being considered; and
- (3) At other times as circumstances warrant.

(s) *Quality Assurance.* Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.

(t) *Setoff of Assigned Subcontract Proceeds.* Where a subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of setoff in accordance with 48 CFR 932.803.

(u) *Strategic and Critical Materials.* The Contractor may use strategic and critical materials in the National Defense Stockpile.

(v) *Termination.* When subcontracts are terminated as a result of the termination of all or a portion of this contract, the Contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in 48 CFR subparts 49.1, 49.2, and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the Contractor shall settle such subcontracts in general conformity with the policies and principles in 48 CFR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the Contracting Officer.

(w) *Unclassified Controlled Nuclear Information.* Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR part 1017.

(x) *Subcontract Flowdown Requirements.* In addition to terms and conditions that are included in the prime contract which direct application of such terms and conditions in appropriate subcontracts, the Contractor shall include the following clauses in subcontracts, as applicable:

- (1) Davis-Bacon clauses prescribed in 48 CFR 22.407.
- (2) Foreign Travel clause prescribed in 48 CFR 952.247-70.
- (3) Counterintelligence clause prescribed in 48 CFR 970.0404-4(a).
- (4) Service Contract Act clauses prescribed in 48 CFR 22.1006.
- (5) State and local taxes clause prescribed in 48 CFR 970.2904-1.
- (6) Cost or pricing data clauses prescribed in 48 CFR 970.1504-3-1(b).

(y) *Legal Services.* Contractor purchases of litigation and other legal services are subject to the requirements in 10 CFR part 719 and the requirements of this clause.

(End of Clause)

970.5245-1 [Amended]

- 339. Section 970.5245-1 is amended by:
 - a. Removing in the introductory text and Alternate I, “48 CFR”;
 - b. Removing “regulations” in clause paragraphs (e)(2), three occurrences, and (i)(1)(i), second sentence, two occurrences, and adding in its place “Regulations”;
 - c. Adding “(DOE)” after “Energy” in clause paragraph (e)(2); and
 - d. Removing the “:” in clause paragraphs (f)(1)(i) introductory text, (g) introductory text, (i)(1)(ii) introductory text, (j) introductory text, and Alternate I (j) introductory text and adding in its place “—”.

PARTS 901, 903, 906, 915, 931, 933, 949, 951, AND 970—[AMENDED]

- 340. The sections listed below are amended by adding the word “Senior” before the word “Procurement” in the following places:
 - a. Section 901.102 in the first sentence;
 - b. Section 903.203 in the second sentence;
 - c. Section 903.603(a);

- d. Section 906.202(b)(1);
- e. Section 906.304(c)(3);
- f. Section 915.404-4-71-2;
- g. Section 915.404-4-71-3(d), two places;
- h. Section 915.404-4-72 paragraphs (a) introductory text and (b);
- i. Section 931.205-32(b)(1) second sentence;
- j. Section 933.103 in paragraph (f) and paragraph (i)(1) introductory text;
- k. Section 933.103(k) in the third sentence;
- l. Section 933.104 in paragraphs (b), (c), and (g)(1), in two places;
- m. Section 949.111(c);
- n. Section 951.103(b);
- o. Section 970.0404-2 in paragraph (c) in the first sentence;
- p. Section 970.1170-2;
- q. Section 970.1504-1-1;
- r. Section 970.1504-1-2 in paragraphs (c), (d), (f), (g), and (i)(1);
- s. Section 970.1504-1-3(b)(1) in the last sentence;
- t. Section 970.1504-1-3 in paragraphs (c)(3) and (4);
- u. Section 970.1504-1-4 in paragraphs (b), (c)(2), and (c)(3);
- v. Section 970.1504-1-7 in paragraph (e);
- w. 970.1504-1-9(e) in paragraphs (e)(1)(v), (e)(2)(vii), (e)(3)(vi), (f) (in two places), and (i);
- x. Section 970.1504-1-10;
- y. Section 970.1504-5 in paragraphs (a) introductory text, (b)(1), (c), and (d);
- z. Section 970.1706-1 in paragraphs (b) and (c);
- aa. Section 970.2303-1 in paragraph (c)(1) in the first sentence;
- bb. Section 970.3101-00-70(a); and
- cc. Clause 970.5232-5 in paragraph (a).

PARTS 952 AND 970—[AMENDED]

- 341. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

Section	Remove	Add
952.203-70(a) and (b)	“contractor”	“Contractor”
952.204-70 in eight places	“contractor”	“Contractor”
952.204-71(a) in five places	“contractor”	“Contractor”
952.204-72(a) two places, and (b)	“contractor”	“Contractor”
952.204-73(f) in two places	“contractor”	“Contractor”
952.204-76(a)(1) in three places, (a)(2) in two places, (a)(3), (b)(1) introductory text, (b)(1)(i), (b)(1)(ii), (b)(2)(ii), (b)(3), (c) introductory text, (c)(3)	“contractor”	“Contractor”
952.204-76(a)(1), (a)(3), (b)(1) introductory text, (c) introductory text, (c)(3)(iii), (c)(3)(iv)	“contractor’s”	“Contractor’s”
952.204-77(a)(2), (b) introductory text, (d) in two places, (e)	“contractor”	“Contractor”
952.208-7(b)	“contractor”	“Contractor”
952.208-70 first paragraph, (2)	“contractor”	“Contractor”

Section	Remove	Add
952.209–72(a), (b) introductory text in three places, (b)(1)(i) in three places, (b)(1)(ii) in three places, (b)(1)(iii), (b)(2)(i) in two places, (b)(2)(ii), (b)(2)(iii), (c)(1) in two places, (c)(2), (d), Alternate I (f)(1) in two places, Alternate I (f)(2) in four places.	“contractor”	“Contractor”
952.209–72(b)(1)(i)	“contractor’s”	“Contractor’s”
952.217–70(a)	“contractor”	“Contractor”
952.217–70(a)(1)	“contractor’s”	“Contractor’s”
952.223–72 in four places	“contractor”	“Contractor”
952.223–75 in three places	“contractor”	“Contractor”
952.223–76(a)(2) in two places, (a)(3), (b)(1) introductory text, (b)(1)(i), (b)(1)(ii), (b)(1)(vi), (b)(2)(ii), (b)(3), (c) first occurrence.	“contractor”	“Contractor”
952.223–76(a)(1), (a)(3), (b)(1), (c) introductory text, (c)(3)(iii), (c)(3)(iv), (d)(1), (d)(3)	“contractor’s”	“Contractor’s”
952.223–77(a)(1) in three places, (a)(2) in two places, (a)(3), (b)(1) introductory text, (b)(1)(i), (b)(1)(ii), (b)(1)(vi), (b)(2)(ii), (c) introductory text first occurrence.	“contractor”	“Contractor”
952.223–77(a)(1), (a)(3), (b)(1) introductory text, (c)(1) introductory text, (c)(3) introductory text	“contractor’s”	“Contractor’s”
952.231–71(a) in two places, (b) in five places, (c)(1), (c)(2) in two places, (d) in three places, (e) introductory text, (g) introductory text, (g)(2), (h), (i) in three places, (j)(1) in two places, (j)(3), (k) introductory text in two places, (l) introductory text in three places, (l)(3) in four places.	“contractor”	“Contractor”
952.231–71(h) introductory text, (l)(3)	“contractor’s”	“Contractor’s”
952.235–71(a), (b) introductory text in three places, (b)(3), (c) introductory text, (d) introductory text, (d)(1) in three places, (d)(2), (d)(3), (d)(5) in four places, (g), (h).	“contractor”	“Contractor”
952.235–71(b)(3), (e)	“contractor’s”	“Contractor’s”
952.237–70 second paragraph of clause	“contractor”	“Contractor”
952.242–70(a)(1), (a)(2), (a)(3), (b), (e) introductory text in four places, (e)(1), (e)(2), (e)(3), (f) ..	“contractor”	“Contractor”
952.242–70(c)(5), (e)(1),	“contractor’s”	“Contractor’s”
952.250–70(c) in three places, (d)(1) in three places, (e)(1), (e)(2)(iii), (e)(2)(iv) introductory text, (e)(2)(vi), (f) in seven places, (g) in two places, (i), (j), (k), Note III in the second paragraph.	“contractor”	“Contractor”
952.251–70(a) in two places in the first sentence and the second sentence, (f)(1) in two places	“contractor”	“Contractor”
970.5203–1(a)(1) in three places, (a)(2), (a)(4) in two places, (b)	“contractor”	“Contractor”
970.5203–1(a)(3)	“contractor’s”	“Contractor’s”
970.5203–2(a), (b), (c) in two places, (d)	“contractor”	“Contractor”
970.5203–3(a), (b) in two places, (c) in four places, (d)	“contractor”	“Contractor”
970.5204–1(a), (b)	“contractor”	“Contractor”
970.5204–2(a) in two places, (b) in seven places, (c), (d) (e) in two places	“contractor”	“Contractor”
970.5204–2(b) in two places, (e)	“contractor’s”	“Contractor’s”
970.5204–3(a) in two places, (b), (b)(2) in two places, (b)(3), (b)(5)(iii) second occurrence only, (c), (d) in four places, (f) in two places, (g).	“contractor”	“Contractor”
970.5204–3(b)(2), (b)(5)(ii)	“contractor’s”	“Contractor’s”
970.5211–1(a) in three places, (b), (c), (d), (e) in two places, (f), (g) in two places	“contractor”	“Contractor”
970.5215–1(c)(2), (c)(3)	“contractor”	“Contractor”
970.5215–1(c)(1), (c)(3), Alternate III (f)	“contractor’s”	“Contractor’s”
970.5215–3(a)(1)(i), (a)(1)(ii), (a)(4), (b)(3)(i), (b)(3)(ii), (b)(3)(vi), (b)(4)(iv) in four places, (b)(4)(v)(A) in three places, (b)(4)(v)(B) in four places, (c) introductory text in two places, (d) introductory text, (d)(3) introductory text, Alternate I (a)(1), (a)(3), (b)(3)(i), (b)(3)(ii), (b)(3)(vi), Alternate II (e) introductory text, Alternate II (f)(3).	“contractor”	“Contractor”
970.5215–3(a)(1)(i), (a)(1)(ii), (b)(2), (b)(3), (b)(4)(ii), (b)(4)(iii), (c)(1), (d)(3)(iii), (d)(3)(iv), Alternate I (a)(1), Alternate I (b)(2), Alternate I (b)(3), Alternate II (f)(3).	“contractor’s”	“Contractor’s”
970.5215–4(b) in two places (definition of administrative cost and definition of design, process or method change), (i).	“contractor”	“Contractor”
970.5217–1(c)(8)	“contractor’s”	“Contractor’s”
970.5222–2(a), (b), (c) introductory text	“contractor”	“Contractor”
970.5223–1(b) introductory text in four places, (b)(1), (b)(7) in two places, (c) introductory text in two places, (d) in two places, (e) in two places, (f) in two places, (g) in four places, (h) in two places, (i) in two places.	“contractor”	“Contractor”
970.5223–1(b) introductory text, (e), (g), (h), (i)	“contractor’s”	“Contractor’s”
970.5223–2(d) introductory text in three places, (d)(iii)	“contractor”	“Contractor”
970.5223–4(a), (b), (c)(1) in two places, (c)(2) in two places, (c)(3)	“contractor”	“Contractor”
970.5223–4(b)	“contractor’s”	“Contractor’s”
970.5228–1(a) in two places, (b) in five places, (c)(1), (c)(2) in two places, (d) in three places, (e) introductory text, (g) introductory text, (g)(2), (h) introductory text, (i) in two places, (j)(1) in two places, (j)(3), (k) in two places, (l) introductory text in three places, (l)(3) in four places.	“contractor”	“Contractor”
970.5228–1(h) introductory text, (l)(3)	“contractor’s”	“Contractor’s”
970.5229–1(a) in six places, (b) in seven places, (c)	“contractor”	“Contractor”
970.5231–4(a) in six places, Alternate II (c) in two places,	“contractor”	“Contractor”
970.5232–1(a), (b)	“contractor”	“Contractor”
970.5232–1(a)	“contractor’s”	“Contractor’s”
970.5232–2(a), (b) in two places, (c) in three places, (d) in four places, (e) introductory text, (e)(1), (e)(2) introductory text, (e)(2)(i), (e)(2)(vi)(A), (e)(2)(vi)(B) in four places, (e)(2)(vi)(C) in two places, (e)(3), (e)(3)(i), (g), (h) in two places, (i) in two places, Alternate II (a), Alternate III (k) in four places, Alternate IV (k) in two places.	“contractor”	“Contractor”
970.5232–2(c), (e)(2)(i), (e)(2)(iv)(B), (h)	“contractor’s”	“Contractor’s”
970.5232–3(a) in four places, (b), (c), (d) in six places, (e), (f), (g), (h)(2) in two places, (i), (i)(1) introductory text, (i)(1)(iii), (i)(2), (i)(3) the first occurrence, (j) in two places, Alternate I (b).	“contractor”	“Contractor”

Section	Remove	Add
970.5232-4(a) in four places, (b) introductory text in two places, (b)(1), (c) in three places, (d) introductory text in two places.	“contractor”	“Contractor
970.5232-4(b) introductory text, (c) in five places	“contractor’s”	“Contractor’s”
970.5232-5(a), (b) in three places	“contractor”	“Contractor”
970.5232-5(a)	“contractor’s”	“Contractor’s”
970.5232-6 in eight places where the word “the” precedes the word “contractor”	“contractor”	“Contractor”
970.5232-6 in two places	“contractor’s”	“Contractor’s”
970.5232-7 in four places	“contractor”	“Contractor”
970.5232-8	“contractor’s”	“Contractor’s”
970.5235-1(a), (b), (c), (d)	“contractor”	“Contractor”
970.5236-1 in two places	“contractor”	“Contractor”
970.5242-1(c)(2), (d) introductory text, (e)(1), (e)(3) introductory text	“contractor”	“Contractor”
970.5242-1(e)(3)(i),	“contractor’s”	“Contractor’s”
970.5243-1(a) in two places, (b)	“contractor”	“Contractor”
970.5245-1(b) in five places, (c), (d) in eight places, (e)(1), (e)(2), (f)(1)(i) introductory text, (f)(1)(ii) in three places, (f)(2) introductory text, (f)(3), (g) in two places, (g)(3), (i)(1)(i), (i)(2)(i), (i)(2)(ii) in three places where the word “the” precedes the word “contractor”, (k).	“contractor”	“Contractor”
970.5245-1(c), (e)(1), (f)(1)(i)(A), (f)(1)(i)(B), (f)(2) introductory text, (g) introductory text, (i)(1)(i), (i)(1)(ii)(C), (i)(1)(iii), (j) introductory text the second use of the word, (j)(1), (j)(2), Alternate I (j) the second use of the word, (j)(1), (j)(2), (j)(3).	“contractor’s”	“Contractor’s”

PARTS 952 AND 970—[AMENDED]

remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

■ 342. In the table below, for each section indicated in the left column,

Section	Remove	Add
952.204-71(a)	“contracting officer”	“Contracting Officer”
952.204-76(a)(2), (b)(1) introductory text, (b)(2)(i), (b)(3)	“contracting officer”	“Contracting Officer”
952.208-70(2)	“contracting officer”	“Contracting Officer”
952.208-70(2)	“contracting officer’s”	“Contracting Officer’s”
952.209-72(b)(1)(i), (b)(1)(ii), (b)(2)(i) introductory text, (c)(1), (c)(2), (e) in two places, Alternate I (f)(2).	“contracting officer”	“Contracting Officer”
952.217-70(a) introductory text, (b)	“contracting officer”	“Contracting Officer”
952.223-72 in three places	“contracting officer”	“Contracting Officer”
952.223-76(a)(2), (b)(1) introductory text, (b)(2)(i), (b)(3)	“contracting officer”	“Contracting Officer”
952.223-77(a)(2), (b)(1) introductory text, (b)(2)(i), (b)(3)	“contracting officer”	“Contracting Officer”
952.231-71(a) in two places, (b) in five places, (c)(1), (c)(2), (c)(3) in two places, (d) in two places, (g)(2), (i), (j)(1), (j)(2), (l)(1).	“contracting officer”	“Contracting Officer”
952.231-71(d)	“contracting officer’s”	“Contracting Officer’s”
952.233-4(a)	“contracting officer”	“Contracting Officer”
952.233-5	“contracting officer”	“Contracting Officer”
952.235-70 in four places	“contracting officer”	“Contracting Officer”
952.235-71(b) introductory text in two places, (b)(3) in four places, (c) introductory text, (d)(5).	“contracting officer”	“Contracting Officer”
952.242-70(b) in two places	“contracting officer”	“Contracting Officer”
952.251-70(a), (f)(2)	“contracting officer”	“Contracting Officer”
970.5203-1(a)(4) in two places	“contracting officer”	“Contracting Officer”
970.5203-2(c) in two places, (d)	“contracting officer”	“Contracting Officer”
970.5203-3(a), (b) in two places, (c), (d)	“contracting officer”	“Contracting Officer”
970.5204-2(b) in five places, (d)	“contracting officer”	“Contracting Officer”
970.5204-2(b)	“contracting officer’s”	“Contracting Officer’s”
970.5204-3(a) in two places, (b), (d) in two places, (g)(1), (g)(2)	“contracting officer”	“Contracting Officer”
970.5215-1(b) in three places, (d)(1)(ii), (d)(3) introductory text, (e) in four places.	“contracting officer”	“Contracting Officer”
970.5215-1(c)(1)	“contracting officer’s”	“Contracting Officer’s”
970.5215-3 Alternate I (a)(3), Alternate I (b)(3) in two places	“contracting officer”	“Contracting Officer”
970.5215-3(b)(3)(v)	“contracting officer’s”	“Contracting Officer’s”
970.5215-4(a), (b) (definition of Shared Net Savings, paragraph (2)), (d) introductory text, (e) in two places, (f), (i).	“contracting officer”	“Contracting Officer”
970.5222-2(b), (c) introductory text in two places	“contracting officer”	“Contracting Officer”
970.5223-1(e) in three places, (g) in three places where the word “the” precedes the word “contracting officer”.	“contracting officer”	“Contracting Officer”
970.5223-3(b)	“contracting officer”	“Contracting Officer”
970.5223-4(c)(1)	“contracting officer”	“Contracting Officer”
970.5228-1(a) in two places, (b) in five places, (c)(1), (c)(2), (c)(3) in two places, (d) in two places, (g)(2), (i), (j)(1), (j)(2), (l)(1).	“contracting officer”	“Contracting Officer”
970.5229-1(a) in five places, (b) in three places	“contracting officer”	“Contracting Officer”
970.5231-4 Alternate II (c) in two places	“contracting officer”	“Contracting Officer”
970.5232-1(a)	“contracting officer”	“Contracting Officer”

Section	Remove	Add
970.5232-2(a) in four places, (b) in two places, (c) in three places, (e), (e)(2)(iv)(B) in two places, (f), (g), (h) in two places, (i), (j), Alternate II (a) in three places, Alternate IV (k).	"contracting officer"	"Contracting Officer"
970.5232-3(c), (d) in two places, (e), (i)(1) introductory text, (i)(1)(viii), (i)(3), (i)(4), (j) in three places.	"contracting officer"	"Contracting Officer"
970.5232-4(a), (b)(1)	"contracting officer"	"Contracting Officer"
970.5232-7	"contracting officer"	"Contracting Officer"
970.5232-8	"contracting officer"	"Contracting Officer"
970.5236-1 in two places	"contracting officer"	"Contracting Officer"
970.5242-1(b) in two places, (d) introductory text, (d)(1), (d)(2), (e) introductory text.	"contracting officer"	"Contracting Officer"
970.5242-1(c)(2)(i), (e)(3) introductory text	"contracting officer's"	"Contracting Officer's"
970.5243-1(a) in two places	"contracting officer"	"Contracting Officer"
970.5245-1(b) in two places, (c) in two places, (d) in five places, (e)(1), (f)(1)(i)(B), (f)(1)(ii), (f)(2)(i), (f)(2)(ii), (g)(1), (g)(3), (i)(1)(i) in two places, (i)(2)(i).	"contracting officer"	"Contracting Officer"

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