

Federal Communications Commission.

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DEPARTMENT OF ENERGY

48 CFR Parts 917, 950, 952, and 970

RIN 1991-AB28

Acquisition Regulation; Department of Energy Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Correction to Notice of limited reopening of the comment period.

SUMMARY: This document corrects the notice of reopening of the comment period published on October 10, 1996 (61 FR 53185). The notice reopening the comment period proposed additional changes to the Department's proposed rule published on June 24, 1996 (61 FR 32588) incorporating certain contract reform initiatives. The notice reopening the comment period proposed additional changes to 48 CFR 970.5204-2, Environment, Safety and Health. The purpose of today's correction is to republish the clause proposed in the October 10, 1996 notice.

DATE: Written comments (1 copy) on this document must be submitted by October 25, 1996.

ADDRESSES: All comments are to be submitted to Connie P. Fournier, Office of Policy (HR-51), Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-8245; (202) 586-0545 (facsimile); connie.fournier@hq.doe.gov (Internet).

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the notice reopening the comment period contained errors in the clause which could be confusing to the reader. Due to the editorial nature of the changes and because the Department has sent actual copies of this notice to those who commented on the Notice of Proposed Rulemaking, the Department has not extended the comment period which remains October 25, 1996.

Correction of Publication

Accordingly, the notice reopening the comment period for 48 CFR Parts 917, 950, 952 and 970 published on October 10, 1996, which was the subject of FR Doc. 96-26083 is corrected as follows:

970.5204-2 [Corrected]

1. At page 53186, beginning at column 1, § 970.5204-2 is corrected to read:

970.5204-2 Integration of Environment, Safety and Health into Work Planning and Execution

As prescribed in 48 CFR (DEAR) 970.2303-2(a), insert the following clause.

Integration of Environment, Safety and Health into Work Planning and Execution (Month and Year TBE)

(a) In performing work under this contract, the contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. Employees include subcontractor employees. In accomplishment of this requirement, the contractor shall implement programs to prevent accidents, releases, and exposures. The contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral and discernible part of the contractor's work planning and execution processes. The contractor shall, in the performance of work, ensure that:

(1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those contractor and subcontractor employees managing or supervising employees performing work.

(2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.

(3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.

(4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.

(5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.

(6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards.

(7) The conditions and requirements to be satisfied for operations to be initiated and conducted are clearly established and agreed-upon. These agreed-upon conditions and requirements are requirements of the contract and binding upon the contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in the Safety Management System (System).

(b) The contractor shall manage and perform work in accordance with a

documented System that fulfills all conditions in paragraph (a) of this clause at a minimum. The contractor shall exercise a degree of care commensurate with the work and the associated hazards. Documentation of the System shall describe how the contractor will:

- (1) define the scope of work
- (2) identify and analyze hazards associated with the work
- (3) develop and implement hazard controls
- (4) perform work within controls, and
- (5) provide feedback on adequacy of controls and continue to improve safety management.

(c) The System shall describe how the contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the contractor will measure system effectiveness.

(d) The contractor shall comply with, and assist the Department of Energy in complying with all applicable laws and regulations, and applicable directives identified in the clause of this contract on Laws, Regulations, and DOE Directives. The contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.

(e) The contractor shall submit to the contracting officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the contracting officer. Guidance on the preparation, content, review, and approval of the System addressing all aspects of ES&H is provided in DOE Guide G 450.4, "Integrated Safety Management," and successor documents. Additional guidance regarding the System may be provided by the contracting officer. On an annual basis, the contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the contractor's business processes for work planning, budgeting, authorization, execution, and change control.

(f) The contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the contractor fails to provide resolution or if, at any time, the contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the contracting officer may issue an order stopping work in whole or in part. Any stop work order issued under this clause (including a stop work order issued by the contractor to a subcontractor in accordance with paragraph (g) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. Thereafter, an order authorizing the

resumption of the work may be issued at the discretion of the contracting officer. The contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.

(g) The contractor shall provide in its purchasing system, required under the clause of this contract entitled, Contractor Purchasing System, policies, practices, and procedures for the flowdown of requirements of this clause, as appropriate, to subcontract performance of work on-site at a DOE-owned

or -leased facility. Depending on the complexity and hazards associated with the work, the purchasing agent may request that the subcontractor submit a Safety Management System for the purchasing agent's review and approval. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (f) of this clause.

(h) The contractor shall be responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.

(I) For the purposes of this clause, safety encompasses environment, safety and health, including pollution prevention and waste minimization.

Issued in Washington, D.C. on October 9, 1996.

Steve Mournighan,

*Acting Deputy Assistant Secretary for
Procurement and Assistance Management.*

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