

Subpart 970.04 - Administrative Matters

Parent topic: PART 970 - DOE MANAGEMENT AND OPERATING CONTRACTS

970.0404 Safeguarding classified information.

970.0404-1 Definitions.

Access Authorization means an administrative determination that an individual is eligible for access to classified information or is eligible for access to, or control over, special nuclear material.

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.

Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communication security programs.

Facility Clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information or special nuclear material.

Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy; but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2162).

970.0404-2 General.

(a) Guidance regarding the National Industrial Security Program as implemented by the Department of Energy (DOE) may be found at subpart 904.4, Safeguarding Classified Information Within Industry. Additional information concerning contractor ownership when national security or atomic energy information is involved may be found at subpart 904.70. Information regarding contractor ownership involving national security program contracts may be found at subpart 904.71.

(b) Executive Order 12333, United States Intelligence Activities, provides for the organization and control of United States foreign intelligence and counterintelligence activities. DOE has established a counterintelligence program subject to this Executive Order which is described in DOE Order 475.1, Counterintelligence Program, or its successor. All DOE elements, including management and operating contractors and other contractors managing DOE-owned facilities which require access authorizations, should undertake the necessary precautions to ensure that DOE and covered Contractor personnel, programs and resources are properly protected from foreign intelligence threats and activities.

(c) For DOE management and operating contracts and other contracts designated by the Senior Procurement Executive, or designee, the clause entitled, "Conditional Payment of Fee, Profit, and Other Incentives - Facility Management Contracts," implements the requirements of section 234B of the Atomic Energy Act (see 904.402(c)(1)) 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 rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified information. The clause, in part, provides for reductions in the amount of fee, profit, or share of cost savings that is otherwise earned by the contractor for performance failures relating to the safeguarding of Restricted Data and other classified information.

970.0404-3 Responsibilities of contracting officers.

(a) Management and operating contracts which may require the processing or storage of Restricted Data or Special Nuclear Material require application of the applicable DOE Directives in the safeguards and security series.

(b) The contracting officer shall refer to subpart [904.71](#) for guidance concerning the prohibition on award of a DOE contract under a national security program to a company owned by an entity controlled by a foreign government when access to proscribed information is required to perform the contract.

970.0404-4 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 970.5204-1, Counterintelligence, into all management and operating contracts and other contracts for the management of DOE-owned facilities which include the security and classification/declassification clauses.

(b) The contracting officer shall refer to 904.404 and 904.7103 for the prescription of solicitation provisions and contract clauses relating to safeguarding classified information and foreign ownership, control, or influence over contractors.

970.0407 Contractor records retention.

970.0407-1 Applicability.

970.0407-1-1 Alternate retention schedules.

Records produced under the Department's contracts involving management and operation responsibilities relative to DOE-owned or -leased facilities are to be retained and disposed of in accordance with the requirements contained in 36 CFR Chapter XII, Subchapter B, "Records Management" and National Archives and Records Administration (NARA)-approved DOE Records Disposition Schedules (consult current schedule), rather than those set forth at 48 CFR subpart 4.7,

Contractor Records Retention.

970.0407-1-2 Access to and ownership of records.

Contracting officers may agree to contractor ownership of certain categories of records designated in the instruction contained in paragraph (b) of the clause at 970.5204-3, *Access to and Ownership of Records*, provided the records do not fall within a DOE Privacy Act system of record and the Government's rights to inspect, copy, and audit these records are not limited. These rights must be retained by the Government in order to carry out the Department's statutory responsibilities required by the Atomic Energy Act and other statutes for oversight of its contractors, including compliance with the Department's health, safety and reporting the Privacy Act requirements, and protection of the public interest.

970.0407-1-3 Contract clause.

The contracting officer shall insert the clause at 48 CFR 970.5204-3, *Access to and Ownership of Records*, in management and operating contracts and other contracts and resulting subcontracts that contain the clause at 48 CFR 970.5223-1, *Integration of Environment, Safety, and Health into Work Planning and Execution* clause, or the clause at 48 CFR 952.223-72, *Radiation Protection and Nuclear Criticality*.

970.0470 Department of Energy Directives.

970.0470-1 General.

(a) The contractor is required to comply with the requirements of applicable Federal, State and local laws and regulations, unless relief has been granted by the appropriate authority. For informational purposes, the contracting officer may append the contract with a list of applicable laws or regulations (see 970.5204-2, *Laws, Regulations, and DOE Directives*, paragraph (a)).

(b) The Department of Energy Directives System is a system of instructions, including orders, notices, manuals, guides, and standards, for Departmental elements. In certain circumstances, requirements contained in these directives may apply to a contractor through operation of a contract clause. Program and requirements personnel are responsible for identifying requirements in the Directives Program which are applicable to a contract, and for developing a list of applicable requirements and providing it to the contracting officer for inclusion in the contract.

(c) Where directives requirements are established using either the Standards/Requirements Identification Process or the Work Smart Standards Process, the applicable process should also be used to establish the environment, safety, and health portion of the list identified in paragraph (b) of this section.

(d) Environmental, safety, and health (ES&H) requirements appropriate for work conducted under a management and operating contract may be determined by a DOE approved process to evaluate the work and the associated hazards, and identify an appropriately tailored set of standards, practices,

and controls, such as a tailoring process included in a DOE approved Safety Management System implemented under 970.5223-1, Integration of Environment, Safety, and Health into Work Planning and Execution. When such a process is used, the contracting officer shall ensure that the set of tailored requirements, as approved by DOE pursuant to the process, is incorporated into the list identified in paragraph (b) of this section. These requirements shall supersede, in whole or in part, the contractual environmental, safety, and health requirements previously made applicable to the contract by List B. If the tailored set of requirements identifies an alternative requirement which varies from an ES&H requirement of an otherwise applicable law or regulation, the contractor must request an exemption or other appropriate regulatory relief that may be specified in the governing regulation.

970.0470-2 Contract clause.

The contracting officer shall insert the clause at 970.5204-2, Laws, Regulations, and DOE Directives, in management and operating contracts. The contracting officer may modify the clause to indicate the location in the contract of List A, List B, or both.