

Classified Information and Protection of Worker Safety and Health” provide for reductions of fee or profit that is earned by the contractor depending upon the severity of the contractor’s failure to comply with contract terms or conditions relating to the safeguarding of Restricted Data or other classified information. When reviewing performance failures that would otherwise warrant a reduction of earned fee, the contracting officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clause. Some of the mitigating factors that must be considered are specified in the clause.

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

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

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

■ 3. Section 904.404 is amended by adding a new paragraph (d)(6) to read as follows:

**904.404 Solicitation provision and contract clause. [DOE Coverage—Paragraph (d)]**

(d) \* \* \*

(6) Except as prescribed in 48 CFR 970.1504–5(c), the contracting officer shall insert the clause at 48 CFR 952.204–76, Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information, in all contracts that contain the clause at 48 CFR 952.204–2, Security, but that do not contain the clause at 48 CFR 952.250–70, Nuclear hazards indemnity agreement.

**PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

■ 4. Section 923.7002 is redesignated as § 923.7003 and a new § 923.7002 is added to read as follows:

**923.7002 Worker Safety and Health.**

(a)(1) Except when the clause prescribed at 48 CFR 970.1504–5(c) is

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

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

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

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

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

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

(5) The contracting officer must coordinate with the Office of Price Anderson Enforcement within the Office of the Assistant Secretary for Environment, Safety and Health (or with

any designated successor office) before pursuing a contract fee reduction in the event of a violation by the contractor or any contractor employee of any Departmental regulation relating to the enforcement of worker health and safety concerns.

■ 5. Redesignated § 923.7003 is further amended by adding a new paragraphs (f) and (g) to read as follows:

**923.7003 Contract clauses.**

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(f) Except as prescribed in 48 CFR 970.1504–5(c), the contracting officer shall insert the clause at 48 CFR 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 48 CFR 952.204–2, Security, and the clause at 48 CFR 952.250–70, Nuclear hazards indemnity agreement.

(g) Except as prescribed in 48 CFR 970.1504–5(c), the contracting officer shall insert the clause at 48 CFR 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 48 CFR 952.204–2, Security, but that do contain the clause at 48 CFR 952.250–70, Nuclear hazards indemnity agreement.

**PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 6. Section 952.204–76 is added in Subchapter H to read as follows:

**952.204–76 Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information.**

As prescribed at 48 CFR (DEAR) 904.404(d)(6), insert the following clause.

**Conditional Payment of Fee or Profit—Safeguarding Restricted Data and Other Classified Information (JAN 2004)**

(a) General. (1) The payment of fee or profit (*i.e.*, award fee, fixed fee, and incentive fee or profit) under this contract is dependent upon the contractor’s compliance with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information (*i.e.*, Formerly Restricted Data and National Security Information) including compliance with applicable law, regulation, and DOE directives. The term “contractor” as used in this clause to address failure to comply shall mean “contractor or contractor employee.”

(2) In addition to other remedies available to the Government, if the contractor fails to comply with the terms and conditions of this contract relating to the safeguarding of Restricted Data and other classified information, the contracting officer may unilaterally reduce the amount of fee or