

**919.7011 Developmental assistance.**

(a) The forms of developmental assistance a Mentor may provide to a Protege include, but are not limited to:

- (1) Management guidance relating to:
  - (i) Financial management,
  - (ii) Organizational management,
  - (iii) Overall business management planning,
  - (iv) Business development, and
  - (v) Marketing assistance;
- (2) Engineering and other technical assistance;
- (3) Noncompetitive award of subcontracts under DOE or other Federal contracts where otherwise authorized;
- (4) Award of subcontracts in the Mentor's commercial activities;
- (5) Progress payments based on costs;
- (6) Rent-free use of facilities and/or equipment owned or leased by Mentor; and
- (7) Temporary assignment of Mentor personnel to the Protege for purposes of training.

(b) Costs incurred by a Mentor to provide developmental assistance, as described in paragraph (a) of this section, are allowable only to the extent provided at 48 CFR 919.7003(b).

**919.7012 Review and approval process of agreement by OSDDBU.**

(a) OSDDBU will review the proposed Mentor-Protege Agreement under 48 CFR 919.7010 and will complete its review and assessment no later than 30 days after receipt. OSDDBU will provide a copy of its assessment to the cognizant DOE technical program manager and contracting officer for review and concurrence.

(b) If OSDDBU approves the Agreement, the Mentor may implement the developmental assistance program.

(c) Upon finding deficiencies that DOE considers correctable, the OSDDBU will notify the Mentor and request information to be provided within 30 days that may correct the deficiencies. The Mentor may then provide additional information for reconsideration. The review of any supplemental material will be completed within 30 days after receipt by the OSDDBU and the Agreement either approved or disapproved.

**919.7013 Reports.**

(a) Prior to performing an evaluation of a Mentor's performance under its Mentor-Protege Agreement for use in award fee evaluations, the Mentor-Protege Program Manager must consult with the cognizant DOE technical program manager and must provide a copy of the performance evaluation comments regarding the technical effort

and Mentor-Protege development to the contracting officer.

(b) The DOE Mentor-Protege Program Manager must submit semi-annual reports to the cognizant contracting officer regarding the participating Mentor's performance in the Program for use in the award fee determination process.

(c) The Mentor firm must submit progress reports to the DOE Mentor-Protege Program Manager semi-annually.

**919.7014 Solicitation provision.**

The cognizant contracting officer must insert the provision at 952.219-70, DOE Mentor-Protege Program, in all solicitations with an estimated value in excess of the simplified acquisition threshold.

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

3. A new subsection 952.219-70, DOE Mentor-Protege Program is added as follows:

**952.219-70 DOE Mentor-Protege program.**

In accordance with 919.7014 insert the following provision in applicable solicitations.

**DOE Mentor-Protege Program**  
(May 2000)

The Department of Energy has established a Mentor-Protege Program to encourage its prime contractors to assist firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. If the contract resulting from this solicitation is awarded on a cost-plus-award fee basis, the contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protege firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the contract. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact the Department of Energy's Office of Small and Disadvantaged Business Utilization.

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**DEPARTMENT OF ENERGY****48 CFR Part 970**

RIN 1991-AB02

**Acquisition Regulation: Financial Management Clauses for Management and Operating (M&O) Contracts**

**AGENCY:** Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) amends its Acquisition Regulation to designate certain Department of Energy Acquisition Regulation (DEAR) M&O contract clauses and Federal Acquisition Regulation (FAR) clauses as Standard Financial Management Clauses to be included in M&O contracts unless the Chief Financial Officer (CFO) concurs in a deviation. Additionally, this final rule will revise selected existing financial management clauses and add financial management related clauses.

**DATES:** This final rule is effective May 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Righi, Office of Policy (MA-51), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585; 202-586-8175 (phone); 202-586-0545 (facsimile); or [michael.l.righi@pr.doe.gov](mailto:michael.l.righi@pr.doe.gov) (Internet).

**SUPPLEMENTARY INFORMATION**

- I. Background
- II. Discussion of Public Comments
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  - H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

**I. Background**

On November 18, 1998, the Department of Energy (DOE or Department) published in the **Federal Register** (63 FR 64024) a Notice of Proposed Rulemaking to amend the DEAR to designate certain Department of Energy Acquisition Regulation (DEAR) M&O contract clauses and Federal Acquisition Regulation (FAR) clauses as Standard Financial Management Clauses to be included in M&O contracts unless the Chief Financial Officer (CFO) concurs in a deviation. Additionally, this Notice of Proposed Rulemaking proposed to revise selected existing financial

management clauses and to add financial management related clauses.

The Notice of Proposed Rulemaking solicited comments on all aspects of the proposed rulemaking. Today's final rule amends the DEAR as proposed in the Notice of Proposed Rulemaking. The contracting officer must apply the changes this rule makes to solicitations issued on or after the effective date of this rule and may apply the changes to existing solicitations. Because this rule's changes are already incorporated in the majority of the Department's management and operating contracts, the contracting officer should incorporate the changes into existing contracts as soon as practicable, but in no case later than one year from the effective date of this rule.

Since publication of the Notice of Proposed Rulemaking, the President signed the National Nuclear Security Administration Act (NNSA) Act into law (Pub.L. 106-65). The NNSA Act reorganized DOE by drawing together various national security-related components of DOE and placing them under an Administrator who is the new DOE Under Secretary for Nuclear Security. Existing procurement regulations before March 1, 2000, including 48 CFR part 970, continue in effect by operation of law with regard to NNSA (50 U.S.C. 2401, note, 2484). Consistent with the NNSA Act and various delegations of authority under the NNSA Act, including the authority to issue procurement regulations subject to approval by the Secretary, today's final regulatory amendments to part 970 revise the authority citation to include the citation for the NNSA Act.

## II. Discussion of Public Comments

The Department received 11 comments from three commenters. None of the issues raised in the comments warrants extended treatment in this rulemaking. Instead, the Department prepared a comment response document that addressed each comment and sent a copy to each of the commenters. A copy of the comment response document is available upon request from Michael L. Righi, Office of Policy (MA-51), Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

## 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, today's action was

not subject to review under the Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

### 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 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 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, the proposed regulations meet the relevant standards of Executive Order 12988.

### C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. This rule would only apply to M&O contractors, which are all large entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

### D. Review Under the Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, are imposed by today's regulatory action.

### E. 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. 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.

### F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), the Department of Energy has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (57 FR 15122, 15152, April 24, 1992) (Categorical Exclusion A6), the Department of Energy has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

### G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each Agency to assess the effects of Federal regulatory action on State, local, and tribal governments and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the private sector.

### H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to

Congress promulgation of the rule prior to its effective date. 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(3).

#### List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, D.C. on April 7, 2000.

**Richard H. Hopf,**

*Director, Office of Procurement and Assistance Management.*

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.

#### PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 is revised to read as follows:

**Authority:** Atomic Energy Act of 1954 (42 U.S.C. 2201); Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*); National Nuclear Security Administration Act (50 U.S.C. 2401, *et seq.*).

2. Section 970.3201 is revised to read as follows:

##### 970.3201 General.

It is the policy of the DOE to finance management and operating contracts through advance payments and the use of special financial institution accounts.

3. Section 970.3202 is amended by revising paragraphs (b) and (c) to read as follows:

##### 970.3202 Advance payments.

\* \* \* \* \*

(b) Advance payments shall be made under a payments cleared financing arrangement for deposit in a special financial institution account or, at the option of the Government, by direct payment or other payment mechanism to the contractor.

(c) Prior to providing any advance payments, the contracting officer shall enter into an agreement with the contractor and a financial institution regarding a special financial institution account where the advanced funds will be deposited by the Government. Such agreement shall:

(1) Provide that DOE shall retain title to the unexpended balance of funds in the special financial institution account including collections, if any, deposited by the contractor;

(2) Provide that the title in paragraph (c)(1) of this section shall be superior to any claim or lien of the financial institution of deposit or others; and

(3) Incorporate all applicable requirements, as determined by the Office of Chief Financial Officer.

\* \* \* \* \*

4. Section 970.3270 is revised to read as follows:

##### 970.3270 Standard financial management clauses.

(a) The following DEAR and FAR clauses are standard financial management clauses that shall be included in all management and operating contracts: DEAR 970.5204–9, Accounts, records, and inspection; DEAR 970.5204–15, Obligation of funds; DEAR 970.5204–16, Payments and advances; DEAR 970.5204–20, Management controls; DEAR 970.5204–92, Liability with respect to Cost Accounting Standards; DEAR 970.5204–93, Work for others funding authorization; FAR 52.230–2, Cost Accounting Standards; and FAR 52.230–6, Administration of Cost Accounting Standards.

(b) The following clauses are standard financial management clauses that shall be included in management and operating contracts with integrated accounting systems: DEAR 970.5204–90, Financial management system; and DEAR 970.5204–91, Integrated accounting.

(c) Any deviations from the standard financial management clauses specified in paragraphs (a) and (b) of this section require the approval of the Head of the Contracting Activity and the written concurrence of the Department's Chief Financial Officer.

5. Section 970.3271 is removed and reserved.

##### 970.3271 [Removed and Reserved]

6. Section 970.5204–9 is amended by revising the introductory paragraph; clause title; and paragraphs (a) (including the note), (b), (d), and (f) to read as follows:

##### 970.5204–9 Accounts, records, and inspection.

As prescribed in 970.0407 and 970.3270, insert the following clause.

Accounts, Records, and Inspection (May 2000)

(a) *Accounts.* The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with

generally accepted accounting principles consistently applied.

**Note:** *If the contract includes the clause for "Price Reduction for Defective Cost or Pricing Data" set forth at FAR 52.215–22, paragraph (a) above should be modified by adding the words "or anticipated to be incurred" after the words "allowable costs incurred."*

(b) *Inspection and audit of accounts and records.* All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause \_\_\_\_, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the contractor shall afford DOE proper facilities for such inspection and audit.

\* \* \* \* \*

(d) *Disposition of records.* Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause \_\_\_\_, Access to and ownership of records, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.

\* \* \* \* \*

(f) *Inspections.* The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time and in such manner as it shall deem appropriate.

\* \* \* \* \*

7. Section 970.5204–13 is amended by revising the clause date and clause paragraph (d)(15) to read as follows (note following paragraph (d)(15) remains unchanged).

##### 970.5204–13 Allowable costs and fixed-fee (management and operating contracts).

\* \* \* \* \*

Allowable costs and fixed-fee (management and operating Contracts) (May 2000)

\* \* \* \* \*

(d) \* \* \*

(15) Establishment and maintenance of financial institution accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments to employees

are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the contracting officer.

\* \* \* \* \*

8. Section 970.5204–15 is revised to read as follows:

**970.5204–15 Obligation of funds.**

As prescribed in 970.1508(c) and 970.3270, insert the following clause.

**Obligation of Funds (May 2000)**

(a) *Obligation of funds.* The amount presently obligated by the Government with respect to this contract is \_\_\_\_ dollars (\$\_\_\_\_). Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph is to be construed as authorizing the contractor to exceed limitations stated in financial plans established by DOE and furnished to the contractor from time to time under this contract.

(b) *Limitation on payment by the Government.* Except as otherwise provided in this contract and except for costs which may be incurred by the contractor pursuant to the clause entitled "Termination," or costs of claims allowable under the contract occurring after completion or termination and not released by the contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fee. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of:

(1) collections accruing to the contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract, and

(2) other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) *Notices—Contractor excused from further performance.* The contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the contractor's best estimate of collections to be

received and available during the \_\_\_\_ day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only \_\_\_\_ days and to cover the contractor's unpaid fee, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the contractor's fee then earned but not paid, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the clause entitled "Termination."

(d) *Financial plans; cost and encumbrance limitations.* In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The contractor agrees

(1) to comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,

(2) to comply with other requirements of such plans and directives, and

(3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

**Note:** *This paragraph (d) may be omitted in contracts which expressly or otherwise provide a contractual basis for equivalent controls in a separate clause.*

(e) *Government's right to terminate not affected.* The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the clause entitled "Termination."

9. Section 970.5204–16 is amended by: Revising the introductory paragraph; clause title; clause paragraphs (a) (notes remain unchanged); last sentence of alternate paragraph (a) that follows note 2; paragraphs (c), (d) (including note 3), (e) (including note 4); adding alternate paragraph (e) following note 4; revising paragraphs (f) and (i) to read as follows:

**970.5204–16 Payments and advances.**

As prescribed in 970.3270, insert the following clause.

**Payments and Advances (May 2000)**

(a) *Installments of fixed-fee.* The fixed-fee payable under this contract shall become due and payable in periodic installments in accordance with a schedule determined by the contracting officer. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the contracting officer.

\* \* \* \* \*

(a) \* \* \* No base fee or award fee pool amount earned payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the contracting officer.

\* \* \* \* \*

(c) *Special financial institution account—use.* All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix \_\_\_\_\_. No part of the funds in the special financial institution account shall be commingled with any funds of the contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract or payments for other items specifically approved in writing by the contracting officer. If the contracting officer determines that the balance of such special financial institution account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.

(d) *Title to funds advanced.* Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

**Note 3:** *The following paragraph (e) shall be included in management and operating contracts with integrated accounting systems.*

(e) *Review and approval of costs incurred.* The contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the

period covered by the Cost Statement. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

**Note 4:** *The following paragraph (e) shall be included in management and operating contracts without integrated accounting systems.*

(e) *Certification and penalties.* The contractor shall prepare and submit a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures incurred for the period covered by the Cost Statement. It is anticipated that this will be an annual submission unless otherwise agreed to by the contracting officer. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended.

(f) *Financial settlement.* The Government shall promptly pay to the contractor the unpaid balance of allowable costs and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after:

- (1) Compliance by the contractor with DOE's patent clearance requirements, and
- (2) The furnishing by the contractor of:
  - (i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;
  - (ii) A closing financial statement;
  - (iii) The accounting for Government-owned property required by the clause entitled "Property"; and
  - (iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:
    - (A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;
    - (B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the contracting officer promptly, but not more than one (1) year

after the contractor's right of action first accrues. 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 also Contract Clause \_\_\_\_, DEAR 970.5204-31, "Insurance—Litigation and Claims");

(C) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents; and

(D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

(3) In arriving at the amount due the contractor under this clause, there shall be deducted,

(i) any claim which the Government may have against the contractor in connection with this contract, and

(ii) deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.

\* \* \* \* \*

(i) *Collections.* All collections accruing to the contractor in connection with the work under this contract, except for the contractor's fee and royalties or other income accruing to the contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the contracting officer.

\* \* \* \* \*

10. Section 970.5204-20 is amended by revising the introductory paragraph, clause title, and paragraph (a) to read as follows:

**970.5204-20 Management controls.**

In accordance with 970.0901 and as prescribed in 970.3270, the following clause shall be used in management and operating contracts:

**Management Controls (May 2000)**

(a) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted;

resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely. The systems of controls employed by the contractor shall be documented and satisfactory to DOE. Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility. The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively.

\* \* \* \* \*

11. Section 970.5204-90 is added to read as follows:

**970.5204-90 Financial management system.**

As prescribed in 970.3270, insert the following clause.

**Financial Management System (May 2000)**

The contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the contractor in connection with the work under this contract, expenditures, costs, and encumbrances; permits the preparation of accounts and accurate, reliable financial and statistical reports; and assures that accountability for the assets can be maintained. The contractor shall submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the contracting officer, shall submit any such deviation to DOE for written approval before implementation.

12. Section 970.5204-91 is added to read as follows:

**970.5204-91 Integrated accounting.**

As prescribed in 970.3270, insert the following clause.

#### Integrated Accounting (May 2000)

Integrated accounting procedures are required for use under this contract. The contractor's financial management system shall include an integrated accounting system that is linked to DOE's accounts through the use of reciprocal accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's Primary Accounting System for reporting financial activity under this contract in accordance with requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract.

13. Section 970.5204–92 is added to read as follows:

#### **970.5204–92 Liability With respect to cost accounting standards.**

As prescribed in 970.3270, insert the following clause.

#### **Liability with Respect to Cost Accounting Standards (May 2000)**

(a) The contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, "Cost Accounting Standards," and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.

(b) The contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at FAR 52.230–2, "Cost Accounting Standards," and FAR 52.230–6, "Administration of Cost Accounting Standards," if the contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and the contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

14. Section 970.5204–93 is added to read as follows:

#### **970.5204–93 Work for others funding authorization.**

As prescribed in 970.3270, insert the following clause.

#### **Work for Others Funding Authorization (May 2000)**

Any uncollectible receivables resulting from the contractor utilizing contractor corporate funding for reimbursable work shall be the responsibility of the contractor, and the United States Government shall have no liability to the contractor for the contractor's uncollected receivables. The contractor is permitted to provide advance payment utilizing contractor corporate funds for reimbursable work to be performed by the

contractor for a non-Federal entity in instances where advance payment from that entity is required under the Laws, regulations, and DOE directives clause of this contract and such advance cannot be obtained. The contractor is also permitted to provide advance payment utilizing contractor corporate funds to continue reimbursable work to be performed by the contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the Laws, regulations, and DOE directives clause of this contract have elapsed. The contractor's utilization of contractor corporate funds does not relieve the contractor of its responsibility to comply with all requirements for Work for Others applicable to this contract.

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**RIN 1018–AF80**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Parts 224, 226, and 424**

**[Docket No. 000330090–0090–01]**

**RIN 0648–XA51**

### **Endangered and Threatened Wildlife and Plants; Notice of Change of Jurisdiction for Coastal Cutthroat Trout**

**AGENCIES:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service (FWS), Interior.

**ACTION:** Transfer of agency jurisdiction.

**SUMMARY:** The Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) have, in the past, jointly managed coastal cutthroat trout (*Oncorhynchus clarki clarki*) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA). This document is to alert interested parties that, effective November 22, 1999, the FWS assumed all ESA regulatory jurisdiction over coastal cutthroat. The only exception is that NMFS will retain ESA jurisdiction over the endangered Umpqua River cutthroat trout Evolutionary Significant Unit (ESU) until the agencies complete a final determination on the proposed de-listing of this ESU. The change in jurisdiction results from a joint agency

determination that coastal cutthroat trout spend the majority of their life cycle in fresh water habitat.

**DATES:** The finding announced in this document was made on November 22, 1999.

**ADDRESSES:** Questions concerning this document should be submitted to the Supervisor, Fish and Wildlife Service, Oregon State Office, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266; or to, Garth Griffin, National Marine Fisheries Service, Northwest Region, Protected Resources Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737.

**FOR FURTHER INFORMATION CONTACT:** Rollie White, Fish and Wildlife Service, telephone 503–231–6179, fax 503–231–6195; or, Garth Griffin, National Marine Fisheries Service, telephone 503–231–2005, fax 503–230–5435.

**SUPPLEMENTARY INFORMATION:** In the past, ESA jurisdiction over the coastal cutthroat trout has been shared by the FWS and NMFS, although NMFS has a history of conducting status reviews on sea-run forms of cutthroat trout (61 FR 41514, August 9, 1996; 64 FR 16397, April 5, 1999). During the status review for Umpqua River sea-run cutthroat trout, both agencies agreed that NMFS would handle ESA responsibilities for this species in the Umpqua River Basin (FWS, 1994). Since that time, the matter of agency jurisdiction has arisen for the various cutthroat life forms in other west coast basins. At issue is the question of appropriate jurisdiction for a species with both diadromous (i.e., migrating between fresh-and saltwater) and resident (i.e., freshwater-dwelling) life forms. Salmonid species exhibiting the former life forms have generally been managed by NMFS while the latter forms have typically been under the jurisdiction of the FWS. The change in jurisdiction announced in this Notice is based on a determination that coastal cutthroat trout spend the majority of their life cycle in fresh water habitat.

On April 5, 1999, the agencies published a joint proposal to list the southwestern Washington/Columbia River cutthroat trout ESU as a threatened species and to de-list the Umpqua River ESU under the ESA (64 FR 16397). In that proposal, we announced that a decision would be made about which agency would have sole jurisdiction over the species. On November 22, 1999, the Directors of NMFS and the FWS signed a joint letter determining that the FWS shall assume all ESA regulatory jurisdiction over coastal cutthroat trout. For the FWS, applicable ESA regulations would include those promulgated in 50 CFR