

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:
 By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME,

MLS/RNAV; § 97/31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

* * * Effective Upon Publication

FDC date	State	City	Airport	FDC No.	SIAP
06/27/97	FM	Pohnpei Island	Pohnpei Intl	FDC7/3998	PTPN). NDB/DME or GPS-A, AMDT 1 ...
08/06/97	DC	Washington	Washington Dulles Intl	FDC7/5199	ILS/DME RWY 1L AMDT 5 ...
08/08/97	FL	Miami	Miami Intl	FDC7/5269	ILS RWY 9L, AMDT 28 ...
08/11/97	MI	Escanaba	Delta County	FDC7/5362	VOR or GPS RWY 18, AMDT 7 ...
08/12/97	NE	Norfolk	Karl Stefan Memorial	FDC7/5380	ILS RWY 1, AMDT 4 ...
08/14/97	MT	Missoula	Missoula International	FDC7/5442	ILS RWY 11, AMDT 10 ...
08/15/97	MA	Hyannis	Barnstable Muni-Boardman/Polando Field.	FDC7/5451	ILS RWY 24, AMDT 16C ...
08/18/97	IN	Greensburg	Greensburg-Decatur County	FDC7/5523	VOR or GPS-A, AMDT 2 ...
08/18/97	KS	Olathe	Johnson County Executive	FDC7/5519	NDB or GPS RWY 18, AMDT 3A ...
08/18/97	VA	Richmond/Ashland	Hanover County Muni	FDC7/5524	VOR RWY 16 ORIG-A ...
08/18/97	VA	Richmond/Ashland	Hanover County Muni	FDC7/5525	VOR RWY 16 ORIG-A ...

[FR Doc. 97-27498 Filed 10-15-97; 8:45 am]
 BILLING CODE 4910-13-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Danger Zone, Pacific Ocean, Naval Air Weapons Station, Point Mugu, Ventura County, CA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: On July 28, 1997, the Corps published an interim final rule in the **Federal Register**, which established a danger zone in the waters of the Pacific Ocean extending 5,000 meters offshore from the small arms range at the Naval Air Weapons Station, in Point Mugu, Ventura County, California. The danger zone would provide an appropriate and enforceable zone in which the Navy may conduct small arms test firing to qualify military and civilian security personnel. The comment period for the interim final rule ended on August 27, 1997. No comments were received.

DATES: Effective July 28, 1997.

ADDRESSES: HQUSACE, CECW-OR, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Ms. Tiffany Welch at (805) 641-2935 or Mr. Ralph Eppard at (202) 761-1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the

Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR part 334 by adding a new danger zone regulation in § 334.1125. On July 28, 1997, the Corps published the new danger zone regulations in the **Federal Register** (62 FR 40278) as an interim final rule, effective on the date of publication, with public comments invited until August 27, 1997. Based on comments received, the Corps would take appropriate action which could include further revision or suspension of the rules. We received no comments.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Transportation.

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

Accordingly, the interim final rule adding 33 CFR 334.1125 on July 28, 1997, (62 FR 40278) is adopted as a final rule, without change.

Dated: October 7, 1997.

Approved:

Russell L. Fuhrman,

Major General, USA, Director of Civil Works.

[FR Doc. 97-27318 Filed 10-15-97; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF ENERGY

48 CFR Parts 901, 903, 904, 912, 913, 915, 916, 932, 933, 939, 944 and 970

RIN 1991-AB35

Acquisition Regulation: Acquisition Streamlining

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) to supplement the Federal Acquisition Regulation's (FAR) implementation of certain provisions of the Federal Acquisition Streamlining Act of 1994 and the Clinger-Cohen Act of 1996. In addition, DOE is amending the DEAR to eliminate unnecessary and obsolete coverage and to make certain technical and conforming amendments, as appropriate.

DATES: This final rule is effective November 17, 1997.

FOR FURTHER INFORMATION CONTACT: John R. Bashista (202) 586-8192 (telephone); (202) 586-0545 (facsimile); john.bashista@hq.doe.gov (electronic mail).

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Section-by-Section Analysis
- III. Procedural Requirements.
 - A. Review Under Executive Order 12612.
 - B. Review Under Executive Order 12866.
 - C. Review Under Executive Order 12988.
 - D. Review Under the National Environmental Policy Act.

- E. Review Under the Paperwork Reduction Act.
- F. Review Under the Small Business Regulatory Enforcement Fairness Act.
- G. Review Under the Unfunded Mandates Reform Act.

I. Background.

The Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103-355, was enacted on October 13, 1994, and provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Among the many changes brought about by this legislation, FASA established new and innovative acquisition streamlining concepts and methods pertaining to the acquisition of commercial items; simplified acquisition procedures; multiple award, task and delivery order contracts; protests; and changes to the Truth in Negotiations Act. The Clinger-Cohen Act of 1996, Pub. L. 104-208, was enacted on September 30, 1996, to further streamline the Federal procurement system in such areas as competition requirements, debriefings, procurement integrity and the acquisition of commercial items and information technology products and services. The issuance of interim and final rules implementing these statutes in the FAR has been largely completed. Accordingly, this rulemaking will implement and supplement, as appropriate, the FAR's implementation of certain provisions of the FASA and Clinger-Cohen Act of 1996. This final rule will also eliminate obsolete coverage and make necessary technical and conforming amendments to the DEAR.

II. Section-by-Section Analysis

1. The authority for citations for parts 901, 903, 904, 913, 915, 916, 932, 933, 939 and 944 are restated.
2. Section 901.601, General, which addresses contracting authority and responsibilities, is amended by designating the current paragraph as paragraph (a), and by adding new paragraph (b) to identify that the authority set forth at 48 CFR 1.601(b) is delegated within DOE to the Procurement Executive.
3. Subsection 903.104-11, Processing violations or possible violations under procurement integrity, is redesignated as subsection 903.104-10, and the subsection heading and coverage are revised to conform to recent FAR changes.
4. Subsection 904.804-1, Close out by the office administering the contract, which addresses contract closeout procedures, is amended by deleting the reference to section 942.708 and substituting in lieu thereof a reference to 48 CFR 42.708.
5. Part 912, Acquisition of Commercial Items, is added and the authority for new Part 912 is stated as 42 U.S.C. 7254 and 40 U.S.C. 486(c).
6. Section 912.302, Tailoring of provisions and clauses for the acquisition of commercial items, is added to incorporate DOE's procedures for waiving the prohibition at 48 CFR 12.302(c) on tailoring or adding terms or conditions that are inconsistent with customary commercial practice for a solicitation or contract for commercial items.
7. Subsection 913.505-1, which addresses the use of certain forms for simplified acquisitions, is amended by redesignating subparagraph (a)(2) as paragraph (a); deleting the last sentence of redesignated paragraph (a) and substituting in lieu thereof a reference to 48 CFR 12.204 regarding the use of the Standard Form 1449, Solicitation/Contract/Order for Commercial Items; and removing subparagraph (b)(2) in its entirety as the coverage is obsolete.
8. Subsection 915.804-3, Exemptions from or waiver of submission of certified cost or pricing data, is redesignated as subsection 915.804-1, and the subsection heading and coverage are revised to conform with recent changes to the FAR.
9. Subsection 915.804-6, which addresses the authority to waive requirements for cost or pricing data under certain circumstances, is amended to conform with recent FAR changes by revising the subsection heading, and removing paragraph (i) which contains obsolete coverage.
10. Subsection 915.806-2, Prospective subcontractor cost or pricing data, is added to implement FAR coverage regarding the authority to excuse a prospective contractor from submitting subcontractor cost or pricing data.
11. Subpart 915.10, Preaward, Award, and Postaward Notifications, Protests and Mistakes, which addresses the debriefing of unsuccessful offerors, is removed as the coverage is obsolete and unnecessary pursuant to recent changes to 48 CFR 15.10.
12. Section 916.504, Indefinite-quantity contracts, is added to implement the Department's policy regarding the incorporation of minimum ordering guarantees in multiple award contracts.
13. Section 916.505, Ordering, is added to implement the Department's policies and procedures pertaining to Task Order Contract and Delivery Order Contract Ombudsman duties and responsibilities.
14. Subpart 932.4 is amended to revise the heading of the subpart to conform with recent changes to the FAR.
15. Subsection 933.102, General, is added to identify that the authority set forth at 48 CFR 33.102(b) to provide corrective relief in response to a protest is delegated within DOE to the Heads of Contracting Activities.
16. Part 939, Acquisition of Federal Information Processing Resources By Contracting, is revised to update the coverage pursuant to recent FAR changes resulting from the passage and implementation of Section E of the Clinger-Cohen Act of 1996.
17. Part 944, Subcontracting Policies and Procedures, which addresses obsolete internal DOE subcontracting policies and procedures pertaining to contractors' purchasing system reviews, is removed.
18. The authority citation for Part 970 is restated.
19. Subsection 970.1508-1, which addresses the applicability of cost or pricing data to DOE cost-reimbursement management and operating contracts, is amended to update and clarify the Department's coverage pursuant to recent changes to the FAR resulting from FASA and Clinger-Cohen Act amendments to the Truth in Negotiations Act and to prescribe the use of appropriate FAR clauses regarding requirements for subcontractor cost or pricing data.
20. Subsection 970.5204-22, Contractor purchasing system, is amended by revising paragraph (a) to incorporate requirements for the management of a Self-Assessment Program, and the Government's review of contractors' purchasing systems in accordance with FAR subpart 44.3 and other DOE implementing policy and guidance. The section is further amended by revising paragraph (b) to correct an obsolete reference.
21. Subsection 970.5204-24, Subcontractor cost or pricing data, is removed and the subsection reserved pursuant to the amendments made to subsections 970.1508-1 and 970.5204-44.
22. Subsection 970.5204-44, which prescribes subcontract flowdown requirements for DOE management and operating contractors, is amended to revise the coverage set forth therein regarding the flowdown of subcontractor cost or pricing data requirements.
23. Subsection 970.5204-60, Facilities management, is amended to update the clause pursuant to the cancellation and/or redesignation of several internal DOE Directives referenced therein.

III. Procedural Requirements.**A. Review Under Executive Order 12612**

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

B. Review Under Executive Order 12866

This 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 action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

C. 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 regulations meet the relevant standards of Executive Order 12988.

D. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500-1508), the Department 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 (Categorical Exclusion A6), DOE has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

E. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

F. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE 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).

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 detailed 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 only affects private sector entities, and the impact is less than \$100 million.

List of Subjects in 48 CFR Parts 901, 903, 904, 912, 913, 915, 916, 932, 933, 939, 944 and 970

Government procurement.

Issued in Washington, D.C. on October 9, 1997.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citations for parts 901, 903, 904, 913, 915, 916, 932, 933, 939 and 944 continue to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 901—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 901.601 is amended to designate the existing paragraph as paragraph (a) and by adding new paragraph (b) to read as follows:

901.601 General.

(a) * * *

(b) The Procurement Executive has been authorized, without power of redelegation, to perform the functions set forth at 48 CFR 1.601(b) regarding the assignment of contracting functions and responsibilities to another agency, and the creation of joint or combined offices with another agency to exercise acquisition functions and responsibilities.

PART 903—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Subsection 903.104-11 is redesignated as subsection 903.104-10, and revised to read as follows:

903.104-10 Violations or possible violations (DOE coverage—paragraph (a)).

(a) Except for Headquarters activities, the individual within DOE responsible for fulfilling the requirements of 48 CFR 3.104-10(a) (1) and (2) relative to contracting officer conclusions on the impact of a violation or possible violation of subsections 27 (a), (b), (c) or (d) of the Office of Federal Procurement Policy Act shall be the legal counsel assigned direct responsibility for providing legal advice to the contracting office making the award or selecting the source. The legal counsel is the Chief Counsel for the Operations Offices or the Federal Energy Technology Center; the Counsel, or the Chief Counsel, for the Support Offices or the Naval Reactors Offices; and the General Counsel for the Power Administrations. For Headquarters activities, the individual designated to perform the responsibilities in 48 CFR 3.104-10(a) (1) and (2) regarding questions of disclosure of proprietary or source

selection information is the Assistant General Counsel for Procurement and Financial Assistance. The designated individual for other questions regarding 48 CFR 3.104-10(a) (1) and (2) for Headquarters activities is the Agency Ethics Official (Designated Agency Ethics Official).

PART 904—ADMINISTRATIVE MATTERS

4. Subsection 904.804-1 is amended by revising the section heading and paragraph (b) to read as follows:

904.804-1 Closeout by the office administering the contract (DOE Coverage—paragraphs (a) and (b)).

* * * * *

(b) Quick closeout procedures for cost reimbursable and other than firm fixed price type contracts are covered under 48 CFR 42.708.

5-6. Part 912 is added in Subchapter B to read as follows:

PART 912—ACQUISITION OF COMMERCIAL ITEMS

Subpart 912.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

Sec.

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

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 912.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

912.302 Tailoring of provisions and clauses for the acquisition of commercial items. (DOE coverage—paragraph (c))

(c) The waiver required by 48 CFR 12.302(c) shall be in writing and approved by the contracting officer.

PART 913—SIMPLIFIED ACQUISITION PROCEDURES

7. Subsection 913.505-1 is revised to read as follows:

913.505-1 Optional Form (OF) 347, Order for Supplies or Services, and Optional Form 348, Order for Supplies or Services Schedule-Continuation or DOE F 4250.3, Order for Supplies or Services. (DOE coverage—paragraph (a))

(a) Optional Forms 347 and 348, or DOE F 4250.3, may be used for purchase orders using simplified acquisition procedures. These forms shall not be used as the contractor's invoice. See 48 CFR 12.204 regarding the use of SF-1449 for the acquisition of commercial items using simplified acquisition procedures.

PART 915—CONTRACTING BY NEGOTIATION

8. Subsection 915.804-3 is redesignated as subsection 915.804-1, and revised to read as follows:

915.804-1 Prohibition on obtaining cost or pricing data (DOE coverage—paragraph (b)).

(b) The Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may approve the finding required by 48 CFR 15.804-1(b)(1)(i)(B), and the determination required by 48 CFR 15.804-1 (b)(1)(ii)(B).

9. Subsection 915.804-6 is revised to read as follows:

915.804-6 Instructions for the submission of cost or pricing data or information other than cost or pricing data (DOE coverage—paragraph (e)).

(e) The Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, waive the requirements for cost or pricing data under the circumstances set forth in 48 CFR 15.804-6(e). Such waivers shall be reported to the Procurement Executive.

10. Subsection 915.806-2 is added in Subchapter C to read as follows:

915.806-2 Prospective subcontractor cost or pricing data (DOE coverage—paragraph (e)).

(e) The Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, approve the contracting officer's determination to excuse a prospective contractor from submitting subcontractor cost or pricing data before completion of negotiations of the prime contract, subject to the requirements set forth in 48 CFR 15.806-2(e).

Subpart 915.10 [Removed]

11. Subpart 915.10 in Subchapter C is removed.

PART 916—TYPES OF CONTRACTS

12. Section 916.504 is added in Subchapter C to read as follows:

916.504 Indefinite-quantity contracts (DOE coverage-paragraph (c)).

(c) The contracting officer shall establish minimum ordering guarantees with each awardee for all indefinite-quantity, multiple award contracts to ensure that adequate consideration exists to contractually bind each awardee to participate in the ordering process throughout the term of the multiple award contract. Minimum

ordering guarantees should be equal among all awardees, and shall be determined on a case-by-case basis for each acquisition commensurate with the size, scope and complexity of the contract requirements.

13. Section 916.505 is added in Subchapter C to read as follows:

916.505 Ordering (DOE coverage—paragraph (b)).

(b) (4) The Director, Office of Management Systems, 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)(4).

(5) 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.

(6) The Contracting Activity Ombudsman shall:

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

(ii) 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;

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

(iv) 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;

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

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

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

(7) 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.

PART 932—CONTRACT FINANCING

14. Subpart 932.4 is amended by revising the heading of the subpart to read as follows:

Subpart 932.4—Advance Payments for Non-Commercial Items

PART 933—PROTESTS, DISPUTES AND APPEALS

15. Section 933.102 is added in Subchapter E to read as follows:

933.102 General (DOE coverage—paragraph (b)).

(b) The Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, provide corrective relief in response to a protest in accordance with 48 CFR 33.102(b).

16. Part 939 is revised in its entirety to read as follows:

PART 939—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 939.70—Implementing DOE Policies and Procedures

Sec.
939.7000 Scope.
939.7001 Outdated information technology equipment.
939.7002 Contractor acquisition of information technology.

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 939.70—Implementing DOE Policies and Procedures

939.7000 Scope.

This part sets forth the policies and procedures that apply to the acquisition of information technology by the Department of Energy (DOE).

939.7001 Outdated information technology equipment.

Solicitations and contracts for, or using, outdated information technology equipment shall be submitted to the Office of Management Systems, Office of Procurement and Assistance Management for review and approval. The Office of Information Management shall review these documents and make the decision whether to allow the acquisition or use of outdated information technology equipment.

939.7002 Contractor acquisition of information technology.

(a) *Management and operating (M&O) contracts.* Except as provided in

paragraph (c) of this section, M&O contractors and their subcontractors shall not be used to acquire information technology unrelated to the mission of the M&O contract either for sole use by DOE employees or employees of other DOE contractors, or for use by other Federal agencies or their contractors.

(b) *Other than M&O contracts.* Where it has been determined that a contractor (other than an M&O contractor or its subcontractor) will acquire information technology either for sole use by DOE employees or for the furnishing of the information technology as government-furnished property under another contract, and after receiving written authorization from their cognizant DOE contracting office pursuant to 48 CFR part 51, DOE contractors working under cost-reimbursement-type contracts may place orders against authorized contracts. All authorizations to contractors shall expressly and specifically reference the restriction regarding contractor use of the items acquired, cited at 48 CFR 951.102(e)(4)(iii).

(c) *Consolidated contractor acquisitions.* When common information technology requirements in support of DOE programs have been identified and it is anticipated that the consolidation of such requirements will promote cost or other efficiencies, the Designated Senior Official for Information Management may authorize an M&O contractor to acquire information technology for use by the following:

- (1) One or more other contractor(s) performing on-site at the same DOE-owned or -leased facility as the M&O contractor, or
- (2) Other M&O contractors.

PART 944—[REMOVED]

17. Part 944 in Subchapter G is removed.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

18. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95-91 (42 U.S.C. 7254).

19. Subsection 970.1508-1 is revised to read as follows:

970.1508-1 Cost or pricing data.

(a) The certification requirements of FAR 15.804-2 are not applied to DOE cost-reimbursement management and operating contracts.

(b) The contracting officer shall ensure that management and operating

contractors and their subcontractors obtain cost or pricing data prior to the award of a negotiated subcontract or modification of a subcontract in accordance with 48 CFR 15.804-2, and incorporate appropriate contract provisions similar to those set forth at 48 CFR 52.215-22 and 48 CFR 52.215-23 that provide for the reduction of a negotiated subcontract price by any significant amount that the subcontract price was increased because of the submission of defective cost or pricing data by a subcontractor at any tier.

(c) The clauses at 48 CFR 52.215-24 and 48 CFR 52.215-25 shall be included in management and operating contracts.

20. Subsection 970.5204-22 is amended by revising the clause date and paragraphs (a) and (b) to read as follows:

970.5204-22 Contractor purchasing system.

* * * * *

Contractor Purchasing System (NOV 1997)

(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, 48 CFR (DEAR) 970.5204-44, and 48 CFR (DEAR) 970.71. The contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR (DEAR) 970.7102. 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. The contractor shall manage a Self-Assessment Program and shall submit to the contracting officer a copy of Self-Assessment reports in accordance with written direction and guidance provided by the contracting officer. DOE reserves the right to review and approve the contractor's purchasing system in accordance with 48 CFR subpart 44.3, and DOE implementing policy and guidance. The contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (w) of this clause.

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

* * * * *

970.5204-24 [Removed and Reserved]

21. Subsection 970.5204-24 in Subchapter I is removed and reserved.

22. Subsection 970.5204-44 is amended by revising paragraph (b)(5) to read as follows:

970.5204-44 Flowdown of contract requirements to subcontracts.

* * * * *

(b) * * *

(5) Cost or Pricing Data. Clauses prescribed at 48 CFR (DEAR) 970.1508-1, and appropriate contract provisions similar to those set forth at 48 CFR 52.215-22 and 48 CFR 52.215-23, that provide for the reduction of a negotiated subcontract price by any significant amount that the subcontract price was increased because of the submission of defective cost or pricing data by a subcontractor at any tier.

* * * * *

23. Subsection 970.5204-60 is amended by revising the clause date and paragraphs (a), (b) and (c) to read as follows:

970.5204-60 Facilities management.

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FACILITIES MANAGEMENT (NOV 1997)

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(a) *Site development planning.* The Government shall provide to the contractor

site development guidance for the facilities and lands for which the contractor is responsible under the terms and conditions of this contract. Based upon this guidance, the contractor shall prepare, and maintain through annual updates, a Long-Range Site Development Plan (Plan) to reflect those actions necessary to keep the development of these facilities current with the needs of the Government and allow the contractor to successfully accomplish the work required under this contract. In developing this Plan, the contractor shall follow the procedural guidance set forth in the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall use the Plan to manage and control the development of facilities and lands. All plans and revisions shall be approved by the Government.

(b) *General design criteria.* The general design criteria which shall be utilized by the contractor in managing the site for which it is responsible under this contract are those specified in the applicable DOE Directives in the 6430, Design Criteria, series listed elsewhere in this contract. The contractor shall comply with these mandatory, minimally acceptable requirements for all facility designs with regard to any building acquisition, new facility, facility addition or alteration or facility lease undertaken as part of the site development activities of

paragraph (a) above. This includes on-site constructed buildings, pre-engineered buildings, plan-fabricated modular buildings, and temporary facilities. For existing facilities, original design criteria apply to the structure in general; however, additions or modifications shall comply with this directive and the associated latest editions of the references therein. An exception may be granted for off-site office space being leased by the contractor on a temporary basis.

(c) *Energy management.* The contractor shall manage the facilities for which it is responsible under the terms and conditions of this contract in an energy efficient manner in accordance with the applicable DOE Directives in the Life Cycle Facility Operations Series listed elsewhere in this contract. The contractor shall develop a 10-year energy management plan for each site with annual reviews and revisions. The contractor shall submit an annual report on progress toward achieving the goals of the 10-year plan for each individual site, and an energy conservation analysis report for each new building or building addition project. Any acquisition of utility services by the contractor shall be conducted in accordance with 48 CFR 970.41.

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