



BDO GOVERNMENT CONTRACTING PRACTICE

## GUIDANCE ON THE PROPOSED DOE BUSINESS SYSTEM RULE

By Eric Sobota, Kelley Doran and Barron Avery

Contractors that work for the Department of Energy (DOE) under agreements that are subject to DOE Acquisition Regulation (DEAR) may soon have to comply with rules proposed by DOE governing the adequacy of company business systems. This latest red tape requirement, if adopted as a final rule, will impose additional compliance burdens on affected companies and ultimately will increase operating costs. In this article, we introduce you to the proposed requirements and highlight the many ways in which this rule will impact your business.

### 1. Proposed rule

On April 1, 2014, DOE proposed a new rule to address Contractor Business Systems in the DEAR.<sup>1</sup> The proposed rule outlines requirements that contractors' business systems must meet, including accounting, cost estimating, purchasing, and property management systems, as well as earned value management systems (EVMS). The below provides a brief overview of the proposed DOE rule and outlines several recommendations for current and prospective DOE contractors to address the expected new requirements.

#### a. Background and Objectives

According to the DOE, the primary goal of the proposed rule is to provide a standard for a contractor's business systems.<sup>2</sup> By strengthening internal control systems, DOE aims to improve its oversight of contractors' business systems and to reduce waste, fraud, and abuse.<sup>3</sup> The DOE believes these requirements will help ensure potential increases in contract costs and/or schedules are assessed and addressed as they arise, not after the fact. The proposed rule would allow the DOE to withhold payments when inadequate business systems are identified.<sup>4</sup> The rule was modeled after the Department of Defense's (DOD) 2012 contractor management rules.<sup>5</sup>

#### b. Contracts Covered

The proposed rule will apply to contracts with the DOE, including the National Nuclear Security Administration (NNSA), that meet certain thresholds. Specifically, the proposed rule's requirements generally will apply to:

- Prime contracts with a value in excess of \$50 million (including options); or
- Prime contracts with a value in excess of \$10 million (but less than \$50 million), where it has been determined by the contracting officer to be in the government's interest to include the clause and when a contract is a fixed price contract awarded to a large business or a covered contract that also contains one of several business systems requirements.<sup>6</sup>

<sup>1</sup> Acquisition Regulation: Contractor Business Systems—Definition and Administration, 79 Fed. Reg. 18,416 (proposed Apr. 1, 2014) (to be codified at 48 C.F.R. pts. 915, 934, 942, 944, 945, and 952).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 18,426 (to be codified at 48 C.F.R. § 942.7004).

<sup>5</sup> *Id.* at 18,417.

<sup>6</sup> *E.g.*, 79 Fed. Reg. 18,422-23 (to be codified at 48 C.F.R. §§ 915.407-5-70(b)(2)(i)-(ii)). Further, a host of other contracts may also be covered, as the rule also defines "covered contract" as any contract subject to the Cost Accounting Standards (CAS), but the rule does not elaborate on whether the contract must be subject to CAS in addition to the above criteria, or is independently subject to the proposed rule. This ambiguity in the proposed rule will likely be clarified through the rulemaking process. See *id.*

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Additionally, BDO's **Center of Excellence for Government Contracting** is committed to providing timely guidance and thought leadership on technical, regulatory and business matters important to government contractors nationwide.

### c. Exceptions

The DOE has proposed a number of exceptions to the proposed rule. Most prominently, Management and Operating (M&O) contracts are not covered by the proposed rule, although DOE indicated that such coverage may be included in the rule through a later rulemaking.<sup>7</sup>

In addition, other exceptions to the rule have been proposed, including those for:

- Small businesses;
- Contracts for
  - Energy savings performance as required by the Energy Policy Act of 1992;
  - “Advisory and assistance services” as defined at 48 C.F.R. § 2.101, unless otherwise designated as applicable by the Senior Procurement Executive or the Head of the Contracting Activity;
  - Security guards;
  - Housekeeping;
  - Education and training;
  - Office of the Deputy Administrator for Naval Reactors;
  - National Environmental Policy Act of 1969 Support; or
  - Utilities;
- Interagency acquisitions in accordance with 48 C.F.R. Subpart 17.5; and
- Orders against another federal agency contract, such as a Federal Supply Schedule.<sup>8</sup>

### d. Implementation Within Solicitations and Contracts

The proposed rule includes solicitation provisions and contract clauses for inclusion in all covered procurements. The individual business system requirements are prescribed at 952.215–71, Cost Estimating System Requirements; 952.234–71, Earned Value Management System; 952.242–72, Accounting System Administration; 952.244–71, Contractor Purchasing System Administration; and 952.245–70, Contractor Property Management System Administration.<sup>9</sup> The attached Appendix I provides specific details of the requirements proposed for each of the applicable business systems under the above-referenced clauses. Covered contracts must also include an additional clause, 952.242-71, Contractor Business Systems, which prescribes standards and procedures for contracting officers to withhold payment for deficient business systems.<sup>10</sup>

### e. Review and Approval Process

Contractors must submit required business systems for review within 60 days of contract award.<sup>11</sup> The contracting officer will review the contractor’s business systems in consultation with an auditor to determine whether they are compliant by evaluating them against the system criteria.<sup>12</sup> Based on this review and consultation, the contracting officer must either approve the contractor’s programs or else provide a written determination to the contractor describing the significant deficiencies and requesting corrective action.<sup>13</sup> Each business system is evaluated independently, so the contracting officer may approve certain systems while identifying deficiencies in others.

The DOE may select some or all of the five business systems to audit over a period of time, and the government will issue a formal document to the contractor detailing the specific areas in which they wish to audit. During an audit, the DOE will evaluate internal controls to assess if there are any areas of risk. They will also perform an examination, on a test basis, of any evidence supporting the data and records evaluated. After this initial testing, the government will issue an Audit Report to identify any deficiencies.

### f. Deficiencies and Corrective Action

The proposed DOE rule is similar to the Defense Federal Acquisition Regulation Supplement (DFARS) business systems requirement final rule in that it references findings of “significant deficiencies” to be a cause for system inadequacy. The DOE considers these deficiencies to be “shortcomings in the system that materially affect the ability of DOE to rely on information produced by the system.” If deficiencies are identified in one of the business systems, the contracting officer will notify the contractor with initial findings, and the contractor will have up to 30 days to respond.<sup>14</sup>

The contracting officer will assess the information received from the contractor and provide notification of a final determination within 30 days

<sup>7</sup> 79 Fed. Reg. 18,416

<sup>8</sup> 79 Fed. Reg. 18,426 (to be codified at 48 C.F.R. § 942.7003).

<sup>9</sup> 79 Fed. Reg. 18,433-39.

<sup>10</sup> 79 Fed. Reg. 18,435-36.

<sup>11</sup> *E.g.*, 79 Fed. Reg. 18,423 (to be codified at 48 C.F.R. § 915.407-5-70(c)).

<sup>12</sup> *Id.* In the case of EVMS systems, any required review will be conducted in consultation with the cognizant DOE Program Office as well. 79 Fed. Reg. 18,424 (to be codified at 48 C.F.R. § 934.201-70(a)(1)(ii)). The criteria for each system is detailed in Appendix I.

<sup>13</sup> *E.g.*, 79 Fed. Reg. 18,423 (to be codified at 48 C.F.R. § 915.407-5-70(d)).

<sup>14</sup> *E.g.*, *id.*

of the contractor's response.<sup>15</sup> The contractor is required to correct any deficiencies within 45 days or submit an acceptable corrective action plan showing milestones and actions to correct the findings.<sup>16</sup> The plan should, at a minimum

- Determine the root cause of the problem;
- Establish a corrective action plan;
- Outline a corrective action schedule; and
- Identify the person responsible for implementation of the corrective action plan.<sup>17</sup>

### **g. Withholdings**

The DOE's proposed business system rule will allow contracting officers to withhold a percentage of payments from contractors with significant system deficiencies. The contract officer will be allowed to withhold no more than five percent of a payment for one or more significant deficiencies in any single contractor business system, and will be allowed to withhold no more than ten percent for significant deficiencies in multiple contractor business systems.<sup>18</sup>

The contracting officer will request, in writing, that the contractor withhold these amounts from invoices until all system deficiencies have been corrected. Under the proposed rule, the DOE could withhold a percentage of:

- Interim payments under:
  - Cost reimbursable contracts;
  - Incentive type contracts;
  - Time and material contracts; or
  - Labor-hour contracts;
- Progress payments, including fixed-price contracts; and
- Performance-based payments, including fixed-price contracts.<sup>19</sup>

As a practical matter, this ability to withhold payments, and the protracted effort required to implement a corrective action plan, means that contractors are well-advised to implement systems in advance of contract performance if possible and certainly prior to the commencement of any potential audit.

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## **2. BDO's Recommendations**

BDO can provide current and potential DOE contractors with guidance regarding the impact of this proposed rule on their organization. In general, contractors must ensure current business systems are compliant with all applicable federal rules and staff can and should implement the enhanced business system requirements. BDO can also offer guidance for contractors wishing to prepare for potential federal audits.

### **a. Enhance Current Business Systems**

Contractors should proactively review their practices and design enhancements to current business systems that will ensure compliance with applicable federal requirements. Contractors should require that consistent documentation be retained within each business system file appropriately detailing the internal control requirements of the identified system.

As contractors review their federal business system practices, they should design effective controls to, at a minimum, include the following:

- Clearly defined process roles, responsibilities and authorities;
- Well-established, documented policies and procedures;
- Effective practices to mitigate conflicts of interest;
- Consistent file documentation;
- Assurance that applicable flowdown clauses and terms and conditions are included in sub-awards;
- Well-defined independent system monitoring practice; and
- Adequate training for applicable personnel.

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<sup>15</sup> *E.g., id.*

<sup>16</sup> *E.g., id.*

<sup>17</sup> *E.g., id.*

<sup>18</sup> 79 Fed. Reg. 18,436 (to be codified at 48 C.F.R. § 952.242-71(e)).

<sup>19</sup> *Id.*

### **b. Monitor Internal Policies and Practices**

Contractors should also implement a process to independently monitor business system practices (e.g., internal audit function or compliance function), and to ensure that actual practices are consistent with documented processes and federal requirements. The process should include the review of established policies and procedures against applicable federal requirements and a mechanism to report potential noncompliance directly to stakeholders outside the business systems (e.g., finance or compliance department). The monitoring function should establish recommended corrective action plans, along with agreed upon milestones for implementation.

Internal training programs should also be developed and conducted at least annually for applicable personnel to ensure that actual practices are consistent with design controls and with management's expectations.

### **c. Prepare for an Audit**

Contractors should consider, as one of their first priorities in preparing for business systems audits, an assessment of their overall control environment. Contractors should be prepared to document—to both their auditors and the federal contract officer—the adequacy of their internal systems. It is recommended that contractors:

- Inventory and document the key internal controls of each major system, including those with both Defense Contract Audit Agency (DCAA) and Defense Contract Management Agency (DCMA) surveillance responsibility;
- Appropriately staff the compliance function and be prepared to demonstrate the effectiveness of internal control systems;
- Establish a robust record management system and communication process to be used in future audits; and
- Independently assess the adequacy of their systems in comparison to existing standards.

In addition, to the extent that a contractor's system has not been audited and the lack of audit puts them at risk of losing a potential contract award, consideration should be given to engaging independent auditors to evaluate the adequacy of systems through an attestation engagement. This external audit can help identify key weaknesses and deficiencies that may arise during a contract bid or award process and can help alleviate the concerns of contracting officers.

### **d. Address Increased Administrative Costs**

A key concern for this new rule is increased administrative costs to the contractor. It is critical that firms think through how they can recover these costs in order to avoid increasing general and administrative (G&A) costs overall. For instance, could this be a new function in the company allowing a new cost allocation to be created? If the company only has a few applicable contracts, could these be direct contract costs?

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## **3. Final Thoughts**

DOE's proposed business systems rule represents yet another effort by the Government to police the perceived potential for waste, fraud and abuse through contractor compliance requirements. As with other payment withholding regimes, DOE's ability to withhold payment under its own business systems rule provides DOE with a "big stick" to force compliance, and contractors are well-advised to implement and/or update their systems in advance of the expected final rule.

This advisement is particularly true as federal agencies continue to move toward proactive business system requirements and away from reactive post-award audits and reviews. In this environment, the design and implementation of a compliant federal business system practice is critical to a successful execution of federal awards.

## APPENDIX I – DOE Proposed Business System Rule Criteria:

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### Accounting System Criteria, Clause 952.242-72

1. A sound internal control environment, accounting framework, and organizational structure
2. Proper segregations of direct costs from indirect costs
3. Identification and accumulation of direct costs by contract
4. A logical and consistent method for the accumulation and allocation of indirect costs to intermediate and final cost objectives
5. Accumulation of costs under general ledger control
6. Reconciliation of subsidiary cost ledgers and cost objectives to general ledger
7. Approval and documentation of adjusting entries
8. Management reviews or internal audits of the system to ensure compliance with the contractor's established policies, procedures, and accounting practices
9. A timekeeping system that identifies employees' labor by intermediate or final cost objectives
10. A labor distribution system that charges direct and indirect labor to the appropriate cost objectives
11. Interim (at least monthly) determination of costs charged to a contract through routine posting of books of account
12. Exclusion from costs charged to Government contracts of amounts which are not allowable in terms of 48 CFR part 31, Contract Cost Principles and Procedures, and other contract provisions
13. Identification of costs by contract line item and by units (as if each unit or line item were a separate contract), if required by the contract
14. Segregation of preproduction costs from production costs, as applicable
15. Cost accounting information, as required-
  - a. By contract clauses concerning limitation of cost (48 CFR 52.232-20), limitations of funds (48 CFR 52.232-22), or allowable cost and payment (48 CFR 52.216-7)
  - b. To readily calculate indirect cost rates from the books of accounts
16. Billings that can be reconciled to the cost accounts for both current and cumulative amounts claimed and comply with contract terms
17. Adequate, reliable data for use in pricing follow-on acquisitions
18. Accounting practices in accordance with standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, Generally Accepted Accounting Principles

## APPENDIX I – DOE Proposed Business System Rule Criteria (continued)

### Cost Estimating System Criteria, Clause 952.215–71

1. Acceptable estimating system means an estimating system that
  - a. Is maintained, reliable, and consistently applied;
  - b. Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;
  - c. Is consistent with and integrated with the contractor's related management systems; and
  - d. Is subject to applicable financial control systems.
2. An estimating system disclosure is acceptable when the contractor has provided the contract officer with documentation no later than 60 days after contract award that—
  - a. Accurately describes those policies, procedures, and practices that the contractor currently uses in preparing cost proposals; and
  - b. Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the contractor's estimating practices.
3. The contractor shall—
  - a. Comply with its disclosed estimating system; and
  - b. Disclose significant changes to the cost estimating system to the Contracting Officer on a timely basis.
4. The contractor's estimating system shall provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures. An acceptable estimating system shall accomplish the following functions:
  - a. Establish clear responsibility for preparation, review, and approval of cost estimates and budgets.
  - b. Provide a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates and budgets.
  - c. Ensure that relevant personnel have sufficient training, experience, and guidance to perform estimating and budgeting tasks in accordance with the contractor's established procedures.
  - d. Identify and document the sources of data and the estimating methods and rationale used in developing cost estimates and budgets.
  - e. Provide for adequate supervision throughout the estimating and budgeting process.
  - f. Provide for consistent application of estimating and budgeting techniques.
  - g. Provide for detection and timely correction of errors.
  - h. Protect against cost duplication and omissions.
  - i. Provide for the use of historical experience, including historical vendor pricing information, where appropriate.
  - j. Require use of appropriate analytical methods.
  - k. Integrate information available from other management systems.
  - l. Require management review, including verification of compliance with the company's estimating and budgeting policies, procedures, and practices.
  - m. Provide for internal review of, and accountability for, the acceptability of the estimating system, including the budgetary data supporting indirect cost estimates and comparisons of projected results to actual results, and an analysis of any differences.
  - n. Provide procedures to update cost estimates and notify the contract officer in a timely manner.
  - o. Provide procedures that ensure subcontract prices are reasonable based on a documented review and analysis provided with the prime proposal, when practicable.
  - p. Provide estimating and budgeting practices that consistently generate sound proposals that are compliant with the provisions of the solicitation and are adequate to serve as a basis to reach a fair and reasonable price.
  - q. Have an adequate system description, including policies, procedures, and estimating and budgeting practices, that comply with the Federal Acquisition Regulation (48 CFR chapter 1) and Department of Energy Acquisition Regulation (48 CFR chapter 9).

## APPENDIX I – DOE Proposed Business System Rule Criteria (continued)

### Contractor Purchasing System Criteria, Clause 952.244–71

1. The Contractor's purchasing system shall—
  - a. Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1) and the Department of Energy Acquisition Regulation (48 CFR Chapter 9);
  - b. Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;
  - c. Maintain an organization plan that establishes clear lines of authority and responsibility;
  - d. Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;
  - e. Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;
  - f. Apply a consistent make-or-buy policy that is in the best interest of the Government;
  - g. Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;
  - h. Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;
  - i. Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award
  - j. Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;
  - k. Document negotiations in accordance with 48 CFR 15.406–3;
  - l. Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;
  - m. Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;
  - n. Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;
  - o. Document and justify reasons for subcontract changes that affect cost or price;
  - p. Notify the Government of the award of all subcontracts that contain the 48 CFR Chapter 1 and 48 CFR Chapter 9 flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;
  - q. Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of the 41 U.S.C. chapter 87, Kickbacks;
  - r. Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;
  - s. Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the 48 CFR chapter 1, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract;
  - t. Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources;
  - u. Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements;
  - v. Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;
  - w. Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and
  - x. Establish and maintain procedures to timely notify the contract officer, in writing, if—
    - i. The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or
    - ii. Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

## APPENDIX I – DOE Proposed Business System Rule Criteria (continued)

### Contractor Property Management System Criteria, Clause 952.245–70

1. Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:
  - a. **Acquisition of Property.** The contractor shall document that all property was acquired consistent with its engineering, production planning, and property control operations.
  - b. **Receipt of Government Property.** The contractor shall receive Government property and document the receipt, record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.
  - c. **Government-furnished property.** The contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.
  - d. **Contractor-acquired property.** The contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.
  - e. **Records of Government property.** The contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and contractor-acquired property.
    - i. Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:
      1. The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition), and other data elements as necessary and required in accordance with the terms and conditions of the contract.
      2. Quantity received (or fabricated), issued, and balance-on-hand.
      3. Unit acquisition cost.
      4. Unique-item identifier or equivalent (if available and necessary for individual item tracking).
      5. Unit of measure.
      6. Accountable contract number or equivalent code designation.
      7. Location.
      8. Disposition.
      9. Posting reference and date of transaction.
      10. Date placed in service (if required in accordance with the terms and conditions of the contract).
    - ii. *Use of a Receipt and Issue System for Government Material.* When approved by the Property Administrator, the contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.
  - f. **Physical inventory.** The contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the contractor's system or the property is to be transferred to a follow-on contract).
  - g. **Subcontractor control.**
    - i. The contractor shall award subcontracts that clearly identify items to be provided and the extent of any restrictions or limitations on their use. The contractor shall ensure appropriate flowdown of contract terms and conditions (e.g., extent of liability for loss of Government property).
    - ii. The contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.
  - h. **Reports.** The contractor shall have a process to create and provide reports of discrepancies, loss of Government property, physical inventory results, audits and self-assessments, corrective actions, and other property-related reports as directed by the contract officer.
  - i. **Relief of stewardship responsibility and liability.** The contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations.

## APPENDIX I – DOE Proposed Business System Rule Criteria (continued)

### Contractor Property Management System Criteria, Clause 952.245–70 (continued)

- i. This process shall include the corrective actions necessary to prevent recurrence.
  - ii. Unless otherwise directed by the Property Administrator, the contractor shall investigate and report to the Government all incidents of property loss as soon as the facts become known. Such reports shall, at a minimum, contain the following information:
    1. Date of incident (if known).
    2. The data elements required under (f)(1)(iii)(A).
    3. Quantity.
    4. Accountable contract number.
    5. A statement indicating current or future need.
    6. Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.
    7. All known interests in commingled material of which includes Government material.
    8. Cause and corrective action taken or to be taken to prevent recurrence.
    9. A statement that the Government will receive compensation covering the loss of Government property, in the event the contractor was or will be reimbursed or compensated.
    10. Copies of all supporting documentation.
    11. Last known location.
    12. A statement that the property did or did not contain sensitive, export controlled, hazardous, or toxic material, and that the appropriate agencies and authorities were notified.
  - iii. Unless the contract provides otherwise, the contractor shall be relieved of stewardship responsibility and liability for property when—
    1. Such property is consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator;
    2. Property Administrator grants relief of responsibility and liability for loss of Government property;
    3. Property is delivered or shipped from the contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the contractor; or
    4. Property is disposed of in accordance with paragraphs (j) and (k) of this clause.
  - j. **Utilizing Government property.**
    - i. The contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.
    - ii. Unless otherwise authorized in this contract or by the Property Administrator the contractor shall not commingle Government material with material not owned by the Government.
  - k. **Maintenance.** The contractor shall properly maintain Government property. The contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.
  - l. **Property closeout.** The contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss of Government property cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.
2. The contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions, loss of Government property, and disposition of material and equipment.

## APPENDIX I – DOE Proposed Business System Rule Criteria (continued)

### Earned Value Management System Criteria, Clause 952.234–71

1. In the performance of this contract, the contractor shall use—
  - a. An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/ Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA–748) (current version at time of award)
  - b. Management procedures.
    - i. Management procedures provide for generation of timely, reliable, and verifiable information for the Department of Energy (DOE) Integrated Program Management Report (IPMR) data item of this contract.
    - ii. The contractor shall use Department of Energy's (DOE) modified version of Department of Defense's Data Item Description (DID) Integrated Program Management Report (IPMR), DI–MGMT– 81861, (DOE version, current version at time of contract award) which contains data for measuring cost and schedule performance for this DOE contract.
    - iii. The contractor shall submit the data electronically by uploading the data into the Project Assessment and Reporting System (PARS II) in accordance with the "Contractor Project Performance Upload Requirements" document maintained by the DOE Office of Acquisition and Project Management (OAPM).
    - iv. All requested data shall be submitted timely and accurately, and shall be current as of the close of the previous month's accounting period.

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