

DOE's analysis showed that, except for seven items proposed for deletion as discussed below, most of the provisions of § 970.7104 should be retained either in the preaward process or in the subcontract document itself. Moreover, DOE has reconsidered the desirability of proposing to eliminate the convenient listing of these subjects and the clarity that comes with such a listing. Further, removing the section could be interpreted incorrectly as proposing to eliminate the underlying substantive requirements identified elsewhere. Therefore, DOE has chosen instead to propose elimination of seven subparagraphs of that section and relocation of most of the subjects from § 970.7104 to two contract clauses, thereby removing the content of § 970.7104 in its entirety. The amendment proposes no new policy and adds no new requirements for a contractor. For the most part, the regulatory treatment of each subject has been simplified and shortened. For details, see the section-by-section analysis below.

II. Section-by-Section Analysis

A. In accordance with Section II, paragraph 6 of the notice of proposed rulemaking published on March 2, 1995, the Department of Energy has performed a detailed review of the subjects covered by DEAR 970.7104 to determine which requirements should be redesignated in the other parts of the DEAR. This amendment to the notice of proposed rulemaking reflects the proposed disposition of the provisions of DEAR 970.7104-1 through 970.7104-47. The redesignation table set forth below will

graphically reflect this proposed disposition.

B. The Department has decided that the subjects of 970.7104 which are to continue to play a part in the award of subcontracts under DOE management and operating contracts fall generally into two categories. The first category consists of processes that lead to the award of prospective subcontracts, and the second category consists of those clauses that should be included in appropriate subcontracts and provisions that guide the administration of certain of those clauses. As a result of this recognition, this amendment proposes to deal with the first category as additions to an existing clause. A new clause is proposed to deal with the subjects that comprise the second category.

C. This amendment proposes to add subjects in the first category to the clause currently set forth at 970.5204-22, "Contractor Purchasing System." The March 2, 1995, notice of proposed rulemaking proposed to change paragraph (a) of 970.5204-22. Today's amendment proposes to further amend paragraph (a) to insert the phrase "this clause, DEAR 970.5204-XX, and" in the first sentence. It would also expand the content of that clause to cover requirements that directly relate to the management and operating contractor's purchasing system and methods in the award of subcontracts.

D. This amendment also proposes to identify subjects in the second category in paragraph (b) of a new clause at 970.5204-XX. The purpose of that clause would be to continue to provide a convenient listing of clauses and

related requirements that management and operating contractors would be required to include in, or apply to, prospective subcontracts. That new clause in its paragraph (a) would contain a general instruction directing the inclusion of the listed clauses and, where appropriate, the application of attendant regulations governing the subject matter of the cited clause. Paragraph (a) would recognize that certain of the listed clauses flow down pursuant to the management and operating contractor's prime contract with the Department (e.g., Employment of the Handicapped). Certain other clauses that would be included in appropriate subcontracts either are not included in the prime contract (e.g., Service Contract Act) or, if included, do not contain a flowdown instruction. For these latter two types of clauses, paragraph (a) would instruct the contractor to apply requirements to subcontracts in the same manner as the Department does for the award of a DOE prime contract which is not a management and operating contract.

E. For certain subjects, such as termination and indemnification, there would be coverage of different aspects of the same subject in both of the clauses at 970.5204-22 and at 970.5204-XX.

F. The following table identifies the new location of each item in 970.7104 and indicates whether the original requirement for the subject provision is based on an Executive Order, Department policy, Federal regulation or statute.

Old citation 970.-	Subject	New citation 970.5204-
7104-1	Contingent Fees (P)	Deleted.
7104-2	Record Retention (S)	XX(b)(20).
7104-3	Utility Services (P)	22(b).
7104-4	Leasing Property, Plant or Equipment (P)	22(q).
7104-5	Leasing of Motor Vehicles (P)	22(m).
7104-6	Strategic and Critical Materials (P)	22(t).
7104-7	Purchases of Special Items (S/R/P)	22(p).
7104-8	Purchasing Alternative Determinations (P)	22(q).
7104-9	Qualification Requirements (P)	Deleted.
7104-10	Organization Conflicts of Interest (S)	XX(b)(16).
7104-11	Cost or Pricing Data (S)	XX(b)(5).
7104-12	Small Business and Small Disadvantaged Business Concerns (S)	XX(b)(23) and 970.1901.
7104-13	Labor Surplus Concerns (P)	Deleted.
7104-14	Convict Labor (P)	Deleted.
7104-15	Contract Work Hours and Safety Standards Act (S)	XX(b)(4).
7104-16	Davis-Bacon Labor Standards for Construction (S)	XX(b)(8).
7104-17	Walsh-Healey (P)	Deleted.
7104-18	Equal Employment Opportunity (E)	XX(b)(11).
7104-19	Service Contract Act (S)	XX(b)(22).
7104-20	Vietnam Vets (S)	XX(b)(24).
7104-21	Environmental & Occupational Safety & Health (S/P)	XX(b)(10).
7104-22	Buy American (S)	22(g).
7104-23	Patents, Data and Copyrights (S/P)	XX(b)(17).
7104-24	Bonds & Insurance (S/P)	22(f).
7104-25	Indemnification (S/P)	22(l) and XX(b)(14).