



**The purpose of this modification is as follows:**

1. Delete Contract Clause I.104 "DEAR 952.222-70 Whistleblower Protection for Contractor Employees (APR 1999)" in its entirety;
2. Incorporate the updated Department of Energy Acquisition Regulation (DEAR) Clause "952.203 -70 Whistleblower Protection for Contractor Employees (DEC 2000)";
3. Incorporate the updated Federal Acquisition Regulation (FAR) Clause "52.203-17 Contractor Employee Whistleblower Rights and Requirement To Inform Employees of Whistleblower Rights (APR 2014)"; and
4. Update Special Contract Requirement H.32 "Costs Associated with Whistleblower Actions" to ensure alignment with the new FAR clause 52.203-17.

**Modification Description:**

1. Contract Section I, Contract Clauses, Clause I.104 DEAR 952.222-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (APR 1999) is deleted in its entirety and replaced with the following:

**I.104 DEAR 952.203-70 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000) (470)**

- (a) The Contractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.
- (b) The Contractor shall insert or have inserted the substance of this clause, including this paragraph (b), in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or leased sites.

2. Contract Section I, Contract Clauses, Clause I.120 FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS is added to Section I in its entirety as listed below:

**I.120 FAR 52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENTS TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (Apr 2014)**

- (a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR 3.908.

- (b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in section 3.908 of the Federal Acquisition Regulation.
  - (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.
3. Section H, SPECIAL CONTRACT REQUIREMENTS, Clause H.32 COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS, is deleted in its entirety and replaced with the following:

### **H.32 COSTS ASSOCIATED WITH WHISTLEBLOWER ACTIONS**

- (a) Definitions:

*Abuse of authority* means an arbitrary and capricious exercise of authority that is inconsistent with the mission of the executive agency concerned or the successful performance of a contract of such agency.

*Covered Contractors and subcontractors* for the purposes of this Section means those contractors and subcontractors with contracts that exceed the Simplified Acquisition Threshold.

*Employee whistleblower action* encompasses any action filed by an employee in Federal and State court for redress of a retaliatory act by a contractor and any administrative procedure brought by an employee under 29 Code of Federal Regulations (CFR) Part 24, "Procedures for the Handling of Retaliation Complaints under the Employee Protection Provisions of Six Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, as amended"; 48 CFR subpart 3.9, "Whistleblower Protections for Contractor Employees"; 10 CFR Part 708, "DOE Contractor Employee Protection Program"; 41 USC 4712, "Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information"; and Federal Acquisition Regulation 3.908, "Pilot Program for Enhancement of Contractor Employee Whistleblower Protections".

*Inspector General* means an Inspector General appointed under the Inspector General Act of 1978 and any Inspector General that receives funding from, or has oversight over contracts awarded for, or on behalf of, the executive agency concerned.

*Retaliatory acts* means discharge, demotion, reduction in pay, coercion, restraint, threat, intimidation, or other similar negative action taken against an employee by a contractor as a result of an employee's activity protected

as a whistleblower activity by a Federal or state statute or regulation.

*Settlement and award costs* means defense costs and costs arising from judicial orders, negotiated agreements, arbitration, or an order from a Federal agency or board and includes compensatory damages, underpayment for work performed, and reimbursement for a complainant employee's legal counsel.

- (b) For costs associated with employee whistleblower actions where a retaliatory act is alleged against a covered contractor or subcontractor, the Contracting Officer:
  - (1) May authorize reimbursement of costs on a provisional basis, in appropriate cases;
  - (2) Must consult with the DOE Office of General Counsel whistleblower cost point of contact before making a final allowability determination; and
  - (3) Must determine allowability of defense, settlement, and award costs on a case-by-case basis after considering the terms of the contract, relevant cost regulations, and the relevant facts and circumstances, including Federal law and policy prohibiting reprisal against whistleblowers, available at the conclusion of the employee whistleblower action.
- (c) Covered contractors and subcontractors must segregate legal costs including costs of in-house counsel, incurred in the defense of an employee whistleblower action so that the costs are separately identifiable.
- (d) If a Contracting Officer provisionally disallows costs associated with an employee whistleblower action for a covered contractor or subcontractor, funds advanced by the U.S. Department of Energy (DOE) may not be used to finance costs connected with the defense, settlement, and award of an employee whistleblower action.
- (e) Contractor defense, settlement, and award costs incurred in connection with the defense of suits brought by employees under Section 2 of the *Major Fraud Act of 1988* are excluded from coverage of this Section.

4. All other terms and conditions remain unchanged.

***(End of Modification)***