

52.250-1 Indemnification Under Public Law 85-804.

As prescribed in 50.104-4 , insert the following clause:

Indemnification Under Public Law 85-804 (Apr 1984)

(a) "Contractor's principal officials," as used in this clause, means directors, officers, managers, superintendents, or other representatives supervising or directing-

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(3) A separate and complete major industrial operation in connection with the performance of this contract.

(b) Under Public Law 85-804 (50 U.S.C. 1431-1435) and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government *shall*, subject to the limitations contained in the other paragraphs of this clause, indemnify the Contractor against-

(1) *Claims* (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;

(2) Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and

(3) Loss of, damage to, or loss of use of Government property, excluding loss of profit.

(c) This indemnification applies only to the extent that the *claim*, loss, or damage (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and (2) is not compensated for by *insurance* or otherwise. Any such *claim*, loss, or damage, to the extent that it is within the deductible amounts of the Contractor's *insurance*, is not covered under this clause. If *insurance* coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced, the Government's liability under this clause *shall* not increase as a result.

(d) When the *claim*, loss, or damage is caused by willful misconduct or lack of good faith on the part of any of the Contractor's principal officials, the Contractor *shall* not be indemnified for-

(1) Government *claims* against the Contractor (other than those arising through subrogation); or

(2) Loss or damage affecting the Contractor's property.

(e) With the *Contracting Officer's* prior written approval, the Contractor *may*, in any subcontract under this contract, indemnify the subcontractor against any risk defined in this contract as unusually hazardous or nuclear. This indemnification *shall* provide, between the Contractor and the subcontractor, the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and Government settlement or defense of *claims* as this clause provides. The *Contracting*

Officer may also approve indemnification of subcontractors at any lower tier, under the same terms and conditions. The Government *shall* indemnify the Contractor against liability to subcontractors incurred under subcontract provisions approved by the *Contracting Officer*.

(f) The rights and obligations of the parties under this clause *shall* survive this contract's termination, expiration, or completion. The Government *shall* make no payment under this clause unless the *agency head* determines that the amount is just and reasonable. The Government *may* pay the Contractor or subcontractors, or *may* directly pay parties to whom the Contractor or subcontractors *may* be liable.

(g) The Contractor *shall*-

(1) Promptly notify the *Contracting Officer* of any *claim* or action against, or any loss by, the Contractor or any subcontractors that *may* be reasonably be expected to involve indemnification under this clause;

(2) Immediately furnish to the Government copies of all pertinent papers the Contractor receives;

(3) Furnish evidence or proof of any *claim*, loss, or damage covered by this clause in the manner and form the Government requires; and

(4) Comply with the Government's directions and execute any authorizations required in connection with settlement or defense of *claims* or actions.

(h) The Government *may* direct, control, or assist in settling or defending any *claim* or action that *may* involve indemnification under this clause.

(End of clause)

Alternate I (Apr 1984). In cost-reimbursement contracts, add the following paragraph (i) to the basic clause:

(i) The cost of *insurance* (including *self-insurance* programs) covering a risk defined in this contract as unusually hazardous or nuclear *shall* not be reimbursed except to the extent that the *Contracting Officer* has required or approved this *insurance*. The Government's obligations under this clause are-

(1) Excepted from the release required under this contract's clause relating to allowable cost; and

(2) Not affected by this contract's Limitation of Cost or Limitation of Funds clause.

Parent topic: [52.250 \[Reserved\]](#)