

3.10.7-1 Indemnification under Public Law 85-804 (February 2003)

(a) 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 and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government will, 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 (c) 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 the 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 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 will 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 the contract as unusually hazardous or nuclear. This indemnification will provide, between the Contractor and the subcontractor, the same rights and duties, and the same evidence or proof, and Government settlement or defense of claims as this clause provides. The Contracting Officer may also approve indemnification of subcontractor's at any lower tier, under the same terms and conditions. The Government will 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 will survive this contract's termination, expiration, or completion. The Government will 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 will:

(1) Promptly notify the Contracting Officer of any claim or action against, or any loss by, the Contractor or any subcontractors that may 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)

PRESCRIPTION

Should be used in RFI/RFPs and contracts if the contractor will be exposed to unusually hazardous or nuclear risks and the DOT Secretary has authorized the use of the clause.