

Department of Energy

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(e) No schedule set forth in 915.404-4-71-5 or 970.1504-1-6 shall be used more than once in the determination of the fee amount for an annual period, unless prior approval of the Senior Procurement Executive, or designee, is obtained.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36371, 36378, July 22, 2009]

970.1504-1-8 Special equipment purchases.

(a) Special equipment is sometimes procured in conjunction with management and operating contracts. When a contractor procures special equipment, the DOE negotiating official shall determine separate fees for the equipment which shall not exceed the maximum fee allowable as established using the schedule in 915.404-4-71-5(h).

(b) In determining appropriate fees, factors such as complexity of equipment, ratio of procurement transactions to volume of equipment to be purchased and completeness of services should be considered. Where possible, the reasonableness of the fees should be checked by their relationship to actual costs of comparable procurement services.

(c) For purposes of this subsection, special equipment is equipment for which the purchase price is of such a magnitude compared to the cost of installation as to distort the amount of technical direction and management effort required of the contractor. Special equipment is of a nature that requires less management attention. When a contractor procures special equipment, the DOE negotiating official shall determine separate fees for the equipment using the schedule in 915.404-4-71-5(h). The determination of specific items of equipment in this category requires application of judgment and careful study of the circumstances involved in each project. This category of equipment would generally include:

- (1) Major items of prefabricated process or research equipment; and
- (2) Major items of preassembled equipment such as packaged boilers, generators, machine tools, and large electrical equipment. In some cases, it would also include special apparatus or

devices such as reactor vessels and reactor charging machines.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36371, July 22, 2009]

970.1504-1-9 Special considerations: Cost-plus-award-fee.

(a) When a management and operating contract is to be awarded on a cost-plus-award-fee basis, several special considerations are appropriate.

(b) All annual performance incentives identified under these contracts are funded from the annual total available fee, which consists of a base fee amount (which may be zero) and a performance fee amount (which typically will consist of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both).

(c) The annual total available fee for the contract shall equal the product of the fee(s) that would have been calculated for an annual fixed fee contract and the classification factor(s) most appropriate for the facility/task. If more than one fee schedule is applicable to the contract, the annual total available fee shall be the sum of the available fees derived proportionately from each fee schedule; consideration of significant factors applicable to each fee schedule; and application of a Classification Factor(s) most appropriate for the work.

(d) Classification Factors applied to each Facility/Task Category are:

Facility/task category	Classification factor
A	3.0
B	2.5
C	2.0
D	1.25

(e) The contracting officer shall select the Facility/Task Category after considering the following:

- (1) *Facility/Task Category A.* The main focus of effort performed is related to—
 - (i) The manufacture, assembly, retrieval, disassembly, or disposal of nuclear weapons with explosive potential;
 - (ii) The physical cleanup, processing, handling, or storage of nuclear radioactive or toxic chemicals with consideration given to the degree the nature of the work advances state of the art

technologies in cleanup, processing or storage operations and/or the inherent difficulty or risk of the work is significantly demanding when compared to similar industrial/DOE settings (i.e., nuclear energy processing, industrial environmental cleanup);

(iii) Construction of facilities such as nuclear reactors, atomic particle accelerators, or complex laboratories or industrial units especially designed for handling radioactive materials;

(iv) Research and development directly supporting paragraphs (e)(1)(i), (ii), or (iii) of this subsection and not conducted in a laboratory, or

(v) As designated by the Senior Procurement Executive, or designee. (Classification factor 3.0)

(2) *Facility/Task Category B.* The main focus of effort performed is related to—

(i) The safeguarding and maintenance of nuclear weapons or nuclear material;

(ii) The manufacture or assembly of nuclear components;

(iii) The physical cleanup, processing, handling, or storage of nuclear radioactive or toxic chemicals, or other substances which pose a significant threat to the environment or the health and safety of workers or the public, if the nature of the work uses state of the art technologies or applications in such operations and/or the inherent difficulty or risk of the work is more demanding than that found in similar industrial/DOE settings (i.e., nuclear energy, chemical or petroleum processing, industrial environmental cleanup);

(iv) The detailed planning necessary for the assembly/disassembly of nuclear weapons/components;

(v) Construction of facilities involving operations requiring a high degree of design layout or process control;

(vi) Research and development directly supporting paragraphs (e)(2)(i), (ii), (iii), (iv) or (v) of this subsection and not conducted in a laboratory; or

(vii) As designated by the Senior Procurement Executive, or designee. (Classification factor 2.5)

(3) *Facility/Task Category C.* The main focus of effort performed is related to—

(i) The physical cleanup, processing, or storage of nuclear radioactive or toxic chemicals if the nature of the

work uses routine technologies in cleanup, processing or storage operations and/or the inherent difficulty or risk of the work is similar to that found in similar industrial/DOE settings (i.e., nuclear energy, chemical processing, industrial environmental cleanup);

(ii) Plant and facility maintenance;

(iii) Plant and facility security (other than the safeguarding of nuclear weapons and material);

(iv) Construction of facilities involving operations requiring normal processes and operations; general or administrative service buildings; or routine infrastructure requirements;

(v) Research and development directly supporting paragraphs (e)(3)(i), (ii), (iii) or (iv) of this subsection and not conducted in a laboratory; or

(vi) As designated by the Senior Procurement Executive, or designee. (Classification factor 2.0)

(4) *Facility/Task Category D.* The main focus of the effort performed is research and development conducted at a laboratory. (Classification factor 1.25)

(f) Where the Senior Procurement Executive, or designee, has approved a base fee, the Classification Factors shall be reduced, as approved by the Senior Procurement Executive, or designee.

(g) Any risks which are indemnified by the Government (for example, by the Price-Anderson Act) will not be considered as risk to the contractor.

(h) All management and operating contracts awarded on a cost-plus-award-fee basis shall set forth in the contract, or the Performance Evaluation and Measurement Plan(s) required by the contract clause at 970.5215-1, Total Available Fee: Base Fee Amount and Performance Fee Amount, a site specific method of rating the contractor's performance of the contract requirements and a method of fee determination tied to the method of rating.

(i) Prior approval of the Senior Procurement Executive, or designee, is required for an annual total available fee amount exceeding the guidelines in paragraph (c) of this subsection.

(j) DOE Operations/Field Office Managers must ensure that all important areas of contract performance are specified in the contract or Performance

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Evaluation and Measurement Plan(s), even if such areas are not assigned specific weights or percentages of available fee.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36371, 36378, July 22, 2009]

970.1504-1-10 Special considerations: Fee limitations.

In situations where the objective performance incentives are of unusual difficulty or where the successful completion of the performance incentives would provide extraordinary value to the Government, fees in excess of those allowed under 970.1504-1-5 and 970.1504-1-9 may be allowed with the approval of the Senior Procurement Executive, or designee. Requests to allow fees in excess of those provided under other provisions of this fee policy must be accompanied by a written justification with detailed supporting rationale as to how the specific circumstances satisfy the two criteria listed in this subsection.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36372, 36378, July 22, 2009]

970.1504-1-11 Documentation.

The contracting officer shall tailor the documentation of the determination of fee prenegotiation objective based on 48 CFR 15.406-1, Prenegotiation objectives, and the determination of the negotiated fee in accordance with 48 CFR 15.406-3, Documenting the negotiation. The contracting officer shall include as part of the documentation: the rationale for the allocation of cost and the assignment of Facility/Task Categories; a discussion of the calculations described in 970.1504-1-5; and discussion of any other relevant provision of this subsection.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36372, July 22, 2009]

970.1504-2 Price negotiation.

(a) Management and operating contract prices (fee) and DOE obligations to support contract performance shall be governed by:

(1) The level of activity authorized and the amount of funds appropriated for DOE approved programs by specific program legislation;

(2) Congressional budget and reporting limitations;

(3) The amount of funds apportioned to DOE;

(4) The amount of obligation authority allotted to program officials and Approved Funding Program limitations; and

(5) The amount of funds actually available to the DOE operating activity as determined in accordance with applicable financial regulations and directives.

(b) Funds shall be obligated and made available by contract provision or modification after the funds become available for obligation for payment to support performance of DOE approved projects, tasks, work authorizations, or services.

(c) Contractor expenditures shall be limited to the overall amount of funds available and obligated on the contract. As prescribed at 970.3270(b), the clause at 970.5232-4, Obligation of Funds, is used for this purpose.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36372, July 22, 2009]

970.1504-3 Documentation.

970.1504-3-1 Cost or pricing data.

(a) The certification requirements of 48 CFR 15.406-2 are not applied to DOE cost-reimbursement management and operating contracts.

(b) The contracting officer shall ensure that management and operating contractors and their subcontractors obtain cost or pricing data prior to the award of a negotiated subcontract or modification of a subcontract in accordance with 48 CFR 15.406-2, and incorporate appropriate contract provisions similar to those set forth at 48 CFR 52.215-10 and 48 CFR 52.215-11 that provide for the reduction of a negotiated subcontract price by any significant amount that the subcontract price was increased because of the submission of defective cost or pricing data by a subcontractor at any tier.

(c) The clauses at 48 CFR 52.215-12 and 48 CFR 52.215-13 shall be included in management and operating contracts.