

## Department of Energy

## 970.1504-5

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.

#### 970.1504-4 Special cost or pricing areas.

#### 970.1504-4-1—970.1504-4-3 [Reserved]

#### 970.1504-5 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 970.5215-1, Total Available Fee: Base Fee Amount and Performance Fee Amount, in management and operating contracts, and other contracts determined by the Senior Procurement Executive, or designee, that include cost-plus-award-fee arrangements.

(1) The contracting officer shall include the clause with its Alternate I