

## Department of Energy

970.2204-1-1

shall be required to maintain comprehensive continuous preventive and protective programs appropriate to the particular activities throughout all operations. Appropriate financial protection in case of occupational disability must be provided to employees on DOE projects.

(b) Title to payroll and associated records under certain contracts for the management and operation of DOE facilities, and for necessary miscellaneous construction incidental to the function of these facilities, shall vest in the Government. Such records are to be disposed of in accordance with DOE directions. For such contracts, the Solicitor of Labor has granted a tolerance from the Department of Labor Regulations to omit from the prescribed labor clauses the requirement for the retention of payrolls and associated records for a period of three years after completion of the contract. Under this tolerance, the records retention requirements for all labor clauses in the contract and the Fair Labor Standards Act are satisfied by disposal of such records in accordance with applicable DOE directives.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 23126, May 18, 2009; 75 FR 68221, Nov. 5, 2010]

### 970.2201-1-3 Contract clause.

In addition to the clause at 48 CFR 52.222-1, Notice to the Government of Labor Disputes, the contracting officer shall insert the clause at 970.5222-1, Collective Bargaining Agreements—Management and Operating Contracts, in all management and operating contracts.

### 970.2201-2 Overtime management.

#### 970.2201-2-1 Policy.

Contracting officers shall ensure that management and operating contractors manage overtime cost effectively and use overtime only when necessary to ensure performance of work under the contract.

#### 970.2201-2-2 Contract clause.

The contracting officer shall insert the clause at 970.5222-2, Overtime Man-

agement, in management and operating contracts.

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

### 970.2204 Labor standards for contracts involving construction.

#### 970.2204-1 Statutory and regulatory requirements.

##### 970.2204-1-1 Administrative controls and criteria for application of the Davis-Bacon Act in operational or maintenance activities.

(a) Particular work items falling within one or more of the following criteria normally will be classified as non-covered by the Davis-Bacon Act, hereinafter referred to in this section as the “Act.”

(1) Individual work items estimated to cost \$2,000 or less. The total dollar amount of the management and operating contract is not a factor to be considered and bears no relation to individual work items classified as construction, alteration and/or repair, including painting and decorating. However, no item of work, the cost of which is estimated to be in excess of \$2,000, shall be artificially divided into portions less than \$2,000 for the purpose of avoiding the application of the Act.

(2) Work and services that are a part of operational and maintenance activities or which, being very closely and directly involved therewith, are more in the nature of operational activities than construction, alteration, and/or repair work. This includes work and services which would involve a material risk to continuity of operations, to life or property, or to DOE operating requirements, if performed by persons other than the contractor's regular production and maintenance forces. However, any decision that contracts or work items are non-covered for these reasons must be made by the Head of the Contracting Activity without power of delegation.

(3) Assembly, modification, setup, installation, replacement, removal, rearrangement, connection, testing, adjustment, and calibration of machinery and equipment. However, it is noted that these activities are covered if they are part of, or would be a logical part of, the construction of a facility, or if