

**970.1706-2**

occur when such extension can be justified under one of the statutory authorities identified in 48 CFR 6.302 and when authorized by the Head of the Agency.

(b) *Exercise of option.* As part of the review required by 48 CFR 17.605(b), the contracting officer shall assess whether competing the contract will produce a more advantageous offer than exercising the option. The incumbent contractor's past performance under the contract, the extent to which performance-based management contract provisions are present, or can be negotiated into, the contract, and the impact of a change in a contractor on the Department's discharge of its programs are considerations that shall be addressed in the contracting officer's decision that the exercise of the option is in the Government's best interest. The contracting officer's decision shall be approved by the Procurement Executive and the cognizant Assistant Secretary(s).

(c) *Conditional Authorization of Non-competitive Extension Made Pursuant to Authority Under CICA.* Authorization to extend a management and operating contract by the Head of the Agency shall be considered conditional upon the successful negotiation of the contract to be extended in accordance with the Department's negotiation objectives. The Head of the Contracting Activity shall advise the Procurement Executive no later than 6 months after receipt of the conditional authorization as to whether the Department's objectives will be met and, if not, the contracting activity's plans for competing the requirement.

**970.1706-2 Contract clause.**

The contracting officer shall insert the clause at 48 CFR 52.217-9, Option to Extend the Term of the Contract, in all management and operating contracts when the inclusion of an option is appropriate.

**48 CFR Ch. 9 (10-1-02 Edition)**

**Subpart 970.19—Small, Small Disadvantaged and Women-Owned Small Business Concerns**

**970.1907 Subcontracting with Small Business, Small Disadvantaged Business and Woman-Owned Small Business Concerns.**

**970.1907-1 Subcontracting plan requirements.**

Pursuant to the clause at 48 CFR 52.219-9, Small Business Subcontracting Plan, which is required for all management and operating contracts, each management and operating contract shall include a subcontracting plan which is effective for the term of the contract. Goals for the contract shall be negotiated annually when revised funding levels are determined. The plan should include provisions for revising the goals or any other sections of the plan. Such revisions shall be in writing, approved by the contracting officer, and shall be specifically made a material part of the contract.

**Subpart 970.22—Application of Labor Policies**

**970.2200 Scope of subpart.**

This subpart prescribes Department of Energy labor policies pertaining to the award and administration of management and operating contracts.

**970.2201 Basic labor policies.**

**970.2201-1 Labor relations.**

**970.2201-1-1 General.**

Contracting officers shall, in appropriate circumstances, follow the guidance in 48 CFR Subpart 22.1, as supplemented in this section, in the award and administration of management and operating contracts.

**970.2201-1-2 Policies.**

(a) The extent of Government ownership of the nation's energy plant and

materials, and the overriding concerns of national defense and security, impose special conditions on personnel and labor relations in the energy program. Such special conditions include the need for continuity of vital operations at DOE installations; retention by DOE of absolute authority on all questions of security; and DOE review of labor expenses under management and operating contracts as a part of its responsibility for assuring judicious expenditure of public funds. It is the intent of DOE that personnel and labor policies throughout the energy program reflect the best experience of American industry in aiming to achieve the type of stable labor-management relations that are essential to the proper development of the energy program. The following enunciates the principles upon which the DOE policy is based:

(1) *Employment standards.* (i) Management and operating contractors are expected to bring experienced, proven personnel from their private operations to staff key positions on the contract work and to recruit other well-qualified personnel as needed. Such personnel should be employed and treated during employment without discrimination by reason of race, color, religion, sex, or national origin. Contractors shall be required to take affirmative action to achieve these objectives.

(ii) The job qualifications and suitability of prospective employees should be established by the contractor prior to employment by careful personnel investigations. Such personnel investigations should include, as appropriate: A credit check; verification of high school degree/diploma or degree/diploma granted by an institution of higher learning within the last 5 years; contacts with listed personal references; contacts with listed employers for the past 3 years (excluding employment of less than 60 days duration, part-time employments, and craft/union employments); and local law enforcement checks when such checks are not prohibited by State or local law or regulation, and when the individual resides in the jurisdiction where the contractor is located. When a DOE access authorization (security clearance) will be required, the aforementioned pre-

employment checks must be conducted and the applicant's job qualifications and suitability must be established before a request is made to the DOE to process the applicant for access authorization. Evidence must be furnished to the DOE with the applicant's security forms that specify: The date each check was conducted, the entity contacted that provided information concerning the applicant, a synopsis of the information provided as a result of each contact, and a statement that all information available has been reviewed and favorably adjudicated in accordance with the contractor's personnel policies. When an applicant is being hired specifically for a position which requires a DOE access authorization, the applicant shall not be placed in that position prior to the access authorization being granted by the DOE unless an exception has been obtained from the Head of the Contracting Activity, or designee. If an applicant is placed in that position prior to access authorization being granted by the DOE, the applicant may not be afforded access to classified matter or special nuclear materials (in categories requiring access authorization) until the DOE notifies the employer that access authorization has been granted. Management and operating contractors and other contractors operating DOE facilities may include the requirements set forth in this subsection in subcontracts (appropriately modified to identify the parties) wherein subcontract employees will be required to hold DOE access authorization in order to perform on-site duties, such as protective force operations.

(iii) Consistent with the policies set forth in this subpart, the contractor is responsible for maintaining satisfactory standards for employee qualifications, performance, conduct, and business ethics under its own personnel policies.

(2) *Security.* On all matters of security at its facilities, DOE retains absolute authority and neither the regulations and policies pertaining to security, nor their administration, are matters for collective bargaining between the contractor's management and labor. Insofar as DOE security regulations affect the collective bargaining

process, the security policies and regulations will be made known to both parties. To the fullest extent feasible, DOE will consult with representatives of the contractor's management and labor when formulating security regulations and policies that may affect the collective bargaining process.

(3) *Wages, salaries, and employee benefits.* (i) Wages, salaries, and employee benefits shall be administered in a manner designated to adapt the normal practices and conditions of industry or institutions of higher education to the contract work, and to provide for appropriate review by DOE. Area practices, valid patterns, and well-established commercial or academic practices of the contractors, as appropriate, form the criteria for the establishment and adjustment of compensation schedules.

(ii) The aspects of wages, hours, and working conditions which are the substance of collective bargaining in normal organized industries will be left to the orderly processes of negotiation and agreement between DOE contractor management and employee representatives with maximum possible freedom from Government interference.

(4) *Employee relations.* The handling of employee relations on contract work, including such matters as the conduct and discipline of the work force and the handling of employee grievances, is part of the normal management responsibility of the contractor.

(5) *Collective bargaining.* (i) DOE review of collective bargaining practices will be premised on the view that management's trusteeship for the operation of the Government facilities includes the duty to adopt practices which are fundamental to the friendly adjustment of disputes, and which experience has shown, promote orderly collective bargaining relationships. Practices inconsistent with this view may be objected to if not found to be otherwise clearly warranted.

(ii) Consistent with the policy of assuring continuity of operation of vital facilities, all collective bargaining agreements at DOE-owned facilities should provide that grievances and disputes involving the interpretation or application of the agreement will be

settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement entered into during the period of performance of this contract should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operation for the term of the collective bargaining agreement.

(iii) DOE expects its management and operating contractors and the unions representing the contractor's employees to cooperate fully with the Federal Mediation and Conciliation Service.

(6) *Personnel training.* DOE encourages and supports personnel training programs aimed at improving work efficiency or developing needed skills which are not otherwise obtainable.

(7) *Working conditions.* Accident, fire, health, and occupational hazards associated with DOE activities will be held to a practical minimum level and controlled in the interest of maintenance of health and prevention of accidents. Subject to DOE control, contractors 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

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in accordance with applicable DOE directives.

### 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 48 CFR 970.5222-2, Overtime Management, in management and operating contracts.

### 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 noncovered 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 activi-

ties 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 noncovered 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 construction-type work which is not “incidental” to the overall effort is involved.

(4) Experimental development of equipment, processes, or devices, including assembly, fitting, installation, testing, reworking, and disassembly. This refers to equipment, processes, and devices which are assembled for the purpose of conducting a test or experiment. The design may be only conceptual in character, and professional personnel who are responsible for the experiment participate in the assembly. Specifically excluded from the category of experimental development are buildings and building utility services, as distinguished from temporary connections thereto. Also specifically excluded from this category is equipment to be used for continuous testing (*e.g.*, a machine to be continuously used for testing the tensile strength of structural members).

(5) Experimental work in connection with peaceful uses of nuclear energy. This refers to equipment, processes and devices which are assembled and/or set in place and interconnected for the purpose of conducting a test or experiment. The nature of the test or experiment is such that professional personnel who are responsible for the test or experiment and/or data to be derived