

(f) Where the Procurement Executive, or designee, has approved a base fee, the Classification Factors shall be reduced, as approved by the 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 48 CFR 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 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 Evaluation and Measurement Plan(s), even if such areas are not assigned specific weights or percentages of available fee.

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 48 CFR 970.1504-1-5 and 48 CFR 970.1504-1-9 may be allowed with the approval of the 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.

970.1504-1-11 Documentation.

The contracting officer shall tailor the documentation of the determina-

tion 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 48 CFR 970.1504-1-5; and discussion of any other relevant provision of this subsection.

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 obligational 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 48 CFR 970.3270(b), the clause at 48 CFR 970.5232-4, Obligation of Funds, is used for this purpose.

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.

970.1504-4

(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 48 CFR 970.5215-1, Total Available Fee: Base Fee Amount and Performance Fee Amount, in management and operating contracts, and other contracts determined by the Procurement Executive, or designee, that include cost-plus-award-fee arrangements.

(1) The contracting officer shall include the clause with its Alternate I when the award fee cycle consists of two or more evaluation periods.

(2) The contracting officer shall include the clause with its Alternate II when the award fee cycle consists of one evaluation period.

(3) The contracting officer shall include the clause with its Alternate III when the DOE Operations/Field Office Manager, or designee, requires the contractor to submit a self-assessment.

(4) The contracting officer shall include the clause with its Alternate IV when the DOE Operations/Field Office Manager, or designee, permits the contractor to submit a self-assessment at the contractor's option.

(b)(1) The contracting officer shall insert the clause at 48 CFR 970.5215-3, Conditional Payment of Fee, Profit, and Other Incentives—Facility Man-

48 CFR Ch. 9 (10-1-06 Edition)

agement Contracts, in all DOE management and operating contracts and other contracts determined by the Procurement Executive, or designee.

(2) The contracting officer shall include the clause with its Alternate I in contracts that do not contain the clause at 48 CFR 952.204-2, Security.

(3) The contracting officer shall include the clause with its Alternate II in contracts that are awarded on a cost-plus-award-fee basis. The contracting officer should consider including the clause with its Alternate II in contracts that are awarded on a multiple fee basis if the cost-plus-award-fee portion of the contract is significant.

(c) The contracting officer shall insert the clause at 48 CFR 970.5215-4, Cost Reduction, in management and operating contracts, and other contracts determined by the Procurement Executive, or designee, if cost savings programs are contemplated.

(d) The Contracting officer shall insert the provision at 48 CFR 970.5215-5, Limitation on Fee, in solicitations for management and operating contracts, and other contracts determined by the Procurement Executive, or designee.

[65 FR 81009, Dec. 22, 2000, as amended at 69 FR 68781, Dec. 10, 2003; 71 FR 16243, Mar. 31, 2006]

Subpart 970.17—Special Contracting Methods

970.1706 Management and operating contracts.

970.1706-1 Award, renewal, and extension.

(a) *Contract term.* Effective work performance under a management and operating contract is facilitated by the use of a relatively long contract term of up to ten (10) years. Accordingly, management and operating contracts shall provide for a basic contract term not to exceed five (5) years and may include an option(s) to extend the term for additional periods; provided, that no one option period exceeds five (5) years in duration and the total term of the contract, including any options exercised, does not exceed ten (10) years. The specific term of the base period