Subpart 970.15—Contracting by Negotiation

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Parent topic: PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

970.1504 Contract pricing.

970.1504-100 Price analysis.

970.1504-101 Fees for management and operating contracts.

This subsection sets forth the Department's policies on fees for management and operating (M&O) contracts.

970.1504-102 Fee policy.

(a) *Basic principles.*

(1) M&O contracts are typically cost-reimbursement type contracts with incentive fees. An M&O contract, however, may be of any contract type or combination of types (for example, firm-fixed-price, cost-plus-award-fee, cost-plus-incentive-fee, multiple-incentive, etc.). Regardless of contract type, an M&O contract may contain work elements using different incentives.

(2) A cost-plus-fixed-fee contract shall only be used if approved in advance by the Senior Procurement Executive (SPE) or designee. The fee for a cost-plus-fixed-fee contract may not exceed the limits at FAR 15.404-4(c)(4)(i).

(3) A base fee amount may only be used if approved in advance by the SPE or designee.

(4) Incentive fees allocated to evaluation periods under cost-reimbursement type contracts should, to the greatest extent appropriate, be tied to a specific portion of the maximum total available fee.

(5) The maximum total available fee amount may not exceed the fee derived from this subsection unless approved in advance by the SPE or designee. A request to allow a higher fee must be in writing and must clearly explain why the situation merits consideration.

(i) Typically, only a situation where either unusually difficult objective performance incentives would be used or where successful performance would provide extraordinary value would merit consideration.

(ii) When a contract requires a contractor to use its own facilities, equipment, or other resources for contract performance (*e.g.,* when there is no letter-of-credit financing), consideration may be given,

subject to approval by the SPE or designee, to allowing a maximum total available fee amount above the amount calculated by this subsection.

(6) Each M&O contract must set forth in the contract (or in a Performance Evaluation and Measurement Plan (PEMP) or similar document) the methods that will be used to rate the contractor's performance and to determine the fee the contractor's performance will earn. The DOE Contracting Officer must ensure all important areas of contract performance are specified in the contract or in a PEMP (or similar document), even if such areas are not assigned a specific portion of the maximum total available fee the contractor might earn.

(i) An M&O contract is an “incentive contract” as that term is used in FAR subpart 16.4. FAR subpart 16.4 prohibits the use in a contract of other than cost incentives without also providing a cost incentive (or constraint).

(ii) Award fee not earned during the award fee cycle shall not be carried over to any future award fee cycle. Consequently—

(A) When the award fee cycle consists of one evaluation period, unearned award fee amounts may not be carried over from one evaluation period to the next.

(B) When the award fee cycle consists of two or more evaluation periods, at the sole discretion of the Contracting Officer, unearned award fee amounts may be carried over from one evaluation period to the next, so long as the periods are within the same award fee cycle.

(b) C*oordination requirements.*

(1) Before issuing a competitive solicitation, the Head of the Contracting Activity (HCA) must coordinate the greatest maximum total available fee amount the HCA will accept with the SPE or designee. A competitive solicitation must identify the greatest maximum total available fee amount the Government will accept and may invite offerors to propose a lower fee amount.

(2) Before beginning to negotiate an extension to an existing contract, the HCA must coordinate the greatest maximum total available fee amount the HCA will accept, and the maximum total available fee amount targeted for negotiation with the SPE or designee.

970.1504-103 Fee determination.

(a) *General.* Determining the fee of an M&O contract requires considering the:

(1) Magnitude of the effort;

(2) Type of the effort;

(3) Nature, difficulty, complexity, and importance of the work; and

(4) Specific circumstances of the procurement.

(b) *Maximum total available fee amount for the contract, annual fee bases, and allocation of the maximum total available fee amount.*

(1) Determining the maximum total available fee amount of an M&O contract, which is based upon

the fee base (among other things) in each of the one-year periods of the M&O contract, is a separate action from allocating that amount to the evaluation periods of the contract, which is based upon what best motivates the M&O contractor's superior performance. The Government's objective is to allocate incentives in a manner that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

(2) The maximum total available fee amount in an M&O contract is the sum of the maximum total available fee amounts in the contract's one-year periods. (See 970.1504-104 for a complete explanation of the calculation of the maximum total available fee amount for a one-year period and an example.)

(3) The maximum total available fee amount for a one-year period is based on the fee base for that one-year period. The fee base is an estimate of the allowable costs (with some exclusions) for that one-year period.

(4) The fee base is a basic component of the fee schedules, which link the fee base to fee. A fundamental aspect of fee calculations is the amount of the fee base and the amount of fee in the fee schedules are annual amounts. Calculating the maximum total available fee amount for a one-year period starts with determining the fee base for the one-year period. Consequently, a contract's maximum total available fee amount is based on the contract's one-year periods and their fee bases.

(5) Usually (but not necessarily) once the maximum total available fee amount for a one-year period is calculated, it is allocated (that is, made available to be earned by the M&O contractor) to the same one-year period. Additionally, when a maximum total available fee amount is established for longer than a year, it is subject to adjustment in the event of a significant change (greater than plus or minus ten percent or a lesser percent if appropriate) to the budget or work scope.

(6) In summary, while the maximum total available fee amount for a one-year period is based on the fee base for the one-year period, the evaluation period in which the contractor may earn all, or part of that fee need not be the same one-year period or even a single evaluation period. Usually, the length of an evaluation period is one year, mirroring the one-year period used in the calculation of the maximum total available fee amount for a one-year period. In fact, the SPE's or designee's approval is required to do otherwise. Nonetheless, the Government's objective is to allocate incentives in a manner that will provide the contractor with the greatest incentive for efficient and economical performance. Consequently, there may be occasions where after calculating the maximum total available fee amount for a year, part or all of it should be allocated to a subsequent one-year evaluation period, an evaluation period of greater than a year, or to several evaluation periods.

(7) Before each year (or other appropriate period), at any time before the year (or period), including as early as the time of contract award, the Contracting Officer and M&O contractor will enter negotiations to establish the requirements for the year (or other appropriate period), including evaluation areas, individual requirements, and the maximum total available fee that the contractor can earn for its performance. If the parties cannot agree, the Contracting Officer will unilaterally establish the requirements and the maximum total available fee. The maximum total available fee allocated to an evaluation period must be apportioned among a base fee amount (which is usually zero) and a performance fee amount. The performance fee amount may consist of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both. Both performance fee components are “incentives” per FAR subpart 16.4 and both are performance based. The performance fee must be tied to objective measures to the maximum extent appropriate. Performance incentive fee is preferable to performance award fee because it uses objective performance requirements rather than subjective

performance requirements. Performance fee that is award fee may be used when: objective measures are not feasible (that is, when it is not feasible to devise effective predetermined objective measures applicable to cost, technical performance, or schedule); and the likelihood of meeting acquisition objectives will be enhanced by using incentives that effectively motivate the contactor toward exceptional performance and provide the Government with the flexibility to evaluate both actual performance and the conditions under which it was achieved.

(8) Within the maximum total available fee, Contracting Officer may include a type of incentive fee component, often labeled “performance based incentive (PBI),” that includes a target fee for a target level of performance. Each PBI must be tied to a specific portion of the total available fee pool. PBIs may only be used when—

(i) A target level of performance can be established that the contractor can reasonably be expected to reach;

(ii) Factors likely to impede the target performance are clearly within the control of the contractor; and

(iii) The contract indicates clearly a level below which performance is not acceptable.

(c) *Determining the maximum total available fee for each one-year period of the contract.*

(1) Determining the maximum total available fee for each one-year period of the contract is a function of the:

(i) Magnitude of the effort (reflected by the total fee base for the year; see 970.1504-105);

(ii) Type of the effort (reflected by the allocation of the total fee base to the three fee schedules—production, research and development, and environmental restoration; see 970.1504-106);

(iii) Nature, difficulty, complexity, and importance of the work (reflected by the choice of classification factors; see 970.1504-107); and

(iv) Specific circumstances of the procurement (reflected by the appropriate percentages derived from considering significant factors; see 970.1504-108).

(2) Calculating the maximum total available fee for a one-year period entails determining the total fee base for the year, allocating it to the fee schedules based on the type of effort, using the fee schedules to determine a fee subtotal for each type of effort, multiplying those fee subtotals by classification factors, multiplying the resulting products by appropriate percentages, and summing those products. (See 970.1504-104 for a complete explanation and an example.)

(d) *Conditional payment of fee, profit, and other incentives.*

(1) In addition to other performance requirements specified in their contracts, M&O contractors are subject to performance requirements relating to: environment, safety, and health (ES&H), including worker safety and health (WS&H) and safeguarding of Restricted Data and other classified information. Performance requirements relating to ES&H will be set forth in the contract's ES&H terms and conditions, including a DOE-approved Integrated Safety Management System (ISMS), or similar document. Performance requirements relating to the safeguarding of Restricted Data and other classified information will be set forth in the clauses of the contract at 952.204-2, “Security Requirements,” and 970.5204-2, “Laws, Regulations, and DOE Directives,” as well as in other terms

and conditions that prescribe requirements for the safeguarding of Restricted Data and other classified information. (If the contract does not include the clause at 952.204-2, “Security Requirements,” the safeguarding of Restricted Data and other classified information requirements of the clause at 970.5215-3, “Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts,” do not apply.)

(2) If the contractor does not meet the performance requirements of the contract relating to ES&H or to the safeguarding of Restricted Data and other classified information, otherwise earned fee, fixed fee, profit, or other incentives may be unilaterally reduced by the Contracting Officer in accordance with the clause at 970.5215-3, “Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts.”

(3) The clause at 970.5215-3, entitled “Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts,” provides for reductions of earned fee, fixed fee, profit, or other incentives under the contract depending upon the severity of the contractor's performance failure relating to ES&H requirements, and relating to the safeguarding of Restricted Data and other classified information. When reviewing performance failures that would otherwise warrant a reduction of earned fee, fixed fee, profit, or other incentives, the Contracting Officer must consider mitigating factors that may warrant a reduction below the applicable range specified in the clause. Some of the mitigating factors that must be considered are included in the clause.

(4) The Contracting Officer must obtain the concurrence of the cognizant Program Secretarial Officer—

(i) Prior to effecting any reduction; and

(ii) Prior to determining that a reduction is not warranted for a particular performance failure or a group of performance failures.

(5) The Contracting Officer must coordinate with the Office of Enforcement within the Office of Enterprise Assessments (or with any designated successor office) before pursuing a contract fee reduction in the event of a violation by the contractor or any contractor employee of any DOE regulation relating to worker safety and health concerns. See 970.2303-2.

(e) *Types of contracts and fee arrangements.*

(1) Contracts that are a combination of types or include work elements with fee arrangements that are a combination of contract types must—

(i) Conform to the requirements of parts 915 and 916 and FAR parts 15 and 16; and

(ii) Where appropriate to the type, be supported by:

(A) Negotiated costs subject to the requirements of the 41 U.S.C. chapter 35;

(B) A pre-negotiation memorandum; and

(C) A plan describing how each contract type or fee arrangement will be administered.

(2) [Reserved]

(f) *Establishing contract type.* Operations and field offices shall take the lead in establishing the most appropriate contract type for their requirements. Before establishing contract types and fee

arrangements, operations and field offices must ensure the necessary resources exist within the contractor's and the Government's organizations to administer them.

970.1504-104 Calculating the maximum total available fee amount for a one-year period.

(a) The maximum total available fee amount for a contract is the sum of the maximum total available fee amounts of the contract's one-year periods. The maximum total available fee amount in a one-year period is based on the fee base of the one-year period. Calculating the maximum total available fee amount for a one-year period requires considering the: magnitude of the effort (reflected by the total fee base for the year); type of effort (reflected by the allocation of the total fee base to the three fee schedules); nature, difficulty, complexity, and importance of the work (reflected by the choice of classification factors); and specific circumstances of the procurement (reflected by the appropriate percentages derived from considering significant factors).

(b) To calculate the maximum total available fee amount for a year, the Contracting Officer takes the following steps:

(1) *Step 1.* Determines the total fee base for the year (see 970.1504-105);

(2) *Step 2.* Allocates the total fee base for the year as appropriate to the three types of efforts reflected by the three fee schedules (if there is only one type of effort, all of the total fee base is allocated to the fee schedule appropriate for the effort);

(3) *Step 3.* Using the portion of the total fee base allocated to the schedule in paragraph (b)(2) of this section (step 2), determines a fee subtotal for each type of effort (see 970.1504-106);

(4) *Step 4.* Multiplies each of the fee subtotals in paragraph (b)(3) of this section (step 3) by the appropriate classification factor (see 970.1504-107);

(5) *Step 5.* Multiplies each of the products produced in paragraph (b)(4) of this section (step 4) by the appropriate percentage, which is determined by considering the significant factors (see 970.1504-108); and

(6) *Step 6.* Adds the products of paragraph (b)(5) of this section (step 5).

(c) An example of calculating the maximum total available fee for a one-year period follows in paragraphs (c)

(1) through (6) of this section. The assumptions are: total fee base is 50,000,000 (comprising 10,000,000 of Production efforts, 15,000,000 of Research and Development (R&D) efforts, and 25,000,000 of Environmental Management (EM) efforts), classification factors are 3.0, 1.5, and 2.0, and appropriate percentages are 90%, 85%, and 75%.

(1) *Step 1.* Determination of the total fee base: 50,000,000.

(2) *Step 2.* Allocation of the total fee base in paragraph (c)(1) of this section (step 1) to the three fee schedules (based on the types of effort in the total fee base):

(i) 10,000,000 to Production;

(ii) 15,000,000 to R&D; and

(iii) 25,000,000 to EM.

(3) *Step 3.* Determination of the fee subtotal for each type of effort using the applicable fee schedules:

(i) 578,726 for Production;

(ii) 957,250 for R&D; and

(iii) 1,236,340 for EM.

(4) *Step 4.* Multiplication of the fee subtotal in paragraph (c)(3) of this section (step 3) for each type of effort by the appropriate classification factor:

(i) 578,726 × 3.0 = 1,736,178 for Production;

(ii) 957,250 × 1.5 = 1,435,875 for R&D; and

(iii) 1,236,340 × 2.0 = 2,472,680 for EM.

(5) *Step 5.* Multiplication of each of the products of paragraph (c)(4) of this section (step 4) by the appropriate percentage for the type of work (determined by considering the significant factors (see 970.1504-108)):

(i) 1,736,178 × .9 = 1,562,560 for Production;

(ii) 1,435,875 × .85 = 1,220,494 for R&D; and

(iii) 2,472,680 × .75 = 1,854,510 for EM.

(6) *Step 6.* Addition of the products of paragraph (c)(5) of this section (step 5):

(i) 1,562,560.

(ii) 1,220,494.

(iii) 1,854,510.

(iv) 4,637,564.

(d) In summary, the maximum total available fee amount for a contract is the sum of the maximum total available fee amounts of the contract's one-year periods. Calculating the maximum total available fee amount for a one-year period entails determining the total fee base, allocating it to the fee schedules, using the fee schedules to determine fee subtotals, multiplying the fee subtotals by classification factors, multiplying the resulting products by appropriate percentages, and summing those products. (Allocating the amount of maximum total available fee for a one-year period to an evaluation period or periods is a separate action.)

970.1504-105 Fee base.

(a) The total fee base for a one-year period (see step 1 located at 970.1504-104(b)(1)) is an estimate of the allowable costs for the one-year period, with some exclusions. (Estimates for Strategic Partnership Projects may be included in the total fee base, where appropriate.) The total fee base excludes estimates of allowable costs for: source and special nuclear materials; land, buildings, and facilities (whether they are to be leased, purchased or constructed); depreciation of Government facilities; and efforts for which a separate fee is to be negotiated.

(b) In addition to the exclusions in paragraph (a) of the section, the total fee base excludes:

(1) Any part of the estimated allowable cost of capital equipment that the contractor procures by subcontract and other similar costs that are of such magnitude or nature as to distort the technical and management effort required of the contractor;

(2) At least 20% of the estimated allowable cost of subcontracts and other major contractor procurements, with the excluded amount increasing as the contractor's estimated required management effort decreases;

(3) Estimates of allowable home office or corporate general and administrative expenses that will be reimbursed;

(4) Any cost of work funded with uncosted balances previously included in a fee base of this or any other contract performed by the contractor;

(5) Cost of rework attributable to the contractor; and

(6) State taxes.

(c) The total fee base does not reflect any fee or compensation for unusual architect-engineer or construction services provided by the M&O contractor. Architect-engineer and construction services are normally covered by special agreements based on the policies applying to architect-engineer or construction contracts. The fees for such services shall be calculated per 915.404-4800 and added to the fees calculated using the production, R&D, and EM schedules. The total fee base also does not reflect any fee or compensation for special equipment purchases. The fees for special equipment purchases shall be calculated per 915.404-4800 and added to the fees calculated using the production, R&D, and EM schedules.

(d) No fee schedule may be used more than once in calculating the maximum total available fee amount for a one-year period.

970.1504-106 Fee schedules.

(a) In calculating the amount of maximum total available fee amount for a one-year period (see 970.1504-104), once the total fee base for the year is determined it is allocated to one or more of the three fee schedules based upon the type of effort. The three types of efforts are: Production; R&D; and EM. Each fee schedule provides a fee subtotal (see steps 2 and 3 in 970.1504-104(b)(2) and (3)).

(b) The three schedules are:

Table 1 to Paragraph (b)

Fee base (dollars)	Fee dollars	Fee (percent)	Incr. (percent)
PRODUCTION EFFORTS SCHEDULE			
Up to $1 Million			7.66
1,000,000	$76,580	7.66	6.78
3,000,000	212,236	7.07	6.07
5,000,000	333,670	6.67	4.90
10,000,000	578,726	5.79	4.24
15,000,000	790,962	5.27	3.71
25,000,000	1,161,828	4.65	3.35
40,000,000	1,663,974	4.16	2.92
60,000,000	2,247,076	3.75	2.57
80,000,000	2,761,256	3.45	2.34
100,000,000	3,229,488	3.23	1.45
150,000,000	3,952,622	2.64	1.12
200,000,000	4,510,562	2.26	0.61
300,000,000	5,117,732	1.71	0.53
400,000,000	5,647,228	1.41	0.45
500,000,000	6,097,956	1.22	
Over $500,000,000	6,097,956		0.45

Table 2 to Paragraph (b)

Fee base (dollars)	Fee dollars	Fee (percent)	Incr. (percent)
RESEARCH AND DEVELOPMENT EFFORTS SCHEDULE			
Up to $1 Million			8.42
1,000,000	$84,238	8.42	7.00
3,000,000	224,270	7.48	6.84
5,000,000	361,020	7.22	6.21
10,000,000	671,716	6.72	5.71
15,000,000	957,250	6.38	4.85
25,000,000	1,441,892	5.77	4.22
40,000,000	2,075,318	5.19	3.69
60,000,000	2,813,768	4.69	3.27
80,000,000	3,467,980	4.33	2.69
100,000,000	4,006,228	4.01	1.69
150,000,000	4,850,796	3.23	1.14
200,000,000	5,420,770	2.71	0.66
300,000,000	6,083,734	2.03	0.58
400,000,000	6,667,930	1.67	0.50
500,000,000	7,172,264	1.43	
Over $500,000,000	7,172,264		0.50

Table 3 to Paragraph (b)

Fee base (dollars)	Fee dollars	Fee (percent)	Incr. (percent)
ENVIRONMENTAL MANAGEMENT EFFORTS SCHEDULE			
Up to $1 Million			7.33
1,000,000	$73,298	7.33	6.49
3,000,000	203,120	6.77	5.95
5,000,000	322,118	6.44	5.40
10,000,000	592,348	5.92	4.83
15,000,000	833,654	5.56	4.03
25,000,000	1,236,340	4.95	3.44
40,000,000	1,752,960	4.38	3.29
60,000,000	2,411,890	4.02	3.10
80,000,000	3,032,844	3.79	2.49
100,000,000	3,530,679	3.53	1.90
150,000,000	4,479,366	2.99	1.48
200,000,000	5,2197924	2.61	1.12
300,000,000	6,337,250	2.11	0.88
400,000,000	7,219,046	1.80	0.75
500,000,000	7,972,396	1.59	0.58
750,000,000	9,423,463	1.26	0.55

Fee base (dollars)	Fee dollars	Fee (percent)	Incr. (percent)
1,000,000,000	10,786,788	1.08	
Over $1 Billion	10,786,788		0.55

970.1504-107 Classification factors.

(a) There are five classification factors. They are tied to facility/task categories. Step 4 in calculating the maximum total available fee amount for the one-year period (see 970.1504-104(b)(4)) is to multiply the fee subtotal in step 3 for each type of effort by the appropriate classification factor. The classification factors and their corresponding facility/task categories are:

Table 1 to Paragraph (a)

Facility/task category	Classification factor
A	3.0
B	2.5
C	2.0
D	1.5
E	1.0

(b) 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) R&D directly supporting paragraph (b)(1)(i), (ii), or (iii) of this subsection and not conducted in a

DOE laboratory; or

(v) As designated by the SPE, 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 that 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) R&D directly supporting paragraph (b)(2)(i), (ii), (iii), (iv), or (v) of this subsection and not conducted in a DOE laboratory; or

(vii) As designated by the SPE 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) R&D directly supporting paragraph (b)(3)(i), (ii), (iii), or (iv) of this subsection and not conducted in a DOE laboratory; or

(vi) As designated by the SPE or designee. (Classification factor 2.0)

(4) *Facility/Task Category D.* The main focus of the effort performed is R&D conducted at a DOE laboratory. (Classification factor 1.5)

(5) *Facility/Task Category E.* Efforts performed using a fixed fee. (Classification factor 1.0)

(c) Where the SPE or designee has approved a base fee, the Classification Factors shall be reduced, as approved by the SPE or designee.

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

970.1504-108 Determining the appropriate percentage by considering the significant factors.

(a) In calculating the maximum total available fee for a one-year period (see 970.1504-104), step 5 (970.1504-104(b)(5)) is to consider the specific circumstances of the procurement using the following significant factors for each type of effort, determine the appropriate percentage for the type of work, and apply it to the subtotals of fee from step 4 (970.1504-104(b)(4)). An appropriate percentage of 100% would be applied to work of maximum difficulty and/or complexity; lesser percentages would be applied to work less difficult or complex. The significant factors are:

(1) The relative difficulty of work, including specific performance objectives, environment, safety and health concerns, and the technical and administrative knowledge, and skill necessary for work accomplishment and experience;

(2) Management risk relating to performance, including—

(i) Composite risk and complexity of principal work tasks required to do the job; and

(ii) Advance planning, forecasting and other such requirements;

(3) Size and operation (number of locations, plants, differing operations, etc.);

(4) The nature and relative complexity of subcontracted efforts, subcontractor management, and complexity of integration with other contractors;

(5) Other special considerations, including support of Government programs such as those relating to small and minority business subcontracting, energy conservation, etc.; and

(6) The presence or absence of financial risk, including the type and terms of the contract.

(b) [Reserved]

970.1504-109 Adding the fee subtotals for a one-year period.

In calculating the maximum total available fee amount for a one-year period (see 970.1504-104), step 6 (970.1504-104(b)(6)) is to add the products of step 5 (970.1504-104(b)(5).

970.1504-110 Allocating the maximum total available fee amount for a one-year period to one or more of the contract's evaluation periods.

Usually, the length of an evaluation period is one year, mirroring the one-year period used in

calculating the maximum total available fee amount for a one-year period. The SPE's or designee's approval is required to do otherwise. Nonetheless, the Government's objective is to allocate incentives in a manner that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance. Consequently, there may be occasions where after calculating the maximum total available fee amount for a one-year period, part or all of it should be allocated to a subsequent one-year evaluation period, an evaluation period of greater than a year, or to several evaluation periods.

970.1504-111 The maximum total available fee amount for a contract.

The maximum total available fee amount for a contract is the sum of the maximum total available fee amounts of the contract's one-year periods.

970.1504-200 Documentation.

970.1504-201 Cost or pricing data.

(a) The certification requirements of FAR 15.406-2 are not applied to DOE cost- reimbursement M&O contracts.

(b) The Contracting Officer shall ensure that M&O contractors and their subcontractors obtain certified cost or pricing data prior to the award of a negotiated subcontract or modification of a subcontract in accordance with FAR 15.406-2, if required by FAR 15.403-4, and incorporate appropriate contract provisions similar to those set forth at FAR 52.215-10 and 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 FAR 52.215-12 and 52.215-13 shall be included in M&O contracts.

970.1504-300 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 M&O contracts.

(b) The Contracting Officer shall insert the clause at 970.5215-3, Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts, in M&O contracts. (Note: The clause states if the contract does not include the Security Requirements clause (952.204-2), the requirements of the clause related to security or safeguarding of Restricted Data and other classified information do not apply.)

(c) The Contracting Officer shall insert the provision at 970.5215-5, Limitation on Fee, in solicitations for M&O contracts.

970.1504-400 Special cost or pricing areas.