970.5215-1 Total available fee: Base fee amount and performance fee amount.

As prescribed in 970.1504-3(a), insert the following clause.

Total Available Fee: Base Fee Amount and Performance Fee Amount [December 2024]

(a) *Total available fee.* Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled, “Payments and advances.”

(b) *Fee negotiations.* For any fee negotiations under this contract, at any time prior to the beginning of the evaluation period the negotiations cover, the Contracting Officer and Contractor shall attempt to reach agreement on: the requirements for the evaluation period including, if appropriate, the evaluation areas and individual requirements subject to incentives; the total available fee amount of the evaluation period; and the allocation of the total available fee amount. If agreement is reached prior to the beginning of the evaluation period, the Contracting Officer shall modify the contract to reflect the agreement. If agreement is not reached prior to the beginning of the evaluation period, the Contracting Officer will, prior to the beginning of the evaluation period, unilaterally determine: the requirements of the evaluation period including, if appropriate, the evaluation areas and individual requirements subject to incentives, the total available fee amount, and the allocation of the total available fee amount. The Contracting Officer shall modify the contract to reflect the determination.

(c) *Determination of total available fee amount earned.*

(1) The Department of Energy (DOE) shall, at the conclusion of each specified evaluation period, evaluate the Contractor's performance of all requirements, and determine the total available fee amount earned. At DOE's discretion, if the contact established specific incentivized requirements and a schedule for their completion and the Contractor completes them during the evaluation period, DOE may evaluate the Contractor's performance upon the requirements' completion. The Contractor agrees the determination of the total available fee amount earned is a unilateral determination made by the Fee Determining Official (FDO). DOE will identify the FDO. The FDO will be the DOE Operations/Field Office Manager, or another DOE official designated by the Assistant Secretary or equivalent (not delegable).

(2) If the award fee cycle consists of one evaluation period, award fee not earned during the evaluation period shall not be allocated to future evaluation periods. At the sole discretion of DOE, if the award fee cycle consists of more than one evaluation period, award fee not earned during the evaluation period may be allocated to future evaluation periods within the same award fee cycle.

(3) Following each evaluation period, the Contractor [insert may or shall] submit a self-assessment within [insert number] calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct them and avoid their recurrence. The FDO will review the Contractor's self-assessment as part of the evaluation of the Contractor's performance during the period.

(4) The FDO will evaluate the Contractor's performance in accordance with the Performance Evaluation and Measurement Plan (PEMP) described in paragraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the total available fee amount earned determination and the basis of the determination.

(d) *PEMP.* To the extent not set forth elsewhere in the contract:

(1) DOE shall establish a PEMP upon which the determination of the total available fee amount earned shall be based. The PEMP will address all of the requirements of contract performance specified in the contract directly or by reference. The Contracting Officer shall provide the Contractor with a copy of the PEMP before the start of an evaluation period.

(2) The PEMP will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. The PEMP will include, per 48 CFR 16.402-1, a cost incentive (or constraint). The criteria in the PEMP should be objective but may also include subjective criteria. The PEMP will set forth the method by which the total available fee amount will be allocated, and the total available fee amount earned will be determined.

(3) The PEMP may be revised, either unilaterally (by DOE) or bilaterally, during the evaluation period. If it is revised, the Contracting Officer shall notify the contractor—

(i) Of unilateral revisions (unless they are urgent and high priority) at least ninety calendar days prior to the end of the evaluation period and at least thirty calendar days prior to the effective date of the revision;

(ii) Of bilateral revisions (unless they are urgent and high priority) at least sixty calendar days prior to the end of the evaluation period;

(iii) Of urgent and high priority revisions, whether made unilaterally or bilaterally, at least thirty calendar days prior to the end of the evaluation period.

(e) *Schedule for total available fee amount earned determinations.* The FDO shall issue the final total available fee amount earned determination in accordance with the schedule set forth in the PEMP or as otherwise set forth in this contract.

(1) The determination for the evaluation period must be made within the later of: sixty calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment, if one is required or permitted; seventy calendar days after the end of the evaluation period; or a longer period if the Contractor and Contracting Officer agree.

(2) If the FDO elects to evaluate the Contractor's performance of any specific requirements upon their completion, the determination of any fee amount earned must be made: within seventy calendar days of the requirements' completion; or a longer period if the Contractor and Contracting Officer agree.

(3) If the determination is not made within the periods stated above, the Contractor shall be entitled to interest on the total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 7109) that is in effect on the payment date. This rate is referred to as the “Renegotiation Board Interest Rate,” and is published in the Federal Register semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual

date the determination is made. That is, interest accrued at the end of any 30-day period will be added to the total available fee amount earned and be subject to interest if not paid in the succeeding 30-day period.

(End of clause)

Parent topic: Subpart 970.52—Solicitation Provisions and Contract Clauses for Management and Operating Contracts