

PART 915—CONTRACTING BY NEGOTIATION

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915.000 Scope.

This part implements and supplements FAR Part 15 for Department of Energy (DOE) and National Nuclear Security Administration (NNSA) acquisitions. All FAR references in this part are to be read as implemented through the DOE and NNSA class deviations that implemented the Revolutionary FAR Overhaul at DOE and NNSA.

Subpart 915.2—Solicitation and Receipt of Proposals and Information

915.200 [Reserved]Scope of subpart.

The 48 CFR subpart 15.2 is not applicable to Program Opportunity Notices for Commercial Demonstrations (See subpart 917.72) or Program Research and Development Announcements (See subpart 917.73).

915.201 [Reserved]Exchanges with industry before receipt of proposals.

(e) Approval for the use of solicitations for information or planning purposes shall be obtained from the Head of the Contracting Activity.

915.207 Handling proposals and information.

915.207-70 Handling proposals and information during evaluation.

(a) Proposals furnished to the Government are to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with, the procedures in this subsection.

(b) While the Government's limited use of proposals does not require that the proposal bear a restrictive notice, proposers should, if they desire to maximize protection of their trade secrets or confidential or privileged commercial and financial information contained in them, apply the restrictive notice prescribed in paragraph (e) of the provision at 48 CFR 52.215-1 to such information. In any event, information contained in proposals will be protected to the extent permitted by law, but the Government assumes no liability for the use or disclosure of information (data) not made subject to such notice in accordance with paragraph (e) of the provision at 48 CFR 52.215-1.

(c) If proposals are received with more restrictive conditions than those in paragraph (e) of the provision at 48 CFR 52.215-1, the contracting officer or coordinating officer shall

inquire whether the submitter is willing to accept the conditions of paragraph (e). If the submitter does not, the contracting officer or coordinating officer shall, after consultation with counsel, either return the proposal or accept it as marked. Contracting officers shall not exclude from consideration any proposals merely because they contain an authorized or agreed to notice, nor shall they be prejudiced by such notice.

(d) Release of proposal information (data) before decision as to the award of a contract, or the transfer of valuable and sensitive information between competing offerors during the competitive phase of the acquisition process, would seriously disrupt the Government's decision-making process and undermine the integrity of the competitive acquisition process, thus adversely affecting the Government's ability to solicit competitive proposals and award a contract which would best meet the Government's needs and serve the public interest. Therefore, to the extent permitted by law, none of the information (data) contained in proposals, except as authorized in this subsection, is to be disclosed outside the Government before the Government's decision as to the award of a contract. In the event an outside evaluation is to be obtained, it shall be only to the extent authorized by, and in accordance with the procedures of, this subsection.

(e) (1) In order to maintain the integrity of the procurement process and to assure that the propriety of proposals will be respected, contracting officers shall assure that the following notice is affixed to each solicited proposal prior to distribution for evaluation:

Government Notice for Handling Proposals

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this Government notice shall be applied to any reproduction or abstract thereof. Any authorized restrictive notices which the submitter places on this proposal shall also be strictly complied with. Disclosure of this proposal outside the Government for evaluation purposes shall be made only to the extent authorized by, and in accordance with, the procedures in DEAR subsection 915.207-70.

(End of notice)

(2) The notice at 48 CFR 15.609(d) for unsolicited proposals shall be affixed to a cover sheet attached to each such proposal upon receipt by DOE. Use of the notice neither alters any obligation of the Government, nor diminishes any rights in the Government to use or disclose data or information.

(f) (1) Normally, Proposal evaluations of proposals shall should be performed only by DOE employees of the Department of Energy. As used in this section, "proposals" includes the offers in response to requests for proposals, sealed bids, program opportunity announcements, program research and development announcements, or any other method of solicitation where the review of proposals or bids is to be performed by other than peer review. In certain cases, in order to gain access

necessary expertise, employees of other agencies may be used ~~in instances in which they will be available and committed during the period of evaluation~~. Evaluators or advisors who are not Federal employees, including employees of DOE management and operating (M&O) contractors, may also be used where necessary. ~~Where such non-Federal employees are used as evaluators, they~~ may only participate as members of technical evaluation committees ~~and. They~~ may not serve as members of the Source Evaluation Board or equivalent board or committee.

(2) (i) Pursuant to section 6002 of Pub. L. 103-355, a determination is required for every competitive procurement as to whether sufficient DOE personnel with the necessary training and capabilities are available to evaluate the proposals that will be received. This determination, ~~discussed at 48 CFR 37.204 (see FAR 37.402-3), shall is to~~ be made in the memorandum appointing the technical evaluation committee by the Source Selection Official, in the case of Source Evaluation Board procurements, or by the ~~Contracting Officer~~ in all other procurements.

(ii) ~~Where-If~~ it is determined ~~such~~ qualified personnel are not available within DOE but are available from other Federal agencies, a determination to that effect ~~shall must~~ be made by the same officials in the same memorandum. ~~Should such If~~ qualified personnel ~~are not be~~ available ~~from other Federal agencies~~, a determination to use non-Federal evaluators or advisors must be made in accordance with paragraph (f)(3) of this subsection.

(3) The decision to ~~employ use~~ non-Federal evaluators or advisors, including employees of DOE ~~management and operating~~ M&O contractors, in Source Evaluation Board procurements ~~must is to~~ be made by the Source Selection Official with the concurrence of the Head of the Contracting Activity (HCA). ~~In-For~~ all other procurements, the decision ~~shall is be~~ made by the senior program official or designee with the concurrence of the ~~Head of the Contracting Activity~~ HCA. ~~In a case where if~~ multiple solicitations ~~are part of within~~ a single program ~~and would call for require~~ the same resources for evaluation, a class determination to use non-Federal evaluators may be made by the Senior Procurement Executive (SPE).

(4) ~~Where such If~~ non-Federal evaluators or advisors are ~~to be~~ used, the solicitation ~~shall must contain a provision~~ informing prospective offerors that non-Federal personnel may be used in the evaluation of proposals.

(5) ~~Before any proposal is provided to a non-Federal evaluator or advisor, the person must sign the~~ The required nondisclosure agreement ~~as it appears~~ in paragraph (f)(6) of this subsection. ~~shall be signed before DOE furnishes a copy of the proposal to non-Federal evaluators or advisors, and care should be taken that t~~ The required handling notice ~~described in (see paragraph (e)) of this subsection should also be~~ is affixed to ~~a cover sheet attached to the proposal before it is disclosed to the evaluator or advisor. In all instances, such persons will be required to~~ All non-Federal evaluators and

~~advisors must comply with nondisclosure of information requirements and requirements involving Procurement Integrity requirements; (see 48 CFR FAR 3.104); and with requirements to rules preventing the potential for personal conflicts of interest; and organizational conflicts of interest when the evaluator is provided under a contract (see FAR subpart 9.5). or, where a non-Federal evaluator or advisor is acquired under a contract with an entity other than the individual, with requirements to prevent the potential for organizational conflicts of interest.~~

(6) ~~The nondisclosure agreement to be signed by~~ Non-Federal evaluators or advisors ~~shall be required to sign the following agreement prior to having access to any proposals as follows:~~

Nondisclosure Agreement

Whenever DOE furnishes a proposal for evaluation, I, the recipient, agree to use the information contained in the proposal only for DOE evaluation purposes and to treat the information obtained in confidence. This requirement for confidential treatment does not apply to information obtained from any source, including the proposer, without restriction. Any notice or restriction placed on the proposal by either DOE or the originator of the proposal ~~shall will~~ be conspicuously affixed to any reproduction or abstract thereof and its provisions strictly complied with. Upon completion of the evaluation, it is agreed ~~that~~ all copies of the proposal and abstracts, if any, ~~shall will~~ be returned to the DOE office which initially furnished the proposal for evaluation. Unless authorized by the Contracting Officer, I agree that I ~~shall will~~ not contact the originator of the proposal concerning any aspect of its elements.

Recipient:

Date:

(End of agreement)

~~(g) The submitter of any proposal shall be provided notice adequate to afford an opportunity to take appropriate action before release of any information (data) contained therein pursuant to a request under the Freedom of Information Act (5 U.S.C. 552); and, time permitting, the submitter should be consulted to obtain assistance in determining the eligibility of the information (data) in question as an exemption under the Act. (See also 48 CFR 24.2, Freedom of Information Act.)~~

Subpart 915.3 ~~[Reserved]~~—Source Selection

915.305 ~~[Reserved]~~ Proposal evaluation.

(d) Personnel from DOE, other Government agencies, consultants, and contractors, including those who manage or operate Government-owned facilities, may be used in the evaluation process as evaluators or advisors when their services are necessary and available. When personnel outside the Government, including those of contractors who operate or manage Government-owned facilities, are to be used as evaluators or advisors, approval and nondisclosure procedures as required by 915.207-70 shall be followed and a notice of the use of non-Federal evaluators shall be included in the solicitation. In all instances, such personnel will be required to comply with DOE conflict of interest and nondisclosure requirements.

Subpart 915.4—Contract Pricing

915.404 Proposal analysis.

915.404-2000 ~~[Reserved]~~ Information to support proposal analysis.

(a) (1) Field pricing assistance as discussed in 48 CFR 15.404-2(a) is not required for the negotiation of DOE contract prices or modifications thereof. The term “field pricing assistance” refers to the Department of Defense (DOD) system for obtaining a price and/or cost analysis report from a cognizant DOD field level contract management office wherein requests for the review of a proposal submitted by an offeror are initiated and the recommendations made by the various specialists of the management office are consolidated into a single report that is forwarded to the office making the contract award for use in conducting negotiations. In the DOE, such review activities, except for reviews performed by professional auditors, are expected to be accomplished by pricing support personnel located in DOE Contracting Activities. The DOE contracting officer shall formally request the assistance of appropriate pricing support personnel, other than auditors, for the review of any proposal that exceeds the threshold stated at 48 CFR 15.403-4(a)(1), unless the contracting officer has sufficient data to determine the reasonableness of the proposed cost or price. Such pricing support may be requested for proposals below the threshold stated at 48 CFR 15.403-4(a)(1), if considered necessary for the establishment of a reasonable pricing arrangement. Contracting officers, however, are not precluded by this section from requesting pricing assistance from a cognizant DOD contract management office, provided an appropriate cross-servicing arrangement for pricing support services exists between the DOE and the servicing agency.

(c) (1) When an audit is required pursuant to 915.404-2700, “Audit as an aid in proposal analysis,” the request for audit shall be sent directly to the Federal audit office assigned cognizance of the offeror or prospective contractor. When the cognizant agency is other than the Defense Contract Audit Agency or the Department of Health and Human Services, and an appropriate interagency agreement has not been

established, the need for audit assistance shall be coordinated with the Office of Policy, within the Headquarters procurement organization.

(2) (i) The request for audit shall establish the due date for receipt of the auditor's report and in so doing shall allow as much time as possible for the auditor's review.

(ii) Copies of technical analysis reports prepared by DOE technical or other pricing support personnel shall not normally be provided to the auditor. The contracting officer or the supporting price, cost, or financial analyst at the contracting activity shall determine the monetary impact of the technical findings.

915.404-2700 [Reserved] Audit as an aid in proposal analysis.

(a) When a contract price will be based on cost or pricing data submitted by the offerors, the DOE contracting officer or authorized representative shall request a review by the cognizant Federal audit activity prior to the negotiation of any contract or modification including modifications under advertised contracts in excess of —

(1) The threshold stated at 48 CFR 15.403-4(a)(1) for a firm fixed-price contract or a fixed-price contract with economic price adjustment provisions; or adjustment provisions; or

(2) Twice the threshold at 48 CFR 15.403-4(a)(1) for requiring cost or pricing data for all other contract types, including initial prices, estimated costs of cost-reimbursement contracts, interim and final price redeterminations, and target and settlement of incentive contracts.

(b) The requirement for auditor reviews of proposals which exceed the thresholds specified in paragraph (a) of this section may be waived at a level above the contracting officer when the reasonableness of the negotiated contract price can be determined from information already available. The contract file shall be documented to reflect the reason for any such waiver, provided, however, that independent Government estimates of cost or price shall not be used as the sole justification for any such waiver.

915.404-4000 Profit.

(c)(4)(i) *Contracting officer responsibilities.* ~~DOE~~ The following the statutory limitations on price and fee as set forth in FAR 15.404-9(c)(4) ~~48 CFR 15.404-4(c)(4)(i) shall be followed,~~ except ~~as exempted~~ for DOE architect-engineer contracts covering Atomic Energy Commission (AEC) and Bonneville Power Administration (BPA) functions. Pursuant to section 602(d)-(13) and (20) of the Federal Property and Administration Services Act of 1949, as amended, those former AEC functions, as well as those of the BPA, now being performed by DOE are exempt from the 6 percent ~~of~~ cost restriction on contracts for architect-engineer services. When calculating ~~The estimated costs on which~~ the maximum

fee, ~~is computed shall~~ include facilities capital cost of money ~~when if~~ this cost is included in the contractor's estimated costs ~~estimates~~.

~~(c)(6) In cases where a change or modification calls for substantially different work than the basic contract, the contractor's effort may be radically changed and a detailed analysis of the profit factors would be a necessity. Also, if the dollar amount of the change or contract modification is very significant in comparison to the contract dollar amount, a detailed analysis should be made.~~

~~(d) Profit-analysis factors. A profit/fee analysis technique designed for a systematic application of the profit factors in 48 CFR 15.404-4(d) provides contracting officers with an approach that will ensure consistent consideration of the relative value of the various factors in the establishment of a profit objective and the conduct of negotiations for a contract award. It also provides a basis for documentation of this objective, including an explanation of any significant departure from it in reaching a final agreement. The contracting officer's analysis of these prescribed factors is based on information available prior to negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys and the like.~~

915.404-4700 DOE structured profit and fee system.

(a) This section implements FAR 15.404-~~49~~(b) and (d).

(b) DOE ~~uses two~~ structured approaches to determine profit and fee ~~system~~ for non-management and operating M&O contracts. ~~comprises two approaches: a~~ weighted guidelines system is used for all contracts, except for ~~but~~ construction, ~~contracts, and~~ construction management ~~contracts-contracts~~, and special equipment purchases ~~ss,~~ and a fee schedules-based system is used for construction and ~~contracts~~, construction management ~~contracts-contracts~~, and special equipment purchases ~~ss~~. The ~~former~~ weighted guidelines system is ~~covered described~~ at 915.404-4720 ~~through 915.404-4780~~; the ~~latter fee schedule system~~ is ~~covered described~~ at 915.404-4800 through 915.404-4860. Both approaches use the procedures at 915.404-4900 for cost-plus-award-fee (CPAF) contracts.

915.404-4710 General.

(a) *Objective.* ~~It is the intent of DOE's policy is to~~ pay remunerate contractors profit or fee for the financial and other risks ~~which they may take assume~~, the resources they use, and organization, performance and management capabilities they provide employ. Profit or fee ~~shall is to~~ be negotiated for this purpose. ~~however, w~~When profit or fee is ~~determined~~ as a separate element of the contract price, ~~it the aim of negotiation~~ should be tailored to fit it to the specific acquisition, giving due weight to ~~considering the contractor's~~ effort, risk, facilities investment, and any special factors as set forth described in this subpart.

(b) *Commercial (profit) organizations.* ~~Determine P~~profit or fee prenegotiation objectives for contracts with commercial (profit) organizations ~~shall be determined as provided using the methods~~ in this subpart, ~~however, see 915.404-4800 for profit and fee-system for construction and construction management contracts and 970.1504 for M&O contracts.~~

(c) *Nonprofit organizations.* ~~It is~~ DOE's general policy ~~is~~ to pay fees in contracts with nonprofit organizations other than educational institutions and governmental ~~bodies/entities.; however, it is a matter of negotiation w~~Whether a fee will be paid ~~is negotiated on an a given~~ case-by-case basis. In making this decision, the DOE negotiating official should consider whether the contractor is ordinarily paid fees for the type of work involved. The profit objective should be reasonable ~~in relation to for~~ the ~~task work~~ to be performed and the requirements placed on the contractor.

(d) *Educational institutions.* ~~It is~~ DOE policy ~~is~~ not to pay fees under contracts with educational institutions.

(e) *State, local and Indian tribal governments.* ~~DOE does not pay P~~profit or fee ~~shall not be paid~~ under contracts with State, local, and Indian tribal Governments.

915.404-4720 Weighted guidelines system.

(a) ~~DOE uses the weighted guidelines method to ensure profit or fee reflects the unique circumstances of each contract. This method applies weights to standard profit factors listed in FAR 15.404-9(d) and in paragraph (d) of this section. Each factor or subfactor has an assigned weight that shows how important it is to the overall contract effort. To properly reflect differences among contracts and the circumstances relating thereto and to select an appropriate relative profit/fee in consideration of these differences and circumstances, weightings have been developed for application by the contracting officer to standard measurement bases representative of the prescribed profit factors cited in 48 CFR 15.404-4(d) and paragraph (d) of this section. This is a structured system, referred to as weighted guidelines. Each profit factor or subfactor, or component thereof, has been assigned weights relative to their value to the contract's overall effort. The allowed range of weights to be applied to for each profit factor is also set forth shown in paragraph (d) of this section. Guidance on how to apply the weighted guidelines is set forth in 915.404-4780.~~

(b) Except as ~~set forth described~~ in 915.404-4700(b)40, ~~use~~ the weighted guidelines ~~method to shall be used in~~ establishing the profit objective for negotiation of contracts where cost analysis is ~~performed required~~.

(c) ~~The n~~Negotiations ~~process~~ does not ~~contemplate or~~ require agreement on ~~specific cost estimates or profit factors, and either estimated cost elements or profit elements.~~ Accordingly, although the details of analysis and evaluation may be discussed in the fact-finding phase of the negotiation process in order to develop a mutual understanding of the

~~logic of the respective positions, specific~~ agreement on the exact weights ~~of or~~ values of the individual profit factors is not required ~~and need not be attempted~~.

(d) ~~Use The~~the profit factors ~~and weight ranges set forth identified~~ in the following table ~~are to be used~~ in determining DOE profit objectives ~~whenever applying. The factors and weight ranges for each factor shall be used in all instances where~~ the weighted guidelines ~~method are applied~~.

Profit factors	Weight ranges (percent)
I. Contractor Effort (Weights applied to cost):	
a. Material acquisitions:	
(1) Purchased parts	1 to 3.
(2) Subcontracted items	1 to 4.
(3) Other materials	1 to 3.
b. Labor skills:	
(1) Technical and managerial:	
(a) Scientific	10 to 20.
(b) Project management/administration	8 to 20.
(c) Engineering	8 to 14.
(2) Manufacturing	4 to 8.
(3) Support services	4 to 14.

Profit factors	Weight ranges (percent)
c. Overhead:	
(1) Technical and managerial	5 to 8.
(2) Manufacturing	3 to 6.
(3) Support services	3 to 7.
d. Other direct costs	3 to 8.
e. G&A (General Management) expenses	5 to 7.
II. Contract Risk (type of contract-weights applied to total cost of items I.a. thru I.e.)	0 to 8.
III. Capital Investment (Weights applied to the net book value of allocable facilities)	5 to 20.
IV. Independent Research and Development:	
a. Investment in IR&D program (Weights applied to allocable IR&D costs)	5 to 7.
b. Developed items employed (Weights applied to total of profit \$ for items I.a. thru I.e.)	0 to 20.
V. Special Program Participation (Weights applied to total of Profit \$ for items I.a. thru I.e.)	-5 to +5.
VI. Other Considerations (Weights applied to total of Profits \$ for items I.a. thru I.e.)	-5 to +5.

Profit factors	Weight ranges (percent)
VII. Productivity/Performance (special computation)	(N/A).

915.404-4730 ~~[Reserved]~~Documentation.

~~Determination of the profit or fee objective, in accordance with this subpart shall be fully documented. Since the profit objective is the contracting officer's pre-negotiation evaluation of a total profit allowance for the proposed contract, the amounts developed for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated amounts will probably vary from the objective and from the pre-negotiation detailed application of the weighted guidelines technique to each element of the contractor's input to total performance. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the pre-negotiation profit objective, as a result of changes to the contractor's input to total performance, need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained in the price negotiation memorandum prepared in accordance with 48 CFR 15.406-3.~~

915.404-4740 ~~[Reserved]~~Exceptions.

~~(a) For contracts not expected to exceed the threshold stated at 48 CFR 15.403-4(a)(1), the weighted guidelines need not be used; however, the contracting officer may use the weighted guidelines for contracts below this amount if he or she elects to do so.~~

~~(b) For the following classes of contracts, the weighted guidelines shall not be used—~~

~~(1) Commercialization and demonstration type contracts;~~

~~(2) Management and operating contracts;~~

~~(3) Construction contracts;~~

~~(4) Construction management contracts;~~

~~(5) Contracts primarily requiring delivery of material supplied by subcontractors;~~

~~(6) Termination settlements; and~~

~~(7) Contracts with educational institutions.~~

~~(c) In addition to paragraphs (a) and (b) of this section, the contracting officer need not use the weighted guidelines in unusual pricing situations where the weighted guidelines method has been determined by the DOE negotiating official to be unsuitable. Such exceptions shall be justified in writing and shall be authorized by the Head of the Contracting Activity. The contract file shall include this documentation and any other information that may support the exception.~~

~~(d) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth in this section, other methods for establishing the profit objective may be used. For contracts other than those subject to subpart 917.6, the selected method shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objective determination. It is intended that the methods will result in profit objectives for noncapital intensive contracts that are below those generally developed for capital intensive contracts.~~

915.404-4750 Special considerations—contracts with nonprofit organizations (other than educational institutions).

~~(a) For purposes of identification, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.~~

~~(b) When determining~~In computing the amount of profit or fee to be paid, the DOE negotiating official shall take into account the tax benefits received by of a nonprofit organization, consider the tax advantages of the organization. While it is difficult to establish the degree to which a remuneration under any given contract contributes to an organization's overall net profit, the DOE negotiating official should assume that there is an element of profit in any amount to be paid.

~~(c) In order to assure consideration of the tax posture of nonprofit organizations during a profit or fee negotiation, the DOE negotiating official shall~~To do this, calculate the fee as if the contractor were for a contract with a commercial entityconcern and, then reduce that amount byit at least 25 percent. ~~However, depending~~Based on the circumstances, the contracting officer may pay~~negotiate a~~ profit or fees ~~somewhere between the reduced~~this amount and the full amount applicableappropriate profit or fee as if it were to a commercial entity, documenting the reason(s) in concern. When this is the case, the contract file ~~shall be documented to specifically state the reason or reasons.~~

~~(d) Where a contract with a nonprofit organization is for the operation of Government-owned facilities, the fee should be calculated using the procedures and schedules applicable to operating contracts as set forth in part 970.~~

915.404-4760 ~~[Reserved] Contracts with educational institutions.~~

~~In certain situations the DOE may contract with a university to manage or operate Government-owned laboratories. These efforts are generally apart from, and not in conjunction with, their other activities, and the complexity and magnitude of the work are not normally found in standard university research or study contracts. Such operating contracts are subject to the applicable provisions set forth in part 970.~~

915.404-4770 ~~[Reserved] Alternative techniques.~~

~~(a) Profit or fees to be paid on construction contracts and construction management contracts shall be determined in accordance with the applicable profit/fee technique for such contracts set forth in 915.404-4800.~~

~~(b) Profit and fee to be paid on contracts under the threshold stated at 48 CFR 15.403-4(a)(1), not using the weighted guidelines, shall be judgmentally developed by the contracting officer by assigning individual dollar amounts to the factors appropriate to DOE profit considerations discussed in 915.404-4720(d).~~

~~(c) Contracts which require only delivery or furnishing of goods or services supplied by subcontractors shall include a fee or profit which, in the best judgment of the contracting officer, is appropriate. It would be expected that there would be a declining relationship of profit/fee dollars in relation to total costs. The higher the cost of subcontracts, for example, the lower the profit/fee ratio to these costs.~~

~~(d) Profit/Fee considerations in termination settlements are often a question of equity. They are a matter of negotiation. They should not, however, exceed what would have otherwise been payable under weighted guidelines had the termination not occurred.~~

915.404-4780 ~~[Reserved] Weighted guidelines application considerations.~~

~~The Department has developed internal procedures to aid the contracting officer in the application of weighted guidelines and to assure a reasonable degree of uniformity across the Department.~~

915.404-4800 Profit and fee-system for construction and construction management contracts.

915.404-4810 General.

~~(a) Businesses~~ ~~es concerns~~ awarded a DOE construction or construction management contract ~~shall~~ may be paid a profit or fee if requested or included in the solicitation. The profit or fee must be calculated using the procedures and schedules described in this subpart, and should match objective for a construction or construction management contract shall be an amount appropriate for the type and level of effort required for the work, taking into account contained therein. It is the intent of DOE to—

~~(1) Reward contractors based on~~ the complexity of work~~;~~.

~~(2) Reward the~~ contractor's ~~who demonstrate and establish excellent~~ records of performance~~;~~ and

~~(3) Reward the extent to which the~~ contractor ~~s who~~ contributes their own resources, including facilities and investment of capital.

~~(b) Standard fees or across-the-board agreements will not be used or made. Profit or fee objectives are to be determined for each contract according to the effort or task contracted thereunder.~~

~~(c) Profit or fee payable on fixed-price and cost-reimbursable construction or construction management contracts shall be established in accordance with the appropriate procedures and schedules set forth in this subpart.~~

915.404-4820 Limitations.

~~Amounts payable~~ Payments under construction and construction management contracts ~~shall~~ may not exceed amounts derived from the schedules established for this purpose. Requests to pay fees in excess of these levels ~~shall~~ must be approved by ~~forwarded to~~ the ~~Senior Procurement Executive~~ SPE for review and approval.

915.404-4830 Factors for determining fees.

(a) The profit policy ~~stated described~~ in 915.404-4810(a) reflects a, in a broad sense, recognition that profit is compensation ~~to contractors for the entrepreneurial function of~~ organizing and managing resources, ~~(including capital resources), and for taking on the assumption of risk that~~ some all costs of performance ~~(operating and capital)~~ may not be reimbursedable.

(b) The best approach for developing the profit or fee objective allows for the ~~calls for a structure that allows~~ judgmental evaluation and consideration of the specific circumstances of the contract, including management risk, such as the variety and complexity of the work, the labor intensity of the effort, special control challenges, and required planning and forecasting activities; financial risk, including the type and terms of the contract; difficulty of the work, including the technical and administrative skills and

~~experience required and the clarity of the specifications; use of the contractor's own resources, such as facilities, equipment, computers, or working capital; project duration; size of the operation; benefits to the contractor, such as opportunities to gain experience, enhance reputation, or retain key staff; and other relevant considerations, such as support for government objectives like small business subcontracting or energy conservation. and determination of fee dollars for prescribed factors which impact the need for, and the rewards associated with, fee or profit, as follows—~~

~~(1) Management risk relating to performance, including the—~~

~~(i) Quality and diversity of principal work tasks required to do the job;~~

~~(ii) Labor intensity of the job;~~

~~(iii) Special control problems; and~~

~~(iv) Advance planning, forecasting and other such requirements;~~

~~(2) The presence or absence of financial risk, including the type and terms of the contract;~~

~~(3) The relative difficulty of work, including consideration of technical and administrative knowledge, skill, experience and clarity of technical specifications;~~

~~(4) Degree and amount of contract work required to be performed by and with the contractor's own resources, including the extent to which the contractor contributes plant, equipment, computers, or working capital (labor, etc.);~~

~~(5) Duration of project;~~

~~(6) Size of operation;~~

~~(7) Benefits which may accrue to the contractor from gaining experience and know-how, from establishing or enhancing a reputation, or from being enabled to hold or expand a staff whose loyalties are primarily to the contractor; and~~

~~(8) Other special considerations, including support of Government programs such as those relating to small, small-disadvantaged, and women-owned small business in subcontracting, energy conservation, etc.~~

(c) The total fee objective ~~and amount for a particular negotiation~~ is established by ~~judgmental~~ considerations of the factors in paragraph (b) of this section, assigning fee values as ~~deemed~~ appropriate for each factor, and totaling the resulting amounts.

(d) ~~In recognition of~~ **Recognizing** the complexities of this process, and to ~~assist in~~ **promoting a reasonable degree of** consistency and uniformity in its application, fee schedules have been developed which ~~identify set forth~~ maximum fee amounts that ~~may be contracting activities are allowed to~~ negotiated for a particular transaction. ~~without obtaining prior approval of the Senior Procurement Executive. In addition, t~~ The fee negotiation objective established in accordance with paragraphs (a), (b), and (c) of this section ~~shall may~~ not exceed the applicable fee schedule amounts without prior approval of the ~~Senior Procurement Executive SPE. To facilitate application to a contract, t~~ The fee ~~schedule~~ amounts are related to the total cost base, which ~~is defined as tota~~ includes both operating and capital costs.

915.404-4840 Considerations affecting fee amounts.

(a) **General.** In selecting final fee amounts for the various factors in 915.404-4840 ~~of this section, the~~ DOE negotiating officials will have to make several judgments as discussed in this subsection.

(b) **Project complexity.** ~~The C~~ complexity of a construction project ~~should~~ **shall** be ~~considered by analyzing~~ **is by looking at** of its ~~main~~ **major** parts. ~~For~~ If a project ~~which~~ includes ~~items of~~ work of different degrees of complexity, ~~either use an single~~ average classification ~~should be considered, or divide~~ the work ~~should be divided~~ into separate ~~categories~~ **classifications**. ~~Use~~ **The** following class identifications ~~are appropriate for~~ **proper to help determine the appropriate** fee ~~determinations~~.

(1) **Class A**—Manufacturing plants involving operations requiring a high degree of design layout or process control; nuclear reactors; atomic particle accelerators; complex laboratories or industrial units especially designed for handling radioactive materials.

(2) **Class B**—Normal manufacturing processes and assembly operations such as ore dressing, metal working plant and simple processing plants; power plants and accessory switching and transformer stations; water treatment plants; sewage disposal plants; hospitals; and ordinary laboratories.

(3) **Class C**—Permanent administrative and general service buildings, permanent housing, roads, railroads, grading, sewers, storm drains, and water and power distribution systems.

(4) **Class D**—Construction camps and facilities and other construction of a temporary nature.

(c) **Management effort.** ~~Construction contracts involve several management tasks, each requiring different levels of effort throughout the project. The total management effort is considered 100 percent, but how it's divided among tasks will vary by project. Typical~~

management tasks and their expected effort ranges (for a normal-sized project) are described in the table below. If the contractor will not perform some of these tasks, the fee should be adjusted downward. Normal management elements of principal tasks relating to a construction contract cover several categories of tasks with differing rates of application throughout the construction period. The principal elements of management effort are outlined in this paragraph. Although each project has a total management value equal to 100% for all elements, the distribution of effort among the various elements will be different for each project due to differences in project character or size. The basic management elements and the normal range of efforts expected to apply for a normal sized project are as follows. When the normally expected effort will not be performed by a contractor, this fact should be considered in arriving at appropriate fee amounts:

Management elements	Effort range
I. Broad p Overall Project Planning . Overall project planning and scheduling, establishment of key project organization and consultation with the A-E and DOE. Performed by highest level of contractor's officers, technical personnel and project manager	15 – 25%
II. Field p Planning . Mobilization and demobilization of top field organization from the contractor's existing organization and from other sources as necessary. Detailed project planning and scheduling for construction of facilities. Performed by the project manager and top field professional staff	18 – 28%
III. Labor s Supervision . Direct supervision of manual employees. Performed by contractor's subprofessional staff, such as superintendents and foremen (some salaried and some hourly rate). This including the contractor's personnel to coordinate and expedite the work of Subcontractors	12 – 16%
IV. Acquisition and s Subcontracting . Acquisition of other than special equipment. Selection of subcontractors and execution and administration of subcontracts. Performed by contractor's staff under supervision and direction of elements I and II	12 – 16%
V. Labor r Relations and rRecruit-ment-(manual) . Performed by the contractor's staff under supervision and direction of elements I, II and III. This including demobilization of work forces	7 – 11%
VI. Recruitment of s Supervisory sStaff . Staffing required to supplement the organization under elements I and II, and demobilization during completion of the project. Performed by contractor's permanent staff and recruitment personnel under supervision and direction of management elements I and II	4 – 6%
VII. Expediting. Expediting contracting performed by contractor's staff and by subcontractors. Performed by	4 – 6%

contractor's staff under supervision and direction of elements I and II

VIII. Construction ~~e~~Equipment ~~o~~Operations. This includes mobilization and demobilization. Performed by contractor's staff under supervision, direction and coordination of elements I, II, and IV 4 – 6%

IX. Other ~~s~~Services: (e.g., Timekeeping, cost accounting, estimating, reporting, security, etc.,) by the contractor's staff under supervision and direction of elements I and II 4 – 6%

(d) Project duration. ~~Fee considerations dealing with the duration of a p~~Project length ~~are is usually typically provided by the~~ consideration given to the degree in the of complexity and ~~size factors~~magnitude of the work. ~~In o~~Only in rare cases very unusual circumstances should ~~duration it be necessary to separately considered weight, positively or negatively, for the period of services or length of time involved in the project when determining the fee levels~~amount.

(e) Project size. The size of ~~a project is closely related to its~~the operation is to a considerable degree a continuation of the complexity factor, and the degree and amount of work required to be ~~self-performed by and with the contractor's own resources; therefore, G~~generally, ~~no separate weighting consideration, positively or negatively, is required for size is not required~~consideration of those factors.

(f) Self-performance. The ~~degree and~~amount of work required to be ~~self-performed by and with the contractor's own resources~~affects the level of fees. Reasonable ~~f~~Fees should ~~be based on~~reflect the expectations that the construction or construction management contractor provides of ~~full complete~~ construction services normally associated with a construction or construction management contract. ~~If the contractor relies heavily on subcontractors or if the government takes on tasks like acquisitions or labor relations, the fee should be reduced. In the case of a construction contract, reduced services can be in the form of excessive subcontracting or supporting acquisition actions and labor relations interfaces being made by the government. If an unusual amount of such work is performed by other than the contractor, it will be necessary to make downward adjustments in the fee levels to provide for the reduction in services required.~~

(g) Contractor investment. The type of contract ~~to be negotiated~~and the anticipated ~~contractor cost~~financial risk ~~assumed by the contracts shat should t~~be considered in establishing the appropriate fee objective for the contract.

(h) ~~When a~~If the contract ~~calls for~~requires the contractor to use its own resources, including facilities and equipment, ~~or and to make its own cost~~investment ~~its own money~~ (i.e., when there is no letter-of-credit financing), ~~a positive impact on the fee should be increased to amount shat be~~reflect ~~this added committed~~.

915.404-4850 Fee schedules.

(a) *General.* This section provides tables that ~~The schedules included in this paragraph,~~ adjusted in accordance with provisions of this section and 915.404-4860, ~~provide set the~~ maximum fee ~~levels~~ for construction ~~contracts (paragraph (d)), and~~ construction management contracts ~~(paragraph (f)), and special equipment purchases and subcontractor work (paragraph (h)).~~ The fees are ~~based on~~ ~~related to~~ the estimated cost (fee base) for the construction work and services to be performed. ~~The schedule in paragraph (d) of this section sets forth the basic fee schedule for construction contracts. The schedule in paragraph (f) of this section sets forth the basic fee schedule for construction management contracts. A separate schedule in paragraph (h) of this section has been developed for determining the fee applicable to special equipment purchases and to reflect a differing level of fee consideration associated with the subcontractor effort under construction management contracts. (See 915.404-4860(c) and (d)).~~

(b) *Contract type adjustment.* The fee schedules ~~cited in paragraph (a) of this section~~ ~~provides show~~ the maximum fee amount for ~~a cost-plus-fixed-fee (CPFF) contracts~~ ~~arrangement. If a~~ For fixed-price ~~contract types contract is to be awarded,~~ ~~increase~~ the fee amount ~~set forth in the fee schedules shall be increased by an amount not to exceed up to~~ 4 percent of the fee base.

(c) *Contractor investment adjustment.* The fee schedules ~~shown in paragraphs (d) and (f) of this section~~ ~~assumes~~ a letter of credit financing arrangement. If a contract provides for or requires the contractor to ~~make their own cost investment for contract performance provide their own financing~~ (i.e., when there is no letter-of-credit financing), ~~increase~~ the fee ~~amounts set forth in the fee schedules shall be increased by an amount equal to~~ 5 percent of the fee amount ~~as determined from shown in~~ the schedules.

(d) *Construction contracts schedule.* The following schedule ~~sets forth identifies~~ the base for construction contracts:

Construction Contracts Schedule

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
Up to \$1 Million			5.47
1,000,000	54,700	5.47	3.88
3,000,000	132,374	4.41	3.28

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
5,000,000	198,014	3.96	2.87
10,000,000	341,328	3.41	2.60
15,000,000	471,514	3.14	2.20
25,000,000	691,408	2.77	1.95
40,000,000	984,600	2.46	1.73
60,000,000	1,330,304	2.22	1.56
80,000,000	1,643,188	2.05	1.41
100,000,000	1,924,346	1.92	1.26
150,000,000	2,552,302	1.70	1.09
200,000,000	3,094,926	1.55	0.80
300,000,000	3,897,922	1.30	0.68
400,000,000	4,581,672	1.15	0.57
500,000,000	5,148,364	1.03	
Over \$500 Million	5,148,364		0.57

(e) *Adjustments for construction contracts.* When using the Construction Contracts Schedule for establishing maximum payable basic fees, adjust the fees as follows~~the following adjustments shall be made to the Schedule fee amounts for complexity levels;~~

excessive subcontracting, normal contractor services performed by the government or another contractor:

(1) *Project complexity.* ~~The target fee amounts, set forth in the fee schedule, shall not be adjusted for a~~ Class A (most complex) project, ~~no adjustments; which is maximum complexity. A~~ Class B project, ~~requires a reduce fee by~~ 10 percent ~~reduction in amounts.~~; Class C and D projects, ~~reduce the fee by~~ require a 20 percent and 30 percent ~~reduction~~, respectively. ~~(The various classes are defined in~~ See section 915.404-4840(b) ~~for class definitions.)~~

(2) *Excessive subcontracting.* The target fee schedule provides for 45 percent of the contract work to be subcontracted for such things as electrical and other specialties. ~~Excessive subcontracting results w~~When such efforts exceed 45 percent of the total contract work, ~~it is considered excessive subcontracting.~~ To ~~establish~~ calculate the appropriate fee reductions ~~for excessive subcontracting, the negotiating official should first,~~ determine the amount of subcontracting as a percentage of the total contract work; ~~then. Next, the negotiating official should~~ determine a percentage by which the prime contractor's ~~own effort~~ normal requirement ~~(based on a requirement for doing work with its own forces)~~ is reduced due to the excessive subcontracting, and, finally, multiply the two percentages to determine ~~at the~~ fee reduction factor.

(3) *Provided services.* If ~~the government, or another DOE prime or operating contractor provides services typically performed by the contractor, acquisition or other services normally expected of the contractor (see 915.404-4-71-4(c)) are performed by the government, or another DOE prime or operating contractor, that a~~ fee ~~may be~~ reduction ~~may also be required. To calculate the reduction, The negotiating official should first~~ determine ~~what the~~ percentage of the total ~~procurement effort or other required services is~~ performed by others, ~~Then the negotiating official should~~ apply this percentage ~~reduction~~ to the normally assigned weight ~~sings for the management services or effort (see as discussed in 915.404-4840(c))~~ to arrive at the ~~appropriate~~ reduction factor.

(f) *Construction management contracts schedule.* The following schedule ~~sets forth~~ identifies the base for construction management contracts:

Construction Management Contracts Schedule

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
Up to \$1 Million			5.47

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
1,000,000	54,700	5.47	3.88
3,000,000	132,374	4.41	3.28
5,000,000	198,014	3.96	2.87
10,000,000	341,328	3.41	2.60
15,000,000	471,514	3.14	2.20
25,000,000	691,408	2.77	1.95
40,000,000	984,600	2.46	1.73
60,000,000	1,330,304	2.22	1.56
80,000,000	1,643,188	2.05	1.41
100,000,000	1,924,346	1.92	1.26
150,000,000	2,552,302	1.70	1.09
200,000,000	3,094,926	1.55	0.80
300,000,000	3,897,922	1.30	0.68
400,000,000	4,581,672	1.15	0.57
500,000,000	5,148,364	1.03	

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
Over \$500 Million	5,148,364		0.57

(g) *Adjustments for construction management contracts.* No fee adjustment is needed for contractor labor ("Force account") used for work that should be subcontracted, unless it exceeds 20 percent of the fee base. When applying the basic Construction Management Contracts Schedule for determining maximum payable fees, no adjustments are necessary to such payable fees for contractor Force account labor used for work which should otherwise be subcontracted until such Force account work exceeds, in the aggregate, 20 percent of the base. Excessive use of When Force account work results when such effort exceeds 20 percent of the fee base, it is considered excessive. Calculate the; and, when this occurs, appropriate fee reductions for such excessive Force account labor by shall be computed as follows:

(1) ~~Dd~~etermining the percentage amount of Force account work to total contractor effort, -

(2) ~~Dthen etermidetermining~~ the percentage amount of subcontract work reduced due to the use of Force account work, and finally, -

(3) ~~Mm~~ultiplying the two percentages to determine the fee reduction factor. It is not expected that rReductions in the Construction Management Contracts Sto s schedule fee amounts are not expected will be made for complexity, reduced requirements, and similar adjustments as are made for construction contracts.

(h) *Special equipment purchases/subcontract work schedule.* The schedule of fees for consideration of special equipment purchases and for consideration of the subcontract program under a construction management contract is as follows:

Special Equipment Purchases/Subcontract Work Schedule

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
Up to \$1 Million			1.64
1,000,000	16,410	1.64	1.09

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
2,000,000	27,350	1.37	0.93
4,000,000	45,948	1.15	0.77
6,000,000	61,264	1.02	0.71
8,000,000	75,486	0.94	0.66
10,000,000	88,614	0.89	0.61
15,000,000	119,246	0.79	0.53
25,000,000	171,758	0.69	0.47
40,000,000	242,868	0.61	0.43
60,000,000	329,294	0.55	0.39
80,000,000	406,968	0.51	0.37
100,000,000	480,266	0.48	0.28
150,000,000	619,204	0.41	0.23
200,000,000	732,980	0.37	0.13
300,000,000	867,542	0.29	
Over \$300 Million	867,542		013

915.404-4860 Fee base.

(a) Costs included in the fee base. The fee base shown in the Construction Contracts Schedule and Construction Management Contracts Schedule ~~represents is that the~~ estimated ~~d-of allowable~~ cost ~~of the construction work or other services which are to be performed~~ to which a percentage factor is applied to determine ~~the~~ maximum fee ~~allowances.~~ ~~For construction or construction management contracts, the~~ The fee base ~~is the estimated necessary allowable cost of the construction work or other services which are to be performed should . It shall~~ include the estimated cost for, but ~~is~~ not limited to, the following ~~as they may apply in the case of a construction or construction management contract:~~

- (1) Site preparation and utilities.
- (2) Construction (labor-materials-supplies) of buildings and auxiliary facilities.
- (3) Construction (labor-materials-supplies) to complete/construct temporary buildings.
- (4) Design services to support the ~~foregoing~~ construction.
- (5) General management and ~~job-project~~ planning ~~cost~~.
- (6) Labor supervision.
- (7) Procurement and acquisition administration.
- (8) ~~Construction Work~~ performed by subcontractors.
- (9) Installation of government-~~furnished~~ or contractor-~~acquired~~ special equipment and other equipment.
- (10) Equipment (other than special equipment) ~~which is to that will~~ become Government property ~~(including a component of Government property).~~

(b) Costs excluded from the fee base. The fee base for the basic fee determination for a construction contract and construction management contract ~~shall is to~~ include all necessary and allowable costs ~~cited-described~~ in paragraph (a) ~~above, of this section as appropriate, based on to the type of contract type; except, any home office G&A expense paid as a contract cost per cost principle guidance and procedures shall be excluded from the fee base.~~ The fee base ~~shall~~ excludes:

- (1) Cost of land.

(2) Cost of engineering (A-&E work).

(3) Contingency estimate.

(4) Equipment rentals or use charges.

(5) Cost of government-furnished equipment or materials.

(6) Special equipment purchases.

(7) Home office general and administrative (G&A) expenses paid as a contract cost (per cost principles).

(c) Special equipment fee base. Establish a separate fee base ~~shall be established~~ for special equipment for use in applying the Special Equipment Purchases or Subcontract Work Schedule (see 915.404-4850(h)). For special equipment purchases, use The fee base for determination of applicable fees on special equipment shall be based on the estimated purchase price of the equipment as the fee base.

(d) Special circumstances under Construction Management Contracts. The fee base under the Construction Management Contracts Schedule ~~for a maximum basic fee determination~~ for a construction management contract ~~is shall be~~ comprised ~~of only of~~ the costs ~~of associated with~~ the construction manager's own efforts, ~~since. However, it is recognized that in the case of construction management contracts,~~ the actual construction work will be performed by subcontractors ~~under. In most cases the subcontracts award eds for the construction work will be made~~ by the construction management contractor. ~~If the construction manager is overseeing work Occasionally the contract may involve management of construction performed under a contract awarded by the Department DOE or by one of the Department's DOE's operating contractors. In these cases, the actual cost of exclude those subcontracted construction costs work shall be excluded from the fee base used to determine the maximum basic fee (under the Construction Management Contracts Schedule) applicable to a construction management contract. A separate fee base f~~For additional allowances (like special equipment purchases or subcontracted work using the Special Equipment Purchases or Subcontract Work Schedule), ~~shall be established, a separate fee base using the cost of those items which shall be comprised of those subcontract construction costs, special equipment purchases, and other items' costs that are contracted for or purchased by the construction manager.~~

915.404-4900 Special considerations for cost-plus-award-fee contracts.

(a) General. When a contract is to be awarded on a ~~cost-plus-award-fee~~CPAF basis several special considerations ~~are appropriate apply.~~ Fee objectives ~~f~~For management and operating M&O contracts or other contracts as determined by the Senior Procurement

~~ExecutiveSPE~~, including those using the ~~E~~construction, ~~E~~construction ~~M~~management, or ~~S~~special ~~E~~quipment ~~P~~purchases/~~S~~subcontract ~~W~~work schedules from 915.404-4850, ~~shall be developed pursuant to follow~~ the procedures set forth in 970.1504-101 through 970.1504-300 ~~to develop fee objectives~~. ~~Fee objectives f~~For other ~~cost-plus-award-~~~~fee~~CPAF contracts, ~~shall be in accordance with follow the procedures at~~ 916.405-2 and ~~this section to develop fee objectivesbe developed~~ as follows:

(1) *Base fee*. The base fee portion of the fee objective ~~offor~~ an award fee contract may range from 0% up to ~~the 50% percent level~~ of the fee amount ~~for a Cost-Plus-Fixed-Fee (CPFF) contract, arrived atdetermined~~ by using the weighted guidelines or other techniques (such as those ~~provided discussed~~ in 915.404-4800 for construction and construction management contracts). However, the base ~~amount~~ should not normally exceed 50% ~~percent~~ of the ~~otherwise applicable~~ fixed fee. In the event ~~this the~~ 50% ~~percent~~ limit is exceeded, ~~appropriate document the rationale ination shall be entered into~~ the contract file. ~~In no event shall t~~The base fee ~~must never~~ exceed 60% ~~percent~~ of the fixed fee amount.

(2) *Total fee (base plus award fee)*. The base fee plus the ~~amount included in the~~ award fee pool should normally not exceed the fixed fee (as subjectively determined or as developed from the fee schedule) by more than 50% ~~percent~~. However, ~~in the event if~~ the base fee is ~~to be~~ less than 50% ~~percent~~ of the fixed fee, the maximum ~~potential~~ award fee may be increased proportionately with the decreases in base fee amounts.

(3) *Maximum award fee*. The following maximum potential award fees ~~shall~~ apply in award fee contracts: ~~(percent is stated as a percent~~age of fee schedule amounts)~~:-~~

Base fee percent	Award fee percent	Maximum total percentage
50	100	150
40	120	160
30	140	170
20	160	180
10	180	190
0	200	200

(b) ~~Approval. If the total fee (base plus award fee pool) exceeds the guidelines above, prior approval of the Senior Procurement Executive SPE is required, is required for total fee (base plus award fee pool) exceeding the guidelines in paragraph (a)(3) of this section.~~

915.408 Solicitation provisions and contract clauses.

915.408-70 Key personnel clause.

~~The Contracting Officer shall~~ Insert the clause at 952.215-70, Key Personnel, in solicitations and contracts under which successful performance is largely dependent on the expertise of specific key personnel.

Subpart 915.6—Unsolicited Proposals

915.602 Policy.

~~(a) Present and future needs demand the involvement of all resources in pursuit of exploring alternative energy sources and technologies. To achieve this objective, it is DOE policy to encourage the submission of unsolicited proposals that offer external sources of unique and innovative methods, approaches, and ideas by stressing submission of unsolicited proposals for government support. In furtherance of this policy and to ensure the integrity of the acquisition process through application of reasonable controls, the DOE:~~

~~(1) Disseminates information on areas of broad technical concern whose solutions are considered relevant to the accomplishment of DOE's assigned mission areas;~~

~~(2) Encourages potential proposers to consult with program personnel before expending resources in the development of written unsolicited proposals;~~

~~(3) Endeavors to distribute unsolicited proposals to all interested organizations within DOE;~~

~~(4) Processes unsolicited proposals in an expeditious manner and, where practicable, keeps proposers advised as discrete decisions are made;~~

~~(5) Assures that each proposal is evaluated in a fair and objective manner; and, (6) Assures that each proposal will be used only for its intended purpose and the information, subject to applicable laws and regulations, contained therein will not be divulged without prior permission of the proposer.~~

915.603 [Reserved] General.

~~(f) Unsolicited proposals for the performance of support services are, except as discussed in this paragraph, unacceptable as the performance of such services is unlikely to necessitate innovative and unique concepts. There may be rare instances in which an unsolicited proposal offers an innovative and unique approach to the accomplishment of a support service. If such a proposal offers a previously unknown or an alternative approach to generally recognized techniques for the accomplishment of a specific service(s) and such approach will provide significantly greater economy or enhanced quality, it may be considered for acceptance. Such acceptance shall, however, require approval of the acquisition of support services in accordance with applicable DOE Directives and be processed as a deviation to the prohibition in this paragraph.~~

915.605 Content of unsolicited proposals.

(b)(5) Unsolicited proposals for nonnuclear energy demonstration activities not covered by existing formal competitive solicitations or program opportunity notices may include a request for federal assistance or participation, and ~~shall will~~ be subject to the cost sharing provisions of subpart [917.70](#).

915.606 Agency procedures.

(b) Unless otherwise specified in a notice of program interest, ~~all~~ unsolicited proposals ~~must should~~ be submitted to the Unsolicited Proposal Manager at DOEUSP@netl.doe.gov. ~~If the proposer has ascertained the cognizant program office through preliminary contacts with program staff, the proposal may be submitted directly to that office. In such instances, the proposer should separately send a copy of the proposal cover letter to the unsolicited proposal coordinator to assure that the proposal is logged in the Department's automated tracking system for unsolicited proposals.~~

915.607 ~~[Reserved] Criteria for acceptance and negotiation of an unsolicited proposal.~~

(c) DOE's cost participation policy, at subpart [917.70](#), shall be followed in determining the extent to which the DOE will participate in the cost for the proposed effort.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 50 U.S.C. 2401

Source: 49 FR 12042, Mar. 28, 1984, unless otherwise noted.

Subpart 952.2—Text of Provisions and Clauses

952.215-70 Key personnel.

952.215-70 Key personnel.

As prescribed in 915.408-70, ~~the contracting officer shall~~ insert the following clause:

Key Personnel ~~[December 2024]~~(DEVIATION JUN 2026)

(a) The personnel ~~listed~~identified below or elsewhere in this contract ~~[Insert cross-reference, if applicable]~~ are considered essential ~~for contract performance to the work being performed under this contract~~. Before removing, replacing, or diverting any of the ~~listed or specified~~identified personnel, the Contractor must:

(1) ~~Provide~~Notify the Contracting Officer ~~reasonably in advance~~notice [Contracting Officer may insert minimum number of days in parentheses] and submit justification including resumes for any proposed substitutions; and

(2) Obtain the Contracting Officer's written approval. ~~Notwithstanding the foregoing, the Contractor may immediately remove or suspend any key person immediately if necessary to maintain satisfactory-acceptable standards of employee competency, conduct, and integrity under the clause at 48 CFR 970.5203-3, Contractor's Organization, but although the Contractor must notify Contracting Officer at or before the time of prior to or concurrently with~~ such action.

(b) The list of key personnel may, ~~with the consent of the contracting parties,~~ be updated at any time with the agreement of the parties~~amended from time to time during the course of the contract to add or delete personnel~~. ~~If any changes involve key personnel associated with a facility clearance, the~~the Contractor must provide written notice to the cognizant security office ~~if changes to the list of personnel affect key personnel connected to a facility clearance~~.

[Insert List of Key Personnel by position/title, reflecting the actual position title of the top-level key personnel, such as Program Manager, Laboratory Director, Project Manager, etc. unless listed elsewhere in the contract]

(End of clause)