

Environmental Restoration Competency 4.5

Competency 4.5 Environmental restoration personnel shall demonstrate a working level knowledge of contract management to establish contractor evaluation requirements, assess contractor performance, and ensure accountability.

1. Supporting Knowledge and Skills

- a. Discuss the purpose of contracting as it pertains to the operations of Department facilities.
- b. Explain the types of contracts employed by the Department.
- c. Describe the characteristics of the three major contract types utilized within the Department.
- d. Describe the "Accountability Rule" and discuss the role it plays in contract management.
- e. Discuss the roles of federal and contractor personnel in contract management.
- f. Define the term, "Federal Norm" and describe its significance to the Department and contractor activities.
- g. Discuss the "Cost Plus Award Fee" evaluation process, including development of performance criteria, conduct of the evaluation, and documentation and transmittal requirements for performance.
- h. Discuss typical criteria, the performance measures, and means to communicate the importance of the contractor evaluation criteria.
- i. Participate in an actual contractor evaluation performance cycle providing an assessment at the conclusion of the cycle.

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2. Self-Study Activities (Corresponding to the Intent of the Above Competency)

Below are two web sites containing many of the references you may need.

Web Sites		
Organization	Site Location	Notes
Department of Energy	http://wastenot.inel.gov/cted/stdguido.html	DOE Standards, Guides, and Orders
U.S. House of Representatives	http://law.house.gov/cfr.htm	Searchable Code of Federal Regulations

Review Subpart 17.7 of the Federal Acquisition Regulation (FAR) and Subpart 917.6 of the Department of Energy Acquisition Regulations (DEAR)

EXERCISE 4.5-A Using the FAR and DEAR, discuss the purpose of contracting as it pertains to the operations of Department M&O facilities.

Review Part 16 of the FAR.

EXERCISE 4.5-B Using the FAR, identify the three major DOE contract types.

EXERCISE 4.5-C Describe the characteristics of the three major DOE contract types.

Read DOE N 4220.3, *Award-Fee Contracts*.

EXERCISE 4.5-D What is the length of the award-fee evaluation period?

EXERCISE 4.5-E How are performance criteria developed and the performance requirements transmitted to the contractor?

Scan 48 CFR 9, DEAR, Part 970, *DOE Management and Operating Contracts*.

Read the summary section below. This information was extracted from the *Federal Register* (56 FR 28099).

EXERCISE 4.5-F Referring to the summary, briefly describe the Accountability Rule.

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EXERCISE 4.5-G Referring to 48 CFR 9, DEAR, Part 970, *DOE Management and Operating Contracts*, describe how the Accountability Rule is applied to unauthorized commitments.

Read DOE Order 5480.19, *Guidelines for the Conduct of Operations at DOE Facilities*, Attachment I, Chapter 1, Operations Organization and Administration.

EXERCISE 4.5-H Identify the key elements and features of an effective DOE and operating contractor relationship.

EXERCISE 4.5-I Identify the roles and responsibilities for the Heads of Field Organizations listed in DOE Order 5480.19, *Guidelines for the Conduct of Operations at DOE Facilities*.

Read the information about the “Federal Norm” presented in the Summary section of this study guide. This information was extracted from several 1995 issues of the *Federal Register*.

EXERCISE 4.5-J Define the term, “Federal Norm.”

EXERCISE 4.5-K Describe the significance of the concept, Federal Norm, to the Department and contractor activities.

Read DOE N 4700.5, *Project Control System Guidelines*, Attachment 2.

EXERCISE 4.5-L Discuss typical criteria, the performance measures, and means to communicate the importance of the contractor evaluation criteria.

Read 10 CFR 830.120, *Quality Assurance*, and DOE G-830.120, *Implementation Guide for Use With 10 CFR 830.120, Quality Assurance*, Section 10, Independent Assessment.

EXERCISE 4.5-M Referring to DOE N 4700.5, *Project Control System Guidelines*, Attachment 2, *Project Control System Guidelines*; and to FAR, Amendment 21, Subpart 970.5204-9, *Accounts, Records, and Inspection*, what are the general events or concerns that would precipitate an independent review of a project?

EXERCISE 4.5-N Referring to DOE G-830.120, *Implementation Guide for Use With 10 CFR 830.120, Quality Assurance*, Section 10, Independent Assessment, what is the purpose of the “independent assessment;” and what is the general approach used in conducting an independent assessment?

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EXERCISE 4.5-O Participate in an actual contractor evaluation performance cycle providing an assessment at the conclusion of the cycle.

3. Summary

Contracting for products and services is by far, the least costly method of obtaining the wide variety of products and services needed.

Contracts and the types of contracts vary according to how and what the Department pay for them. All have similarities yet each is unique in its own way. Whether it is an award fee, fixed-price, or a time and materials contract, all require oversight by a DOE employee.

Contracts may be awarded as the result of competitive bids, by direct assignment, or through the “set aside funds” (for projects/products under \$25,000). Not using the full and open competitive bidding process requires justification according to the conditions set down in DOE Order 4200.1C.

DOE uses far more than three types of contracts. As an agency, they may use any of the contract types detailed in the FAR. There are six broad categories, with multiple types of contracts under each category. See below for brief description and references.

1. Fixed-Price Contracts: Includes firm-fixed-price, fixed-price with economic price adjustment, fixed-price with prospective price redetermination, firm-fixed-price level-of-effort, etc. (See FAR Part 16.2)
2. Cost-Reimbursement Contracts: Includes cost-reimbursement no fee, cost-reimbursement-plus-award fee, cost-sharing, cost-plus-incentive fee, cost-plus-fixed fee. (See FAR Part 16.3)
3. Incentive Contracts: Includes fixed-price incentive, cost-reimbursement incentive, cost-plus incentive, etc. (See FAR Part 16.4)
4. Indefinite Delivery Contracts: Includes definite quantity, indefinite delivery; indefinite quantity, indefinite delivery; and requirements contracts. (See FAR Part 16.5)
5. Time-and-Materials, Labor-Hour, and Letter Contracts: Three distinctly different types of contract. (See FAR Part 16.6).

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6. Agreements: Basic Agreements and Basic Ordering Agreements. (See FAR Part 16.7)

In addition to the type of contract, the agency must decide whether the award will result from Sealed Bidding or will be a Negotiated Procurement.

Because it is sometimes difficult to determine what type of contract is contemplated, FAR 16.105 instructs government procurement personnel to insert the clause at FAR 52.216-1 as follows in RFPs or RFQs unless the solicitation is for a small purchase: "The Government contemplates award of a . . . (Contracting Officer inserts specific type of contract) contract resulting from this solicitation."

Performance criteria are established in the Performance Evaluation Plan (PEP) that is developed between the contractor and DOE and is a part of the contract. The contractor is held to these criteria and is normally evaluated in six-month increments as a part of the award-fee process. The actual evaluation process is site specific and local process and procedures should be consulted.

On June 19, 1991, the Department issued a Final Rule (56 FR 28099), known as the Accountability Rule, to amend the Acquisition Regulation (48 CFR 970) in order to incorporate the requirements of the Major Fraud Act of 1988. The provisions of this rule are expected to be incorporated in all new M&O contracts with profit making contractors (at time of contract extension or reselection, or where the Government and incumbent contractor agree to do so prior to expiration of the current contract's term). Starting with FY92, all fee-negotiation objectives are to be developed using the fee schedules incorporated in the amended regulation. The Accountability Rule contains various provisions to increase the accountability and liability of contractors and subcontractors in their performance of work for DOE at DOE facilities. Examples of these provisions follow:

- The Rule limits liability to the amount of actual award fee earned plus the actual basic fee earned.
- Liabilities flow down to subcontractors.
- Unauthorized commitments: Whenever it is discovered that any person is performing or has performed work as a result of an unauthorized commitments, the contracting officer shall advise that person that the work is unauthorized and performance is at the person's own risk.
- Major considerations include:
 - the work is clearly within the sole and exclusive control of the contractor or subcontractor
 - the increased costs or expenses result from the actions or inactions of the contractor or subcontractor
 - DOE is not responsible in any way for the act or omission that resulted in the additional cost

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- The contractor shall maintain and administer a financial management system that includes an integrated accounting system and (1) is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the contractor in connection with the work under this contract, expenditures, costs, and encumbrances; (2) permits the preparation of accounts and accurate, reliable financial and statistical reports; and (3) assures that accountability for the assets can be maintained.

In the context of DOE procurement, purchasing, and subcontracting, the “Federal Norm” is an outdated practice that, in effect, requires DOE’s M&O contractors to follow certain Federal-oriented prescribed practices in purchasing and in the award of subcontracts.

In 1995, the DEAR, Part 970, *DOE Management and Operating Contracts*, was amended to remove the concept of Federal Norm from the procurement purchasing system objectives and standards. This was done to place greater reliance upon commercial business practices and to reflect the change in Federal contracting procurement principles and practices from those embodied in law and regulation to those based on performance. DOE contracts for the management and operation of DOE facilities, the design and production of nuclear weapons, energy research and development, and the performance of other services. These M&O contractors have been selected for their technical and managerial expertise and are expected to utilize these technical and managerial skills to accomplish the significant Federal mission(s) described in their contracts with and work plans approved by DOE.

Purchasing done by M&O contractors is one area in which the particular skills of the contractors will be brought to bear in order to more readily accomplish the contractors’ assigned missions. The contracting procedures of the contractor’s organization, therefore, form the basis for the development of a purchasing system and methods that will comply with its contract with DOE and this Subpart 970.71. (60 FR 28741, Jun. 2, 1995)

In DOE, overall responsibility for the oversight of the performance of M&O contractors, including their purchasing activities, rests with the cognizant DOE contracting activity and, in particular, the Head of the Contracting Activity (HCA). Contracting Officers are responsible for M&O contractors’ conformance with this Subpart and their contracts, and for determining whether those purchasing activities provide timely and effective support to DOE programs.
(48 CFR 970.71)

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Effective relationships between the Department and operating contractors are based in the site's conduct of operations. The organization and administration of operations should ensure that a high level of performance in DOE facility operations is achieved through effective implementation and control of operations activities. Effective implementation and control of operating activities are primarily achieved by establishing written standards in operations, periodically monitoring and assessing performance, and holding personnel accountable for their performance.

The project control systems used by contractors in planning and controlling the performance of their work shall meet the Guidelines set forth (in DOE N 4700.5). The Guidelines are divided into three categories: baseline development, project performance, and change management. The Project Control System Guidelines establishes the policy for applying control systems to overall management of projects, including Major Systems Acquisitions (MSAs), Major Projects (MPs), other line item projects, General Plant Projects (GPPs), and operating funded projects and contracts within those projects.

The general areas of project performance monitored by the contractor and DOE are:

- Funds management
- Accounting
- Work authorization
- Performance analysis
- Reporting

The types of reporting mechanisms to be used by the contractor in reporting project performance to its own management and to DOE include the following:

1. Narrative status reports
2. Schedule status reports
3. Cost status reports
4. Labor status reports
5. Problem reports
6. Baseline change status reports
7. Development of predetermined thresholds that will trigger problem reports
8. Identification and reporting of "at risk" areas
9. Trend charts

The major responsibilities of the project manager are to:

1. Identify the applicability of the specific control guidelines for the compliance reviews. Participate in the review process.
2. Prepare a project management plan.
3. Specify the frequency of reporting and establish variance analysis thresholds.

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4. Develop project-specific procedures for use of contingency.
5. Provide written comments or findings to the contractor for clearly established management action and resolution.

4. Exercise Solutions

EXERCISE 4.5-A Using the FAR and DEAR, discuss the purpose of contracting as it pertains to the operations of Department M&O facilities.

ANSWER 4.5-A Contracting provides flexibility in acquiring the large variety and volume of supplies and services needed by government agencies. Contract types vary (1) according to the degree and timing of the responsibility assumed by the contractor for the costs of performance and (2) by the amount and nature of the profit incentive offered to the contractor.

EXERCISE 4.5-B Using the FAR, Identify the three major DOE contract types.

ANSWER 4.5-B The three major DOE contract types are:

- cost-plus-award fee
- fixed-price
- time-and-materials

EXERCISE 4.5-C Describe the characteristics of the three major DOE contract types.

ANSWER 4.5-C Cost-plus-award fee: A contract for a given product or service in which the contractor will be reimbursed for the cost of the product or services and can earn an agreed upon award fee based upon how well they deliver the product or service.

Fixed-price: A contract for a given product or service in which the contractor will be paid an agreed upon price.

Time-and-materials: A contract for a given product or service in which the contractor will be reimbursed for the actual cost of materials and an agreed upon “hourly” rate for labor performed.

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EXERCISE 4.5-D What is the length of the award-fee evaluation periods?

ANSWER 4.5-D All Performance Evaluation Plans (PEPs) shall provide for separate evaluation periods of six months in length.

EXERCISE 4.5-E How are performance criteria developed and the performance requirements transmitted to the contractor?

ANSWER 4.5-E PEPs should clearly delineate and effectively communicate to the contractors milestones and performance objectives for the upcoming rating periods. The award-fee criteria for each contract must reflect the Department's restructured objectives and priorities and focused initiatives.

They must be meaningful and challenging objectives, prioritized and weighted appropriately. In establishing these criteria, goals and objectives included in corrective action plans resulting from Tiger Teams, Technical Safety Appraisals, and other report recommendations should be included.

Agreement on PEP goals and objectives must be reached early-on with all interfacing organizations to achieve clarity of expectations prior to the beginning of the award-fee period. This includes agreement between the Field Office, the Contractors, and HQ expectations, priorities, objectives, criteria, performance indicators, and the meaning of successful achievement of the PEP criteria.

EXERCISE 4.5-F Referring to the summary, briefly describe the Accountability Rule.

ANSWER 4.5-F The answer should consist of two parts: 1) A general overall description, and 2) Any three of the example provisions.

The Accountability Rule, as defined in 56 FR 28099, contains various provisions to increase the accountability and liability of contractors and subcontractors in their performance of work for the DOE at DOE facilities. Examples of these provisions follow:

- The Rule limits liability to the amount of actual award fee earned plus the actual basic fee earned.
- Liabilities flow down to subcontractors.

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- Unauthorized commitments - Whenever it is discovered that any person is performing or has performed work as a result of an unauthorized commitments, the Contracting Officer shall advise that person that the work is unauthorized and performance is at the person's own risk.
- Major considerations include:
 - The work is clearly within the sole and exclusive control of the contractor or subcontractor
 - The increased costs or expenses result from the actions or inactions of the contractor or subcontractor
 - DOE is not responsible in any way for the act or omission that resulted in the additional cost
- The contractor shall maintain and administer a financial management system that includes an integrated accounting system and (1) is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the contractor in connection with the work under this contract, expenditures, costs, and encumbrances; (2) permits the preparation of accounts and accurate, reliable financial and statistical reports; and (3) assures that accountability for the assets can be maintained.

EXERCISE 4.5-G Referring to 48 CFR 9, DEAR, Part 970, *DOE Management and Operating Contracts*, describe how the Accountability Rule is applied to unauthorized commitments.

ANSWER 4.5-G Whenever it is discovered that any person is performing or has performed work as a result of an unauthorized commitment, the contracting officer shall advise that person that the work is unauthorized and performance is at the person's own risk. This could result in no compensation for work performed in the past or in the future.

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EXERCISE 4.5-H Identify the key elements and features of an effective DOE and operating contractor relationship.

ANSWER 4.5-H An effective DOE and operating contractor relationship includes the following features:

- High operating standards established by management
- Communication of operating standards to the working level
- Sufficient resources provided to the operations department
- Ensurance that personnel are well trained
- Close monitoring of performance in operations
- Accountability of workers and their supervisors for their performance in conducting activities

EXERCISE 4.5-I Identify the roles and responsibilities for the Heads of Field Organizations listed in DOE Order 5480.19, *Guidelines for the Conduct of Operations at DOE Facilities*.

ANSWER 4.5-I As an environmental restoration professional, you may be tasked with the roles and responsibilities of the Heads of Field Elements listed in DOE Order 5480.19, *Guidelines for the Conduct of Operations at DOE Facilities*. This includes the following:

1. Ensure that adequate contractor plans, procedures, and programs are in place and assess the effectiveness of their implementation at sites under their jurisdiction, consistent with the provisions of this Order
2. Ensure that DOE Facility Representatives are assign responsibility for a major facility or group of lesser facilities, and oversee the day-to-day conduct of operations at these facilities in accordance with the requirements of this Order and the direction received from the Program Manager
3. Approve documentation prepared by the contractor to demonstrate conformance to the guidelines in Attachment I

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EXERCISE 4.5-J Define the term, “Federal Norm.”

ANSWER 4.5-J The Federal Norm refers to those fundamental principles embodied in law and regulation that should be reflected in contractor procurements even though such procurements are not Federal procurements. In other words, the contractor is “required” to follow the same rules as DOE in purchasing products and services from vendors.

EXERCISE 4.5-K Describe the significance of the concept, Federal Norm, to the Department and contractor activities.

ANSWER 4.5-K Following the accepted practice of purchasing products and services in accordance with the Federal Norm has historically increased the overall cost to DOE. With DOE’s transition to performance-based contracting has come the expectation that the contractor will rely on standard business practices when purchasing products and services.

EXERCISE 4.5-L Discuss typical criteria, the performance measures, and means to communicate the importance of the contractor evaluation criteria.

ANSWER 4.5-L The project control systems used by contractors in planning and controlling the performance of their work shall meet the Guidelines set forth (in DOE N 4700.5). The Guidelines are divided into three categories: baseline development, project performance, and change management.

Baseline Development: includes management actions necessary to define project scope and responsibilities, establish baselines, and plan the project.

Project Performance: includes management actions after work commences that are necessary to monitor project status, report and analyze performance, and manage risk. Assessments, surveillances, etc. are conducted for this purpose.

Change Management: includes management actions necessary to ensure adequate control of project baselines, including the performance measurement baseline. The results of assessments, surveillances, etc. are implemented as part of change management.

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EXERCISE 4.5-M Referring to DOE N 4700.5, *Project Control System Guidelines*, Attachment 2, *Project Control System Guidelines*, and to *Federal Acquisition Regulation, Amendment 21*, Subpart 970.5204-9, *Accounts, Records, and Inspection*, what are the general events or concerns that would precipitate an independent review of a project?

ANSWER 4.5-M Generally DOE, in accordance with contract provisions, has the “right to inspect the work and activities of the contractor . . . at such time in such manner as it shall deem appropriate.” With regard to project management and performance analysis, DOE or the contractor management may commission an independent review “to determine project status by analyzing technical, schedule, and cost performance considering potential problems, their impact, and alternative courses of action.” The conduct of a performance analysis can entail:

- Identify significant differences between planned and actual cost, schedule, and technical activities.
- Implement a performance measurement system to identify and analyze problematic areas.
- Validate the estimates at completion (EAC).

EXERCISE 4.5-N Referring to G-830.120, *Implementation Guide for Use With 10 CFR 830.120, Quality Assurance*, Section 10, *Independent Assessment*, what is the purpose of the “independent assessment;” and what is the general approach used in conducting an independent assessment?

ANSWER 4.5-N

- Purpose: to measure item quality and process effectiveness and to promote improvement.
- Approach: Structured, using a performance-based methodology.

EXERCISE 4.5-O Participate in an actual contractor evaluation performance cycle providing an assessment at the conclusion of the cycle.

ANSWER 4.5-O See your supervisor for an assignment to evaluate a performance cycle. Utilize the information from the previous questions and summary as part of the assessment.