

Periodic Table of Acquisition Innovations

Award Term Incentives: Content Page

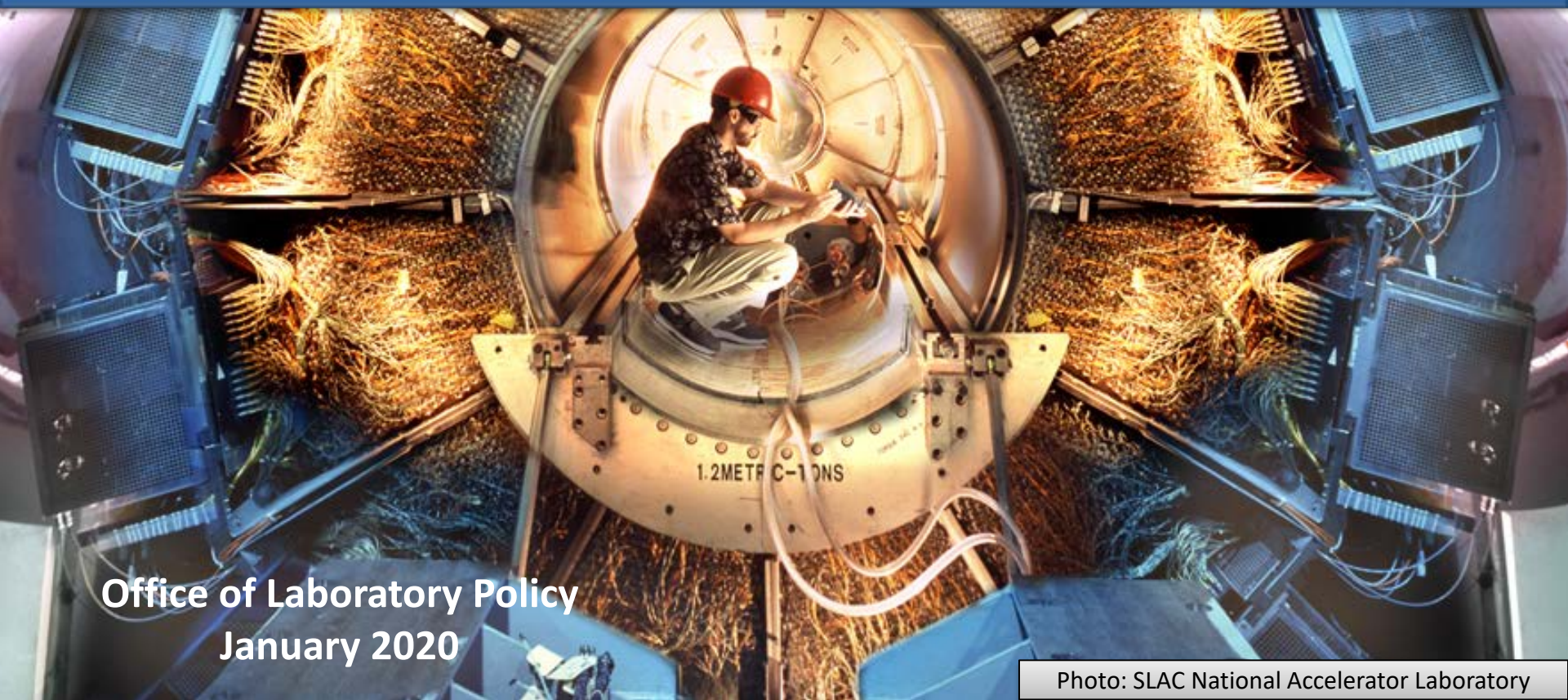
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An Introduction to Office of Science Laboratory Evaluation Process



Office of Laboratory Policy
January 2020

Photo: SLAC National Accelerator Laboratory

- **Robust Acquisition Policies and Procedures**
 - Laboratory contracts are competed when there is a reasonable assumption of improved contractor performance.
 - All work at the laboratories is competitively awarded.
- **Institutional Planning**
 - Annually DOE reviews the long term plans of each laboratory and provides feedback on whether these plans align with DOE goals and priorities.
- **Establish Performance Expectations**
 - Annually a standard Performance Evaluation and Measurement Plan (PEMP) is added to the contract for all 10 laboratories.
 - A few select notable outcomes are defined by SC leadership and included in PEMP.
 - Programs and Site Offices provide feedback throughout the year.

- To meet our contractual obligations, determine fee, etc.,
- To inform acquisition planning decisions,
and most importantly,
- To assess how our contractors are performing against our expectations, to ensure that we are getting good/best value for the money we expend at the laboratories.

Laboratory Appraisal Cycle



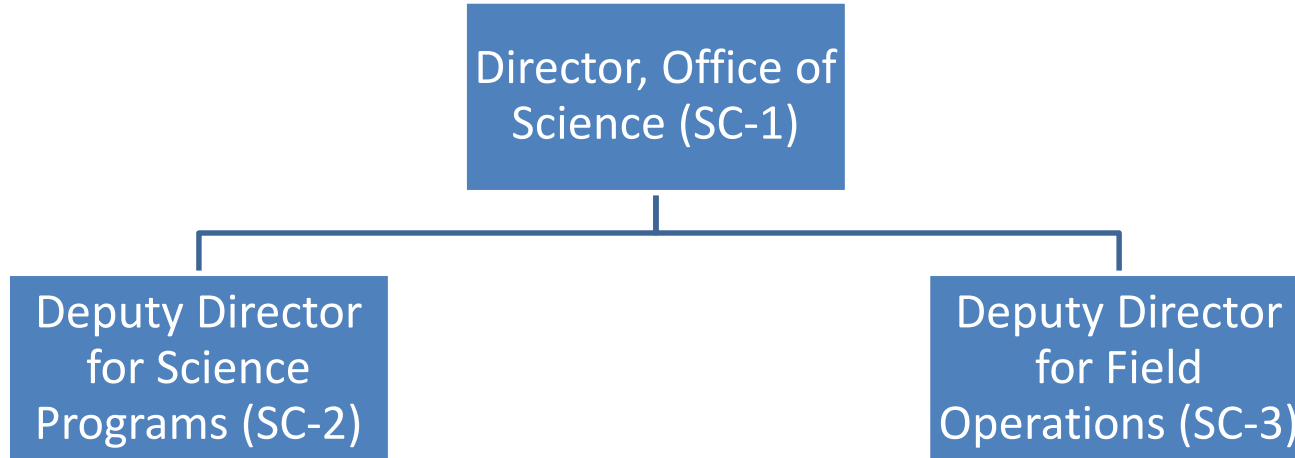
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SC-1

- Approves notables for future year PEMPs.
- Approves grades/scores for all goals.
- Award Term Determining Official for the Office of Science
- Briefs Lab/Contractor Management on Results



SC-2 and Associate Directors (ADs)

- Evaluates the quality of science and program management (goals 1-3).
- Reviews and recommends notable outcomes for goals 1-4.

SC-3 and Site Office Managers (SOMs)

- Evaluates operational performance of the labs (goals 5-8).
- Reviews and recommends notable outcomes for goals 4-8.

- Standard ***Performance Goals and Objectives*** for all SC laboratories
- Revised ***review process*** for annual laboratory performance plans (PEMPs) and reports with SC senior management involvement
- Standardized ***scoring*** and ***reporting*** approach (4 point scale and public report card)
- Broadened ***incentives*** with standard fee calculation

Standard Performance Goals



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1. Mission Accomplishment
2. Design, Fabrication, Construction and Operation of Research Facilities
3. Program Management

4. Contractor Leadership/Stewardship

5. Environment, Safety and Health
6. Business Systems
7. Facilities and Infrastructure
8. Security and Emergency Management



Science &
Technology



Management
& Operations

Standard Performance Goals and Objectives



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1. Mission Accomplishment

- a) Impact (significance)
- b) Leadership (recognition of S&T accomplishments)

2. Design, Fabrication, Construction & Operation of Research Facilities

- a) Design of Facility (the initiation phase and the definition phase)
- b) Construction of Facility/Fabrication of Components (execution phase)
- c) Operation of Facility (e.g., availability, reliability, and efficiency of facility)
- d) Utilization of Facility to Grow and Support Lab's Research Base and External User Community

3. Program Management

- a) Strategic Planning, Stewardship of Scientific Capabilities and Programmatic Vision
- b) S&T Project/Program/Facilities Management
- c) Communications and Responsiveness to HQ

4. Contractor Leadership/Stewardship

- a) Leadership and Stewardship of the Laboratory
- b) Management and Operation of the Laboratory
- c) Laboratory External Engagements/Partnerships
- d) Contractor Value-added

5. Environment, Safety and Health

- a) Worker Safety and Health Program
- b) Environmental Management System

6. Business Systems

- a) Efficient, Effective, and Responsive Financial Management System(s)
- b) Efficient, Effective, and Responsive Acquisition and Property Management Systems
- c) Efficient, Effective, and Responsive Human Resource Management System and Diversity Program
- d) Efficient, Effective, and Responsive Contractor Assurance Systems, including Internal Audit and Quality
- e) Effective Transfer of Knowledge and Technology and Commercialization of Intellectual Assets

7. Facilities and Infrastructure

- a) Manage Facilities and Infrastructure in an Efficient and Effective Manner that Optimizes Usage and Minimizes Life Cycle Costs
- b) Provide planning for and acquire the facilities and infrastructure required to support future laboratory programs

8. Security and Emergency Management

- a) Efficient and Effective Emergency Management System
- b) Efficient and Effective Cyber-Security for Protection of Classified and Unclassified Information
- c) Efficient and Effective System for the Protection of Special Nuclear Materials, Classified Matter/Information, Sensitive Information and Property

Standard Descriptions



GOAL 1.0 PROVIDE FOR EFFICIENT AND EFFECTIVE MISSION ACCOMPLISHMENT

Objective 1.1 Provide Science and Technology Results with Meaningful Impact on the Field

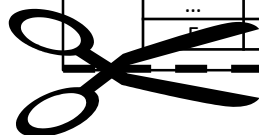
In assessing the performance of the Laboratory against this Objective, the following assessment elements should be considered:

- Performance of the Laboratory with respect to proposed research plans;
- Performance of the Laboratory with respect to community impact and peer review; and
- Performance of the Laboratory with respect to impact to DOE mission needs.

The following is a sampling of factors to be considered in determining the level of performance for the Laboratory against this Objective. The evaluator(s) may consider the following as measured through progress reports, peer reviews, Field Work Proposals (FWPs), Program Office reviews/oversight, etc.

- Impact of publications on the field, as measured primarily by peer review;
- Impact of S&T results on the field, as measured primarily by peer review;
- Impact of S&T results outside the field indicating broader interest;
- Impact of S&T results on DOE or other customer mission(s);
- Successful stewardship of mission-relevant research areas;
- Delivery on proposed S&T plans;
- Significant awards (Nobel Prizes, R&D 100, FLC, etc.);
- Invited talks, citations, making high-quality data available to the scientific community; and
- Development of tools and techniques that become standards or widely-used in the scientific community.

Letter Grade	Definition
A+	In addition to satisfying the conditions for B+ <ul style="list-style-type: none"> • There are <i>significant research areas for which the Laboratory has exceeded the expectations</i> of the proposed research plans in <i>significant ways through creative, new, or unconventional methods that allow greater scientific reach than expected.</i> • S&T conducted at the Laboratory <i>has resolved one of the most critical questions in the field, or has changed the way the research community thinks about a particular field through paradigm shifting discoveries that would be considered the most influential discovery of the decade for that field.</i> • S&T conducted at the Laboratory <i>provided major advances that significantly accelerate</i> DOE or other customer mission(s).
...	
F	



- In 2009, a COV recommended SC reduce the number of metrics to a “critical few” for each lab because:
 - There were 100s of performance measures and targets in each lab PEMP and it was not clear what SC considered to be the “most important” items;
 - Many of the measures were “compliance measures” or “process steps” that duplicated requirements found in Orders, regulations, etcetera; and
 - They were not focused on “outcomes” for improved performance.
- This led to the creation of “Notable Outcomes,” beginning in the FY 2010 PEMP
 - Notable outcomes are the short list of the most important things SC wants the contractor to focus on in the coming year, above and beyond sound management of the contract and across all the eight evaluation categories.
 - Clearly do not cover all the lab has to do. Instead, they identify the “notable few” things the lab must focus on achieving or improving in the coming year.
 - Are pass/fail in the sense that accomplishment of the notable is required to get the lab a B+ for that Objective; super-achievement doesn’t necessarily get you more.

Goal 4.0 - Contractor Stewardship/Leadership

- Evaluated by SC-1, SC-2, and SC-3
- Input is provided by the SC Associate Directors and the SC Site Office Managers
- Impacts both S&T and M&O overall grades (25% of grade)

Final S&T Score = (Initial S&T Score x 75%) + (Goal 4.0 Score x 25%)

Final M&O Score = (Initial M&O Score x 75%) + (Goal 4.0 Score x 25%)

Standard Scoring System



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Current, Standard Numerical Scoring System

Grade	Score	S&T Gateway	Operations Multiplier	
A+	4.1 – 4.3	100%	100%	
A	3.8 - 4.0	97%	100%	
A-	3.5 – 3.7	94%	100%	
B+	3.1 – 3.4	91%	100%	Meets Expectations
B	2.8 – 3.0	88%	95%	
B-	2.5 – 2.7	85%	90%	
C+	2.1 – 2.4	75%	85%	
C	1.8 – 2.0	50%	75%	
C-	1.1 – 1.7	0%	60%	
D	0.8 – 1.0	0%	0%	
F	0 – 0.7	0.0	0%	

For Fee: (S&T Gateway) x (Ops Multiplier) = Fee % Awarded

For Consideration of Award Term:
Combined S&T ≥ A- and Combined Ops ≥ B+ ,
and no S&T Goal < B+ and no Ops Goal < B-

(For first year only: Combined S&T ≥ B+ and Combined Ops ≥ B+)

Incentivizing Performance



Incentives include performance fee, award term, the public release of grades, and tie to contract extend/compete decisions.

FY 2019 SC Laboratory Fee Awards

Laboratory	Maximum Available Perf. Fee	Max. Available Perf. Fee as % of Lab Operating Cost	Performance Fee Awarded (% of Max. Available Perf. Fee)	Award Term
AMES	\$1.496 M	2.8%	\$1.407M (94%)	Yes
ANL	\$5.82 M	0.8%	\$5.47M (94%)	Yes
BNL	\$6.9 M	1.2%	\$6.49M (94%)	Yes
FNAL	\$4.58 M	1.4%	\$4.301M (94%)	Yes
LBNL	\$6.7 M	0.8%	\$6.298M (94%)	Yes
ORNL	\$11.5 M	0.8%	\$10.81M (94%)	N/A
PNNL	\$12.5 M	1.3%	\$12.125M (97%)	N/A
PPPL	\$1.860 M	1.9%	\$1.69M (91%)	N/A
SLAC	\$ 4.85 M	1.3%	\$4.56M (94%) ¹	N/A
TJNAF	\$3.23 M	2.4%	\$3.03M (94%)	Yes

Annual Report Cards Made Public

<https://science.osti.gov/lp/Laboratory-Appraisal-Process/FY-2019>

- A-** Mission Accomplishment (Quality & Productivity of R&D)
- A-** Construction & Operation of Research Facilities
- B+** S&T Program Management
- A-** Contractor Leadership & Stewardship
- B+** Environment, Safety & Health
- B** Business Systems
- B** Facilities & Infrastructure
- B+** Security & Emergency Management

¹ TJNAF's fee was further reduced by approximately \$334,000 due to significant safety issues during FY 2019.

FY 2019 Office of Science Laboratory Performance Appraisals Questions and Answers

Question: What DOE laboratories are subject to the Office of Science laboratory appraisal process?

Answer: Ames Laboratory, Ames, Iowa; Argonne National Laboratory, Argonne, Illinois; Brookhaven National Laboratory, Upton, New York; Fermi National Accelerator Laboratory, Batavia, Illinois; Lawrence Berkeley National Laboratory, Berkeley, California; Oak Ridge National Laboratory, Oak Ridge, Tennessee; Pacific Northwest National Laboratory, Richland, Washington; Princeton Plasma Physics Laboratory, Princeton, New Jersey; SLAC National Accelerator Laboratory, Menlo Park, California; and Thomas Jefferson National Accelerator Facility, Newport News, Virginia.

Question: Why are the other DOE laboratories not evaluated through this process?

Answer: All of the DOE laboratories are evaluated against criteria established in their respective contracts. The laboratories and contractors that report to the Office of Science are evaluated through this process.

Question: Why does the DOE Office of Science need to appraise the performance of its national laboratory management and operating contractors?

Answer: The national laboratories' management and operating contracts require the Office of Science to appraise the scientific and operational performance of its contractors. These evaluations provide the basis for determining annual performance incentives, as well as information the Department uses to make contracting decisions.

Question: How long has this appraisal process been in place?

Answer: This appraisal process went into effect for the fiscal year 2006 performance evaluation period. The grades being released by DOE are the results of the fourteenth full evaluation cycle and cover the fiscal year 2019 performance period (October 1, 2018, through September 30, 2018).

Question: Can you briefly describe the areas of performance the Office of Science evaluates through this appraisal process?

Answer: The Office of Science evaluates the performance of its laboratory management and operating contractors against eight standard Performance Goals; each Performance Goal has a set of standard underlying Objectives. Three of the Goals focus on the contractors' scientific and technological performance with respect to 1) mission accomplishment (quality and productivity of research and development), 2) design, fabrication, construction, and operation of research facilities, and 3) science and technology research project/program management. Four of the Goals are used to evaluate the contractors' managerial and operational performance with respect to 1) integrated environment, safety, and health protection, 2) business systems, 3) facility maintenance and infrastructure, and 4) security and emergency management. The other Goal is used to evaluate the overall leadership and stewardship of the laboratory by senior laboratory officials and the contractor.

Question: How does the Office of Science evaluate its laboratory contractors' performance?

Answer: Each laboratory's performance was evaluated against the eight Performance Goals and associated Objectives common to all of the laboratories. In addition, the Office of Science developed a unique set of Notable Outcomes for each laboratory that was intended to focus the laboratory leadership on the specific items the Office of Science believed were the most important initiatives and highest risk issues the laboratory had to address during the past year. Notable Outcomes were clearly linked to one or more Performance Objectives, though they were not required for each Objective. They were also either met, or not met; they were not given a numerical score, nor a letter grade, at the end of the fiscal year. Achievement of a Notable Outcome was a prerequisite for meeting the Department's expectations (i.e., for achievement of a "B+" grade for the Objective(s) to which the Notable Outcome was linked).

The scientific and technological performance of the laboratory was evaluated by those organizations that fund its work including, as appropriate, the Office of Science, other DOE Program Offices, the Department of Homeland Security, and the Nuclear Regulatory Commission; furthermore, the managerial and operational performance of the laboratory was evaluated by its cognizant site office. Each contractor's Objective grades are based on both its performance against the Notable Outcomes, as well as other performance information that became available to DOE as a result of oversight throughout the year. Examples this type of information include independent scientific program reviews and internal and external operational reviews. The evaluation process included end-of-year normalization meetings for both the scientific and technological and the managerial and operational areas, during which rating organizations reported their proposed scores/grades and worked to achieve a consistent and fair scoring/grading approach across the ten laboratories.

Question: Are the grades consistently applied? Can different laboratories' grades be compared?

Answer: This appraisal process is robust in its ability to provide consistent assessments of the Office of Science Laboratory contractors' performance against the Performance Goals and Objectives common to all of the laboratories, as well as against the unique Notable Outcomes we defined for each individual laboratory. Substantial effort is expended each year to ensure comparability of the grades across the ten laboratories.

Question: What are the definitions of the various grades, including the plus (+) and minus (-) grades?

Answer: The evaluation process incorporates a standard (0-4.3) scoring system with corresponding grades for each Performance Goal and Objective, and results in the creation of a "Report Card" for each laboratory contractor. The table below represents the scale the Office of Science uses to assign scores and letter grades. A grade of "B+" is awarded for performance against an Objective that meets the Department's "expected" level of performance for that Objective. Therefore grades above a "B+" indicate a level of performance that exceeded DOE's expectations, while grades below a "B+" indicate levels of performance which have not met DOE's expectations and need improvement. The grade for each Performance Goals is based on a weighted sum of the scores of the individual Performance Objectives identified for each Goal.

Score/Letter Grade Scale

Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F
Total Score	4.3-4.1	4.0-3.8	3.7-3.5	3.4-3.1	3.0-2.8	2.7-2.5	2.4-2.1	2.0-1.8	1.7-1.1	1.0-0.8	0.7-0

Question: How do a laboratory's grades in the eight Performance Goals result in a fee determination?

Answer: SC uses the following process to determine the amount of performance-based fee earned by the contractor. The S&T score from each evaluator shall be used to determine an initial numerical score for S&T, and the rollup of the scores for each managerial and operational Performance Goal shall be used to determine an initial numerical M&O score.

These initial scores will then be adjusted based on the numerical score for the Goal (i.e., Goal 4.0) which evaluates the overall leadership and stewardship of the laboratory by senior laboratory officials and the contractor (see table below).

Final S&T and M&O Score Calculation

	Numerical Score	Weight		
Initial S&T Score		0.75		
Goal 4.0		0.25		
Final S&T Score				
Initial M&O Score		0.75		
Goal 4.0		0.25		
Final M&O Score				

The final S&T score will then be used to determine the amount of available fee that may be earned and the final M&O score will be used to determine the multiplier to be applied to the S&T fee earned to determine the final amount of fee earned for the year (in accordance with the table below).

Performance-Based Fee Earned Scale

Final Grade	A+	A	A-	B+	B	B-	C+	C	C-	D	F
Total Score	4.3-4.1	4.0-3.8	3.7-3.5	3.4-3.1	3.0-2.8	2.7-2.5	2.4-2.1	2.0-1.8	1.7-1.1	1.0-0.8	0.7-0
S&T % Fee Available	100%	97%	94%	91%	88%	85%	75%	50%	0%	0%	0%
M&O Fee Multiplier	100%	100%	100%	100%	95%	90%	85%	75%	60%	0%	0%

Question: How do grades in the eight Performance Goals affect the award term incentive?

Answer: The recently competed Office of Science Laboratory contracts include a new clause which allows the contractor to earn additional contract term based on its performance. There are minimum performance levels the contractor must achieve to be eligible for this "award term" incentive; the

performance levels are based on the eight Performance Goal grades resulting from the laboratory appraisal process. Six of the Office of Science laboratories' contracts include this award term provision. They are: Ames Laboratory, Argonne National Laboratory, Brookhaven National Laboratory, Fermi National Accelerator Laboratory, Lawrence Berkeley National Laboratory, and Thomas Jefferson National Accelerator Facility.

M&O Contractor Incentives – Fee, Rollover of Performance Fee, and Award Term

Guiding Principle

DOE contractors are motivated in a variety of ways, depending on the nature of the firm, the Government's requirement, or other specific circumstances. No single method applies to all contractors. The goal of the Department is to obtain maximum return from its contractors by offering a rational mix of integrated, fair, and challenging incentives to its contractors.

[Reference: [DEAR 970.1504-1-2](#)]

1.0 Summary of Latest Changes

This update makes administrative and formatting changes.

2.0 Discussion

This chapter supplements other more primary acquisition regulations and policies contained in the references above and should be considered in the context of those references.

2.1 Overview. This chapter provides: (1) a synopsis of the M&O contractor fee policy (focused on the mechanics of the calculation and the key considerations of the policy); (2) guidance on a key aspect of the policy, linking performance fee to outcomes, including guidelines on allowing rollover of performance fee; and (3) guidance on the use of the non-fee incentive of award term. In this guide chapter, the term "DOE" refers to both DOE and NNSA.

2.2 Background. M&O contractor fee policy, found at DEAR 970.1504-1, provides a comprehensive approach to determining an appropriate fee for contractors performing DOE M&O contracts and other contracts as determined by the DOE Senior Procurement Executive. Since the contractors and the work they perform cover a wide spectrum, the fee policy is necessarily complex. The first section of this guide chapter provides a straightforward articulation of basic mechanics and considerations of the policy. Fee must be tied to contractor performance. The guidance in the second section of this guide chapter discusses rollover of performance fee (fee not earned in an evaluation period that is available for payment in a

subsequent period), which requires careful consideration of its effect on the contractor's motivation, because it provides the opportunity to earn the same fee more than once.

The final section of this guide chapter provides guidance on the non-fee incentive of award term. Although recognized and used for a number of years by several Federal agencies, no Government-wide regulation or guidance currently addresses award term incentives. Within DOE, the Report of the Blue Ribbon Commission on the Use of Competitive Procedures for the Department of Energy Labs, titled "Competing the Management and Operations Contracts for DOE's National Laboratories," suggested that outstanding laboratory contractors could "be rewarded with significant contract extensions, in most cases up to a maximum of 20 years." It's important to understand that this incentive has considerations that must be weighed carefully to ensure that DOE derives a meaningful benefit from its use. As a matter of DOE policy, award term incentives may only be used in management and operating (M&O) contracts for DOE laboratories and then only with the approval of the DOE Senior Procurement Executive or NNSA Senior Procurement Executive, as appropriate.

2.3 Synopsis of M&O Fee Calculation & Key Considerations of M&O Fee Policy

2.3.1 How To Calculate Total Available Fee. There are four possible components in the fee calculation, depending on whether the site is a laboratory or a non-laboratory and whether the contract type is fixed-fee or cost-plus-award fee.

- Non-Laboratory
 - Fixed-fee contract
 - Determine the fee base
 - Determine the maximum fee from the fee schedule for that fee base
 - Calculate the "appropriate fixed fee"
 - Evaluate the eight significant factors at 970.1504-1-5
 - Assign "appropriate fee values"
 - Cost-plus-award-fee contract
 - Multiply the "appropriate fixed fee" by the classification factor for the facility/task (from DEAR 970.1504-1-9 (c), (d), and (e)) to obtain total available fee
- Laboratory
 - Fixed-fee contract
 - Determine if fee is appropriate at all (from the six considerations at 970.1504-1-3). If not, stop here!

- If fee appropriate
 - Determine the fee base
 - Determine the maximum fee from the fee schedule tied to the fee base
 - Calculate the “appropriate fixed fee”
 - Evaluate the eight significant factors at 970.1504-1-5
 - Re-evaluate the six considerations at 970.1504-1-3
 - Consider benefits lab operator will receive due to its tax status
 - Assign appropriate fee values
 - Ensure appropriate fixed fee is less than or equal to 75% of the fixed fee that would have been calculated for a non-laboratory
- Cost-plus-award-fee contract
 - Determine if fee is appropriate at all (from the six considerations at 970.1504-1-3)
 - If fee appropriate
 - Multiply the “appropriate fixed fee” by the classification factor for the facility/task to obtain total available fee (970.1504-1-9 (c), (d), and (e))
 - Ensure the total available fee is less than or equal to 75% of the total available fee that would have been calculated for a non-laboratory.

2.3.2 Key Considerations For Determining M&O Total Available Fee

- Coordinate all M&O fee determinations with the Procurement Executive, whether or not using the maximum fee allowed or a lesser amount and whether adhering to fee policy or not
- Procurement Executive approval is required for the following
 - Establishing fees outside the annual funding cycle
 - Establishing fee amount greater than that derived from the fee schedules
 - Establishing total available fee greater than normal due either to the contractor using its own facilities or other resources or to the contractor being assigned objective performance incentives that are of unusual difficulty or performance incentives whose completion would provide extraordinary value
 - Including allowable costs as proposed fee in a laboratory contract
 - Establishing total available fee for a laboratory greater than 75% of that which would have been calculated for a non-laboratory

- Not establishing the fee for the life of a laboratory contract
- Using a cost-plus-fixed fee contract type for other than a laboratory contract
- Using a fee schedule more than once in determining fee
- For a cost-plus-award-fee contract, establishing a total available fee greater than the product of: the fee that would be calculated for a fixed fee contract and the appropriate classification factor
- Assess whether fee motivated contractor performance
 - Dramatic increases in total available fee over historical levels generally not warranted
- Consider the Fee Base/Fee Schedule
 - Generally, use only one fee base/fee schedule, that of the predominant work, for a contract
 - If unusual circumstances exist and considering using more than one fee base/fee schedule
 - Prepare rationale
 - Coordinate as soon as practical with procurement executive
 - Approval criteria are the significant differences between the nature, scope, risk, and dollar value of the other work and that of the predominant work
- Additional constraints on laboratories for determining fee
 - Six considerations (970.1504-1-3) to determine if any fee is appropriate; if fee is appropriate, use the six considerations again in determining appropriate fee
 - Consider tax status of contractor in determining fee
 - Fee must be less than or equal to 75% of the fee that would have been calculated for a non-laboratory
 - Fees for laboratories may be significantly less than fees for non-laboratories

2.4 Linking Performance Fee to Acquisition Outcomes. A cost-plus-award-fee (CPAF) contract is generally the appropriate contract type for an M&O contract. Total available fee in this case is the sum of base fee and performance fee. Base fee is not generally appropriate. Performance fee can comprise both objective and subjective fee components.

Performance fee must relate to clearly defined performance objectives and performance measures. Where feasible, the performance objectives and measures should be expressed as desired results or outcomes. The specific measures used to determine the contractor's achievement must be stated as concretely as possible. Following these principles will increase

the probability that the contractor will only receive performance fee for government negotiated acquisition outcomes. This is especially important to keep in mind in evaluating the contractor's performance against its objectives and measures for subjective fee components.

Using subjective fee components is less desirable than using objective fee components because there is not as clear a link between performance and reward. Only when it is not feasible to use objective measures of performance should subjective fee components be used, and they should be tied to identifiable interim outcomes, discrete events, or milestones to the maximum extent practicable. When using subjective fee components it is especially important to ensure that the contract/award fee plan clearly defines how the Government will measure the contractor's performance. Fee payment must depend upon only one thing--the contractor's providing the acquisition outcomes for which DOE negotiated.

2.5 Rollover of Performance Fee. Some performance evaluation and measurement plans contemplate the rollover of unearned performance fee—typically the subjective fee component—from one period to another. Since this practice gives the contractor more than one chance to earn the same fee, its use could violate the principles discussed above. Consequently, the following limitations apply when applying rollover (these limitations do not apply to the extent a clearly identifiable Government action or inaction caused the contractor to fail to earn performance fee):

- The DOE Senior Procurement Executive or the NNSA Senior Procurement Executive, as appropriate, must approve use of a rollover provision. Because the use of a rollover is an exception rather than the rule, convincing rationale addressing both benefits and costs must accompany any request for use. The DOE Senior Procurement Executive or the NNSA Senior Procurement Executive, as appropriate, will consider the following, among other things related to the benefits and costs of the proposed rollover, in determining whether rollover is appropriate:
 - The contractor may only earn a portion of the unearned performance fee—regardless of how well the contractor performs in the subsequent period. The size of this portion depends on
 - how close the contractor came to delivering the originally negotiated performance (for example, a contractor failing to reach a milestone by a year must earn significantly less than a contractor that fails by a week) and
 - how much DOE still desires the originally negotiated performance, some other performance, or both.
 - The performance expectations must be in place before the contractor starts work on the effort associated with the rollover fee.
 - The performance expectations must be of such rigor and evident nexus to the value of the “new” work as to be clearly equitable to the Department.

The contract file must include complete documentation of the use of rollover.

2.6 Award Term

2.6.1 General.

- In establishing appropriate incentives for contractors, it is well-founded Government policy that fee is to be reasonable, reflecting effort (the complexity of the work and the resources required for contract performance), cost risk (the degree of cost responsibility and associated risk the contractor assumes under the contract type and the reliability of the cost estimates in relation to the complexity of the task), and several other factors (for example, support of Federal socioeconomic programs, investment in capital, and independent development).
- An award term incentive provides a new dimension in contractor incentives. An award term incentive has similarities to award fee, with the major difference being the contractor earns additional periods of performance instead of award fee. An award term incentive rewards the contractor with additional contract term if: (1) the performance of the contractor meets specific contractually required criteria; and (2) any contract specified conditions are met. The process for administering award term can be similar to, or separate from, the process for administering award fee, but the award term performance objectives must be distinct and separate from the award fee performance objectives. Typically, the contractor's superlative performance in meeting award fee performance objectives will be the only gateway to the contractor's being eligible to earn award term. Additionally, the award term performance objectives will be higher, broader, or further reaching in scope (or perhaps all three) than the award fee performance objectives.
- If an award term incentive is used, it must be integrated with other contract incentives, for example, fee. Consequently, while the value of an award term incentive can not be easily quantified, it must be considered in determining a reasonable fee. That is, if a fee of x dollars is reasonable for a contract that includes no other incentives, then a fee of less than x dollars would be reasonable for a contract that includes an award term incentive. A 5 to 15 percent reduction (to the amount of total available fee for the contract that would be reasonable if no award term incentive were included) would usually be appropriate. An example of a reasonable reduction would be a 1 percent reduction to each annual available fee amount (that would be reasonable if there were no award term incentive) for each additional year that the contractor can earn over the course of the contract. In this example if the contract includes a base term of five years and 15 additional years that the contractor can earn, the 1 percent reduction per additional year

results in a 15 percent reduction to each annual available fee amount. The formula for this example is:

$$\frac{[(1 \text{ percent reduction in annual available fee amount}) / (\text{each additional year that the contractor can earn})] \times$$

1. [15 possible additional years that the contractor can earn]=
 2. 15 percent reduction to each annual available fee amount.
- To avoid creating commitments that the Government does not want to make and expectations of contractors that will not be fulfilled, the award term clause must specify clearly that if certain conditions (which may be outside the control of the contractor) are not met the contractor will lose (1) the opportunity to earn additional award term and (2) any award term benefits it may already have earned. The clause must also state that the Department has no further obligation to the contractor if this happens and that the determination of whether the conditions have been met is at the sole discretion of the contracting officer. These and other conditions and terms are listed in the subsequent section titled, “Award Term Clause: Required Conditions and Terms.”

2.6.2 Applicability.

- Award term incentives may only be used in performance-based M&O contracts for laboratories where it is clear that the potential benefit to the Department from the contractor’s increased motivation exceeds the potential impact on future competitions and the additional administrative burden/cost.

2.6.3 Limitations.

- The Head of Departmental Element must obtain the approval of the DOE Senior Procurement Executive or the NNSA Senior Procurement Executive, as appropriate, prior to initiating any plan to apply award term incentives.
- Award term incentives may not be used in conjunction with contract options to extend the contract period of performance.
- Award term incentives may be used only in contracts that have been awarded pursuant to full and open competition for the basic contract award.

- Award term incentives may be used only if all of the criteria for the contractor's earning of award term are discussed in the RFP and defined clearly in the contract before the start of each evaluation period for award term.
- Award term incentives may only be used in M&O contracts for DOE's national laboratories and only with the approval of the DOE Senior Procurement Executive or the NNSA Senior Procurement Executive, as appropriate.

2.6.4 Conditions For Use.

- Trade-off with fee--
 - Award term incentives replace, in whole or in part, monetary fee incentives. Accordingly, award term incentives are not permitted if the resultant contract would provide the contractor with a total available fee equal to the amount calculated under the DEAR fee policy. As the contemplated length of the potential award term periods increases, a corresponding decrease must occur in the contemplated total available fee.
- Length and Number of Terms--
 - The cumulative length of the contract's base term and all possible award terms shall not exceed the lesser of: 20 years; the approved length of the M&O form of contract and term (DEAR 970.1706 and any approved deviations); or the approved length of the use and need of a Federally Funded Research and Development Center (DEAR 970.3501 and any approved deviations), if applicable.
 - The length of award term periods and the number of such periods shall vary depending upon how effort under the contract is best facilitated by a potentially long contract term.
 - The contract's award term clause shall limit the maximum amount of additional term that the contractor can earn for a year of performance to one year.
- Distinction from Award Fee--
 - Performance objectives for earning award term shall be distinct from those for earning award fee.

- The Head of the Departmental Element must approve the objectives. Performance objectives for earning award term must be stated in the contract prior to the start of the evaluation period. Annually, the award term determining official shall report his/her assessment of the contractor performance of award term performance objectives to the Head of the Departmental Element.
- Award Term Clause: Required Conditions and Terms
 - Conditions: The contract's award term clause (or other clauses of the contract) must include the following conditions 1 through 7. Conditions 1 through 5 apply to both the contractor's right to earn award term and to the contractor's right to perform any term earned. Conditions 6 and 7 apply only to the contractor's right to perform any term earned.
 - The Department has a continuing need for the supplies/services.
 - The Department has sufficient funds to reimburse the contractor.
 - The Department must not have terminated the contract for convenience or default.
 - The Department has a continuing need for the M&O form of contract.
 - The Department has not concluded that it does not have a continuing need for the use of a Federally Funded Research and Development Center.
 - The contractor agrees to contract modifications applicable to the award term period earned to implement any significant new Department or government requirements.
 - The contractor agrees to contract modifications applicable to the award term period earned that reflect monetary performance incentives (performance measures, fee policy, etc.) similar to the base period, unless otherwise stated.
 - Terms: The contract's award term clause must include the following terms:
 - The contracting officer will at his or her sole discretion determine if the contractor has met the conditions to earn award term and to perform any award term earned.
 - If the conditions and terms to earn award term are not satisfied, the Department has no additional obligation under the clause to the contractor; that is, cancellation of the opportunity to earn award term or cancellation of the award term earned for any reason, term, or condition set forth in the award term clause does not entitle the contractor to an equitable adjustment or any other compensation.

- Before the start of any award term evaluation period the Government may modify both: the criteria the contractor must meet to earn award term extensions; and the conditions to which the contractor's being able to earn award term or to perform award term extensions earned are subject.
 - The Department has the same right to terminate for convenience or default any portion of the contract (base term or earned award term) as it would have if the contract did not contain its award term cause.
 - If at the end of an evaluation period after the contractor has received credit for any earned award term extension, two or fewer years remain on the term of the contract: (i) the Government, at its sole discretion, may end the contract as early as the end of the remaining term of the contract or as late as two years from the end of the evaluation period; and (ii) the contractor must continue to perform up to the point in time decided by the Government in (i) above.
 - The contracting officer must modify the contract to reflect any earned award term extension before the contractor proceeds.
- Sample Clauses
 - Two sample award term clauses are provided as Attachments A and B. These are not mandatory clauses. They are provided simply to aid contracting officers in developing clauses that match their particular situations.
 - The **Attachment A clause** conforms generally to the guidelines above and includes additional conditions for consideration: the contractor loses some contract term for poor performance (using this feature necessitates stating a minimum contract term); the contractor must earn an outstanding rating for two consecutive periods to earn any award term extension; the contractor loses the ability to earn further award term extensions if the remaining contract term falls below two years (with certain exceptions); the Government may reduce any earned Award Term extension for contractor performance failures under the “Conditional Payment of Fee, Profit, and Other Incentives—Facilities Management Contracts” clause (DEAR 970.5215-3); and specific discussion of how and when changes to the Award Term Plan can be made.
 - The **Attachment B clause** also conforms generally to the guidelines above. It uses simpler mechanics than the clause at Attachment A, and it uses the term “Award Term Determining Official.” It also includes conditions under the “Conditional Payment of Fee, Profit, and Other Incentives—Facilities

Management Contracts” clause (DEAR 970.5215-3) and the “Management Controls” clause (DEAR 970.5203-1).

Attachment A

SAMPLE AWARD TERM CLAUSE

Award Term

Contract Length. The Government may extend or reduce the initial five (5) year contract term based on the contractor's performance. The minimum contract term is three (3) years. The maximum contract term is twenty (20) years.

Contractor Performance. The Government will evaluate the contractor's performance per the clause in Section H entitled, "Award Term Plan."

Award Term determinations.

The term "remaining term of the contract" as used in this clause means the period of contract performance to which the contractor is entitled at the end of a performance evaluation period, after receiving credit of any earned award term extension. If at the end of an evaluation period the remaining term of the contract does not equal or exceed two years: (1) the Government, at its sole discretion, may end the contract as early as the end of the remaining term of the contract or as late as two years from the end of the performance evaluation period; and (2) the contractor must continue to perform up to the point in time decided by the Government in (1) above.

The contractor must earn an overall performance rating of "Outstanding" during two (2) consecutive annual performance evaluation periods in order to begin earning Award Term extensions, beginning with the first two years of this contract. Once two consecutive "Outstanding" ratings have been earned the contract shall be extended for two (2) years (one for each "Outstanding" performance rating earned) and shall continue to be extended an additional one (1) year for each "Outstanding" performance rating earned in consecutive years

Should the contractor earn an overall performance rating of "Excellent" during any annual performance evaluation period, the contract term will neither be extended nor reduced.

Should the contractor earn an overall performance rating of "Good" during any annual performance evaluation period, the contract term shall be reduced by one (1) year.

Should the contractor earn an overall performance rating of "Marginal" or less, the contract term shall be reduced by one (1) year and the Government may, at its sole discretion, start a new acquisition.

Conditions.

The Contracting Officer shall unilaterally modify the contract to reflect any extension or reduction of the contract term. In the case of extensions, the contractor shall not proceed until this modification is executed.

Nothing in this clause shall diminish or remove any rights afforded the Government regarding contract termination as may be set forth elsewhere within this contract.

The contractor's earning of award term extensions and the contractor's right to perform earned award term extensions are subject to:

The Government's continuing need for the contract's work;

The availability of funds;

The Government's continuing need for the management and operating form of contract;

The Government has not concluded that it does not have a continuing need for the use of a Federally Funded Research and Development Center;

The contractor's agreement to incorporate contract modifications that reflect significant new DOE policy;

The contractor's agreement to reasonable monetary performance incentives; and

Termination for convenience or default.

The Government may reduce any earned award term extensions by up to three years if the contractor's performance results in a first degree performance failure under the clause of this contract entitled "Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts."

Bilateral changes may be made to the Award Term Plan at any time during contract performance. If the Government or the contractor desires to change the Award Term Plan and agreement cannot be reached, the Government may make unilateral changes before the start of an award term evaluation period.

The contractor is not entitled to any cancellation charges, termination costs, equitable adjustments, or any other compensation if its earning of award term extensions, or its right to perform earned award term extensions, or both, are cancelled due to any of the conditions stated above.

Before the start of any award term evaluation period, the Government may modify both: (1) the criteria the contractor must meet in order to earn award term extensions; and (2) conditions affecting the contractor's ability to earn award term or to perform under any earned award term extensions.

The contracting officer will at his or her sole discretion determine if the contractor has met: the criteria to earn award term; the conditions to earn award term; and the conditions to perform any award term earned.

Attachment B

SAMPLE AWARD TERM CLAUSE

AWARD TERM INCENTIVE

(a) Definitions. For purposes of this clause:

- (1) “Outstanding” means the highest rating available to the contractor under the performance evaluation process used to assess contractor performance against stated contract performance objectives. The term “outstanding” may be expressed using numbers, adjectives, or any other assessment approach deemed appropriate by the Government.
- (2) “Satisfactory” means the rating available to the contractor under the performance evaluation process where the contractor has met the stated contract performance objectives. The term “satisfactory” may be expressed using numbers, adjectives, or any other assessment approach deemed appropriate by the Government.
- (3) “Award Term Determination Official (ATDO)” means the Department of Energy official designated to determine whether the contractor has met contractual requirements to earn any award term extension during an evaluation period
- (4) “Initial contract term,” for purposes of this clause only, means the period of performance commencing on the date the contractor assumes full responsibility for a site pursuant to the provisions of Clause H XXXX through the end date specified in the initial contract period of performance.

(b) Eligibility for Award Term Extensions. In order for the contractor to earn a contract term extension pursuant to the award term incentive, the contractor must:

- (1) Have been assessed by the ATDO to have achieved an annual average overall rating of “outstanding” for each performance evaluation period (except as provided in (2) below), and, meet contract performance objectives, standards, or criteria and other contract requirements applicable to earning additional award term, defined in the Performance Evaluation and Measurement Plan (or equivalent document), as determined by the ATDO.
- (2) With respect to the evaluation periods for the first award term extension, the Contractor must achieve a minimal rating of satisfactory for the first and an overall rating of outstanding for each of the next two.

(c) Award Term Evaluation and Determination

- (1) The Government may extend the initial contract term up to a total of twenty years through operation of this award term incentive clause. The evaluation periods for the first award term extension will be the first three performance evaluation periods of the initial contract term. Evaluations for subsequent award term extensions will be conducted annually.
- (2) The ATDO will unilaterally determine if the contractor: (i) meets eligibility requirements to earn an award term extension; and (ii) has earned additional contract term.
- (3) The amount of award term that may be earned by the contractor for performance during the first evaluation periods will not exceed 36 months. The amount of award term that may be earned by the contractor for each subsequent evaluation period is 12 months.
- (4) If the ATDO determines that the contractor has earned additional award term, the Contracting Officer must modify the contract to extend the term of the contract before the contractor may begin work on the extended term.
- (5) If the Contractor fails either (i) to earn the first award term extension, or (ii) to earn the award term during three consecutive evaluation periods, the contractor becomes ineligible to earn any additional award term extension(s) under the contract.
- (6) If at the end of an evaluation period after the contractor has received credit for any earned award term extension, two or fewer years remain on the term of the contract: (i) the Government, at its sole discretion, may end the contract as early as the end of the remaining term of the contract or as late as two years from the end of the evaluation period; and (ii) the contractor must continue to perform up to the point in time decided by the Government in (i) above.

(d) Conditions.

- (1) This clause does not confer any other rights to the Contractor other than the right to earn additional contract term as specified herein. Any additional contract term awarded under this clause remains subject to all other terms and conditions of this Contract. Should the terms of this clause conflict with any other terms of this Contract, then this clause shall be subordinate.
- (2) The contractor's earning of and right to perform any award term extension are subject to:
 - (i) The Government's continuing need for the contract's work;