THE ROCKY FLATS CLOSURE CONTRACT: APPLYING CONTRACT REFORM INITIATIVES TO A CLOSURE PROJECT

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ABSTRACT

The Rocky Flats Closure Contract represents the Department of Energy's first attempt to significantly expand application of its Contract Reform initiatives to closure of major nuclear facility. In January 2000, the Rocky Flats Field Office awarded an innovative, $4 billion contract for the completion of the Rocky Flats Closure Project. In his press release announcing the award, Energy Secretary Bill Richardson described the new closure contract as "…the next step forward in contract reform."

The new closure contract incorporates a unique combination of features to motivate safe and compliant contractor performance with emphasis on project cost and schedule. These features include, but are not limited to, the following:

- Predetermined criteria for fee reduction in the event of environmental, safety, and safeguards/security performance deficiencies
- "Equity partnership" between DOE and contractor to reduce costs
- All contractor fee conditional until project "physical completion"
- Baseline scope-of-work with change project control system
- Schedule reward and penalty
- Risks for many site latent conditions shifted to contractor
- DOE accountability for Government Furnished Services and Items
- Contractor controls work sequencing
- Significant goals for subcontracting work to small and disadvantaged businesses
- Partnership commitment to reduce non-value added transactions and requirements
- Contract completion definition

This paper provides a real-life look at the new closure contract from the DOE and Contractor view points respectively. Read on to learn how this new contract was established and how it's really working.

INTRODUCTION

In the 1994 report issued by DOE's Contract Reform Team, *Making Contracting Work Better and Cost Less,* (1) Rocky Flats was identified as an initiative in progress. Since then, Rocky Flats has continued its leadership role in expanding application of new Contract Reform initiatives to help create a government that works better and costs less. This was recently demonstrated by the new Rocky Flats closure contract awarded February 1, 2000 to Kaiser-Hill Company, L.L.C.

The Rocky Flats contract situation has always been unique within the DOE Complex. Unlike most DOE facilities, Rocky Flats has a history of competing or changing its prime contractors.

Perhaps because Rocky Flats is located near a major metropolitan area, rather than isolated like many DOE facilities, its economic impact has not been as overpowering as some of the "AEC Towns" like Los Alamos, Oak Ridge or Hanford. Rocky Flats' contractors have always been one major employer among many, never *the* major employer in the state or region. As a result, Rocky Flats' prime contractors may have come under more intense, negative scrutiny by local media, governments and regulators.

The first Rocky Flats contractor, Dow Chemical, was selected by the Atomic Energy Commission (AEC) in January 1951 to operate Rocky Flats, even before construction began on the facility. In December 1973, the AEC notified Dow Chemical that DOE it would request competitive proposals for the contract term commencing July 1, 1975. Three months after this notification, Dow Chemical announced that it would not submit a proposal for the new contract term. In November 1974, Rockwell International was selected as the follow-on contractor.

In June 1989, approximately eighty agents of the Federal Bureau of Investigation (FBI) and the Environmental Protection Agency (EPA) arrived at Rocky Flats to carry out a search warrant filed in the U.S. District Court of Colorado. The warrant, alleging violations of environmental laws, authorized the agents to search for evidence of alleged criminal violations of the Resource Conservation and Recovery Act (RCRA) and the Federal Water Pollution Control Act (known as the Clean Water Act). Agents remained on plant site about three weeks. In August of the same year, a special Grand Jury convened to review allegations and evidence secured during the June search. Many months later, the Justice Department would enter into a plea agreement whereby Rockwell was found guilty of environmental violations and paid the largest environmental fine ever.

In October 1989, EG&G, Inc. signed a contract with DOE to operate Rocky Flats, assuming plant operations on January 1, 1990. In November of that same year, President George Bush announced the end of the Cold War, as relations eased with the Soviet Union. In his January 1992 State of the Union address, President Bush announced production curtailment of nuclear weapons components for submarine-based missiles. The announcement effectively ended the need for nuclear production at Rocky Flats. Energy Secretary Watkins made this public by his preferred intention to change Rocky Flats' mission to that of decontamination and decommissioning.

As a consequence of the FBI investigation, the Rocky Flats Plant processing of special nuclear material and other non-nuclear products were virtually halted. Many production lines were immediately interrupted while "in-process" and, believing that resumption would occur promptly after the FBI left the site, the production lines were not prepared for long-term shutdown. For two years, resumption was the primary objective after the FBI departure but, due to world-events, resumption did not occur and the result was an urgent need for Rocky Flats nuclear and non-nuclear risk reduction, work scope definition (2) and clean-up. During this time, the Department's own Plutonium Vulnerability Study (3) identified that Rocky Flats had four of the ten most dangerous buildings in America.

In June 1993, Secretary of Energy Hazel O'Leary formed a Contract Reform Team to evaluate DOE's contracting practices. The Team's report, issued in February 1994, proposed two alternative contracting models for reforming the Rocky Flats contract.[c] Employing one of the suggested models, Rocky Flats Field Office in July 1994 issued a request for proposals for the Performance Based Integrating Management Contract (PBIMC). This became the first DOE contract to incorporate the agency's Contract Reform initiatives when it was awarded in April 1995 to the Kaiser-Hill Company, L.L.C.

This was the first Rocky Flats contract to depart from the standard agency approach to management and operating (M&O) contracts. The PBIMC differed from the old M&O approach in several important ways:

- Rather than a single contractor that was expected to accomplish the entire scope of work, the PBIMC encouraged the use of an "integrating" prime contractor responsible for overseeing and planning the work of several specialized subcontractors.
- To address serious questions about the use of organized labor on the site, Kaiser-Hill proposed to remain the employer of record for the largest bargaining unit, the United Steelworkers of America ("steelworkers") and to provide steelworker labor to subcontractors through an innovative labor-leasing arrangement.
- Instead of a cost-plus-award-fee arrangement, where DOE determined the contractor's fees based upon subjective evaluations of performance, this contract included objective Performance Measures with specific pools of fee tied to the completion of each.
- Kaiser-Hill proposed sharing fee earnings with its employees, and to employ similar performance-based fee arrangements with its major subcontractors.
- Rather than relying on broad and nebulous expectations, the contract included strong negative incentives in the form of penalty provisions that allowed DOE to reduce fee when negative incidents or events occurred in the important areas of environment, safety and health.
- The contract did not include the ordinary M&O "letter-of-credit" version of advance financing. Kaiser-Hill was required to finance its own performance, and submit a voucher for payment.
- For the most part, the contract employed standard contract provisions from the Federal Acquisition Regulations (FAR) rather than M&O contract provisions from the DOE Acquisition Regulations (DEAR). In this regard, the PBIMC included FAR cost principles identifying which categories of costs were allowable and which were unallowable.
- Rather than broadly indemnifying the contractor for its performance, the contract shifted risk to the contractor. However, the contract allowed the contractor greater latitude in acquiring commercial insurance for which the premiums would be reimbursed. Kaiser-Hill proposed a "wrap-up" insurance plan that covered it and the subcontractors working on the site.

Rocky Flats' PBIMC became the first of the so-called Management and Integrating (M&I) contracts in the DOE complex. The contract was considered a success, as reflected in the Office of Contract Reform and Privatization's Report on Contract Reform Implementation.(4) *Engineering News-Record* noted, "Today the site (Rocky Flats) is considered a model of how to manage environmental cleanup and redevelopment".

THE NEED FOR MORE

In August 1997, Secretary of Energy Federico Peña announced that Rocky Flats would be the first large-scale accelerated closure pilot project for the DOE's weapons complex. Rather than a 70-year closure schedule with estimated costs exceeding $36 Billion, Rocky Flats began preparations to close by the end of 2006 with estimated costs of $7 Billion.

The accelerated closure mission amplified both the good and bad features of the PBIMC. On the positive side, the performance-based incentives had a significant positive impact. Not only did the incentives drive Kaiser-Hill to deliver what was required, but even more importantly the incentive structure required DOE to specifically define what it expected the contractor to deliver. Also, after initial adjustments and a painful transition period, the integrating contractor approach appeared to work well. The fee penalty provisions seemed to maintain an appropriate focus on worker and public safety. Many of Kaiser-Hill's proposed innovations also proved beneficial (sharing fee earnings with employees, labor-leasing, and wrap-up insurance). For the first time in a decade, real work (clean-up) was being accomplished at Rocky Flats and, most notable, it was being accomplished at an accelerated pace within the budget constraints in a safe and compliant manner.

There were, nevertheless, shortcomings in the contract. For example, the performance-based fees had to be negotiated annually. Even though the parties negotiated and implemented multi-year performance measures, there was still an unacceptable short-term focus inherent to the performance-based incentives. It was almost that these performance-based incentives worked *too* well, in that the annual performance incentives resulted in behavior that was at odds with the long-term project needs. Because the performance-based incentives were so significant to the success of the contract, an inordinate amount of management effort on the part of both DOE and Kaiser-Hill was devoted simply to the administration of the fee process. Sometimes, this came at the expense of focus on effective project management. This, and numerous other DOE and contractor administrative transaction requirements, were significantly impeding progress to accomplish the site closure objectives.

Over the course of the PBIMC, one of Kaiser-Hill's parent companies, ICF Kaiser International suffered serious financial problems. As the PBIMC came to a close, the company reorganized and sold several of its operating divisions. The remaining entity, renamed Kaiser Group International, continued to experience problems and bankruptcy appeared imminent. The PBIMC contained relatively weak corporate commitments to performance from the parent companies, and DOE saw a need to seek stronger performance guarantees.

In July 1999, Secretary of Energy Bill Richardson announced the Department's decision to negotiate a new closure contract with Kaiser-Hill. "In the last few years we have achieved more real results in waste management, environmental cleanup and movement of materials than anyone would have thought possible. Just a few years ago, the experts said this cleanup would take 70 years and cost $36 billion. But an aggressive, creative and innovative team of managers and workers is shaving years and billions of dollars from the original estimate. Today, we are talking seriously about finishing by 2006," Richardson concluded.

THE GOVERNMENT'S OBJECTIVES FOR THE NEW CONTRACT

As it prepared for negotiations, the DOE Negotiation Team identified its objectives for the new closure contract as follows:

- A *completion* contract. DOE wanted a contract to complete the Rocky Flats Closure Project. This would avoid the delays and distractions associated with any additional contract extension decisions. Not only that, a completion contract could also be structured to incentivize the completion of the project, eliminating the inefficiencies of the annual fee and performance measure negotiation process.
- A powerful fee incentive. The contractor demonstrated that fee earning opportunities motivates and focuses its performance on what DOE identifies as important. A cost-plus-incentive-fee (CPIF) contract was targeted, because this arrangement provided a strong profit motive with a focus on cost efficiency.
- Improved safety focus. The Government wanted to craft improvements on the PBIMC's fee reduction provisions, making the penalties more specific both in terms of the dollar limits on the penalties and also by providing examples of the types of events or incidents that could be penalized.
- Subcontract focus. The Government recognized that, if Kaiser-Hill was awarded a new contract, the opportunity for competition on the Rocky Flats Closure Project existed primarily at the subcontract level. The objective was to negotiate goals for use of subcontracts as opposed to in-house performance by Kaiser-Hill employees, in addition to the ordinary contract goals for utilization of small and disadvantaged businesses.
- Performance guarantees. Recognizing that bankruptcy of Kaiser Group International was likely, DOE wanted to obtain stronger performance guarantees from the owner (parent) companies. DOE previously issued an Acquisition Letter providing a model for such guarantees, and the objective was to acquire corporate guarantees using this model.

The Government assembled a Negotiation Team consisting of Rocky Flats Field Office (RFFO) functional experts in contracting, project planning, project management, legal, finance and environment, safety and health. DOE Headquarters program offices provided points of contact to assist in coordinating the negotiations with the field office. The team was chaired by DOE's Principal Deputy Assistant Secretary for Environmental Management. It is important to note that DOE consistently maintained its option to compete the new closure contract in the event negotiations with Kaiser-Hill were not satisfactory to DOE.

THE CONTRACTOR'S OBJECTIVES FOR THE NEW CONTRACT

Kaiser-Hill learned a lot under the initial contract (PBIMC) regarding the optimum contract structure and project management necessary to effectively and efficiently accomplish Rocky Flats closure objectives. These lessons-learned evolved into Kaiser-Hill's objectives for the new closure contract as follows:

- Establish a closure contract. Kaiser-Hill was convinced that only a "finish-line" focus with incentives for reduced cost and schedule acceleration would successfully close Rocky Flats by December 2006.
- Improved safety focus. Kaiser-Hill set out to help DOE establish specific criteria for fee reduction both in terms of dollar limits and types of penalties including DOE consideration of contractor mitigation efforts.
- Balance contractor risk and earning opportunity. Kaiser-Hill was willing to assume more risk but this must be balanced by increased earning opportunity as routinely accomplished by commercial models.
- Significant reduction in Rocky Flats requirements. Transactional, technical and administrative requirements must be reduced or eliminated to increase contractor productivity.
- Contractor owns work sequencing. Kaiser-Hill must have responsibility for all work including the flexibility to determine what work will be performed when.
- Appropriate DOE accountability. In order to be successful, DOE must be held accountable for its responsibilities under the contract such as Government Furnished Services/Items and required turn-around-times for processing contractor submittals/requests.
- Obtain reasonable project FY funding commitment. Obtaining a reliable funding stream for the entire closure project was critical.
- Improve contractor (and subcontractor) management team quality and stability. Emphasize subcontractor competition on best-value approach, establish fee sharing opportunities to incentivize workforce performance and encourage increased utilization of small and disadvantaged businesses.

THE NEW CONTRACT

In January 2000, DOE and Kaiser-Hill signed the Rocky Flats Closure Contract and it became effective February 1, 2000. The contract incorporated features meeting both parties' objectives, and embodied an unprecedented approach to environmental management and facility closure contracting for the Department.

The most significant departure from DOE's ordinary M&O contracting was the use of a completion contract. Earlier versions of the Federal Acquisition Regulation (FAR) defined a completion contract as follows: "The completion form describes the scope of work by stating a definite goal or target and specifying an end product. This form of contract normally requires the contractor to complete and deliver the specified end product…".(5) In the Rocky Flats Closure Contract, the end product is defined in physical terms. Section C.1.2 of the Statement of Work identifies seven components of "physical completion" of the contract. Unlike M&O contracts, where the scope is defined primarily in terms of the contract performance period, the Rocky Flats Closure Contract targets "physical completion" of the project by December 15, 2006. Although this Target Schedule is identified, the contract is not complete until the seven identified components of "physical completion" are achieved.

The second unusual feature of the Rocky Flats Closure Contract is the contract type. Whereas most of DOE's M&O contracts are cost-plus-award-fee contracts, or the more recent performance-based fee contract (a close "relative"), the Rocky Flats Closure Contract is a cost-plus-incentive-fee (CPIF) contract straight out of FAR 16.405-1. Even though this contract type has been used very sparingly within DOE, it is more familiar to other Federal agencies than DOE's M&O contracts. As set forth in FAR, a CPIF contract is "a cost-reimbursement contract that provides for the initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs".(6) The contract actually is a multi-incentive arrangement, as envisioned by FAR 16.402-4, because it contains both a cost incentive and a schedule (or delivery) incentive.

The Rocky Flats Closure Contract identifies a Target Cost of $3.963 billion, and a Target Fee of $340 million. Upon contractor achievement of "physical completion" and after the costs are audited and calculated, fee will be determined based upon the total actual costs. If actual costs are between $3.963 billion and $4.163 billion, the contractor earns the Target Fee. If the actual costs are below the Target Cost, the contractor earns an additional 30 cents for every dollar of underrun (DOE share is 70 cents). If actual costs exceed $4.163 billion, the contractor's fee is reduced by 30 cents for every dollar of overrun (DOE share is 70 cents). A maximum fee of $460 million and a minimum fee of $150 million (subject to further downward adjustment for violation of safety and compliance requirements) set the outside boundaries of the cost incentive arrangement. The cost incentive is depicted graphically in Figure 1, below.

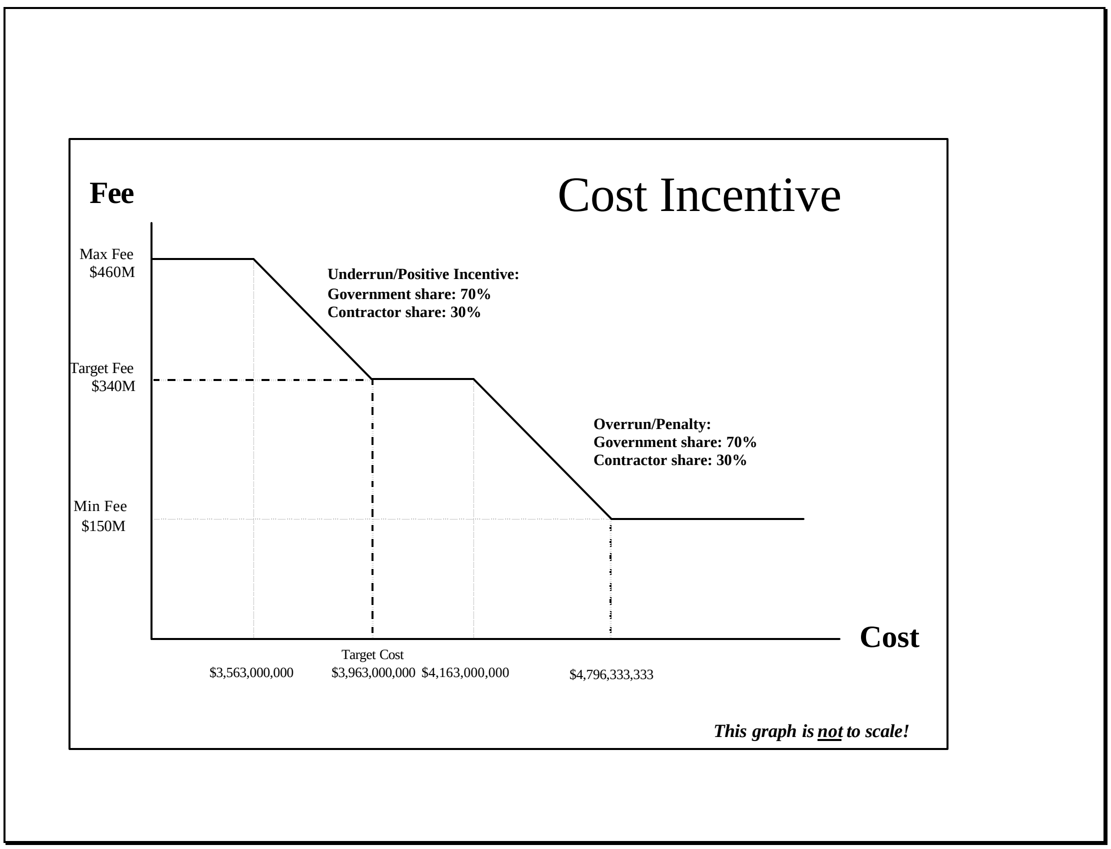
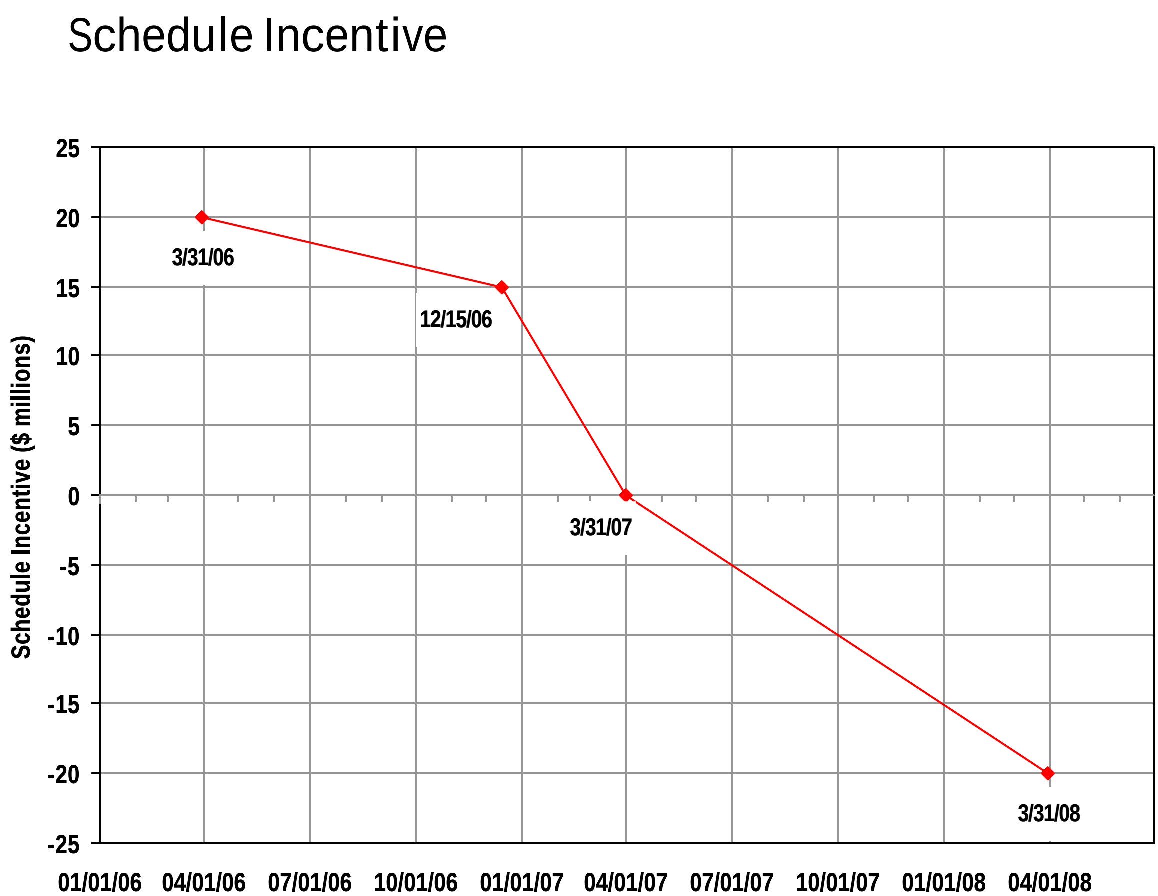


Fig. 1. Cost incentive.

In addition to the cost incentive described above, the Rocky Flats Closure Contract contains a schedule, or delivery, incentive. The schedule incentive provides that Kaiser-Hill earns an additional $15 million for accomplishing "physical completion" of the contract on the Target Date of December 15, 2006. The maximum schedule incentive of $20 million is earned for "physical completion" on or before March 31, 2006. For delivery later than December 16, 2006, the schedule incentive is reduced on a day-by-day basis to zero on March 31, 2007. After that, the schedule incentive becomes negative and the contractor's *cost incentive fee* is reduced on a daily basis, up to a $20 million reduction for delivery on or after March 31, 2008. The schedule incentive is portrayed in Figure 2, below.



3/31/06-12/15/06	=	$19,230.77/day
12/16/06-3/31/07	=	$141,509.43/day
4/1/07-3/31/08	=	$-54,794.52/day

Fig. 2. Schedule incentive.

A third feature of the Rocky Flats Closure Contract represents a significant departure from DOE's ordinary contracting methodology. The contract contains a specific list of Government Furnished Services and Items (GFS/I) representing those aspects of the project that DOE must provide. This includes, but not limited to, waste receiver sites, transportation of special nuclear materials, waste containers, and certifications of waste containers, as well as other items. If DOE fails to provide the GFS/I on a schedule that supports the contractor's progress, the contract allows Kaiser-Hill to request an equitable adjustment to the cost, schedule, fee or other contract provisions. Equitable adjustments will highlight the true cost of DOE delays in these areas, whereas the cost of such delays may have been "invisible" in earlier contract arrangements.

The GFS/I provisions are among several that recognize the importance of cooperation between DOE and the Contractor in assuring project success. In addition to committing to the GFS/I, DOE also commits to streamlining of processes and requirements, and to engaging in a formal partnering agreement with the Contractor. Both parties agreed to use Statements of Commitment to streamline problematic processes. The contract includes several such Statements of Commitment, but anticipates a broader application of this concept. Also, DOE contractually accepted that the Government's benefit for streamlining i.e., cost reduction initiatives, will accrue through DOE's 70% cost incentive share described above.

The contract includes a commitment for DOE to provide a steady, predictable funding stream, but that commitment is subject to the ordinary limitations associated with the Congressional appropriations process. This is of particular importance because it provides reasonable funding reliability in support of the FY work plan to efficiently accomplish the closure project objectives.

One of the over-arching objectives of the new closure contract was to advance to the next generation of Contract Reform. In this regard, the Rocky Flats Closure Contract advanced a number of Contract Reform initiatives issued by DOE after the inception of the previous Rocky Flats Contract (PBIMC). One of these initiatives relates to the DEAR 970.5204-86 clause entitled *Conditional Payment of Fee, Profit or Incentives.* DOE and Kaiser-Hill recognized that this new clause gives DOE the right to make a "unilateral determination to reduce the evaluation period's otherwise earned fee." However, this reference to an "evaluation period" is irrelevant to a cost-plus-incentive-fee contract, in which there are no fee evaluation periods. Accordingly, DOE and Kaiser-Hill negotiated a separate fee penalty provision, consistent with DEAR 970.5204-86 as well as the FAR's *Incentive Fee* clause from FAR 52.216-10. The FAR clause refers to a payment schedule to be set forth in the contract. Therefore, DOE and Kaiser-Hill agreed that a separate clause would define the payment schedule and Clause B.6, *Fee Payment Schedule and Fee Payment Withholdings* was negotiated for this purpose.

Another example of DOE and Kaiser-Hill working together to advance contract reform is the contract quarterly fee payment schedule identified as "ordinary" fee. This quarterly fee is conditional (subject to adjustment at "physical completion") and is estimated at 50% of a representative proportion of the Target Fee (about $6 million). DOE has the right to adjust quarterly fee payments upward or downward, to reflect DOE's projection of the Contractor's success in achieving the contract's Target Cost and Target Schedule. By using 50% of the Target Fee to establish the "ordinary" fee payment, the parties created a situation where target performance would result in a significant amount of fee payments deferred until project completion – in essence, a "balloon payment" effect that provides a very strong contractor incentive for final project completion.

As previously mentioned, one of the objectives under the new closure contract was to establish specific descriptions of events that would trigger fee loss and the associated dollar value for such event(s). Clause B.6 also sets forth a series of fee reductions that DOE can impose for certain environment, safety, health, safeguards or security events or incidents. The clause identifies three categories of fee reductions, or penalties. Category 1 events are the most serious, including such events as Contractor-caused workplace fatalities. DOE can penalize Category 1 events by six months worth of fee (equivalent to a semiannual award fee evaluation period in a more traditional M&O contract). Category 2 events are those reflecting conditions significantly adverse to safety. For these, DOE can reduce the fee by an amount up to $2 million. Finally, Category 3 events or incidents are those that indicate a lack of focus on *improving* environment, health, safety, safeguards, or security. The penalty for these kinds of events is a fee reduction up to $250,000. Each category in the contract is not only defined, but illustrated by a list of specific events or incidents. Category 1, 2 or 3 fee penalties are subtracted from quarterly fee payments, but they also reduce the fee available to be earned. The parties also negotiated a set of contractor mitigation factors that the Contracting Officer must consider prior to application of any fee reduction. Further, the doctrine of fair play concept set forth by FAR 1.602-2 was incorporated to require the Contracting Officer to "…ensure that Contractor receives impartial fair and equitable treatment".

Risk was a major issue during negotiations. Kaiser-Hill was not adverse to risk assumption and ultimately agreed to accept significant risks that ordinarily represent an opportunity for the Contractor to request an equitable adjustment in Target Cost. At Rocky Flats, there is a high likelihood that the Contractor will encounter an unpredictable amount of contamination, or contamination of a kind not expected in a particular location. This situation might be considered a "latent physical condition" entitling the Contractor to an equitable adjustment under the conventional M&O contracting methodology. In the Rocky Flats Closure Contract, Kaiser-Hill agreed to accept the risk of such events, forgoing the contractual right to request an equitable adjustment. Under the closure contract, the location and kind of contamination is irrelevant and the estimated total quantities of the various waste categories (low-level, low-level mixed, etc.), are identified. So long as the estimated total quantities are not exceeded, there will be no equitable adjustment.

Given that so much is riding on completion of the closure contract, the parties agreed that a clear and simple description of "physical completion" of the contract is critical. Consequently, the Rocky Flats Closure Contract incorporated an innovative approach to describe physical completion based on completion of seven simple physical events, as set forth in Figure 3 below.

Physical Completion

1. All buildings are demolished, except continuing water treatment facilities or other structures with a DOE declared continuing mission.
2. All Individual Hazardous Substance Sites are remediated or dispositioned per the Rocky Flats Cleanup Agreement (RFCA).
3. All wastes are removed except for some materials that can be left in place, recycled or used as fill materials in accordance with regulatory requirements.
4. Closure caps are used for the remediation of two old landfills, the 700-Area and the solar ponds or these areas are otherwise remediated in accordance with RFCA.
5. Building foundations, utilities or other remaining structures, paved roads and/or parking lots are covered by a minimum of three feet of fill after final grade.
6. Surface water onsite will meet health-based standards based on open space use calculated using methodology and toxicity assumptions utilized for the July 19,1996 surface water action level.
7. Water leaving the site in Woman and Walnut Creeks meets the water quality standards established by the Colorado Water Quality Control Commission.

Fig. 3. Physical completion.

The first four events capture the most challenging and important work of the closure project. Upon completion of these four events, the risk to the public and the environment will be reduced significantly. The remaining three represent the final clean-up to established standards. "Finish-line focus" and accelerated risk reduction are important objectives to DOE and Kaiser-Hill. Consequently, the contract requires that, upon completion of the first four completion events, a significant amount of the fee withheld up to that point will be released. This "balloon payment" effect is a very strong incentive for Kaiser-Hill to complete the most difficult, challenging work first, and to quickly reduce risk to the environment and the public.

A major objective during negotiations was to clearly establish the process to document contract completion and allow release of remaining withheld fee. DOE wanted to make certain it received what is required by the contract and Kaiser-Hill wanted to prevent the potential of extended "bring me another rock" syndrome. The parties eventually agreed that, when Kaiser-Hill declared completion of all seven completion events, DOE has ninety days to accept the project as complete or to provide the Contractor a "punch list" of material deficiencies remaining to be addressed. Kaiser-Hill must complete the punch list at its own expense and costs for this activity are unallowable for a nine month period immediately succeeding Contractor receipt of DOE's punch list notice. During this time frame, the Contractor's declared completion date is preserved while the punch-list is completed and Kaiser-Hill submits its Final Completion Declaration. If DOE determines that certain punch-list items are not complete, Kaiser-Hill must complete them, as unallowable costs, prior to release of any remaining withheld fee.

In 1995, the initial contract (PBIMC) between DOE and the Kaiser-Hill Company emphasized that DOE wanted an "integrating management contract." That contract included a specific delineation of the duties of the prime contractor versus the work expected of subcontractors. The Rocky Flats Closure Contract takes a very different approach. Instead of defining the roles of prime contractor and subcontractors, the new contract sets forth a seriously challenging scope of work, along with strong incentives for completion in a safe, cost-effective, and timely manner. The contract also incorporates a goal to subcontract at least 80% of the contract value.

In line with its emphasis on partnering and streamlining, the Rocky Flats Closure Contract incorporates the requirements of fewer DOE directives (Orders, Manuals, Notices, etc.) than did its predecessor contract. This continues Rocky Flats' emphasis on applying a "necessary and sufficient" approach to standards. The implementation of the contract's Statements of Commitment is expected to result in even more variances and waivers of the requirements of some DOE directives, when the situation does not call for their application.

The 1995 Rocky Flats contract (PBIMC) was the first non-M&O contract at Rocky Flats. Now, the new Closure Contract represents yet another significant step away from the M&O contracting methodology. Notably, the new closure contract incorporates only ten DEAR clauses from Subpart 970, the section of DEAR devoted to M&O contracting

CHALLENGES

The greatest challenge of the Rocky Flats Closure Contract is similar to the challenge faced by Rocky Flats Field Office and the Kaiser-Hill Company in 1995, when they signed the PBIMC breaking the DOE contracting mold, and embarking on a contract without precedent in the agency. As RFFO and Kaiser-Hill learned with the PBIMC, the first in the agency to try a new contracting strategy must be able to operate without any templates. Every event is a "first," and every step establishes precedent. This challenge arises every time a new or different contract action is required.

Early examples of this challenge include internal DOE issues related to accounting for the incentive fee. The agency must ensure that it reserves adequate funds to cover the full scope of work activity for the year, and a cost-plus-incentive contract presents a new set of questions regarding how to account for the fee withholdings.

But, without question, the single biggest challenge under the new closure contract is related to culture change. For decades, federal and contractor personnel, systems and processes performed DOE work under conventional cost-reimbursement M&O contracts. Now, suddenly, both parties are being held accountable to specific contract requirements that are new and very different from the "comfort zone" of the past. This culture change has also affected third parties as evidenced by the challenge to clarify and explain the unusual features of the new contract to the oversight groups, such as the Office of Inspector General.

Another major challenge of the Closure Contract is for both Rocky Flats Field Office and the Kaiser-Hill Company to establish training, discipline and processes necessary to identify and control contract changes and equitable adjustments. Losing control of contract changes would be a clear lose-lose situation. Yet, neither organization has had to deal with such significant emphasis on performance accountability and potential for contract changes and associated equitable adjustments. This new contract is a first of its kind and, consequently, neither RFFO nor Kaiser-Hill have experience with this contracting approach in the DOE environment. Nevertheless, both sides recognize this contract as yet another move toward the correct DOE-Contractor relationship, a relationship that RFFO's Manager describes as "arm-in-arm, at arm's length."

Going into the new contract, DOE recognized that the cost and schedule impact of its own action or inaction will be apparent immediately. Whether it is a new DOE policy, challenges associated with keeping WIPP open, or identifying and contracting for a new waste receiver site, there will be cost and/or schedule adjustments associated with DOE's inability to meet its commitments. And, cost/schedule adjustments must be promptly negotiated with the Contractor and incorporated into contract modifications.

Finally, there is the inherent challenge of the project itself. This is a high-risk project, with no certainty of success. No company or agency in America has attempted to clean up or close a major nuclear weapons production facility like Rocky Flats. It is a daunting challenge and no contract incentive mechanism can fully overcome this intricate set of difficult and overlapping issues. But, DOE and Kaiser-Hill are committed to working collaboratively as business partners for success. Both parties recognize that the perfect contract does not exist and that, to be successful, each party must demonstrate reasonableness and be willing to equitably adjust the contract as necessary to accomplish the closure objectives.

CONCLUSION/SUMMARY

DOE and Kaiser-Hill have constructed and implemented a new closure contract and business-partnership model based on best commercial practices to safely clean-up and tear-down Rocky Flats by December 15, 2006. The contractor risks and DOE accountability under the new closure contract are unprecedented, but the benefits are also unprecedented. If successful, this new model will accelerate Rocky Flats closure by sixty years and save taxpayers over $30 billion. This is contract reform at its best and provides a rare opportunity to historically change DOE's contracting methodology and to create a Government that works better and costs less.

Once again, Rocky Flats is on the "bleeding edge of innovation".

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