

**970.1504-1-5**

paragraph (a) of this subsection and 48 CFR subpart 16.1, the contracting officer should apply that contract type or fee arrangement most appropriate to the work component. However, multiple contract types or fee arrangements—

(1) Must conform to the requirements of 48 CFR part 915 and 48 CFR parts 15 and 16, and

(2) Where appropriate to the type, must be supported by—

(i) Negotiated costs subject to the requirements of the Truth in Negotiations Act,

(ii) A pre-negotiation memorandum, and

(iii) A plan describing how each contract type or fee arrangement will be administered.

(f) Cost reduction incentives are addressed in the clause at 970.5215-4, Cost Reduction. This clause provides for incentives for quantifiable cost reductions associated with contractor proposed changes to a design, process, or method that has an established cost, technical, and schedule baseline, is defined, and is subject to a formal control procedure. The clause is to be included in management and operating contracts as appropriate. Proposed changes must be: Initiated by the contractor, innovative, applied to a specific project or program, and not otherwise included in an incentive under the contract. Such cost reduction incentives do not constitute fee and are not subject to statutory or regulatory fee limitations; however, they are subject to all appropriate requirements set forth in this subpart.

(g) Operations and field offices shall take the lead in developing and implementing the most appropriate pricing arrangement or cost reduction incentive for the requirements. Pricing arrangements which provide incentives for performance and cost control are preferred over those that do not. The operations and field offices are to ensure that the necessary resources and infrastructure exist within both the contractor's and government's organizations to prepare, evaluate, and administer the pricing arrangement or

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cost reduction incentive prior to its implementation.

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36371, 36378, July 22, 2009; 75 FR 68220, Nov. 5, 2010]

**970.1504-1-5 General considerations and techniques for determining fixed fees.**

(a) The Department's fee policy recognizes that fee is remuneration to contractors for the entrepreneurial function of organizing and managing resources, the use of their resources (including capital resources), and, as appropriate, their assumption of the risk that some incurred costs (operating and capital) may not be reimbursed.

(b) Use of a purely cost-based structured approach for determining fee objectives and amounts for DOE management and operating contracts is inappropriate considering the limited level of contractor cost, capital goods, and operating capital outlays for performance of such contracts. Instead of being solely cost-based, the desirable approach calls for a structure that allows evaluation of the following eight significant factors, as outlined in order of importance, and the assignment of appropriate fee values (subject to the limitations on fixed fee in 970.1504-1-6)—

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

(2) The relative difficulty of work, including specific performance objectives, environment, safety and health concerns, and the technical and administrative knowledge, and skill necessary for work accomplishment and experience;

(3) Management risk relating to performance, including—

(i) Composite risk and complexity of principal work tasks required to do the job;

(ii) Labor intensity of the job;

(iii) Special control problems; and

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

(4) Degree and amount of contract work required to be performed by and with the contractor's own resources, as compared to the nature and degree of

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subcontracting and the relative complexity of subcontracted efforts, subcontractor management and integration;

(5) Size and operation (number of locations, plants, differing operations, etc.);

(6) Influence of alternative investment opportunities available to the contractor (i.e., the extent to which undertaking a task for the Government displaces a contractor's opportunity to make a profit with the same staff and equipment in some other field of activity);

(7) Benefits which may accrue to the contractor from gaining experience and knowledge of how to do something, from establishing or enhancing a reputation, or from having the opportunity to hold or expand a staff whose loyalties are primarily to the contractor; and

(8) Other special considerations, including support of Government programs such as those relating to small and minority business subcontracting, energy conservation, etc.

(c) The total fee objective for a particular annual fixed fee negotiation is established by evaluating the factors in this subsection, assigning fee values to them, and totaling the resulting amounts (subject to limitations on total fixed fee in 48 CFR 970.1504-1-6).

[65 FR 81009, Dec. 22, 2000, as amended at 74 FR 36371, July 22, 2009]

**970.1504-1-6 Calculating fixed fee.**

(a) In recognition of the complexities of the fee determination process, and to assist in promoting a reasonable degree of consistency and uniformity in its application, the following fee schedules set forth the maximum amounts of fee that contracting activities are allowed to award for a particular fixed fee transaction calculated annually.

(b) Fee schedules representing the maximum allowable annual fixed fee available under management and operating contracts have been established for the following management and operating contract efforts—

- (1) Production;
- (2) Research and Development; and
- (3) Environmental Management.

(c) The schedules are:

**PRODUCTION EFFORTS**

| Fee base (dollars) | Fee (dollars) | Fee (percent) | Incr. (percent) |
|--------------------|---------------|---------------|-----------------|
| Up to \$1 Million  |               |               | 7.66            |
| 1,000,000          | \$76,580      | 7.66          | 6.78            |
| 3,000,000          | 212,236       | 7.07          | 6.07            |
| 5,000,000          | 333,670       | 6.67          | 4.90            |
| 10,000,000         | 578,726       | 5.79          | 4.24            |
| 15,000,000         | 790,962       | 5.27          | 3.71            |
| 25,000,000         | 1,161,828     | 4.65          | 3.35            |
| 40,000,000         | 1,663,974     | 4.16          | 2.92            |
| 60,000,000         | 2,247,076     | 3.75          | 2.57            |
| 80,000,000         | 2,761,256     | 3.45          | 2.34            |
| 100,000,000        | 3,229,488     | 3.23          | 1.45            |
| 150,000,000        | 3,952,622     | 2.64          | 1.12            |
| 200,000,000        | 4,510,562     | 2.26          | 0.61            |
| 300,000,000        | 5,117,732     | 1.71          | 0.53            |
| 400,000,000        | 5,647,228     | 1.41          | 0.45            |
| 500,000,000        | 6,097,956     | 1.22          |                 |
| Over \$500 Million | 6,097,956     |               | 0.45            |

**RESEARCH AND DEVELOPMENT EFFORTS**

| Fee base (dollars) | Fee (dollars) | Fee (percent) | Incr. (percent) |
|--------------------|---------------|---------------|-----------------|
| Up to \$1 Million  |               |               | 8.42            |
| 1,000,000          | 84,238        | 8.42          | 7.00            |
| 3,000,000          | 224,270       | 7.48          | 6.84            |
| 5,000,000          | 361,020       | 7.22          | 6.21            |
| 10,000,000         | 671,716       | 6.72          | 5.71            |
| 15,000,000         | 957,250       | 6.38          | 4.85            |
| 25,000,000         | 1,441,892     | 5.77          | 4.22            |
| 40,000,000         | 2,075,318     | 5.19          | 3.69            |
| 60,000,000         | 2,813,768     | 4.69          | 3.27            |
| 80,000,000         | 3,467,980     | 4.33          | 2.69            |
| 100,000,000        | 4,006,228     | 4.01          | 1.69            |
| 150,000,000        | 4,850,796     | 3.23          | 1.14            |
| 200,000,000        | 5,420,770     | 2.71          | 0.66            |
| 300,000,000        | 6,083,734     | 2.03          | 0.58            |
| 400,000,000        | 6,667,930     | 1.67          | 0.50            |
| 500,000,000        | 7,172,264     | 1.43          |                 |
| Over \$500 Million | 7,172,264     |               | 0.50            |

**ENVIRONMENTAL MANAGEMENT EFFORTS**

| Fee base (dollars) | Fee (dollars) | Fee (percent) | Incr. (percent) |
|--------------------|---------------|---------------|-----------------|
| Up to \$1 Million  |               |               | 7.33            |
| \$1,000,000        | 73,298        | 7.33          | 6.49            |
| 3,000,000          | 203,120       | 6.77          | 5.95            |
| 5,000,000          | 322,118       | 6.44          | 5.40            |
| 10,000,000         | 592,348       | 5.92          | 4.83            |
| 15,000,000         | 833,654       | 5.56          | 4.03            |
| 25,000,000         | 1,236,340     | 4.95          | 3.44            |
| 40,000,000         | 1,752,960     | 4.38          | 3.29            |
| 60,000,000         | 2,411,890     | 4.02          | 3.10            |
| 80,000,000         | 3,032,844     | 3.79          | 2.49            |
| 100,000,000        | 3,530,679     | 3.53          | 1.90            |
| 150,000,000        | 4,479,366     | 2.99          | 1.48            |
| 200,000,000        | 5,219,924     | 2.61          | 1.12            |
| 300,000,000        | 6,337,250     | 2.11          | 0.88            |
| 400,000,000        | 7,219,046     | 1.80          | 0.75            |
| 500,000,000        | 7,972,396     | 1.59          | 0.58            |
| 750,000,000        | 9,423,463     | 1.26          | 0.55            |
| 1,000,000,000      | 10,786,788    | 1.08          |                 |
| Over \$1.0 billion | 10,786,788    |               | 0.55            |