

970.1504-1-3 Special considerations: Laboratory management and operation.

(a) For the management and operation of a laboratory, the contracting officer shall consider whether any fee is appropriate. Considerations should include:

- (1) The nature and extent of financial or other liability or risk assumed or to be assumed under the contract;
- (2) The proportion of retained earnings (as established under generally accepted accounting methods) that are utilized to fund the performance of work related to the DOE contracted effort;
- (3) Facilities capital or capital equipment acquisition plans;
- (4) Other funding needs, to include contingency funding, working capital funding, and provision for funding unreimbursed costs deemed ordinary and necessary;
- (5) The utility of fee as a performance incentive; and
- (6) The need for fee to attract qualified contractors, organizations, and institutions.

(b) In the event fee is considered appropriate, the contracting officer shall determine the amount of fee in accordance with this subsection.

(1) Costs incurred in the operation of a laboratory that are allowable and allocable under the cost principles (i.e., commercial using 48 CFR 31.2, nonprofit using OMB Circular A-122, or university-affiliated using OMB Circular A-21), regulations (including subpart [970.31](#)), or statutes applicable to the operating contractor should be classified as direct or indirect (overhead or G&A) charges to the contract and not included as proposed fee. Exceptions must be approved by the Senior Procurement Executive, or designee.

(2) Except as specified in 970.1504-1-3(c)(3), the maximum total amount of fee shall be calculated in accordance with 970.1504-1-5 or 970.1504-1-9, as appropriate. The total amount of fee under any laboratory management and operating contract or other designated contract shall not exceed, and may be significantly less than, the result of that calculation. In determining the total amount of fee, the contracting officer shall consider the evaluation of the factors in paragraph (a) of this subsection as well as any benefits the laboratory operator will receive due to its tax status.

(c) In the event fee is considered appropriate, the contracting officer shall establish the type of fee arrangement in accordance with this subsection.

(1) The amount of fee may be established as total available fee with a base fee portion and a performance fee portion. Base fee, if any, shall be an amount in recognition of the risk of financial liability assumed by the contractor and shall not exceed the cost risk associated with those liabilities or the amount calculated in accordance with 970.1504-1-5, whichever is less. The total available fee, excepting any base fee, shall normally be associated with performance at or above the target level of performance as defined by the contract. If performance in either of the two general work categories appropriate for laboratories (science/technology and support) is rated at less than the target level of performance, the total amount of the available fee shall be subject to downward adjustment. Such downward adjustment shall be subject to the terms of the clause at 970.5215-3, Conditional Payment

of Fee, Profit, and Other Incentives - Facility Management Contracts, if contained in the contract.

(2) The amount of fee may be established as a fixed fee in recognition of the risk of financial liability to be assumed by the contractor, with such fixed fee amount not exceeding the cost risk associated with the liabilities assumed or the amount of fee calculated in accordance with 970.1504-1-5, whichever is less.

(3) If the fixed fee or total available fee exceeds 75% of the fee that would be calculated per 970.1504-1-5 or 970.1504-1-9; or if a fee arrangement other than one of those set forth in paragraphs (c) (1) or (2) of this subsection is considered appropriate, the approval of the Senior Procurement Executive, or designee, shall be obtained prior to its use.

(4) Fee, if any, as well as the type of fee arrangement, will normally be established for the life of the contract. It will be established at time of award, as part of the extend/compete decision, at the time of option exercise, or at such other time as the parties can mutually reach agreement, e.g., negotiations. Such agreement shall require the approval of the Senior Procurement Executive, or designee.

(5) Fee established for longer than one year shall be subject to adjustment in the event of a significant change (greater than $\pm 10\%$ or a lesser amount if appropriate) to the budget or work scope.

(6) Retained earnings (reserves) shall be identified and a plan for their use and disposition developed.

(7) The use of retained earnings as a result of performance of laboratory management and operation may be restricted if the operator is an educational institution.

Parent topic: [Subpart 970.15 - Contracting by Negotiation](#)