

# 52.216-10 Incentive Fee.

As prescribed in 16.307(d), insert the following clause:

Incentive Fee (Jun 2011)

(a) *General*. The Government *shall* pay the Contractor for performing this contract a fee determined as provided in this contract.

(b) *Target cost and target fee*. The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) of this clause.

(1) "Target cost," as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) of this clause.

(2) "Target fee," as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) of this clause.

(c) Withholding of payment.

(1) Normally, the Government *shall* pay the fee to the Contractor as specified in the Schedule. However, when the *Contracting Officer* considers that performance or cost indicates that the Contractor will not achieve target, the Government *shall* pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government *may*, at the sole discretion of the *Contracting Officer*, pay on the basis of an appropriate higher fee.

(2) Payment of the incentive fee *shall* be made as specified in the Schedule; provided that the *Contracting Officer* withholds a reserve not to exceed 15 percent of the total incentive fee or \$100,000, whichever is less, to protect the Government's interest. The *Contracting Officer shall* release 75 percent of all fee withholds under this contract after receipt of an adequate certified *final indirect cost rate* proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The *Contracting Officer may* release up to 90 percent of the fee withholds under this contract based on the Contractor's *past performance* related to the submission and settlement of *final indirect cost rate* proposals.

(d) *Equitable adjustments*. When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, *shall* be stated in a *supplemental agreement* to this contract.

(e) Fee payable.

(1) The fee payable under this contract *shall* be the target fee increased by \_\_\_\_ [*Contracting Officer insert Contractor's participation*] cents for every dollar that the total allowable cost is less than the target cost or decreased by \_\_\_\_ [*Contracting Officer insert Contractor's participation*] cents for

every dollar that the total allowable cost exceeds the target cost. In no event *shall* the fee be greater than \_\_\_\_\_ [*Contracting Officer insert percentage*] percent or less than \_\_\_\_\_ [*Contracting Officer insert percentage*] percent of the target cost.

(2) The fee *shall* be subject to adjustment, to the extent provided in paragraph (d) of this clause, and within the minimum and maximum fee limitations in paragraph (e)(1) of this clause, when the total allowable cost is increased or decreased as a consequence of-

(i) Payments made under assignments; or

(ii) *Claims* excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.

(3) If this contract is terminated in its entirety, the portion of the target fee payable *shall* not be subject to an increase or decrease as provided in this paragraph. The termination *shall* be accomplished in accordance with other applicable clauses of this contract.

(4) For the purpose of fee adjustment, "total allowable cost" *shall* not include allowable costs arising out of-

(i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;

(ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;

(iii) Any *direct cost* attributed to the Contractor's involvement in litigation as required by the *Contracting Officer* pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;

(iv) The purchase and maintenance of additional *insurance* not in the target cost and required by the *Contracting Officer*, or *claims* for reimbursement for liabilities to third persons pursuant to the *Insurance Liability to Third Persons* clause;

(v) Any *claim*, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Government Property clause; or

(vi) Any *claim*, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.

(5) All other allowable costs are included in "total allowable cost" for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.

(f) *Contract modification*. The total allowable cost and the adjusted fee determined as provided in this clause *shall* be evidenced by a modification to this contract signed by the Contractor and *Contracting Officer*.

(g) *Inconsistencies*. In the event of any language inconsistencies between this clause and provisioning documents or Government *options* under this contract, compensation for spare parts or other *supplies* and services ordered under such documents *shall* be determined in accordance with

this clause.

(End of clause)

**Parent topic:** [52.216 \[Reserved\]](#)