

March 22, 1941
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MEMORANDUM

TO: The Director of the Division of Purchases
FROM: Milton Kats, Assistant General Counsel
SUBJECT: Statutory Authority and Limitations with Respect to
Cost-Plus-a-Fixed-Fee Contracts

CLAS

PLAINTIFF'S
EXHIBIT

JM-1842

Broadly speaking, specific statutory authority is required for a cost-plus-a-fixed-fee contract. Exceptions for "public exigency," and the like, in the statutes requiring competitive bidding are not considered broad enough to apply to the present situation for many reasons. There are also exceptions applying to contracts insignificant in amount.

Recent statutes and appropriation acts, however, have contained the necessary authority. They have ordinarily listed the public projects as to which a cost-plus-a-fixed-fee contract is permitted, either specifically by project, or by types of projects. The size of the fee is usually limited and, in each instance, the limitation is to a percentage of the estimated cost of the project exclusive of the fee.

In general, the top limit of the permitted fee is 6%, except that a limit of 7% is applicable to naval ship and aircraft construction, certain War Department contracts, and, upon enactment of pending legislation, to Maritime Commission contracts.

Following is a summary of the present statutory authorizations for cost-plus-a-fixed-fee contracts other than the exceptions mentioned above.

<u>Subject Matter</u>	<u>Limitation on Fee</u>	<u>Remarks</u>	<u>Statutes</u>
<u>A. NAVY</u>			
1. Naval vessels, aircraft and spare parts, also machine tools.	7%	Determination by President of National interest. Limited to emergency de- clared on September 8, 1939. Secre- tary of Navy to determine that price is fair and reasonable.	Public No. 671, 76th Congress.