



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

JAN 22 2008

MEMORANDUM FOR DISTRIBUTION

Subj: PROPER USE OF AWARD FEE CONTRACTS AND AWARD FEE PROVISIONS

Ref: (a) DASN (A&LM) memo of May 8, 2007

Encl: (1) OUSD (AT&L) DPAP memo of April 24, 2007

This memorandum supplements reference (a), which implemented the award and incentive fees data collection and reporting requirement in Section 814 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364). By enclosure (1), distributed earlier via e-mail, the Director of Defense Procurement and Acquisition Policy (DPAP) issued additional policy governing the use of award fee contracts and award fee provisions.

The acquisition planning or acquisition strategy process begins the decision-making process of selecting the right contract type and performance incentive strategy to deliver quality products and services for our customers on time and within budget. At a minimum, contracting officers, working closely with program managers and other professionals, must consider the factors in FAR Part 16 to determine which contract type is most suitable for the requirement and to decide which contract incentives encourage efficient and effective contractor performance. Contracting officers and program managers jointly determine the basic contract requirements and the criteria applicable to cost, technical performance, or schedule that will form the basis to measure contract performance.

Enclosure (1) requires the use of objective performance criteria, whenever possible, to measure contract performance. If objective criteria do not exist, and a cost-plus-award fee (CPAF) contract is considered appropriate in accordance with FAR 16.405-2(b)(1)(i), the Head of the Contracting Activity (HCA) must approve a written determination and findings (D&F) before using this contract type. The HCA may delegate this approval authority, within the contracting chain, no lower than one level below the HCA. In order to comply with the reporting requirement of enclosure (1), contracting activities must submit copies of award fee D&F's for ACAT I programs to this office within 15 days after approval. Additionally, copies of award-fee D&Fs for any contract \$50,000,000 or more, including options, must be provided to this office within 30 days after approval. Ensure each D&F identifies whether the contract is for an ACAT designated program. The point of contact for this requirement is Ms. Robbin Bruce who may be reached via email robbin.bruce@navy.mil or by telephone (703)693-3998.

Subj: PROPER USE OF AWARD FEE CONTRACTS AND AWARD FEE PROVISIONS

Finally, enclosure (1) establishes that contractors may earn award fees only if they meet the minimum essential requirements of the contract. Please ensure that your award fee provisions and award fee processes conform to this DOD policy.

Please disseminate this memorandum to your contracting staff, program managers, and other staff involved in acquisition, as appropriate. Questions regarding this memorandum should be directed to Ms. Evelyn Ortiz at telephone (703) 614-9640 or via email evelyn.ortiz@navy.mil.


M. F. Jaggard
Chief of Staff/Policy
for DASN (A&LM)

Distribution:

CMC (LB)
DRPM SSP
MARCORSYSCOM (CT)
MSC (N10)
NAVAIRSYSCOM (2.0)
NAVFACENCOM (ACQ)
NAVICP (02)
NAVSEASYSCOM (02)
NAVSUPSYSCOM (02)
ONR (02)
SPAWARSYSCOM (02)
SSP (SPN)

Copy to:

AGC (RDA)
CHENG (RDA)
DASN (AIR)
DASN (C41/SPACE)
DASN (ExW)
DASN (IP)
DASN (IWS)
DASN (LMW)
DASN (M&B)
DASN (RDT&E)
DASN (SHIPS)
DoN SBPO
PEO (A)

Subj: PROPER USE OF AWARD FEE CONTRACTS AND AWARD FEE
PROVISIONS

Copy to: (Continued)

PEO (C41)

PEO (CARRIERS)

PEO (EIS)

PEO (IW)

PEO (JSF)

PEO (LMW)

PEO (LS)

PEO (SHIPS)

PEO (SPACE SYSTEMS)

PEO (SUB)

PEO (T)

PEO (W)



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

APR 24 2007

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
(ATTN: ACQUISITION EXECUTIVES)
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Proper Use of Award Fee Contracts and Award Fee Provisions

Over the past several years there has been an increased use of cost-plus-award-fee contracts and award fee provisions, particularly for development efforts and low rate initial production (LRIP) efforts. The purpose of this memorandum is to state the Department's policy with regard to the proper use of award fee contracts and award fee provisions.

FAR 16.104 requires that we take into account a number of factors when selecting the proper contract type. Among them are: price competition, price analysis, cost analysis, type and complexity of requirement, urgency of requirement, period of performance or length of production run, the Contractor's technical capability and financial responsibility, the adequacy of the contractor's accounting system, concurrent contracts, and the extent and nature of proposed subcontracting and acquisition history.

In particular, with regard to the use of award fee contracts, FAR 16.405-2 (b)(1)(i) states that: "The cost-plus-award-fee contract is suitable for use when – (i) The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance or schedule."

The fact is that most, if not all, of our development and LRIP contracts contain numerous objective criteria. For a variety of reasons, expediency being among the most prevalent, over the past several years we have chosen not to construct contracts that appropriately contain the means to measure objective and subjective criteria.

It is the policy of the Department that objective criteria will be utilized, whenever possible, to measure contract performance. In those instances where objective criteria exist, and the Contracting Officer and Program Manager wish to also evaluate and incentivize subjective elements of performance, the most appropriate contract type would be a multiple incentive type contract containing both incentive and award fee criteria (e.g., cost-plus-incentive/award fee, fixed-price-incentive/award fee) or a fixed price/award fee contract.



ENCLOSURE(1)

If it is determined that objective criteria do not exist and that it is appropriate to use a cost-plus-award fee (CPAF) contract, then the Head of the Contracting Activity (HCA) must sign a determination and finding (D&F) that “the work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance or schedule.” The HCA may delegate this approval authority, within the contracting chain, no lower than one level below the HCA.

The following shall apply to all award fee provisions:

Award fee may be earned in accordance with the following:

<u>Rating</u>	<u>Award Fee Pool Earned</u>
Unsatisfactory	0%
Satisfactory	No Greater Than 50%
Good	50%-75%
Excellent	75%-90%
Outstanding	90%-100%

Definitions of Ratings

Unsatisfactory	Contractor has failed to meet the basic (minimum essential) requirements of the contract.
Satisfactory	Contractor has met the basic (minimum essential) requirements of the contract.
Good	Contractor has met the basic (minimum essential) requirements of the contract, and has met at least 50% of the award fee criteria established in the award fee plan.
Excellent	Contractor has met the basic (minimum essential) requirements of the contract, and has met at least 75% of the award fee criteria established in the award fee plan.

Outstanding

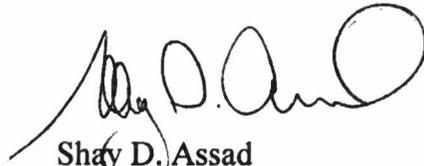
Contractor has met the basic (minimum essential) contract requirements and has met at least 90% of the award fee criteria established in the award fee plan.

Contracting Officers are required, together with the Program Manager, to determine the basic contract requirements that will be specified in the contract. In consultation with the Program Manager and the Fee Determining Official, the Contracting Officer shall derive the award fee criteria to be included in the Award Fee Plan among the trade space of various technical/programmatic, cost and schedule contract objectives.

The policies included in this memo are effective for all solicitations issued commencing on 1 August 2007, and will be incorporated into the DFARS or DFARS Procedures, Guidance and Information, as appropriate.

For ACAT I programs, copies of all D&Fs shall be provided to the Director, Defense Procurement and Acquisition Policy, within 30 days of the end of the quarter, beginning with the quarter ending September 30, 2007. Senior Procurement Executives of the Military Departments and Other Defense Agencies shall be responsible for establishing the level of reporting for non-ACAT I contracts within their organizations.

Please direct any questions regarding this memorandum to Mr. Bill Sain, Senior Procurement Analyst, Defense Procurement and Acquisition Policy (Office of Cost, Pricing, and Finance) at 703-602-0293 or bill.sain@osd.mil.



Shay D. Assad
Director, Defense Procurement
and Acquisition Policy