

## 1816.404

the contract, ceases or when the maximum positive incentive is reached. When hardware performance ceases below the standard established in the contract and a negative incentive is included, the Government shall calculate the amount due and the contractor shall pay the Government that amount. Once hardware performance exceeds the standard, the contractor may request payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When hardware performance ceases above the standard level of performance, or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

(d) When the deliverable hardware lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. When the contract requires the sequential delivery of several hardware items (e.g. multiple spacecraft), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables.

(e) In determining the value of the maximum performance incentives available, the contracting officer shall follow the following rules:

(1) For a CPFF contract, the sum of the maximum positive performance incentive and fixed fee shall not exceed the limitations in FAR 15.404-4(c)(4)(i).

(2) For an award fee contract.

(i) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one-third of the total potential contract fee. The remaining one-third of the total potential contract fee may be divided between award fee and the maximum performance incentive at the discretion of the contracting officer.

(ii) The maximum negative performance incentive for research and development hardware (e.g., the first and second units) shall be equal in amount to the total *earned* award fee (including any base fee). The maximum negative performance incentives for production

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hardware (e.g., the third and all subsequent units of any hardware items) shall be equal in amount to the total *potential* award fee (including any base fee). Where one contract contains both cases described above, any base fee shall be allocated reasonably among the items.

(3) For cost reimbursement contracts other than award fee contracts, the maximum negative performance incentives shall not exceed the total earned fee under the contract.

[62 FR 3478, Jan. 23, 1997, as amended at 62 FR 58687, Oct. 30, 1997; 63 FR 9965, Feb. 27, 1998; 63 FR 12997, Mar. 17, 1998; 63 FR 28285, May 22, 1998; 68 FR 23424, May 2, 2003; 69 FR 21764, Apr. 22, 2004]

### 1816.404 Fixed-price contracts with award fees.

Section 1816.405-2 applies to the use of FPAF contracts as if they were CPAF contracts. However, neither base fee (see 1816.405-271) nor evaluation of cost control (see 1816.405-274) apply to FPAF contracts.

[62 FR 58687, Oct. 30, 1997]

### 1816.405 Cost-reimbursement incentive contracts.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997]

### 1816.405-2 Cost-plus-award-fee (CPAF) contracts.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997]

### 1816.405-270 CPAF contracts.

(a) Use of an award fee incentive requires advance approval by the Assistant Administrator for Procurement. Requests for approval, that include Determination & Findings (D&F) cited in paragraph (b) of this section, shall be submitted to Headquarters Office of Procurement, Program Operations Division.

(b) Contracting officers shall prepare a D&F in accordance with FAR 16.401(d) prior to using an award fee incentive. In addition to the items identified in FAR 16.401(e)(1), D&Fs will include a discussion of the other types of contracts considered and shall indicate why an award fee incentive is the appropriate choice. Award fee incentives

should not be used on contracts with a total estimated cost and fee less than \$2 million per year. Use of award fee incentive for lower-valued acquisitions may be authorized in exceptional situations such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(c) Except as provided in paragraph (d) of this section, an award fee incentive may be used in conjunction with other contract types for aspects of performance that cannot be objectively assessed. In such cases, the cost incentive is based on objective formulas inherent in the other contract types (*e.g.*, FPI, CPIF), and the award fee provision should not separately incentivize cost performance.

(d) Award fee incentives shall not be used with a cost-plus-fixed-fee (CPFF) contract.

[76 FR 6697, Feb. 8, 2011]

#### **1816.405-271 Base fee.**

(a) A base fee shall not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.405-273(a)). In these circumstances, contractor performance during any award fee period is independent of and has no effect on subsequent performance periods or the final results at contract completion. For other contracts, such as those for hardware or software development, the procurement officer may authorize the use of a base fee not to exceed 3 percent. Base fee shall not be used when an award fee incentive is used in conjunction with another contract type (*e.g.*, CPIF/AF).

(b) When a base fee is authorized for use in a CPAF contract, it shall be paid only if the final award fee evaluation is "satisfactory" or better. (*See* 1816.405-273 and 1816.405-275) Pending final evaluation, base fee may be paid during the life of the contract at defined intervals on a provisional basis. If the final award fee evaluation is "unsatisfactory", all provisional base fee payments shall be refunded to the Government.

[76 FR 6697, Feb. 8, 2011]

#### **1816.405-272 Award fee evaluation periods.**

(a) Award fee evaluation periods, including those for interim evaluations, should be at least 6 months in length. When appropriate, the procurement officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated with the shorter periods are offset by benefits accruing to the Government. Where practicable, such as developmental contracts with defined performance milestones (*e.g.*, Preliminary Design Review, Critical Design Review, initial system test), establishing evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates should be considered. In no case shall an evaluation period be longer than 12 months.

(b) A portion of the total available award fee contract shall be allocated to each of the evaluation periods. This allocation may result in an equal or unequal distribution of fee among the periods. The contracting officer should consider the nature of each contract and the incentive effects of fee distribution in determining the appropriate allocation structure.

[62 FR 3478, Jan. 23, 1997. Redesignated at 62 FR 36706, July 9, 1997, as amended at 63 FR 13133, Mar. 18, 1998]

#### **1816.405-273 Award fee evaluations.**

(a) *Service contracts.* On contracts where the contract deliverable is the performance of a service over any given time period, contractor performance is often definitively measurable within each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or "rolled-over," into subsequent periods.

(b) *End item contracts.* On contracts, such as those for end item deliverables, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the