

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 16 and 52**

[FAR Case 93-603]

RIN 9000-AH07

**Federal Acquisition Regulation;
Performance Incentives for Fixed-Price
Contracts**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) by allowing performance incentives alone and not just when performance incentives are coupled with cost incentives. Thus award fees will be allowed in fixed-price contracts. Also, they have agreed to some editorial changes to the related clauses. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before August 19, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 93-603 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 93-603.

SUPPLEMENTARY INFORMATION:**A. Background**

The FAR currently only provides for the use of performance incentives together with cost incentives. This FAR revision proposes an amendment to the FAR allowing performance incentives to be used alone. This proposed change will allow agencies to recognize and

reward contractors that share the Government's commitment to quality and perform at a level that exceeds the minimum in terms of quality, timeliness, technical ingenuity and effective management.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule authorizes the government to use an additional type of contract under the Federal Acquisition Regulation. The rule authorizes award fees in fixed price contract performance incentives alone and not just when performance incentives are coupled with cost incentives. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 93-603), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 16 and 52

Government procurement.

Dated: June 6, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 16 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 16 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 16—TYPES OF CONTRACTS

2. Section 16.204 is amended by removing the citation "16.405" and inserting "16.406" in its place.

3. Section 16.403-3 is added to read as follows:

16.403-3 Fixed-price contracts with award fees.

Award fee provisions may be used in fixed-price contracts as provided in 16.405.

4. Section 16.405 is redesignated as 16.406 and a new 16.405 is added to read as follows:

16.405 Other applications of award fees.

The "award amount" portion of the fee may be used in other types of contracts under the following conditions:

(a) The Government wishes to motivate and reward a contractor for management performance in areas which cannot be measured objectively and where normal incentive provisions cannot be used.

(b) A "base fee" (fixed amount portion) is not used.

(c) A level above the contracting officer approves the use of the "award amount."

(d) An award review board and procedures are established for conduct of the evaluation.

(e) The administrative costs of evaluation do not exceed the expected benefits.

(f) The contract expressly excludes from the operation of the disputes clause any disagreement by the contractor concerning the amount of the award fee.

**PART 52—SOLICITATION PROVISIONS
AND CONTRACT CLAUSES**

5. Section 52.216-16 is amended by revising the introductory paragraph, and Alternate I introductory text to read as follows:

52.216-16 Incentive Price Revision—Firm Target.

As prescribed in 16.406(a), insert the following clause:

* * * * *

Alternate I (APR 1984). As prescribed in 16.406(a), add the following paragraph (o) to the basic clause:

* * * * *

6. Section 52.216-17 is amended by revising the introductory paragraph, and Alternate I introductory text to read as follows:

**52.216-17 Incentive Price Revision—
Successive Targets.**

As prescribed in 16.406(b), insert the following clause:

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Alternate I (APR 1984). As prescribed in 16.406(b), add the following paragraph (q) to the basic clause:

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