



DEPARTMENT OF THE AIR FORCE

Headquarters Air Force Materiel Command
Wright-Patterson Air Force Base Ohio

FAR 32
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S. Hall
5 Mar 01

MEMORANDUM FOR SEE DISTRIBUTION

26 February 2001

FROM: HQ AFMC/PK
4375 Chidlaw Road, Room S208
Wright-Patterson AFB OH 45433-5006

SUBJECT: Performance-Based Payments

1. The field has raised questions about the implementation and interpretation of performance-based payments. A specific concern is whether the FAR limits payments to 90 percent of the performance event price while also limiting payments to 100 percent of the projected cost at that performance event.
2. FAR 32.1004(b)(2)(ii) indicates that performance-based payments can not exceed 90 percent of price. FAR 32.1004(b)(3)(ii) further states that the contractor cannot have an unreasonable or negative level of contractor investment in the contract. This FAR language provides business latitude in negotiating settlements. FAR 32.1004(b)(2)(ii) does not state that performance-based payments should be made at 90 percent of price for every performance event. FAR 32.1004(b)(2)(ii) requires that at final delivery there should be a 10 percent withhold/reserve to liquidate. FAR 32.1004(b)(3)(ii) does not state that performance based payments shall be less than 100 percent of the projected cost at every performance event. FAR 32.1104(b)(3)(iii) requires the contractor-proposed budget profile to be assessed for realism so that early performance events do not recover a disproportionate amount of price upfront. For example, if an acquisition has four performance events with the first event priced at \$100, any payment amount between \$0-\$100 that provided a proper incentive for the contractor to perform can be arranged for that performance event. If the acquisition total price was \$1000 in our example, it is necessary to arrange the other performance event payment amounts so that a \$100 withhold exists at final delivery.
3. We have identified practices to consider when establishing performance-based payments.
 - a. Obtain an expenditure profile. Remember that they are not exact; they constitute an estimate of expenditure. Assess the profile for realism.
 - b. Tie the milestone performance events to the critical path through an integrated management plan/schedule.
 - c. Utilize DCAA expertise, SPO technical expertise, and SPO comptroller expertise in the development of the milestone performance events.
 - d. Make sure the events are well defined and meaningful in terms of measurable progress toward delivery.

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- e. Establish payment amounts that reflect an appropriate incentive for the contractor to perform.
- f. Do not establish event payment amounts that in the event of a termination would result in the government overpayment for the amount of goods or services received to that point.
- g. Match contractor risk under performance-based payments with the calculation of profit (contract-type risk) under the Weighted-Guidelines Method.
- h. The performance-based clause should:
 - (1) Show the liquidation schedule,
 - (2) Tie milestones to CLINs,
 - (3) Be coordinated with DFAS,
 - (4) Where percentages are used, accompany them with dollar amounts,
 - (5) Consider the potential for the impact of changes and explain the process for incorporating changes,
 - (6) Establish an appropriate number of milestone performance events.

4. Our point of contact for this action is Karl Heiland, HQ AFMC/PKPC, DSN 787-6863, e-mail address karl.heiland@wpafb.af.mil.

// Signed //
STANLEY A. SIEG
Brigadier General, USAF
Director of Contracting

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