

**SUBPART 216.4—INCENTIVE CONTRACTS**

*(Revised January 12, 2011)*

**216.401 General.**

(c) See PGI [216.401](#)(c) for information on the Defense Acquisition University Award and Incentive Fees Community of Practice.

(e) Follow the procedures at PGI [216.401](#)(e) when planning to award an award-fee contract.

**216.401-70 Data collection.**

Section 814 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) requires DoD to collect relevant data on award and incentive fees paid to contractors and have mechanisms in place to evaluate such data on a regular basis. In order to comply with this statutory requirement, follow the procedures at PGI [216.401-70](#).

**216.402 Application of predetermined, formula-type incentives.**

**216.402-2 Technical performance incentives.**

See PGI [216.402-2](#) for guidance on establishing performance incentives.

**216.403 Fixed-price incentive contracts.**

**216.403-2 Fixed-price incentive (successive targets) contracts.**

See PGI [216.403-2](#) for guidance on the use of fixed-price incentive (successive targets) contracts.

**216.405 Cost-reimbursement incentive contracts.**

**216.405-1 Cost-plus-incentive-fee contracts.**

See PGI [216.405-1](#) for guidance on the use of cost-plus-incentive-fee contracts.

**216.405-2 Cost-plus-award-fee contracts.**

(b) *Application.* The cost-plus-award-fee (CPAF) contract may include provisional award fee payments. A provisional award fee payment is a payment made within an evaluation period prior to a final evaluation for that period. The contracting officer may include provisional award fee payments in a CPAF contract on a case-by-case basis, provided those payments—

(i) Are made no more frequently than monthly;

(ii) Are limited to no more than—

(A) For the initial award fee evaluation period, 50 percent of the award fee available for that period; and

(B) For subsequent award fee evaluation periods, 80 percent of the evaluation score for the prior evaluation period times the award fee available for the

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current period, e.g., if the contractor received 90 percent of the award fee available for the prior evaluation period, provisional payments for the current period shall not exceed 72 percent (90 percent x 80 percent) of the award fee available for the current period;

(iii) Are superseded by an interim or final award fee evaluation for the applicable evaluation period. If provisional payments have exceeded the payment determined by the evaluation score for the applicable period, the contracting officer shall collect the debt in accordance with FAR 32.606; and

(iv) May be discontinued, or reduced in such amounts deemed appropriate by the contracting officer, when the contracting officer determines that the contractor will not achieve a level of performance commensurate with the provisional payment. The contracting officer shall notify the contractor in writing of any discontinuance or reduction in provisional award fee payments.

(c) *Limitations.*

(i) The CPAF contract shall not be used—

(A) To avoid—

(1) Establishing cost-plus-fixed-fee contracts when the criteria for cost-plus-fixed-fee contracts apply; or

(2) Developing objective targets so a cost-plus-incentive-fee contract can be used; or

(B) For either engineering development or operational system development acquisitions that have specifications suitable for simultaneous research and development and production, except a CPAF contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(1) It is more advantageous; and

(2) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(ii) Do not apply the weighted guidelines method to CPAF contracts for either the base (fixed) fee or the award fee.

(iii) The base fee shall not exceed three percent of the estimated cost of the contract exclusive of the fee.

(S-70) See PGI [216.405-2](#) for guidance on the use of CPAF contracts.

#### **216.405-270 Award fee reduction or denial for jeopardizing the health or safety of Government personnel.**

(a) *Definitions.*

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“Covered incident” and “serious bodily injury,” as used in this section, are defined in the clause at [252.216-7004](#), Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

(b) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84), the contracting officer shall include in the evaluation of any award fee plan, a review of contractor actions that jeopardized the health and safety of Government personnel.

(c) If, in performing under a contract, contractor or subcontractor actions cause serious bodily injury or death of civilian or military Government personnel, the contracting officer shall consider reducing or denying the award fee for any of the relevant award fee period in which the covered incident occurred, including the recovery of all or part of any award fees previously paid for such period.

#### **216.406 Contract clauses.**

Use the clause at [252.216-7004](#), Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, in all solicitations and contracts containing award fee provisions.

#### **216.470 Other applications of award fees.**

See PGI [216.470](#) for guidance on other applications of award fees.