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October 20, 2004

Office of the Director, Defense Procurement and Acquisition Policy
Policy Directorate
Attention: Mr. David Capitano
Room 3C838
3000 Defense Pentagon, Washington, DC 20301-3000

Subject: Federal Acquisition Regulation; Contract Financing: Performance-Based Payments.

Reference: Request for Public Comments. FR Doc. 04-20398, 69 FR 54651, September 9, 2004.

Dear Mr. Capitano:

The Boeing Company has completed an internal review of the subject request for public comments that was published in the Federal Register on Thursday, September 9, 2004 (69 FR 54651).

As you are aware, the Director of Defense Procurement and Acquisition Policy (DPAP) is currently conducting an internal assessment regarding the use of performance-based payments as a method of financing for DoD contracts.

As part of this assessment, DPAP has requested the views of interested parties on what they believe are potential areas for improving DoD's use of performance-based payments (PBPs). In response to DoD's request for public comments on improving both DoD's use of performance based payments (PBPs) and the efficiency of PBPs, the following observations are offered for your consideration. We appreciate the opportunity to provide comments to the Director of Defense Procurement and Acquisition Policy regarding this matter.

PBPs are a valuable tool in reducing administrative effort over the course of contracts with lengthy periods of performance. While some additional non-recurring effort is required to establish payable events, the benefits of reduced administrative effort compared with cost-based progress payments, together with the potential for somewhat reduced financing burden on the contractor, usually more than offset that initial effort.

Current policy and regulatory implementation of PBPs are generally adequate. DoD policy now clearly states that PBPs are the preferred form of contract financing employed by the Government. However, perhaps because of the initial efforts involved in identifying objective payable events, some Contracting Officers remain reluctant to adopt use of PBPs.

One possible solution might be to adopt an approach similar to former Secretary of Defense Perry's policy regarding use of industry or commercial specifications and standards in lieu of military standards or specifications. Perhaps, DoD policy could stipulate that on all major fixed price production programs in which the end item delivery cycle exceeds 12 months, the Contracting Officer must obtain a waiver from the Head of the Contracting Activity in order to use progress payments rather than the preferred PBPs.

This new policy could be authorized and implemented by memorandum until such time as PBPs truly do become the norm, as implied in FAR 32.10. Perhaps some additional mandatory training on how to establish payment criteria would also improve the compliance level of PCO in use of PBPs. Additional training for ACO's in DCMA on administering contracts with PBP would also be beneficial in the future.

In addition, it has been noted that as program leadership personnel changes over the course of a program, occasionally that new leadership (PM and/or PCO) wishes to revise the initially established events, which tends to negate some of the benefit by adding administrative effort. Perhaps policy should clarify that unless it has been determined that payments are in violation of the general restrictions on financing payments in FAR 32, previously established milestones or criteria should remain stable.

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Since the request for comments also solicited a summary of experience with PBPs, it should be noted that Boeing's experience has been overwhelmingly favorable where PBPs are used on production programs. On Boeing programs, with major fixed price production contracts, PBPs have become a majority form of financing. While on the whole PBPs represent less than a majority of total dollar billings across our Integrated Defense Systems business unit, this reflects many factors which vary over time, such as the mix of cost-reimbursable versus fixed price contracts, the mix of contracts versus Other Transactions, and mix of mature legacy programs versus newer programs. PBPs remain our preferred form of fixed price contract financing going forward.

Thank you again for the opportunity to comment on this important issue. For further information, please contact Mark Olague at (253) 773-2173 or Ed Will at (314) 233-0102.

Respectfully,

Warren L. Reece

Warren L. Reece
Director, Contract Policy & Process