

IL 049-04-11
September 14, 2004

OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT INFORMATION LETTER

TO: Under Secretaries for Health, Benefits, and Memorial Affairs; Assistant Secretary for Management; Chief Facilities Management Officer, Office of Facilities Management; Veterans Integrated Service Network Directors; Directors, VA Medical Center Activities, Domiciliaries, Outpatient Clinics, Medical and Regional Office Centers, and Regional Offices; Directors, Denver Distribution Center, Austin Automation Center, Records Management Center, VBA Benefits Delivery Centers, and VA Health Administration Center; and the Executive Director and Chief Operating Officer, VA National Acquisition Center

ATTN: Heads of the Contracting Activity and VA Contracting Officers

SUBJ: Incentive Contracts and Award Fees

1. There have been some difficulties in the past regarding the use of incentive contracts (e.g., contracts that include performance or delivery incentives or award fees, see Federal Acquisition Regulation (FAR) subpart 16.4). The purpose of this Information Letter (IL) is to provide guidance on the use of incentive contracts and to establish a new review requirement. Effective immediately, solicitations that include monetary incentives, regardless of dollar value, shall only be issued with the advance written approval of the Deputy Assistant Secretary for Acquisition and Materiel Management (DAS for A&MM). Solicitations that include incentives that are other than monetary will not require review unless they meet the other review requirements of the Department of Veterans Affairs (VA) Acquisition Regulation (VAAR). These requirements do not apply to the Office of Inspector General. Although contracting officers are required to obtain additional approval for the use of monetary incentive contracts and award fees, VA encourages contracting officers to use these vehicles when appropriate and when the benefits to be derived will demonstrably exceed the costs.

2. An incentive contract is used to motivate a contractor to perform beyond satisfactory. Per FAR 16.401(d), an award-fee contract is a type of incentive contract. An incentive represents additional profit for the contractor. Typically, incentives are not used or needed in firm-fixed-price contracts, since the contractor is already sufficiently motivated to perform satisfactorily and on time. Award fee incentives are most commonly used in cost plus award-fee contracts, which are used infrequently, if at all, in VA contracting. If incentives are used in

2.

IL 049-04-11
September 14, 2004

VA contracting, the more likely format to be used would be performance or delivery incentives to achieve specific performance or delivery results over and above minimum satisfactory requirements.

3. Contracts with incentives require periodic evaluations of the contractor's performance throughout the life of the contract. Incentives allow the Government to assess performance and appropriately recognize the contractor's accomplishments. The Government has the flexibility to consider both the contractor's performance levels and the conditions under which these levels were achieved during the evaluation process.

4. In both recommending an incentive and developing the incentive strategy, contracting officers must consider interrelated factors such as the dollar value of the contract, the complexity and criticality of the acquisition, the availability of Government resources to monitor and evaluate performance, and the benefits expected to result from such Government oversight. Contracts and task or delivery orders containing an incentive require additional administrative and management effort. The contracting officer shall document in the contract file the factors considered in arriving at a decision to use an incentive.

5. After considering the above factors, if the contracting officer determines that an incentive is appropriate for the type of contract being contemplated, the contracting officer must appoint a Review Board (RB) and, along with the RB and as part of the acquisition planning process (see FAR subpart 7.1), develop an incentive plan. The incentive plan must include the following: the organizational structure; the roles and responsibilities of the evaluation team (the performance monitors, the RB, the Fee Determining Official (FDO), and the contracting officer); the evaluation periods and respective incentive or fee allocations for each period; the evaluation criteria and performance criteria; the categories of performance being evaluated (e.g., technical, quality, cost, delivery) and their associated weights, if any; the evaluation process; and the procedures for amending or changing the plan. The FDO must be at least one level above the contracting officer and must approve the incentive plan. The incentives must be carefully structured to ensure that the desired results will not be achieved at the expense of other desired or required results (e.g., expedited delivery at the expense of quality). The plan must, prior to payment of an incentive, require at least satisfactory performance by the contractor on all other aspects of the contract that are not related to the incentive.

3.

IL 049-04-11
September 14, 2004

6. Monetary incentives shall be used only with the advance written approval of the DAS for A&MM, regardless of the dollar value of the proposed contract or task or delivery order. The contracting officer's documentation of the factors considered in the decision to use a monetary incentive and the proposed incentive plan must accompany the request for approval. Non-monetary incentives may be used without obtaining the approval of the DAS for A&MM.

7. In any solicitation and contract that includes an incentive, the contracting officer shall add a provision stating that incentive determinations will be made unilaterally by the designated FDO, in accordance with the evaluation plan, and that such determinations will not be subject to appeal under the Disputes clause of the contract. The evaluation plan must be provided to the contractor, but it is normally not included as part of the contract, thus allowing the Government to unilaterally change the plan prior to the start of any evaluation period. If the plan is included in the contract, the contracting officer must include a provision in the solicitation and contract specifying that the Government retains the unilateral right to amend the plan prior to the start of any evaluation period. In either case, the contractor must be informed of any changes to the plan and given a copy of the revised plan prior to the start of the evaluation period or periods to which it applies.

8. At the end of each performance evaluation period, the performance monitors (the individuals tasked with monitoring performance) shall prepare written assessments of the contractor's performance (see Attachment A). The RB shall review the assessments and submit a written evaluation and recommendation to the FDO. The FDO shall make the final decision on whether or not an incentive is to be paid and, if so, the amount. The contracting officer shall ensure that the decision is fully documented in the contract file. Open and on-going communications with the contractor are essential to the successful use of contract incentives.

9. An incentive, when properly used, is a valuable tool. The application is intended to motivate the contractor's performance in those areas critical to program success (e.g., technical, logistics support, cost, delivery schedule) that are susceptible to judgmental/qualitative measurement and evaluation. This subjective evaluation of contractor performance must be supported, however, by the Government's written assessment of the contractor's performance.

4.

IL 049-04-11
September 14, 2004

10. References:

a. Department of the Air Force Award-Fee Guide, March 2002,
<http://www.safaq.hq.af.mil/contracting/toolkit/part16/acrobat/award-feeguide.pdf>.

b. Federal Acquisition Regulation subpart 16.4.

c. Guidance for Award Fee Contracting, United States Agency for
International Development, <http://www.usaid.gov/policy/ads/300/302saa.pdf>.

d. National Aeronautics and Space Administration (NASA) Award Fee
Contracting Guide, <http://www.hq.nasa.gov/office/procurement/regs/afguidee.html>.

11. Please direct any questions regarding this information letter to Barbara
Latvanas, Director, Acquisition Policy Division (049A5A), at (202) 273-7808.

/S/

C. Ford Heard
Director
Acquisition Resources Service

Distribution: RPC 7029

5.

**IL 049-04-11
September 14, 2004**

Attachment A

SAMPLE EVALUATION CHECKLIST

The Government must administer the incentive provisions of the contract in accordance with the FAR. In addition, the Government must specify the exact criteria that will be used to evaluate the contractor's performance in an incentive plan that is developed and tailored for each acquisition. This sample evaluation checklist provides some examples of areas that can assist in evaluating the contractor's performance. The overall objective is to document the evaluation of the contractor's performance against the incentive plan. The contractor must meet a clear condition for payment to protect VA from paying incentives that have not been justly earned by the contractor. Ongoing communication with contractor personnel about performance is of considerable importance in the incentive environment, but should not lead to the direction of efforts in a manner that compromises the contractor's responsibilities under the contract. Appraisal, assessment, and measurement connote evaluation, not direction.

1. Did the contractor perform this task with an unusual degree of competence?
2. Were the tasks or specific objectives clearly defined in declarative and unambiguous terms (i.e., reasonably certain and determinable)?
3. What was the impact of the early or late completion of this effort?
4. Did the contractor make unusual effort to utilize manpower available?
5. What was the current workload in relation to the contractor's performance of this particular event?
6. Was the contractor resourceful in attempts to complete the task through in-house capabilities?
7. Did factors beyond the contractor's control hinder or limit performance?
8. What significant relationship exists between this effort and others?
9. Has the contractor been provided with adequate descriptions of the facilities involved and their relationships to the event?
10. How important was the time frame involved?

6.

IL 049-04-11
September 14, 2004

Attachment A

11. Did the contractor perform the effort on its own initiative or as a result of a specific technical direction?
12. Has the program office clearly distinguished the contractor's performance in terms of ingenuity, creativity, and motivation?
13. Has the program office clearly expressed the impact of the event?
14. Has the program office clearly assessed the contractor's performance in regard to all tasks and specific objectives?
15. Was the contractor's performance at least satisfactory on all of the other tasks under the contract that were not directly related to the award fee?