

# Acquisition Reform Issue

Second Acquisition Reform Event

July 29, 2014

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# Issue Area & Problem Statement

- The Government does not effectively encourage, use, or manage Incentive Contracts
- Incentive Contracts are valuable procurement vehicles that can, when used effectively:
  - Fairly apportion contract risk between the Government and contractors
  - Increase competition for contracts
  - Incentivize contractor performance
  - Reward superior contract performance
  - Promote cost savings

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# Concise Root Cause Analysis

- The Government and contractors are reluctant to use or pursue Incentive Contracts due to challenges in structuring, administering, and competing for the contracts
- The restrictions of the current FAR regulations, the lack of subject-matter expertise in the Government acquisition force, and the reluctance of contractors to zealously lobby for the use of Incentive Contracts limits their use and effectiveness throughout the Government

# Concise Solution Proposal(s)

- Promote more effective and efficient use of Incentive Contracts via FAR and policy changes
  - Allow Incentive Contract use without head of contracting agency activity approval
  - Train the Government's acquisition force to effectively implement and administer Incentive Contracts
  - Disclose Award Fee Plans during solicitation phase
  - Revise Award Fee metrics to objectively quantify fees and effectively reward performance

# Adverse Consequences

- Failure to encourage the use of Incentive Contracts throughout the Government will continue to deprive the Government and contractors of a mutually beneficial procurement vehicle that can produce:
  - Effective risk sharing
  - Increased competition
  - Incentivized contractors
  - Appropriate rewards for superior contract performance
  - Cost savings

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## Prior Studies

- *Guidance on Award Fees Has Led to Better Practices But is Not Consistently Applied*, GAO-09-630 (May 29, 2009)
- *Application of OMB Guidance Can Improve Use of Award Fee Contracts*, GAO-09-839T (Aug. 3, 2009)
- *Use of Award Fees for Achieving Program Outcomes Should Be Improved*, GAO-07-58 (Jan 17, 2007)
- *DOD Has Paid Billions in Award and Incentive Fees Regardless of Acquisition Outcomes*, GAO-06-66 (Dec. 19, 2005)

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## Current Regulation, Guidance, or Policy

- FAR 16.402(d) – Requires approval and justification by the head of contracting activity that use of incentive and award-fee contracts is in the best interest of Government
- FAR 16.401(e)(2) – The methodology for determining the award fee is a unilateral decision of the Government and payment of the award fee is prohibited if contractor's performance is below Satisfactory
- FAR 16.401(e)(3) – Requires the creation of an Award-Fee Board to make fee determinations
- FAR 16.401(e)(4) – Prohibits the rollover of unearned award fees

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## Legislative, Regulatory, or Other Action

- Revise FAR 16.402(d) to delete the requirement that the head of a contracting activity must approve the use of Incentive Contracts. This decision should be made at the Contracting Officer level to more effectively encourage the use of Incentive Contracts
- Revise FAR 16.401(e)(2) to require the disclosure of the Award Fee Plan at the solicitation stage and to implement quantifiable metrics for administering the plan
- Revise FAR 16.401(e)(3) to delete the Award Fee Board requirement
- Revise FAR 16.401(e)(4) to permit the use of rollover award fees, which is equitable and beneficial to contractors

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# Questions?

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