

Requirements for Using and Administering Cost-plus-award-fee Contracts: Pre and Post FAC 2005-37

Pre FAC 2005-37

Prior to Federal Acquisition Circular (FAC) 2005-37, which has an effective date of October 14, 2009, the Federal Acquisition Regulation (FAR) required the following in using and administering a cost-plus-award-fee contract:

1. neither a firm-fixed-price nor a fixed-priced incentive contract was appropriate;
2. the limitations on use of a cost reimbursement contract were met;
3. the supplies or services could be acquired at lower costs, and in certain instances, with improved delivery or technical performance, by relating the amount of fee to the contractor's performance;
4. it was neither feasible nor effective to use predetermined objective incentive targets for cost, technical performance, or schedule;
5. the likelihood of meeting acquisition outcomes was enhanced due to greater motivation for the contractor and to the Government's ability to evaluate actual performance and the conditions under which it was achieved;
6. the expected benefits warranted the additional administrative effort and cost; and
7. evaluation was provided at stated intervals during performance so that the contractor was informed of the quality of its performance and the areas in which improvement was expected.

Post FAC 2005-37

With the issuance of FAC 2005-37, the FAR now requires, in addition to previous requirements, several new actions in using and administering a cost-plus-award-fee contract. Requirements 6 and 7 above were modified (a new requirement to conduct a risk and cost benefit analysis and a new requirement to establish mandatory evaluation periods). Four new groups of requirements were added (a Determination and Findings, award-fee earned limitations and documentation, an award-fee plan, and a prohibition on rollover of unearned award fee). The post FAC 2005-37 requirements are attached. Italics indicate new or modified coverage.

Post FAC 2005-37

Requirements for Using and Administering Cost-plus-award-fee Contracts

The use of a cost-plus-award-fee contract is appropriate only when all of the following conditions are met:

1. neither a firm-fixed-price nor a fixed-priced incentive contract is appropriate;
2. the limitations on use of a cost reimbursement contract are met;
3. the supplies or services can be acquired at lower costs, and in certain instances, with improved delivery or technical performance, by relating the amount of fee to the contractor's performance;
4. it is neither feasible nor effective to use predetermined objective incentive targets for cost, technical performance, or schedule;
5. the likelihood of meeting acquisition outcomes is enhanced due to greater motivation for the contractor and to the Government's ability to evaluate actual performance and the conditions under which it was achieved;
6. *a risk and cost benefit analysis that documents the expected benefits warrant the additional administrative effort and cost has been completed and included in the Determination and Findings (see 8. below);*
7. (see 10.(i) below);
8. *before contract award, the head of the contracting activity has signed a Determination and Findings justifying that the use of a cost-plus-award-fee contract is in Government's best interest and that addresses items 4, 5, and 6 above;*
9. *the award fee earned is*
 - a. *commensurate with performance per the award-fee plan criteria,*
 - b. *zero if overall performance is below satisfactory, and*
 - c. *documented in the contract file (including a determination that overall performance was or was not satisfactory);*
10. *an award-fee plan is completed before contract award that*
 - a. *establishes how award fee will be evaluated,*
 - b. *establishes an Award-Fee Board (defined in FAR 16.001) that will determine earned award fee,*
 - c. *was approved by the Fee-Determining Official (defined in FAR 16.001),*
 - d. *identifies the evaluation criteria and their link to acquisition objectives that are defined in terms of cost, schedule, and technical performance and that motivate enhanced performance in evaluated areas without jeopardizing minimum acceptable performance in all other areas,*
 - e. *describes how the evaluation criteria will be used to measure performance,*
 - f. *uses the award-fee adjectival ratings, the award-fee pool available to be earned percentages, and the descriptions in table 16-1 of FAR 16.401(e)(3)(iv),*
 - g. *documents the method that will be used for determining the award-fee adjectival rating the contractor's performance merits,*
 - h. *prohibits any earned award fee if overall performance is below satisfactory,*
 - i. *provides for evaluation periods at stated intervals so that the contractor is informed of the quality of its performance and the areas in which improvement is expected, and*

j. defines the total award-fee pool amount and how it is allocated across the evaluation periods;

11. rollover of unearned award fee (defined in FAR 16.001) is prohibited.