



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS SPACE AND MISSILE SYSTEMS CENTER (AFSPC)
LOS ANGELES AIR FORCE BASE CALIFORNIA

FEB 13 2004

MEMORANDUM FOR RECIPIENTS OF SMC/PK INFORMATIONAL LETTERS

FROM: SMC/PK

SUBJECT: Provisional Award Fee Payments

REFERENCES: (a) Federal Register, Vol 68, Nov. 14, 2003, Pgs 64561-64568
(b) SMC/PK Informational Letter dated 9 August 2002,
Subject: "Interim Award Fee Payments"

1. This memorandum establishes guidance for the use of provisional award fee payments at SMC. This policy letter cancels and supersedes the policy letter entitled "Interim Award Fee Payments" dated 9 August 2002. The DoD has issued a final rule amending the DFARS (DFARS 216.405-2) to address the use of provisional award fee payments under cost-plus-award-fee contracts. The effective date of this change is 13 January 2004, as further clarified below:
 - a. Applicable to solicitations issued on or after 13 January 2004; and
 - b. May be applied to existing contracts if appropriate consideration is provided by the Contractor.
2. Optional Use of Provisional Award Fee Payments. The Contracting Officer, in consultation with the Program Manager, shall determine if the use of provisional award fee payments is appropriate for the contractual situation. Provisional award fee payments can help improve contractor cash flow, reward and motivate outstanding contractor performance, and foster a healthy relationship between the Government and the Contractor. However, provisional award fee payments should not be used if they dilute the effectiveness of the award fee, cause undue administrative burden, or are otherwise not in the Government's best interests.
3. Process. Provisional award fee payments are not automatic. They may be authorized only after an assessment of contractor performance has been accomplished and a determination has been made by the Contracting Officer (after coordination with the FDO or designee) that contractor performance warrants the use of provisional award fee payments. The assessment of the Contractor's performance for provisional award fee payments can be informal and streamlined. The contracting officer must ensure funds are available and the criteria in the award fee plan are used in the assessment. At the end of the entire award fee evaluation period, the formal award fee evaluation process shall be conducted, and the FDO will determine the entire award fee amount earned for that period. Based on the FDO determination, the difference between the cumulative sum of provisional payments for the period and the FDO's final determination is authorized for payment to the contractor. In instances where the cumulative sum of provisional payments already paid during a particular evaluation period is greater than the

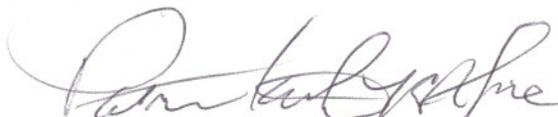
FDO's final determination for that period, the contractor shall be required to liquidate the debt as prescribed in FAR 32.6, *Contract Debts*.

4. Other SMC Guidance.

- a. CPAF contracts with base fee. It is the general policy of SMC/PK that provisional award fee payments will not be used on any CPAF contract that provides for the payment of a base fee. However, Contracting Officers may allow provisional award fee payments on contracts that contain a base fee only if adequate consideration is received (as documented in the contract file).
- b. CPAF contracts only. Provisional award fee payments apply only to CPAF contracts.
- c. Not more frequently than quarterly. Provisional award fee payments should normally not occur more frequently than quarterly, and in no case more frequently than monthly. Permission from SMC/PK shall be obtained for any payments made more frequently than quarterly.

5. CPAF contracts authorizing the use of provisional award fee payments shall incorporate Provisional Award Fee Payment language in the award fee plan. Sample language is attached.

6. Questions concerning this memorandum may be addressed to Ms. Melissa Duong at (310) 363-6996, or Mr. Tim Brown at (310) 363-6984.



PATRICIA KIRK-McALPINE, SES
Director of Contracting

Attachment:
Sample Provisional Award Fee Language

**Provisional Award Fee Payment
Sample Language**

(1) Provisional Award Fee Amounts. Pending a final determination by the Fee Determining Official (FDO) of the total amount of award fee earned for an evaluation period, a portion of the available award fee for that period may be paid to the contractor on a _____ [*Insert the frequency of provisional payments, not more than quarterly unless approved by SMC/PK*] basis after an assessment has been made. The portion paid, if any, will be determined by the Contracting Officer (after coordination with the FDO, or designee). The provisional award fee payments are limited as follows:

(a) For the initial award fee period, not more than _____ [*Insert provisional payment percentage, not to exceed 50% per DFARS 216.405-2*] of the award fee available for that period; and,

(b) For subsequent award fee periods, not more than _____ [*Insert provisional payment percentage, not to exceed 80% per DFARS 216.405-2*] of the evaluation score for the prior evaluation period times the award fee available for the current period, e.g., if the Contractor received 90% of the award fee available for the prior evaluation period, provisional payments for the current period shall not exceed 72% ($90\% \times 80\% = 72\%$) of the award fee available for the current period.

[Please note these paragraphs will need to be further expanded if there is more than one provisional payment for each award fee period. The percentages in paragraphs a and b above represent the cumulative percentage for the affected award fee period. The number and amount of provisional payments within an entire award fee period shall be at the discretion of the Contracting Officer.]

(2) Provisional Assessment. The determination and methodology for determining the provisional award fee amount are unilateral decisions made solely at the discretion of the Government. The award fee portion paid, if any, shall be commensurate with the work accomplished. If, during contract performance, the Contracting Officer determines that the contractor will not achieve a level of performance commensurate with the scheduled provisional award fee disbursement, payment of provisional award fee will not be made for that period, and may be unilaterally discontinued or reduced in such amounts as the Contracting Officer (after coordination with the FDO, or designee) deems appropriate. The Contracting Officer shall notify the contractor in writing if such a determination is made.

(3) Final Assessment. At the end of the evaluation period, the formal award fee evaluation process shall be conducted, and the FDO will determine the earned award fee amount for that period. Based on the FDO determination, the difference between the cumulative sum of the provisional payments and the FDO's final determination for that period is authorized for payment to the Contractor. In the event the amount of award fee earned, as determined by the Fee Determining Official, at the end of the award fee period,

is less than the sum of the provisional payments made for that period, the contractor shall repay the difference (with interest) to the Government in the manner directed by the Contracting Officer. For purposes of FAR 52.232-17, "Interest," the due date shall be the date of the overpayment (i.e., date of the most recent provisional payment in the affected award fee period).

(4) Modification. The Contracting Officer will issue a contract modification that identifies the amount of the provisional award fee payment. The modification will obligate the necessary funds and provisionally increase the contract value for each provisional payment. The modification implementing the FDO's final determination of the award fee earned for the period must definitize the provisional adjustments to the contract.

(THE END)