UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer and
Assistant Secretary for Administration
Washington, D.C. 20230

JUN 29 2009

PROCUREMENT MEMORANDUM 2009-12

ACTION

MEMORANDUM FOR: **BUREAU PROCUREMENT OFFICIALS**
HEADS OF CONTRACTING OFFICES

FROM: Helen Hurcombe
Senior Procurement Executive
And Director, Office of Acquisition Management

SUBJECT: Tracking and Oversight of Contracts with Award and Incentive Provisions

Background

The use of incentive and award fee/term provisions can provide significant benefits to the agency if utilized and managed appropriately. As well, use of these provisions requires a greater level of oversight and vigilance on the part of the Contracting Officer and the Contracting Officer's Representative. Problems associated with the use and execution of these contract provisions have been the topic of numerous Government Accountability Office (GAO) and Office of Inspector General (OIG) reports and are of interest to Congress.

The Federal Acquisition Regulation (FAR) (Subparts 16.4 and 16.5), the Commerce Acquisition Regulation (CAR) (Subpart 1316.4), Procurement Memorandum 2008-03 and the Office of Federal Procurement Policy (OFPP) Memorandum, *Appropriate Use of Incentive Contracts* (December 4, 2007) provide guidance on the use and administration of contracts with award and incentive provisions.

Based on the number of reports and inquiries received regarding usage of award and incentive provisions in Department of Commerce contracts, the Office of Acquisition Management (OAM) has been directed to establish a process to identify, track and oversee such contracts.

Purpose

The purpose of this Procurement Memorandum is to establish procedures to identify, track and oversee acquisitions which include award fee, award term and incentive provisions.

Applicability

This policy applies to all contracts containing award fee, award term or incentive provisions regardless of dollar value.

Required Actions

- **Acquisition Plans and Review Boards**
  Consistent with the requirements of Procurement Memorandum 2008-03, the intent to utilize provisions for award fee, award term or incentive provisions in any acquisition regardless of dollar value must be addressed in the associated acquisition plan and must be presented to the appropriate Departmental review board. Specifically:

  - Acquisitions over $75,000,000 (or those below this threshold specifically designated by the Deputy Secretary) must be submitted to the Department of Commerce Investment Review Board for review.

  - Acquisitions between $10,000,000 and $75,000,000 must be submitted to OAM for a paper review.

  - Acquisitions below $10,000,000 containing award fee, award term or incentive provisions shall be reviewed and approved in accordance with Bureau-level policy.

- **New Contracts and Orders**
  Effective with the date of this Procurement Memorandum, Contracting Officers shall comply with the following submission requirements:

  - A copy of any contract or order awarded under FAR Parts 8, 12, 13, 14, 15, 19, and 36 containing any award fee, award term, or incentive provisions shall be provided immediately upon award to OAM.

  - A copy of any management plan governing the operation of the award fee, award term, or incentive process under the contract, or modification thereto, shall be provided immediately upon implementation to OAM.

  - A copy of all fee/term determination decisions (with supporting documentation) and implementing modification to the contract during the life of the contract shall be provided immediately upon execution to OAM.

  - A copy of any GAO or OIG reports (draft and final versions) reflecting audit or investigation of any contract or order containing award fee, award term or incentive provisions and the agency's response to such report shall be provided to OAM upon receipt of the report and upon release of the agency's response.

- **Existing Contracts and Orders**
  Not later than August 31, 2009, the Bureau Procurement Official shall provide copies of the following documents to OAM for contracts or orders awarded under FAR Parts 8, 12, 13, 14, 15, 19 and 36 containing award fee, award term or

incentive provisions which are currently in effect and will continue in effect beyond September 30, 2009:

- Copy of the contract/order and all modifications;
- Copy of any management plan, and amendments thereto governing the operation of the award fee, award term or incentive provisions;
- Copy of all fee/term determination decisions (with supporting documentation) made during the life of the contract through August 31, 2009; and
- Copy of any GAO or OIG reports (draft and final versions) reflecting audit or investigation of any contract or order containing award fee, award term, or incentive provisions and the agency's response which has been issued through August 31, 2009.

For each contract or order awarded under FAR Parts 8, 12, 13, 14, 15, 19, and 36 containing award fee, award term or incentive provision which are currently in effect and will continue in effect beyond September 30, 2009, the following tshall be provided to OAM for the period September 1, 2009, through the final date of the period of performance:

- A copy of any modification to the contract or order shall be submitted immediately upon execution by the Contracting Officer.
- A copy of any amendments to any management plan governing the operation of the award fee, award term or incentive provisions shall be submitted immediately upon execution by the designated official.
- A copy of any fee/term determination decisions (with supporting documentation) made through the remainder of the contract performance period after August 31, 2009 shall be submitted immediately upon decision.
- A copy of any GAO or OIG reports (draft and final versions) reflecting audit or investigation of any contract or order containing award fee, award term or incentive provisions and the agency's response which is issued after August 31, 2009, shall be submitted upon receipt of the report and upon issuance of the agency's response.

- **Tracking and Monitoring**
  The Office of Acquisition Management Risk Management staff will establish and maintain a database of all department contracts and orders containing award fee, award term and incentive provisions. This information will be utilized to respond to inquiries and to monitor the use and execution of such provisions. The Risk Management staff will periodically review Federal Procurement Data System

records to validate that Bureaus have identified and submitted the required documents.

- **Submission Requirements**
  The submissions requirements under this policy shall be submitted to the Senior Procurement Executive electronically or in hard copy at:

  U. S. Department of Commerce
  Senior Procurement Executive
  Office of Acquisition Management
  1401 Constitution Ave., NW
  HCHB Room 6422
  Washington, DC 20230

If you have any questions regarding this policy, please contact Lori Donovan at ldonovan@doc.go or (202)482-1716.

cc: Acquisition Community
Acquisition Council