# Redesigning Federal Contracting Incentives

# Legal Summary

This essay is a valid legal argument-style essay advocating for the benefits and opportunities to transition government contracting regulations from Earned Value Management (EVM)-based performance incentive fees to a product-focused incentive concept. This essay integrates legal reasoning grounded in the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), and other statutory authorities, while addressing foreseeable counterarguments and offering a compelling case for reform. The argument is structured to persuade policymakers, contracting officers, and stakeholders of the merits aligned with this concept. This is not a scientific research project but rather a legal business case argument advancing modernization of robust inefficient government systems.

## A Legal Argument for Enhanced Benefits and Opportunities

### Shifting to Product-Focused Incentives in Government Contracting:

#### Introduction

Government contracting, governed by the FAR and supplemented by agency-specific rules like the DFARS, the PGI, and other relevant policies seek to balance cost efficiency, timely delivery, and mission success. The current reliance on Earned Value Management (EVM) for performance incentive fees, as mandated by [FAR 34.201](https://www.acquisition.gov/far/34.201) and [DFARS 234.201](https://www.acquisition.gov/dfars/234.201-policy.), prioritizes cost and schedule adherence. Process metrics that often overshadow the initial goal include delivering functional, high-quality, mission critical innovative products. This essay argues that amending these regulations to adopt a product-focused incentive concept, as proposed through revisions to [FAR 16.401](https://www.acquisition.gov/far/16.401), [DFARS 216.401](https://www.acquisition.gov/dfars/216.401-general.), [PGI 216.401](https://www.acquisition.gov/dfars/216.401-general.), FARA, and supporting guidance, offers significant benefits and opportunities. Such a shift aligns contractor incentives with mission outcomes, fosters innovation, reduces administrative burdens, and enhances acquisition flexibility, all while remaining legally viable under existing statutory frameworks like [41 U.S.C. § 3307](https://uscode.house.gov/view.xhtml?req=granuleid:USC-2015-title41-section3307&num=0&edition=2015) and the [Clinger-Cohen Act](https://www.cio.gov/handbook/it-laws/clinger-cohen-act/). Despite potential challenges, the advantages outweigh the risks, making this reform a critical step forward for government contracting.

#### Argument I: Alignment with Mission Objectives Enhances Procurement Effectiveness

The primary benefit of a product-focused incentive model is its alignment with the government’s core objective: acquiring products and services that fulfill mission needs. Under the current EVM framework, [FAR 16.405-1](https://www.acquisition.gov/far/16.405-1), among others, tie incentive fees to cost and schedule variances, incentivizing contractors to optimize process efficiency often at the expense of the desired product quality. For instance, a contractor might meet EVM targets by reducing testing time, delivering a technically compliant but unreliable or flawed system. In contrast, a product-focused approach, authorized by proposed [FAR 16.401(f)](https://www.acquisition.gov/far/16.401) and [DFARS 216.401](https://www.acquisition.gov/dfars/216.401-general.)(e), rewards contractors for exceeding mission-critical benchmarks such as a satellite’s signal accuracy or a software system’s uptime.

Legally, this shift is supported by [41 U.S.C. § 3306(a)(3),](https://uscode.house.gov/view.xhtml?req=(title:41%20section:3306%20edition:prelim)) which mandates that acquisition planning prioritize “performance standards” tied to agency goals. The Clinger-Cohen Act ([40 U.S.C. § 11302](https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title40-section11302&num=0&edition=prelim)) further reinforces performance-based acquisition, emphasizing measurable outcomes over process compliance. By tying fees to product outcomes (e.g., $X bonus for 99% reliability), agencies can ensure contractors prioritize mission success over bureaucratic box-checking and fungible number manipulations. This creates an opportunity to procure systems that not only meet specifications but exceed expectations, enhancing national defense, public safety, and service delivery while leveraging a limited oversight technique for accountability.

#### Argument II: Fostering Innovation Through Outcome-Based Incentives

A product-focused incentive structure unlocks opportunities for contractor innovation, a cornerstone of modern acquisition policy. [FAR 1.102-2(c)](https://www.acquisition.gov/far/1.102-2) encourages “innovation and creativity” in contracting, yet EVM’s rigid cost/schedule focus can stifle it. Contractors, fearing fee reductions for cost overruns, may avoid risky but potentially transformative approaches. For example, developing a novel propulsion system might delay schedules, penalizing the contractor under EVM despite its long-term value.

By contrast, product-focused incentives, as enabled by proposed FAR 16.402-2 revisions, reward breakthroughs in functionality or quality, such as, a fee bonus for exceeding a weapon system’s range target. This aligns with [FAR 1.102-5(e),](https://www.acquisition.gov/far/1.102-5) which grants agencies flexibility to tailor strategies to specific needs. Legally, such incentives comport with 41 U.S.C. § 3307’s emphasis on promoting competition and innovation. The opportunity here is clear for innovation in which contractors, freed from EVM’s process shackles, can pursue cutting-edge solutions, positioning the government as a leader in technological advancement rather than a follower of outdated metrics.

#### Argument III: Reduction of Administrative Burden and Cost Savings

The administrative overhead of EVM imposes significant costs on both government and contractors, detracting from resources better spent on product development. [DFARS 252.234-7002](https://www.acquisition.gov/dfars/252.234-7002-earned-value-management-system.), [DFARS 234.201(c)](https://www.acquisition.gov/dfars/234.201-policy.), and [ANSI/EIA-748](https://www.ndia.org/-/media/sites/ndia/divisions/ipmd/division-guides-and-resources/ndia_ipmd_intent_guide_ver_d_aug282018.ashx?la=en) requires contractors to maintain complex EVM systems, submit detailed reports, and undergo compliance reviews—costs often passed to taxpayers. The Government Accountability Office (GAO) has noted that EVM implementation can exceed $1 million annually for large contracts, diverting funds from mission priorities.

A product-focused model, with proposed waivers under [FAR 34.201(c)](https://www.acquisition.gov/far/34.201) and [DFARS 234.201(c)](https://www.acquisition.gov/dfars/234.201-policy.) streamlines this process. By replacing EVM reporting with targeted product metrics with test results or operational data, agencies reduce compliance burdens while maintaining accountability. [FAR 1.102(d)](https://www.acquisition.gov/far/1.102-2) prioritizes “economy and efficiency,” and this reform delivers both: lower overhead costs and a focus on tangible deliverables. The opportunity is twofold: cost savings for taxpayers and reallocation of contractor resources toward innovation and quality, amplifying the value of each contract dollar.

#### Argument IV: Enhanced Flexibility for Diverse Acquisitions

Government contracting spans a vast array of needs, from software to satellites, yet EVM applies a one-size-fits-all approach ill-suited to this diversity. [FAR 34.201](https://www.acquisition.gov/far/34.201) mandates EVM for major acquisitions, but its cost/schedule focus fits poorly with agile software development or service contracts where outcomes (e.g., user satisfaction) matter more than process. A product-focused incentive model, supported by tailored metrics under proposed [PGI 216.401](https://devfcs.acquisition.gov/dfars/part-216-types-contracts#DFARS_SUBPART_216.4), offers flexibility to adapt incentives to each acquisition’s unique goals and states as referenced in [FAR 1.102-5](https://www.acquisition.gov/far/part-1#FAR_1_102_2) “the contracting officer must have the authority to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract.”

Legally, [FAR 1.602-3(b)(2)](https://www.acquisition.gov/far/1.602-3) and [DFARS 201.404](https://www.acquisition.gov/dfars/201.404-class-deviations.) permit deviations for “unusual circumstances,” providing a testing ground for this approach. The opportunity lies in crafting contracts that reflect real-world priorities, for example, incentivizing cyber resilience in IT systems or durability in infrastructure projects. This adaptability ensures agencies can respond to evolving threats and technologies, a necessity in an era of rapid change. These two regulations legally lay the business case and testing avenue for implementing the proposed shift from the routine performance (process) focused incentive awards to the argued product focused incentive-based argument.

#### Counterarguments and Rebuttals

Critics may argue that abandoning EVM risks losing cost and schedule oversight, potentially inflating budgets or delaying delivery. While valid, this concern is mitigated by retaining baseline cost/schedule monitoring (e.g., simplified reporting) as a secondary safeguard, as proposed in the FAR amendments. Product-focused metrics, validated by independent testing, provide equal or greater accountability by focusing on what matters most to mission critically which is always the “product end result”. Furthermore, the performance-based model will still be mandated per relevant regulations for the disbursement of periodic reimbursable costs on cost type contracts and will not affect base reimbursement allowable expenses. The “end product” quality focused approach will only apply to the “incentive award fee” and will be detached from the monthly performance cost metrics completely. The incentive award fee, also known as the sole profit margin in SAP (standard account practices), will only be awarded post product delivery. The increased costs from performance data typically dilute the product quality. The performance data and abuses of the reported data have morphed into the primary objective in all contracts due to the direct link of the profit award dependent on it. Logic and reason demand this system be corrected and place the value and profit on the goal of the contracts purpose to realign this complex system of interdependence.

Another objection is that defining product outcomes is subjective or complex compared to EVM’s standardized metrics, risking disputes. However, [FAR 15.304](https://www.acquisition.gov/far/15.304) already requires clear evaluation criteria in solicitations, and industry benchmarks (e.g., ISO standards) can ensure objectivity. Pilot programs under [FAR 1.404](https://devfcs.acquisition.gov/far/1.404) class deviations can refine these metrics, proving their feasibility before full adoption. Shifting the profit award to the product eliminates the hostilities and conflicting environment between contractors and the government during the execution of the contract and shifts the accountability and ownership of the total program objective to the correct operational authority—the Contractor. With all the rules, laws, and policies protecting the contractor from unnecessary government intrusion, withholding the profit award until a determination on “end product” is achieved, which is by design an integrated collection of the entire contractor’s performance, thereby provides the best objective measurement for the tangible customer-valued product. A simple scale can be formulated and aggregated by new advanced software and AI technologies to assess the products form, fit, quality, safety, and function with the added benefit of removing human bias or corruption.

#### Conclusion

The transition from EVM-based performance incentive fees to a product-focused concept offers transformative benefits and opportunities for government contracting. By aligning incentives with mission objectives, fostering innovation, reducing administrative costs, and enhancing flexibility, this reform strengthens the acquisition system while honoring legal mandates under the FAR, DFARS, and supporting statutes. The risks, loss of oversight or metric complexity, are manageable through phased implementation and robust design. Policymakers should seize this opportunity to modernize contracting, ensuring taxpayer dollars yield not just compliance, but excellence and mission critical innovation. Amending, [FAR 16.401](https://www.acquisition.gov/far/16.401), [DFARS 216.401](https://www.acquisition.gov/dfars/216.401-general.), and related guidance is not just legally sound—it’s a strategic imperative for a more effective government and advanced warfighting capabilities.

### Additional Resources:

[Redesigning Federal Contracting Incentives PowerPoint](https://doge.ideascale.com/c/govtefficiency/idea/183321)

Recommended Regulatory and Policy Changes- Under Construction