



1. PURPOSE

The purpose of this document is to provide SPAWAR Claimancy policy, responsibilities, and procedures for the precontract authorization and contractual recognition of costs incurred by contractors prior to contract, modification, or delivery order award in accordance with [FAR 31.205-32](#).

Related guidance is available under CMPG [2.2.4.2 Precontract/Anticipatory Costs](#).

2. POLICY

2.1 Authorization

- A. Precontract or anticipatory costs are authorized only in those instances that warrant an exception to the standard procedures for award of contract actions.
- B. Requests by program managers/technical codes for precontract cost authorization shall not be used as a routine solution for inadequate planning.
- C. Program managers/technical codes and contracting officers shall not tacitly or overtly authorize or otherwise encourage contractors to begin work and incur costs without benefit of a formal contractual agreement, except in accordance with the procedures of this instruction.
- D. If it can be demonstrated that cost incurrence prior to award of the anticipated contract is essential to achieve the contract delivery schedule, and that failure to meet this schedule will adversely impact the Government, the PCO may authorize anticipatory costs in accordance with the procedures below.

2.2 Alternatives

- A. In examining the alternatives for meeting urgent requirements, the PCO and the program manager should also consider whether issuing a letter contract ([FAR 16.603](#)) is a more appropriate solution.
- B. Factors to consider in choosing one of these two alternatives include the following:
 - 1. Schedule:
 - a. Authorizing anticipatory costs should be considered a short-term solution.
 - b. The longer the period of time between authorization and contract/modification award, the more appropriate the use of a letter contract action will be. Otherwise, the lack of cost control over an extended period could place the government at a greater financial and legal risk.
 - 2. Cost ratio:
 - a. Anticipatory costs should cover a relatively small portion of the anticipated total contract amount.
 - b. As the ratio of projected incurred costs to total estimated costs increases, the use of a letter contract may be more appropriate. Otherwise, the contract may take the form of an invoice for work essentially completed.

3. RESPONSIBILITIES

3.1 PCO/Contract Specialist

- A. Determines whether recognition of pre-contract costs or a letter contract is more appropriate.



3.2 Program Manager

- A. Ensures adequate contract award lead time via formal acquisition plans and individual procurement request planning.
- B. Prevents precontract performance and cost incurrence without benefit of a formal contract arrangement with SPAWAR.
- C. Assists the contracting officer in determining whether issuing a letter contract is a more appropriate solution.

4. PROCEDURE

4.1 Contractor Notifies PCO

- A. **Contractor** provides notification to the PCO that they have been incurring costs without prior anticipatory cost authorization.
- B. **PCO** immediately:
 - 1. Provides written notice to the contractor that the Navy is under no obligation to reimburse the contractor and that they are working at their own risk;
 - 2. Consults with the cognizant program office/technical code before determining whether or not to authorize anticipatory costs; and
 - 3. If an increase to a previously approved anticipatory cost limitation is requested, follows paragraph [4.2\(D\)](#) below.

4.2 Documentation and Authorization

- A. **PM/Tech Code** ensures the formal Procurement Request (PR) or Modification Request (MR) including evidence that funds are available has been received by the cognizant contracting office.
 - 1. The funding document should reflect a severable/non-severable determination, type of funding, and expiration date.
 - 2. If an unauthorized commitment exists, follow [FAR 1.602-3](#) and the [Ratification of Unauthorized Commitments](#) SCPPM. ✓
- B. **PM/Tech Code** requests authorization of anticipatory costs (unless waived, in rare exceptions, by the PCO) via a memorandum signed IAW [Approvals](#) to the cognizant PCO requesting authorization of anticipatory costs. See [Toolbox](#) for sample memos, which shall include:
 - 1. The factual information substantiating the necessity for a contractor to proceed with effort prior to contract award,
 - 2. The requested start date if such effort,
 - 3. The total time period of the advance effort, and
 - 4. The cost limitation.
- C. **Contracting Officer/Contract Specialist** determines whether or not the information in the program manager's/technical code's request for authorization of anticipatory costs is adequate to support such an action.
 - 1. If the request is not justified, the Contracting Officer shall notify the program manager/technical code in writing.
 - 2. If the information supports the request, proceed to the next step.
- D. **Contracting Officer/Contract Specialist** ensures that the following documents are in, or have been obtained, for the contract file:
 - 1. A sole source J&A (if appropriate - see [FAR 6.302](#)), developed and approved IAW the [Justification and Approval](#) SCPPM. ✓
 - 2. Claimancy funding for the amount of anticipatory cost authorization, or concurrence of the program manager's/technical code's request for anticipatory cost authorization, indicating that funds are still available.
- E. **Contracting Officer/Contract Specialist** obtains approval to authorize anticipatory costs from one level above that of the cognizant contracting



- officer, and provide a copy to the program manager/technical code (see [Toolbox](#) for sample).
- F. **Contracting Officer/Contract Specialist** authorizes anticipatory costs using one of the following methods (see [Toolbox](#) for samples):
 - 1. An Advanced Agreement signed by both parties; or
 - 2. An Allowability of Anticipatory Costs letter to the contractor, providing SPAWAR’s position concerning costs incurred before award.
 - G. **Contracting Officer/Contract Specialist** limits pre-award authorization of anticipatory cost expenditures. The contractor shall not be authorized to expend more than 25% of the anticipated contract amount prior to award, unless a waiver for the greater amount is approved two levels above the Contracting Officer.
 - H. J&A? If so, **Contracting Officer/Contract Specialist** recognizes costs initially incurred by a contractor before execution of the J&A. Costs initially incurred by a contractor, at their own risk, prior to approval of the J&A may be recognized under an authorization of anticipatory costs once the J&A is signed.
 - I. **Contracting Officer/Contract Specialist** inserts the SPAWAR Component clause 5252.231-9200 “Anticipatory Costs” in any contract for which anticipatory costs have been authorized. (See [SPAWAR Clausebook](#).)

5. APPROVALS

Document	Approval Authority
Memorandum	PD, PEO, Technical Directorate Head, or Technical Code (as appropriate)
Authorization of Anticipatory Costs	Branch Head
Letter/Notice to Contractor	PCO

6. TOOLBOX

6.1 SPAWAR

6.1.1 HQ AND SSC-ATLANTIC

- A. [PM/Tech Code’s Memo request for Authorization of Anticipatory Costs](#)
- B. [PCO’s Memo request for Authorization of Anticipatory Costs](#)
- C. [Advance Agreement](#)
- D. [Sample Letters to Contractor](#)

6.1.2 SSC-PACIFIC-SPECIFIC

- A. [Determination and Findings \(D&F\) for Letter Contracts](#)
- B. [Letter for Letter Contracts](#)
- C. [Letter for Pre-Contract Costs](#)
- D. [Letter for Pre-Task/Delivery Order Costs \(after quote\)](#)
- E. [Letter for Pre-Task/Delivery Order Costs \(prior to quote\)](#)

6.2 Related SCPPMs

- A. [Ratification of Unauthorized Commitments](#)
- B. [Justification and Approval](#)



7. CHANGE HISTORY

Date	Description of Changes
June 2016	Content formatted and reorganized. List schema standardized. Links fixed. Templates added as attachments vice appended.
November 2012	Last version created in old format. Links were updated in the Toolbox.

Updated material is highlighted by *purple text* and an Alert/New  icon.