



National Aeronautics and  
Space Administration  
Washington, DC 20546

# Procurement Class Deviation

PCD 25-53

DECEMBER 19, 2025

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## CLASS DEVIATION FROM FEDERAL ACQUISITION REGULATION (FAR) 16 AND NASA FAR SUPPLEMENT (NFS) PARTS 1816 TO IMPLEMENT THE REVOLUTIONARY FAR OVERHAUL (NASA Case 2025-N057)

**PURPOSE:** To provide a Class Deviation from the FAR to implement the FAR Council's model deviation text to FAR Part 16, Types of Contracts, and deviation to NFS Part 1816, Types of Contracts.

**BACKGROUND:** On April 15, 2025, the Executive Order (E.O.) 14275, ["Restoring Common Sense to Federal Procurement"](#) was signed. Section 2 of the E.O. establishes the policy that the FAR "should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed." To implement E.O. 14275, the Office of Federal Procurement Policy (OFPP) is leading the **Revolutionary FAR Overhaul (RFO)** initiative. This effort is supported by the FAR Council (the Council) member agencies—which includes General Services Administration, Department of War, NASA, along with other agencies. In line with the E.O., the initiative aims to eliminate unnecessary regulations and policies across all levels of the federal government.

The Office of Management and Budget (OMB) memorandum, M-25-25 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, provided additional guidance to federal agencies regarding the FAR overhaul.

**FAR Streamlining.** As part of the RFO, the FAR will be streamlined to include only statutory requirements, while non-statutory content will move to new buying guides, collectively forming the Strategic Acquisition Guidance (SAG). The Council will first issue model deviation guidance by FAR Part, followed by formal rulemaking through the notice-and-comment process. Agencies will have 30 days to issue class deviations based on the model text once it is released.

**Streamlining Agency Acquisition Supplements.** Agencies must streamline their FAR supplements by removing regulations not based on statute or executive orders and aligning with the FAR Council's deviation guidance. Supporting policies must also be updated to reflect these changes. This approach ensures the NASA FAR Supplement (NFS) remains consistent with the streamlined FAR.

**FAR Buying Guides and NFS Companion Guide (CG) (coming soon).** As the FAR and the NFS are streamlined, helpful non-regulatory content will be moved to new FAR Buying Guides and NFS CG. These guides are intended to offer practical instructions and best practices for implementing effective contracting methods.

RFO Part 16, Types of Contracts, model deviation was released by the FAR Council. RFO Part 16 prescribes policies and procedures for selecting contract type(s) appropriate to the circumstances of the acquisition. Except for limited instructions regarding the placement of task and delivery orders, the entirety of this part applies to the pre-solicitation phase and is meant to guide in acquisition planning. Burdensome, duplicative, or outdated language and language not required by statute have been removed from FAR Part 16. This plain language version of FAR Part 16 shall be adhered to.

To align with the RFO FAR Part 16, the NFS 1816, is revised to remove non-statutory and outdated language. This deviation implements the revised RFO Part 16 and NFS Part 1816.

PCD 10-17, Class Deviation to NFS 1816.405-274: Award Fee Evaluation Factors are not directly tied to Earned Value Management Metrics, dated November 15, 2010 has been incorporated in this PCD, and therefore, hereby rescinded.

***GUIDANCE:***

(1) Contracting officers shall follow the RFO Part 16 deviated text instead of FAR Part 16 as codified at 48 CFR Chapter 1, Subchapter C, Part 16. The FAR Council's RFO text is available at [FAR Overhaul - Part 16 | Acquisition.GOV](#).

(2) COs shall also follow the NFS Part 1816 deviated text enclosed within this deviation.

***ACTION REQUIRED BY CONTRACTING OFFICERS:*** Effective immediately, ensure that new contract actions issued on or after the effective date complies with the policy in the PCD.

***EFFECTIVE DATE:*** This PCD is effective as dated and shall remain in effect until implemented in the FAR and NFS or otherwise rescinded.

***PROVISION AND CLAUSE CHANGES:*** This deviation includes a revision to NFS clauses 1852.216-73, Estimated Cost and Cost Sharing, 1852.216-75, Payment of Fixed Fee, 1852.216-76, Award Fee for Service Contracts, 1852.216-77, Award Fee for

End Item Contracts, 1852.216-78, Firm-Fixed-Price, 1852.216-80, Task Ordering Procedure, and 1852.216-89, Assignment and Release Forms.

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Changes in the NFS Deviation text below are identified as follows:  
Deletions shown as ~~strike-throughs~~; and additions shown as **[bold in brackets]**.

## PART 1816 TYPES OF CONTRACTS

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## PART 1816 TYPES OF CONTRACTS

### **1816.001[-70] [NASA] Definitions.**

As used in this part—

“*Earned Award Fee*” means the payment of the full amount of an award fee evaluation period’s score/rating.

“*Term-determining official*” means the designated Agency official who reviews the recommendations of the Award Term Board in determining whether the contractor is eligible for an award term.

“*Unearned Award Fee*” means the difference between the available award fee pool amount for a given award fee evaluation period less the contractor’s earned award fee amount for that same evaluation period.

### **Subpart 1816.1—Selecting Contract Types**

#### **~~1816.104 Factors in selecting contract types.~~**

#### **~~1816.104-70 Contract type for performance based acquisition (PBA).~~**

~~—(a) PBA is defined in FAR 2.101 and discussed in FAR 37.6. Although FAR Part 37 addresses services contracts, PBA is not limited to these contracts. PBA is the preferred way of contracting for all supplies and services at NASA. Generally, when contract performance risk under a PBA specification can be fairly shifted to the contractor to allow for the operation of objective incentives, a contract type with objectively measurable incentives (e.g., FFP, FPIF, or CPIF) is appropriate. However, when contractor performance (e.g., cost control, schedule, or quality/technical) is best evaluated subjectively using quantitative measures, a CPAF contract may be used.~~

~~—(b) A PBA is a completion form of contract (something is accomplished). Term/level-of-effort, time and materials and labor hour contracts should include, when feasible, features that are performance oriented. However, those contracts may not be characterized as PBA.~~

### **Subpart 1816.2—Fixed-Price Contracts**

#### **1816.202 Firm-fixed-price contracts.**

#### **1816.202-70 NASA contract clause.**

The contracting officer ~~shall~~**[must]** insert the clause at 1852.216-78, Firm-Fixed-Price, in firm-fixed-price solicitations and contracts.- Insert the appropriate amount in the resulting contract.

## **~~1816.203 Fixed-price contracts with economic price adjustment.~~**

### **~~1816.203-4 Contract clauses.~~**

~~—(a) In addition to the determination required by FAR 16.203-3, the contracting officer shall coordinate with the installation's Deputy Chief Financial Officer (Finance) before exceeding the ten-percent limit in paragraph (c)(1) of the clauses at FAR 52.216-2 and 52.216-3 and paragraph (c)(4) of the clause at FAR 52.216-4.~~

~~—(d)(2) Contracting officers shall contact the cognizant Enterprise Pricing Office Pricing Liaison Advocate within the Headquarters Office of Procurement, Enterprise Services Analysis Division, for specific guidance on preparing clauses using cost indexes. Such clauses require advance approval by the head of contracting activity.~~

~~[PN 23-08]~~

## **Subpart 1816.3—Cost-Reimbursement Contracts**

### **1816.303-70 Cost-sharing contracts.**

#### **(a) *Cost-sharing with for-profit organizations.***

(1) Cost sharing by for-profit organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal; and may be accepted in any other contract when offered by the proposing organization. -The requirement for cost-sharing may be waived when the contracting officer determines in writing that the contractor has no commercial, production, education, or service activities that would benefit from the results of the research, and the contractor has no means of recovering its shared costs on such projects.

(2) The contractor's cost-sharing may be any percentage of the project cost. -In determining the amount of cost-sharing, the contracting officer ~~shall~~**[must]** consider the relative benefits to the contractor and the Government. -Factors that should be considered include—

(i) The potential for the contractor to recover its contribution from non-Federal sources;

(ii) The extent to which the particular area of research requires special stimulus in the national interest; and

(iii) The extent to which the research effort or result is likely to enhance the contractor's capability, expertise, or competitive advantage.

#### **(b) *Cost-sharing with not-for-profit organizations.***

(1) Costs to perform research stemming from an unsolicited proposal by universities and other educational or not-for-profit institutions are usually fully reimbursed. When the contracting officer determines that there is a potential for significant benefit to the institution cost-sharing will be considered.

(2) The contracting officer ~~will normally~~**[should]** limit the institution's share to no more than 10 percent of the project's cost.

#### **(c) *Implementation.***

Cost-sharing ~~shall~~**[must]** be stated as a minimum percentage of the total allowable costs of the project. -The contractor's contributed costs may not be charged to the Government under any

other contract or grant, including allocation to other contracts and grants as part of an independent research and development program.

**~~1816.306 Cost-plus-fixed-fee contracts.~~**

~~—(d) Completion and term forms.~~

~~—(4) Term form contracts should include, when feasible, features that are performance-oriented. However, those contracts may not be characterized as PBA.~~

**1816.307[5] Contract clauses.**

(a)(1) In paragraph (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216-7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215-2, Audit and Records–Negotiation.

~~—(b) In solicitations and contracts containing the clause at FAR 52.216-8, Fixed Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.~~

~~—(d) In solicitations and contracts containing the clause at FAR 52.216-10, Incentive Fee, the Schedule shall include appropriate terms, if any, for provisional billing against fee.~~

**1816.307[5]-70 NASA contract clauses.**

(a) The contracting officer ~~shall~~**[must]** insert the clause at 1852.216-73, Estimated Cost and Cost[-]-Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303-70.

(b) The contracting officer ~~shall~~**[must]** insert the clause substantially ~~as stated at~~ **[the same as]** 1852.216-74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts.

(c) The contracting officer may insert the clause at 1852.216-75, Payment of Fixed Fee, in cost-plus-fixed-fee contracts.

(d) The contracting officer ~~shall~~**[must]** insert the clause at 1852.216-81, Estimated Cost, in cost-no-fee contracts that are not cost sharing or facilities contracts.

(e) Reserved.

(f) When FAR clause 52.216-7, Allowable Cost and Payment, is included in the contract, as prescribed at FAR 16.307[5](a), the contracting officer should include the clause at 1852.216-89, Assignment and Release Forms.

(g) As required by section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), use the clause at 1852.216-90, Allowability of Costs Incurred in Connection With a Whistleblower Proceeding—



- (1) In task orders entered pursuant to contracts awarded before September 30, 2013, that include the clause at FAR 52.216-7, Allowable Cost and Payment; and
- (2) In contracts awarded before September 30, 2013, that—
  - (i) Include the clause at FAR 52.216-7, Allowable Cost and Payment; and
  - (ii) Are modified to include the clause at 1852.203-71, Requirement to Inform Employees of Whistleblower Rights, dated June 2013 or later.

## **Subpart 1816.4—Incentive Contracts**

### **1816.401—General.**

—(a) See the [Award Fee Contracting Guide](#) for additional guidance on the organization and administration of award fee contracts.

—(d) Use of an award fee contract requires advance approval by the Senior Procurement Executive. Requests for approval, to use an award fee contract, shall be submitted to Headquarters Office of Procurement, Procurement Strategic Operations Division. Use of an incentive fee or award term contract shall be approved in accordance with FAR 16.401(d). Requests for use of an incentive contract shall be prepared using the applicable agency wide Determination and Findings (D&F) template. If a specific agency wide template does not exist, requests shall be prepared in accordance with FAR 1.704. Contracting officers shall provide a copy of approved D&Fs to the Headquarters Office of Procurement, Procurement Strategic Operations Division Director.

—(e)(3)(i) Fee Determining Official and Term Determining Official shall be the head of the contracting activity unless otherwise delegated in writing.

—(f) In accordance with FAR 16.401(f) for Cost Plus Award Fee or Fixed Price Award Fee type contracts, contracting officers shall complete evaluation information in the Award Fee Evaluation System module in the NASA Acquisition Internet Service. (See 1842.1503(e))

*[PN 18-01, PN 23-08]*

### **1816.402—Application of predetermined, formula type incentives.**

When considering the use of a quality, performance, or schedule incentive, the following guidance applies:

- (1) A positive incentive is generally not appropriate unless—
  - (i) Performance above the target (or minimum, if there are no negative incentives) level is of significant value to the Government;
  - (ii) The value of the higher level of performance is worth the additional cost/fee;
  - (iii) The attainment of the higher level of performance is clearly within the control of the contractor; and
  - (iv) An upper limit is identified, beyond which no further incentive is earned.
- (2) A negative incentive is generally not appropriate unless—

~~—— (i) A target level of performance can be established, which the contractor can reasonably be expected to reach with a diligent effort, but a lower level of performance is also minimally acceptable;~~

~~—— (ii) The value of the negative incentive is commensurate with the lower level of performance and any additional administrative costs; and~~

~~—— (iii) Factors likely to prevent attainment of the target level of performance are clearly within the control of the contractor.~~

~~—— (3) When a negative incentive is used, the contract must indicate a level below which performance is not acceptable.~~

## **~~1816.402-2 Performance incentives.~~**

### **~~1816.402-270 NASA technical performance incentives.~~**

~~—— (a) Pursuant to the guidelines in 1816.402, NASA has determined that a performance incentive shall be included in all contracts that are based on performance-oriented documents (see FAR 11.101(a)), except those awarded under the commercial product and commercial service procedures of FAR Part 12, where the primary deliverable(s) is (are) hardware with a total value (including options) greater than \$25 million. Any exception to this requirement shall be approved in writing by the head of the contracting activity. Performance incentives may be included in supply and service contracts valued under \$25 million, acquired under procedures other than Part 12, at the discretion of the contracting officer upon consideration of the guidelines in 1816.402. Performance incentives, which are objective and measure performance after delivery and acceptance, are separate from other incentives, such as cost or delivery incentives.~~

~~—— (b) When a performance incentive is used, it shall be structured to be both positive and negative based on performance after acceptance, unless the contract type requires complete contractor liability for product performance (e.g., fixed price). In this latter case, a negative incentive is not required. In structuring the incentives, the contract shall establish a standard level of performance based on the salient performance requirement. This standard performance level is normally the contract's target level of performance. No performance incentive amount is earned at this standard performance level. Discrete units of measurement based on the same performance parameter shall be identified for performance above and, when a negative incentive is used, below the standard. Specific incentive amounts shall be associated with each performance level from maximum beneficial performance (maximum positive incentive) to, when a negative incentive is included, minimal beneficial performance or total failure (maximum negative incentive). The relationship between any given incentive, either positive or negative, and its associated unit of measurement should reflect the value to the Government of that level of performance. The contractor should not be rewarded for above-standard performance levels that are of no benefit to the Government.~~

~~—— (c) The final calculation of the performance incentive shall be done when performance, as defined in the contract, ceases or when the maximum positive incentive is reached. When performance ceases below the standard established in the contract and a negative incentive is included, the Government shall calculate the amount due and the contractor shall pay the Government that amount. Once performance exceeds the standard, the contractor may request~~

payment of the incentive amount associated with a given level of performance, provided that such payments shall not be more frequent than monthly. When performance ceases above the standard level of performance, or when the maximum positive incentive is reached, the Government shall calculate the final performance incentive earned and unpaid and promptly remit it to the contractor.

—(d) When the deliverable supply or service lends itself to multiple, meaningful measures of performance, multiple performance incentives may be established. When the contract requires the sequential delivery of several items (e.g., multiple spacecraft), separate performance incentive structures may be established to parallel the sequential delivery and use of the deliverables.

—(e) In determining the value of the maximum performance incentives available, the contracting officer shall follow the following rules:

—(1) For a CPFF contract, the sum of the maximum positive performance incentive and fixed fee shall not exceed the limitations in FAR 15.404-4(c)(4)(i).

—(2) For an award fee contract:

—(i) The individual values of the maximum positive performance incentive and the total potential award fee (including any base fee) shall each be at least one third of the total potential contract fee. The remaining one third of the total potential contract fee may be divided between award fee and the maximum performance incentive at the discretion of the contracting officer.

—(ii) The maximum negative performance incentive for research and development hardware (e.g., the first and second units) shall be equal in amount to the total earned award fee (including any base fee). The maximum negative performance incentives for production hardware (e.g., the third and all subsequent units of any hardware items) shall be equal in amount to the total potential award fee (including any base fee). Where one contract contains both cases described above, any base fee shall be allocated reasonably among the items.

—(3) For cost reimbursement contracts other than award fee contracts, the maximum negative performance incentives shall not exceed the total earned fee under the contract.

#### **[1816.402 Award-Fee.]**

#### **1816.404[2-3] Fixed-price contracts with award fees.**

Section 1816.405-2[2-3] applies to the use of [fixed-price contracts with award fees (FPAF)] FPAF contracts as if they were CPAF contracts. -However, neither base fee (see 1816.405-274[2-471]) nor evaluation of cost control (see 1816.405-274[2-474]) apply[applies] to FPAF contracts.

#### **~~1816.405 Cost reimbursement incentive contracts.~~**

#### **1816.405-2[2-4] Cost-plus-award-fee (CPAF) contracts.**

#### **~~1816.405-270[2-470] CPAF contracts.~~**

(a) In addition to the items identified in FAR 16.401(e)(1)[16.402-1, D&Fs will][the determination and findings must] include a discussion of the other types of contracts

considered and ~~shall~~ indicate why an award fee incentive is the appropriate choice. -Award fee incentives should not be used on contracts with a total estimated cost and fee less than \$2 million per year. -Use of award fee incentive for lower-valued acquisitions may be authorized in exceptional situations such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(b) Except as provided in paragraph (c) of this section, an award fee incentive may be used in conjunction with other contract types for aspects of performance that cannot be objectively assessed. In such cases, the cost incentive is based on objective formulas inherent in the other contract types (e.g., FPI, CPIF), and the award fee provision should not separately incentivize cost performance.

(c) Award fee incentives ~~shall~~**[must]** not be used with a cost-plus-fixed-fee (CPFF) contract.

#### **1816.405-271[2-471] Base fee.**

(a) A base fee ~~shall~~**[must]** not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.405-273[402-473](a)). -In these circumstances, contractor performance during any award fee period is independent of and has no effect on subsequent performance periods or the final results at contract completion. For other contracts, such as those for hardware or software development, the procurement officer may authorize the use of a base fee not to exceed 3 percent. -Base fee ~~shall~~**[must]** not be used when an award fee incentive is used in conjunction with another contract type (e.g., CPIF/AF).

(b) When a base fee is authorized for use in a CPAF contract, it ~~shall~~**[must]** be paid only if the final award fee evaluation is "satisfactory" or better. ~~(See 1816.405-273 and 1816.405-275)~~**[(See 1816.402-473 and 1816.402-475)]** Pending final evaluation, base fee may be paid during the life of the contract at defined intervals on a provisional basis. -If the final award fee evaluation is "unsatisfactory", all provisional base fee payments ~~shall~~**[must]** be refunded to the Government.

#### **1816.405-272[402-472] Award fee evaluation periods.**

(a) Award fee evaluation periods, including those for interim evaluations, should be at least 6 months in length. -When appropriate, the procurement officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated with the shorter periods are offset by benefits accruing to the Government. -Where practicable, such as developmental contracts with defined performance milestones (e.g., Preliminary Design Review, Critical Design Review, initial system test), establishing evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates should be considered. ~~In no case shall an evaluation period~~**[An evaluation period must never]** be longer than 12 months.

(b) A portion of the total available award fee contract ~~shall~~**[must]** be allocated to each of the evaluation periods. -This allocation may result in an equal or unequal distribution of fee among the periods. -The contracting officer ~~shall~~**[must]** consider the nature of each contract and the incentive effects of fee distribution in determining the appropriate allocation structure.

~~—(c) For NASA’s most significant contracts for design and development programs and projects, with a life cycle cost of \$250 million or more, or otherwise designated by the NASA Associate Administrator, the award fee evaluation period shall be limited to six months for contracts in the implementation phase (i.e. Phases C and D).~~

~~[PN 19-01]~~

#### **1816.405-273[402-473] Award fee evaluations.**

(a) *Service Contracts.* ~~On~~**[For]** contracts where the contract deliverable is the performance of a service over any given time period, contractor performance is definitively measurable within each evaluation period. -In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. -Unearned award fee in any given period in a service contract is lost and shall not be carried forward, or "rolled-over," into subsequent periods.

(b) *End Item Contracts.* ~~On~~**[For]** contracts, such as those for end item deliverables, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. -At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. -In addition to the final evaluation, interim evaluations are done to monitor performance prior to contract completion, provide feedback to the contractor on the Government's assessment of the quality of its performance, and establish the basis for making interim award fee payments ~~(see 1816.405-276(a))~~**[(see 1816.402-476(a))]**. -These interim evaluations and associated interim award fee payments are superseded by the fee determination made in the final evaluation at contract completion. -However, if the final award fee adjectival rating is higher or lower than the average adjectival rating of all the interim award fee periods, or if the final award fee score is eight base percentage points higher or lower than the average award fee score of all interim award fee periods (e.g. 80% to 88%), then the Head of the Contracting Activity (HCA) or the Deputy Chief Acquisition Officer (if the HCA is the ~~Fee Determination~~**[Fee-Determining]** Official) ~~shall~~**[must]** review and concur in the final award fee determination. -The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payments.

(c) *Control of evaluations.* Interim and final evaluations may be used to provide past performance information during the source selection process in future acquisitions and should be marked and controlled as “Source Selection Information - See FAR 3.104”. See FAR ~~42.1503(h)~~**[42.1103]** regarding the requirements for releasing Source Selection Information included in the Contractor Performance Assessment Reporting System (CPARS).

~~(d) Providing award fee evaluations to Headquarters. Award fee evaluations for NASA’s most significant contracts for design and development programs and projects, with a lifecycle cost of \$1 billion or more, shall require additional review prior to the Fee Determination Official (FDO) making a final determination in writing as to the amount of fee to be paid. The FDO shall provide award fee determination letter and performance evaluation board recommendations to a NASA Headquarters, independent panel, comprised of the NASA Assistant Administrator for Procurement or Deputy, NASA Chief Financial Officer or Deputy, NASA General Counsel or~~

~~Deputy, Program Manager (from a different program), and Center Director (from a Center other than where the program is hosted).~~

~~[PN 19-01, PN 22-11]~~

**1816.405-274[402-474] Award fee evaluation factors.**

~~See [PCD-10-17](#) for further guidance.~~

(a) Explicit evaluation factors ~~shall~~**[must]** be established for each award fee period. -Factors ~~shall~~**[must]** be linked to acquisition objectives which ~~shall~~**[must]** be defined in terms of contract cost, schedule, and technical performance. -If used, subfactors should be limited to the minimum necessary to ensure a thorough evaluation and an effective incentive.

(b) Evaluation factors will be developed by the contracting officer based upon the characteristics of an individual procurement. -Cost control, schedule, and technical performance considerations ~~shall~~**[must]** be included as evaluation factors in all CPAF contracts, as applicable. When explicit evaluation factor weightings are used, cost control ~~shall~~**[must]** be no less than 25 percent of the total weighted evaluation factors. -The predominant consideration of the cost control evaluation should be a measurement of the contractor's performance against the negotiated estimated cost of the contract. -This estimated cost may include the value of undefinitized change orders when appropriate.

(c)(1) The technical factor must include consideration of risk management (including mission success, safety, security, health, export control, and damage to the environment, as appropriate) unless waived at a level above the contracting officer, with the concurrence of the project manager. -The rationale for any waiver ~~shall~~**[must]** be documented in the contract file. When safety, export control, or security are considered under the technical factor, the award fee plan ~~shall~~**[must]** allow the following fee determinations, regardless of contractor performance in other evaluation factors, when there is a major breach of safety or security.

(i) For evaluation of service contracts under 1816.405-273[402-473](a), an overall fee rating of unsatisfactory for any evaluation period in which there is a major breach of safety or security.

(ii) For evaluation of end item contracts under 1816.405-273[402-473](b), an overall fee rating of unsatisfactory for any interim evaluation period in which there is a major breach of safety or security. -To ensure that the final award fee evaluation at contract completion reflects any major breach of safety or security, in an interim period, the overall award fee pool ~~shall~~**[must]** be reduced by the amount of the fee available for the period in which the major breach occurred if an unsatisfactory fee rating was assigned because of a major breach of safety or security.

(2) A major breach of safety must be related directly to the work on the contract.- A major breach of safety is an act or omission of the ~~C~~**[c]**ontractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any “willful” or “repeat” violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(3) A major breach of security may occur on or off Government installations; but must be directly related to the work on the contract. -A major breach of security is an act or omission

by the contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than \$250,000, or theft greater than \$250,000.

(4) The Assistant Administrator for Procurement ~~shall~~**[must]** be notified prior to the determination of an unsatisfactory award fee rating because of a major breach of safety or security.

(d) In rare circumstances, contract costs may increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment. -One example is a weather-related launch delay on a launch support contract. -The Government ~~shall~~**[must]** take such situations into consideration when evaluating contractor cost control.

(e) Emphasis on cost control should be balanced against other performance requirement objectives **[and must not be directly tied to earned value metrics such as the cost performance index (CPI), schedule performance index (SPI), cost variance (CV), or schedule variance (SV)]**. -The contractor should not be incentivized to pursue cost control to the point that overall performance is significantly degraded. -For example, incentivizing an underrun that results in direct negative impacts on technical performance, safety, or other critical contract objectives is both undesirable and counterproductive. -Therefore, evaluation of cost control ~~shall~~**[must]** conform to the following guidelines:

(1) Normally, the contractor should be given an unsatisfactory rating for cost control when there is a significant overrun within its control. -However, the contractor may receive a satisfactory or higher rating for cost control if the overrun is insignificant. -Award fee ratings should decrease sharply as the size of the overrun increases. -In any evaluation of contractor overrun performance, the Government ~~shall~~**[must]** consider the reasons for the overrun and assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

(2) The contractor should normally be rewarded for an underrun within its control, up to the maximum award fee rating allocated for cost control, provided the adjectival rating for all other award fee evaluation factors is very good or higher (see FAR 16.401(e)(iv)**[402(c)(4)]**).

(3) The contractor should be rewarded for meeting the estimated cost of the contract, but not to the maximum rating allocated for cost control, to the degree that the contractor has prudently managed costs while meeting contract requirements. -No award fee ~~shall~~**[must]** be given in this circumstance unless the average adjectival rating for all other award fee evaluation factors is satisfactory or higher.

(f) When an AF arrangement is used in conjunction with another contract type, the award fee's cost control factor will only apply to a subjective assessment of the contractor's efforts to control costs and not the actual cost outcome incentivized under the basic contract type (e.g. CPIF, FPIF).

—(g)(1) The contractor's performance against the subcontracting plan incorporated in the contract ~~shall~~**[must]** be evaluated. -Emphasis may be placed on the contractor's accomplishment of its goals for subcontracting with small business, small disadvantaged business, HUBZone small business, women-owned small business, veteran-owned small business, service-disabled veteran-owned small business concerns, and Historically Black Colleges and Universities – Minority Institutions (HBCU/MIs). -The evaluation should consider both goals as a percentage of subcontracting dollars as well as a percentage of the total contract value.

(2) The contractor's achievements in subcontracting high technology efforts as well as the contractor's performance under the Mentor-Protégé Program, if applicable, may also be evaluated.

(3) The evaluation weight given to the contractor's performance against the considerations in paragraphs (g)(1) and (g)(2) of this section ~~shall~~**[must]** be 10 percent of available award fee and ~~shall~~**[must]** be separate from all other factors.

(h) When contract changes are anticipated, the contractor's responsiveness to requests for change proposals should be evaluated. -This evaluation should include the contractor's submission of timely, complete proposals and cooperation in negotiating the change.

(i) Only the award fee performance evaluation factors set forth in the performance evaluation plan ~~shall~~**[must]** be used to determine award fee scores.

(j) The Government may unilaterally modify the applicable award fee performance evaluation factors and performance evaluation areas prior to the start of an evaluation period. The contracting officer ~~shall~~**[must]** notify the contractor in writing of any such changes 30 days prior to the start of the relevant evaluation period.

#### **1816.405-275[402-475] Award fee evaluation rating.**

(a) All award fee contracts ~~shall utilize~~**[must use]** the adjectival rating categories and associated descriptions as well as the award fee pool available to be earned percentages for each adjectival rating category contained in ~~FAR 16.401(e)(3)(iv).~~ **[Table 16-1 in FAR 16.402-2.]** Contracting officers may supplement these descriptions with more specifics relative to their procurement but they cannot alter or delete the FAR adjectival rating descriptions.

(b) The following numerical scoring system ~~shall~~**[must]** be used in conjunction with the FAR adjectival rating categories and associated descriptions (see FAR ~~16.401(e)(3)(iv)~~**[16.402(c)(4), Table 16-1])**).

- (1) Excellent (100-91)
- (2) Very good (90-76)
- (3) Good (75-51)
- (4) Satisfactory (50)
- (5) Unsatisfactory (less than 50) No award fee shall be paid for an unsatisfactory rating.

(c) As a benchmark for evaluation, in order to be rated "Excellent" overall, the contractor would typically be under cost, on or ahead of schedule, and providing outstanding technical performance.

(d) A weighted scoring system appropriate for the circumstances of the individual contract requirement should be developed. -In this system, each evaluation factor (e.g., technical, schedule, cost control) is assigned a specific percentage weighting with the cumulative weightings of all factors totaling 100. -During the award fee evaluation, each factor is scored from 0-100 according to the ratings defined in **[FAR 16.402(c)(4) Table 16-1, and 1816.402-475(b)]**~~1816.405-275(b)~~. -The numerical score for each factor is then multiplied by the weighting for that factor to determine the weighted score. For example, if the technical factor has a weighting of 60 percent and the numerical score for that factor is 80, the weighted technical



score is 48 (80 x 60 percent). -The weighted scores for each evaluation factor are then added to determine the total award fee score.

**1816.405-276[402-476] Award fee payments and limitations.**

(a) *Interim Award Fee Payments.* The amount of an interim award fee payment (see 1816.405-273[402-473](b)) is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that interim period less any provisional payments (see paragraph (b) of this subsection) made during the period.

(b) *Provisional Award Fee Payments.* Provisional award fee payments are payments made within evaluation periods prior to an interim or final evaluation for that period.- Provisional payments may be included in the contract and should be negotiated on a case-by-case basis. -For a service contract, the total amount of award fee available in an evaluation period that may be provisionally paid is the lesser of a percentage stipulated in the contract (but not exceeding 80 percent) or the prior period's evaluation score.- For an end item contract, the total amount of provisional payments in a period is limited to a percentage not to exceed -80 percent of the prior interim period's evaluation score, except for the first evaluation period which is limited to 80 percent of the available award fee for that evaluation period.

(c) *Fee Payment.* The ~~Fee Determination~~[**Fee-Determining**] Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. -Any fee, interim or final, due the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

**1816.405-277[402-477] Award term.**

(a) An award term enables a contractor to become eligible for additional periods of performance or ordering periods under a service contract (as defined in FAR 37.101) by achieving and sustaining the prescribed performance levels under the contract. -It incentivizes the contractor for maintaining superior performance by providing an opportunity for extensions of the contract term.

(b) Award terms are best suited for acquisitions where a longer[-]-term relationship (generally more than five years) between the Government and a contractor would provide significant benefits to both. -Motivating excellent performance, fostering contractor capital investment, and increasing the desirability of the award, thus potentially increasing competition, are benefits that may justify the use of award terms.

(c) While the administrative burden and cost of more frequent procurements to both the Government and potential offerors should be considered when determining whether to use award terms, this decision must be weighed against market stability, the potential changes and advancements in technology, and flexibility to change direction with mission changes and associated frequent procurements.

(d) Award terms may be used in conjunction with contract options under FAR 17.2. Award terms are similar to contract options in that they are conditioned on the Government's continuing need for the contract and the availability of funds. However, FAR 17.207(e)(7)[17.204-

**1(b)(3)(iv)** states the contracting officer must determine that the contractor's performance has been acceptable, e.g., received satisfactory **[or better performance]** ratings. -In contrast, to become eligible for an award term, the contractor must maintain a level of performance above acceptable as specified in the Award Term Plan (see 1816.405-277**[402-477]**(i)). -In contracts with both option periods and award terms, the award term period of performance or ordering period shall begin after completion of any option period of performance or ordering period.

(e) Contracts with award terms ~~shall~~**[must]** include a base period of performance or ordering period and may include a designated number of option periods during which the Government will observe and evaluate the contractor's performance allowing the contractor to earn an award term. -Additionally, as specified in the Award Term Plan, the contractor may also be evaluated for additional award terms during performance of an earned award term. -If the contractor meets or exceeds the performance requirements, there is an on-going need for and desire to continue the contract, funds are available, and the contractor is not listed in the System for Award Management Exclusions, then the contractor may be eligible for contract extension for the period of the award term.

(f) Contracts with award terms shall comply with FAR and NFS restrictions on the overall contract length, ~~such as the 5-year period of performance limitation found at NFS 1817.204.~~

(g) Award terms may only be used in acquisitions for services exceeding \$20 million dollars. Use of award terms for lower-valued acquisitions may be authorized in exceptional situations such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(h) Consistent with the Competition in Contracting Act and general procurement principles, the potential award term periods in a procurement must be priced, evaluated, and considered in the initial contract selection process ~~in order~~ to be valid.

(i) All contracts including award terms shall be supported by an Award Term Plan that establishes criteria for earning an award term and the methodology and schedule for evaluating contractor performance. -A copy of the Award Term Plan ~~shall~~**[must]** be included in the contract. -The contracting officer may unilaterally revise the Award Term Plan. -Award Term Plans ~~shall~~**[must]**—

(1) Identify the officials to include Term-Determining Official involved in the award term evaluation and their function;

(2) Identify and describe each evaluation factor, any subfactors, related performance standards, adjectival ratings, and numerical ranges or weights to be used. -The contracting officer should follow the guidance at 1816.405-274**[402-474]** in establishing award term evaluation factors and 1816.405-275**[402-475]** in establishing adjectival rating categories, associated descriptions, numerical scoring system, and weighted scoring system;

(3) Specify the annual overall rating required for the contractor to be eligible for an award term that reflects a level of performance above acceptable and the number of award terms the contractor may qualify for based on the rating score;

(4) Identify the evaluation period(s) and the evaluation schedule to be conducted at stated intervals during the contract period of performance or ordering period so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected (e.g., six months, nine months, twelve months, or at other specific

milestones), and when the decision points are for the determination that the contractor is eligible for an award term; and

(5) Identify the contract's base period of performance or ordering period, any option period(s), and total award-term periods(s). -Award term periods ~~shall~~**[must]** not exceed one year.

(j)(1) The Government has the unilateral right not to grant or to cancel award term periods and the associated Award Term Plans if—

(i) The contractor has failed to achieve the required performance measures for the corresponding evaluation period;

(ii) After earning an award term, the contractor fails to earn an award term in any succeeding year of contract performance, the contracting officer may cancel any award terms that the contractor has earned, but that have not begun;

(iii) The contracting officer notifies the contractor that the Government no longer has a need for the award term period before the time an award term period is to begin;

(iv) The contractor represented that it was a small business concern prior to award of the contract, the contract was set-aside for small businesses, and the contractor rerepresents in accordance with FAR clause 52.219-28 Post-Award Small Business Program Rerepresentation, that it is no longer a small business; or

(v) The contracting officer notifies the contractor that funds are not available for the award term.

(2) When an award term period is not granted or cancelled, any—

(i) Prior award term periods for which the contractor remains otherwise eligible are unaffected.

(ii) Subsequent award term periods are also cancelled.

(k) Cancellation of an award term period that has not yet commenced for any of the reasons set forth in paragraph (j) of this section ~~shall~~**[must]** not be considered either a termination for convenience or termination for default, and ~~shall~~**[must]** not entitle the contractor to any termination settlement or any other compensation. -If the award term is cancelled, a unilateral modification will cite the clause as the authority.

#### **1816.406 Contract clauses.**

##### **1816.406-70 NASA contract clauses.**

(a) As authorized by FAR 16.406(e[d]), ~~the contracting officer shall~~ insert the clause at 1852.216-76, Award Fee for Service Contracts, in solicitations and contracts when an award-fee contract is contemplated[,], and the contract deliverable is the performance of a service.

(b) As authorized by FAR 16.406(e[d]), ~~the contracting officer shall~~ insert the clause at 1852.216-77, Award Fee for End Item Contracts, in solicitations and contracts when an award fee contract is contemplated[,], and the contract deliverables are hardware or other end items for which total contractor performance cannot be measured until the end of the contract. -When the clause is used in a fixed-price award-fee contract, it ~~shall~~**[must]** be modified by deleting references to base fee in paragraphs (a), and by deleting paragraph (c)(1), the last sentence of (c)(4), and the first sentence of (c)(5).

(c) The contracting officer may insert a clause substantially as stated at 1852.216-83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. -For items subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(d) ~~The contracting officer shall insert the clause at 1852.216-84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.~~

(e) The contracting officer may insert the clause at 1852.216-85, Estimated Cost and Award Fee, in award-fee solicitations and contracts. -When the contract includes performance incentives, use Alternate I. -When the clause is used in a fixed-price award fee contract, it shall be modified to delete references to base fee and to reflect the contract type.

(f) As provided at 1816.402-270, ~~the contracting officer shall~~ insert a clause substantially as stated at 1852.216-88, Performance Incentive, when the primary deliverable(s) is (are) hardware and total estimated cost and fee is greater than \$25 million. -A clause substantially as stated at 1852.216-88 may be included in lower dollar value supply or service contracts at the discretion of the contracting officer.

(g) Insert the clause at 1852.216-72, Award Term[,], in solicitations and contracts for services exceeding \$20 million when award terms are contemplated.

### **Subpart 1816.5—Indefinite-Delivery Contracts**

#### **1816.504 Indefinite~~[-]~~ quantity contracts.**

~~—(a) Description.~~

~~—(4)(ii) IDIQ service contract values and task order values shall be expressed only in dollars.~~

~~—(a)(4)(v) See 1815.7003.~~

~~(c) Multiple award preference—~~

~~—(1)(ii)(D)(1) The authority to make the determination to award a task or delivery order contract authorized at FAR 16.504(c)(1)(ii)(D)(1), is delegated to Senior Procurement Executive. Requests for approval of this determination shall be submitted through the cognizant Procurement Strategic Operations Division Procurement Analyst in Headquarters' Office of Procurement. The request for approval shall document that the contracting officer, with input from the requiring organization, considered establishing a defined core portion of the requirement in the single award IDIQ contract by following the procedures listed in paragraph (2) of this section.~~

~~—(v) To reduce transactional costs, minimize the number of task orders for similar performance requirements, and reduce the administrative burden to the Government, NASA's policy is that single award IDIQ contracts, to the maximum extent possible, contain a core requirement, in addition to the task order(s) that specify discrete requirements. When considering inclusion of a core requirement—~~

~~—(A) The requiring organization shall identify the known, defined, and recurring requirements anticipated to be awarded under the single award IDIQ contract. If available, the~~

~~requiring organization shall review the predecessor contract information to identify any recurring requirements. If the identified recurring requirements will be needed for the duration of the contract, the contracting officer should include these requirements in the core portion of the single award IDIQ contract or justify, with input from the requiring organization, why those requirements cannot be part of the core portion of the IDIQ contract.~~

~~(B) The contracting officer and the requiring organization shall analyze the historical staffing levels, labor hours and variations in annual cost of predecessor contract(s). If the staffing levels, labor hours and annual costs were relatively consistent over the previous contract and the requirements are recurring, the contracting officer shall include the recurring requirements in the core portion of the single award IDIQ contract or justify, with input from the requiring organization, why those requirements cannot be part of the core portion of the IDIQ contract.~~

~~(2)(i)(A) The authority to make the determination authorized at FAR 16.504(c)(2)(i)(A), is delegated to the head of the contracting activity (HCA).~~

~~(B) The authority to make the determination authorized at FAR 16.504(c)(2)(i)(B), is delegated to the HCA.~~

~~(ii) The authority to make the determination authorized at FAR 16.504(c)(2)(ii), is delegated to the HCA.~~

~~[PN 18-01, PN 20-06]~~

#### **~~1816.505 Ordering.~~**

~~—(a) (2) Task and delivery orders shall be issued by the contracting officer. To reduce the administrative burden and transactional costs of issuing numerous task orders, before issuing a task order under a single award IDIQ contract, the contracting officer, in consultation with the contracting officer's representative and resources analyst, as necessary, shall consider—~~

~~—(i) Including the requirements in the core portion of the contract;~~

~~—(ii) Adding the new requirement into an existing task or delivery order if the requirement fits within the scope of an existing task or delivery order;~~

~~—(iii) Avoiding the use of task orders solely to track funding or satisfy financial reporting requirements; and~~

~~—(iv) That all task and delivery orders shall have clear milestones and/or deliverables.~~

~~—(b)(5) The Agency and installation ombudsmen designated in accordance with 1815.7001 shall review complaints from contractors on task order contracts and delivery order contracts.~~

~~[PN 18-01]~~

#### **~~1816.505-70 Task ordering.~~**

~~—(a) The contracting officer shall, to the maximum extent possible, state task order requirements in terms of functions and the related performance and quality standards such that the standards may be objectively measured.~~

~~—(b) To the maximum extent possible, contracting officers shall solicit contractor task plans to use as the basis for finalizing task order requirements and enable evaluation and pricing of the contractor's proposed work on a performance based approach as described in 1816.104-70(a).~~

~~—(c) Task order contract type shall be individually determined, based on the nature of each task order's requirements.~~

~~—(1) Task orders may be grouped by contract type for administrative convenience (e.g., all CPIF orders, all FFP orders, etc.) for contractor progress and cost reporting.~~

~~—(2) Under multiple awards, solicitations for individual task plans shall request the same pricing structure from all offerors.~~

~~—(d) Any undefinitized task order issued under paragraph (f) of the clause at 1852.216-80, Task Ordering Procedure, shall be treated and reported as an undefinitized contract action in accordance with NFS 1843.70.~~

#### **~~1816.505-71 Task and delivery order contract ordering period.~~**

~~—(a) 10 U.S.C. 3403 establishes limitations on the ordering period of a task or delivery order contract awarded by NASA. The statute specifies that the ordering period may be for any period up to five years. This period may be subsequently extended for one or more successive periods pursuant to an option or contract modification. In no case may the ordering period exceed a total of ten years unless approved by the Senior Procurement Executive.~~

~~—(b) The deviation requirement at 1817.204(e)(5) applies to a task or delivery contract with an ordering period of more than five years.~~

~~—(c) Orders under GSA Federal Supply Schedule contracts must comply with the limitations in paragraph (a) of this subsection if the orders provide for the issuance of subsequent task or delivery orders.~~

~~—(d) The limitations in paragraph (a) of this subsection do not apply to—~~

~~—(1) Advisory and assistance service task order contracts (authorized by 10 U.S.C. 3405). These contracts are limited by statute to 5 years, with the authority to extend an additional 6 months (see FAR 16.505));~~

~~—(2) Definite quantity contracts; and~~

~~—(3) Multi-agency contracts awarded by agencies other than NASA, DoD, or the Coast Guard.~~

~~[PN 23-12]~~

#### **~~1816.506 Solicitation provisions and contract clauses.~~**

~~(j) When using FAR clause 52.216-32, Task Order and Delivery Order Ombudsman, insert the website at: [https://www.hq.nasa.gov/office/procurement/regs/Procurement\\_Ombuds-Comp\\_Advocate\\_Listing.pdf](https://www.hq.nasa.gov/office/procurement/regs/Procurement_Ombuds-Comp_Advocate_Listing.pdf), that provides installation and Agency Ombudsman, name, address, telephone number, facsimile number, and email address. Use the clause with its Alternate I when the contract will be available for use by multiple agencies (e.g., Governmentwide acquisition contracts or multi-agency contracts). When placing orders under the multiple award contract~~

available for use by multiple agencies, insert the website at:  
<https://www.hq.nasa.gov/office/procurement/regs/Procurement-Ombuds-Comp-Advocate-Listing.pdf>, that provides installation and Agency Ombudsman, name, address, telephone number, facsimile number, and email address in paragraph (d)(2).

*[PN 19-03, PN 20-03]*

#### **1816.506[5]-70 -NASA contract clause.**

Insert the clause at 1852.216-80, Task Ordering Procedure, in solicitations and contracts when an indefinite-delivery, task order contract is contemplated. -The clause is applicable to both fixed-price and cost-reimbursement type contracts. -The contracting officer ~~shall~~**[must]** use the clause with its-

(a) Alternate I, if the cost type, fixed-price with prospective price redetermination, or fixed-price incentive contract does not include a NASA Form 533M reporting requirements; or

(b) Alternate II, if a fixed price contract is contemplated.

*[PN 18-07]*

#### **~~Subpart 1816.6—Time and Materials, Labor-Hour, and Letter Contracts~~**

##### **~~1816.601-1 Determination and Findings.~~**

~~—(d)(1) The contracting officer shall use the Time and Materials and Labor Hour Contract/Order Determination and Findings template.~~

##### **~~1816.603 Letter contracts.~~**

##### **~~1816.603-2 Application.~~**

~~—(a) Centers must ensure that NASA liabilities and commitments are minimized under letter contracts. When a letter contract is justified and program requirements can be severed into smaller, discrete efforts, the work authorized by the letter contract must be limited to the minimum severable effort required to satisfy the urgent program requirements. The remaining requirements may not be initially included in the letter contract and must be acquired through a separate fully priced and definitized contract action.~~

##### **~~1816.603-370 Approvals.~~**

~~—(a)(1) The approval authority to issue a letter contract is the head of the contract activity (see NFS definition of “head of the contract activity” at NFS 1802.101).~~

~~—(2) The head of the contract activity is also the approval authority for any modification to a letter contract that increases the estimated value of the definitized contract. This approval must be obtained prior to issuing the modification.~~

~~—(b) The contracting officer shall use the agency wide “Justification and Approval of Undefined Contract Actions (UCAs) and Letter Contracts Template” template to document the file for all letter contract actions.~~

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## **PART 1852 SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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### **Subpart 1852.2—Text of Provisions and Clauses**

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#### **1852.216-73 Estimated Cost and Cost Sharing.**

As prescribed in 1816.307[5]-70(a), insert the following clause:

#### **ESTIMATED COST AND COST SHARING (~~DEC 1991~~)-(DEC 2025) (DEVIATION)**

(a) It is estimated that the total cost of performing the work under this contract will be \$ \_\_\_\_.

(b) For performance of the work under this contract, the €-[c]ontractor shall be reimbursed for not more than \_\_\_\_ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining \_\_\_\_ percent or more of the costs of performance so determined shall constitute the €[c]ontractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the \_\_\_\_\_ [insert "Limitation of Cost" or "Limitation of Funds"] clause, the total estimated cost to the Government is hereby established as \$ \_\_\_\_ (insert estimated Government share); this amount is the maximum Government liability.

(d) The € [c]ontractor shall maintain records of all contract costs claimed by the €[c]ontractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the €[c]ontractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

(End of clause)

#### **1852.216-74 Estimated Cost and Fixed Fee.**

As prescribed in 1816.307[5]-70(b), insert the following clause:

#### **ESTIMATED COST AND FIXED FEE (DEC 1991)**



The estimated cost of this contract is \_\_\_\_ exclusive of the fixed fee of \_\_\_\_ . The total estimated cost and fixed fee is \_\_\_\_ .

(End of clause)

**1852.216-75 Payment of Fixed Fee.**

As prescribed in 1816.307[5]-70(c), insert the following clause:

PAYMENT OF FIXED FEE  
~~(DEC 1988)~~**(DEC 2025 (DEVIATION))**

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the € [c]ontracting Θ[o]fficer.

(End of clause)

**1852.216-76 Award Fee for Service Contracts.**

As prescribed in 1816.406-70(a), insert the following clause:

AWARD FEE FOR SERVICE CONTRACTS  
~~(JUN 2018)~~**(DEC 2025 (DEVIATION))**

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract.

(b) Beginning 6\* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6\* months to determine the amount of award fee earned by the contractor during the period. -The €[c]ontractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. -The Government's ~~Fee Determination~~**[Fee-Determining]** Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with [*identify performance evaluation plan*]. -The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the €[c]ontractor in writing of the evaluation results. The [*insert payment office*] will make payment based on [*Insert method of authorizing award fee payment*].

(d) The €[c]ontracting Θ[o]fficer may direct the withholding of earned award fee payments until a reserve is set aside in an amount that the €[c]ontracting Θ[o]fficer considers necessary to protect the Government's interest relative to an orderly and timely closeout of the contract. -This reserve shall not exceed 15 percent of the contract's total potential award fee or \$100,000, whichever is less.

(e) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at *[identify location of award fee amounts]*. -Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(f)(1) Provisional award fee payments *[insert "will" or "will not", as applicable]* be made under this contract pending the determination of the amount of fee earned for an evaluation period. If applicable, provisional award fee payments will be made to the €[c]ontractor on a *[insert the frequency of provisional payments (not more often than monthly)]* basis. -The total amount of award fee available in an evaluation period that will be provisionally paid is the lesser of *[Insert a percent not to exceed 80 percent]* or the prior period's evaluation score.

(2) Provisional award fee payments will be superseded by the final award fee evaluation for that period. -If provisional payments exceed the final evaluation score, the €[c]ontractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the €[c]ontracting Θ[o]fficer.

(3) If the €[c]ontracting Θ[o]fficer determines that the €[c]ontractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the €[c]ontracting Θ[o]fficer deems appropriate. The €[c]ontracting Θ[o]fficer will notify the €[c]ontractor in writing if it is determined that such discontinuance or reduction is appropriate.

(4) Provisional award fee payments *[insert "will" or "will not", as appropriate]* be made prior to the first award fee determination by the Government.

(g) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

\* [A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405[2]-2[4]72(a).]

(End of clause)

~~/PN 18-11/~~

#### **1852.216-77 Award Fee for End Item Contracts.**

As prescribed in 1816.406-70(b), insert the following clause:

#### **AWARD FEE FOR END ITEM CONTRACTS (AUG 2016)[(DEC 2025)(DEVIATION)]**

(a) The contractor can earn award fee, or base fee, if any, from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract. -All award fee evaluations, with the exception of the last evaluation, will be interim evaluations. -At the last evaluation, which is final, the €[c]ontractor's performance for the entire contract will be evaluated to determine total earned award fee. No award fee or base fee will be paid to the €[c]ontractor if the final award fee evaluation is "poor/unsatisfactory."

(b) Beginning 6\* months after the effective date of this contract, the Government will evaluate the €[c]ontractor's interim performance every 6\* months to monitor €[c]ontractor performance prior to contract completion and to provide feedback to the €[c]ontractor. -The evaluation will be performed in accordance with [*identify performance evaluation plan*] to this contract. -The €[c]ontractor may submit a self-evaluation of performance for each period under consideration. -These self-evaluations will be considered by the Government in its evaluation. The Government will advise the €[c]ontractor in writing of the evaluation results. -The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c)(1) Base fee, if applicable, will be paid in [*Insert "monthly", or less frequent period*] installments based on the percent of completion of the work as determined by the €[c]ontracting Θ[o]fficer.

(2) Interim award fee payments will be made to the €[c]ontractor based on each interim evaluation. The amount of the interim award fee payment is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that period *less* any provisional payments made during the period. All interim award fee payments will be superseded by the final award fee determination.

(3) Provisional award fee payments will [*insert "not" if applicable*] be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the €[c]ontractor on a [*insert the frequency of provisional payments (not more often than monthly)*][ ] basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to [*Insert a percent not to exceed 80 percent*] of the prior interim evaluation score (see [*insert applicable cite*]), except for the first evaluation period which is limited to [*insert a percent not to exceed 80 percent*] of the available award fee for that evaluation period. -Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. -If provisional payments made exceed the interim evaluation score, the €[c]ontractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the €[c]ontracting Θ[o]fficer. -If the Government determines that (i) the total amount of provisional fee payments will apparently substantially exceed the anticipated final evaluation score, or (ii) the prior interim evaluation is "poor/unsatisfactory," the €[c]ontracting Θ[o]fficer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate. -Written notification of the determination will be provided to the €[c]ontractor with a copy to the Deputy Chief Financial Officer (Finance).

(4) All interim (and provisional, if applicable) fee payments will be superseded by the fee determination made in the final award fee evaluation. -The Government will then pay the €[c]ontractor, or the Contractor will refund to the Government the difference between the final award fee determination and the cumulative interim (and provisional, if applicable) fee payments. -If the final award fee evaluation is "poor/unsatisfactory", any base fee paid will be refunded to the Government.

(5) Payment of base fee, if applicable, will be made based on submission of an invoice by the Contractor. Payment of award fee will be made by the [*insert payment office*] based on [*Insert method of making award fee payment, e.g., issuance of a unilateral modification by the €[c]ontracting Θ[o]fficer*].

(d) The €[c]ontracting Θ[o]fficer may direct the withholding of interim award fee payments until a reserve is set aside in an amount that the €[c]ontracting Θ[o]fficer considers necessary to

protect the Government's interest relative to an orderly and timely closeout of the contract. -This reserve shall not exceed 15 percent of the contracts total potential award fee or \$100,000, whichever is less.

(e) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

\* [A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405-2[2-4]72(a).]

(End of clause)

**1852.216-78 Firm[-]-Fixed[-]-Price.**

As prescribed in 1816.202-70, insert the following clause:

**FIRM[-]-FIXED[-]-PRICE  
(~~DEC 1988~~)-(DEC 2025)( DEVIATION)**

The total firm[-]-fixed[-]-price of this contract is \$[Insert the appropriate amount].

(End of clause)

**1852.216-80 Task Ordering Procedure.**

As prescribed in 1816.506[5]-70, insert the following clause:

**TASK ORDERING PROCEDURE  
(~~OCT 1996~~)-(DEC 2025)( DEVIATION)**

(a) Only the €[c]ontracting-Θ [o]fficer may issue task orders to the €[c]ontractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the schedule. The €[c]ontractor may incur costs under this contract in performance of task orders and task order modifications issued in accordance with this clause. No other costs are authorized unless otherwise specified in the contract or expressly authorized by the €[c]ontracting Θ[o]fficer.

(b) Prior to issuing a task order, the €[c]ontracting Θ[o]fficer shall provide the €[c]ontractor with the following data:

(1) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(3) A request for a task plan from the €[c]ontractor to include the technical approach, period of performance, appropriate cost information, and any other information required to determine the reasonableness of the €[c]ontractor's proposal.

(c) Within \_\_\_\_ calendar days after receipt of the-€[c]ontracting Θ[o]fficer's request, the €[c]ontractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the €[c]ontracting Θ[o]fficer may issue a task order to the €[c]ontractor containing, as a minimum, the following:

- (1) Date of the order.
- (2) Contract number and order number.
- (3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.
- (4) Performance standards, and where appropriate, quality assurance standards.
- (5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.
- (6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.
- (7) Delivery/performance schedule including start and end dates.
- (8) If contract funding is by individual task order, accounting and appropriation data.

(e) The €[c]ontractor shall provide acknowledgment of receipt to the €[c]ontracting Θ[o]fficer within \_\_\_\_ calendar days after receipt of the task order.

(f) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued.

(g) The €[c]ontracting Θ[o]fficer may amend tasks in the same manner in which they were issued.

(h) In the event of a conflict between the requirements of the task order and the €[c]ontractor's approved task plan, the task order shall prevail.

(End of clause)

ALTERNATE I  
(APR 2018)

As prescribed in 1816.506[5]-70(a), insert the following paragraph (i):

(i) Contractor shall submit progress reports, as required. When required, the reports shall contain, at a minimum, the following information:

- (1) Contract number, task order number, and date of the order.
- (2) Total estimated dollar amount of task order(s).
- (3) Cost and hours incurred to date for each issued task order.
- (4) Costs and hours estimated to complete each issued task order.
- (5) Significant issues/problems associated with a task order.
- (6) Cost summary of the status of all task orders issued under the contract.
- (7) Invoice number.

~~/PN 18-07/~~

ALTERNATE II  
(APR 2018)

As prescribed in 1816.506[5]-70(b), insert the following paragraph (i):

(i) Contractor shall submit progress reports, as required. When required, the reports shall contain, at a minimum, the following information:

- (1) Contract number, task order number, and date of the order.
- (2) Price and billed amounts to date for each task order.
- (3) Significant issues/problems associated with the task order.
- (4) Status of all task orders issued under the contract.
- (5) Invoice number.

~~/PN 18-07/~~

\* \* \* \* \*

**1852.216-81 Estimated Cost.**

As prescribed in 1816.307[5]-70(d), insert the following clause:

\* \* \* \* \*

**1852.216-89 Assignment and Release Forms.**

As prescribed in 1816.307[5]-70(f), insert the following clause:

ASSIGNMENT AND RELEASE FORMS  
(AUG 2016)[(DEC 2025) (DEVIATION)]

The Contractor shall use the following forms to fulfill the assignment and release requirements of FAR clause 52.216-7, Allowable Cost and Payment:

[NASA Form 778](#), Contractor's Release;

[NASA Form 779](#), Assignee's Release;

[NASA Form 780](#), Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts; and

[NASA Form 781](#), Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

Computer generated forms are acceptable, provided that they comply with FAR clause 52.253-1, Computer Generated Forms.

(End of clause)

**1852.216-90 Allowability of legal costs incurred in connection with a whistleblower proceeding.**

As prescribed in 1816.307[5]-70(g), use the following clause:

ALLOWABILITY OF LEGAL COSTS INCURRED IN CONNECTION WITH A  
WHISTLEBLOWER PROCEEDING  
(JUL 2023)

Pursuant to section 827 of the National Defense Authorization Act for Fiscal year 2013 (Pub. L. 112-239), notwithstanding FAR clause 52.216-7, Allowable Cost and Payment—

(1) The restrictions of FAR 31.205-47(b) on allowability of costs related to legal and other proceedings also apply to any proceeding brought by a contractor employee submitting a complaint under 10 U.S.C. 4701, entitled ``Contractor employees: protection from reprisal for disclosure of certain information;" and

(2) Costs incurred in connection with a proceeding that is brought by a contractor employee submitting a complaint under 10 U.S.C. 4701 are also unallowable if the result is an order to take corrective action under 10 U.S.C. 4701.

(End of clause)

~~[PN 23-12]~~

\* \* \* \* \*

CLEAN REGULATORY VERSION WITH CHANGES INCORPORATED:

**PART 1816**  
**TYPES OF CONTRACTS**

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## **PART 1816**

### **TYPES OF CONTRACTS**

#### **1816.001-70 NASA Definitions.**

As used in this part—

*Earned Award Fee* means the payment of the full amount of an award fee evaluation period's score/rating.

*Term-determining official* means the designated Agency official who reviews the recommendations of the Award Term Board in determining whether the contractor is eligible for an award term.

*Unearned Award Fee* means the difference between the available award fee pool amount for a given award fee evaluation period less the contractor's earned award fee amount for that same evaluation period.

#### **Subpart 1816.2—Fixed-Price Contracts**

##### **1816.202 Firm-fixed-price contracts.**

##### **1816.202-70 NASA contract clause.**

The contracting officer must insert the clause at 1852.216-78, Firm-Fixed-Price, in firm-fixed-price solicitations and contracts. Insert the appropriate amount in the resulting contract.

#### **Subpart 1816.3—Cost-Reimbursement Contracts**

##### **1816.303-70 Cost-sharing contracts.**

###### **(a) *Cost-sharing with for-profit organizations.***

(1) Cost sharing by for-profit organizations is mandatory in any contract for basic or applied research resulting from an unsolicited proposal and may be accepted in any other contract when offered by the proposing organization. The requirement for cost-sharing may be waived when the contracting officer determines in writing that the contractor has no commercial, production, education, or service activities that would benefit from the results of the research, and the contractor has no means of recovering its shared costs on such projects.

(2) The contractor's cost-sharing may be any percentage of the project cost. -In determining the amount of cost-sharing, the contracting officer must consider the relative benefits to the contractor and the Government. -Factors that should be considered include—

- (i) The potential for the contractor to recover its contribution from non-Federal sources;
- (ii) The extent to which the particular area of research requires special stimulus in the national interest; and
- (iii) The extent to which the research effort or result is likely to enhance the contractor's capability, expertise, or competitive advantage.

###### **(b) *Cost-sharing with not-for-profit organizations.***

(1) Costs to perform research stemming from an unsolicited proposal by universities and other educational or not-for-profit institutions are usually fully reimbursed. When the contracting officer determines that there is a potential for significant benefit to the institution cost-sharing will be considered.

(2) The contracting officer should limit the institution's share to no more than 10 percent of the project's cost.

*(c) Implementation.*

Cost-sharing must be stated as a minimum percentage of the total allowable costs of the project. The contractor's contributed costs may not be charged to the Government under any other contract or grant, including allocation to other contracts and grants as part of an independent research and development program.

**1816.305 Contract clauses.**

(a)(1) In paragraph (h)(2)(ii)(B) of the Allowable Cost and Payment clause at FAR 52.216-7, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; provided, that a corresponding increase is made in the period for retention of records required in paragraph (f) of the clause at FAR 52.215-2, Audit and Records–Negotiation.

**1816.305-70 NASA contract clauses.**

(a) The contracting officer must insert the clause at 1852.216-73, Estimated Cost and Cost-Sharing, in each contract in which costs are shared by the contractor pursuant to 1816.303-70.

(b) The contracting officer must insert the clause substantially the same as 1852.216-74, Estimated Cost and Fixed Fee, in cost-plus-fixed-fee contracts.

(c) The contracting officer may insert the clause at 1852.216-75, Payment of Fixed Fee, in cost-plus-fixed-fee contracts.

(d) The contracting officer must insert the clause at 1852.216-81, Estimated Cost, in cost-no-fee contracts that are not cost sharing or facilities contracts.

(e) Reserved.

(f) When FAR clause 52.216-7, Allowable Cost and Payment, is included in the contract, as prescribed at FAR 16.305(a), the contracting officer should include the clause at 1852.216-89, Assignment and Release Forms.

(g) As required by section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), use the clause at 1852.216-90, Allowability of Costs Incurred in Connection With a Whistleblower Proceeding—

(1) In task orders entered pursuant to contracts awarded before September 30, 2013, that include the clause at FAR 52.216-7, Allowable Cost and Payment; and

(2) In contracts awarded before September 30, 2013, that—

(i) Include the clause at FAR 52.216-7, Allowable Cost and Payment; and

(ii) Are modified to include the clause at 1852.203-71, Requirement to Inform Employees of Whistleblower Rights, dated June 2013 or later.

### **Subpart 1816.4—Incentive Contracts**

#### **1816.402 Award-Fee.**

##### **1816.402-3 Fixed-price contracts with award fees.**

Section 1816.402-3 applies to the use of fixed-price contracts with award fees (FPAF) as if they were CPAF contracts. However, neither base fee (see 1816.402-471) nor evaluation of cost control (see 1816.402-474) applies to FPAF contracts.

##### **1816.402-4 Cost-plus-award-fee (CPAF) contracts.**

##### **1816.402-470 CPAF contracts.**

(a) In addition to the items identified in FAR 16.402-1, the determination and findings must include a discussion of the other types of contracts considered and indicate why an award fee incentive is the appropriate choice. Award fee incentives should not be used on contracts with a total estimated cost and fee less than \$2 million per year. Use of award fee incentive for lower-valued acquisitions may be authorized in exceptional situations such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(b) Except as provided in paragraph (c) of this section, an award fee incentive may be used in conjunction with other contract types for aspects of performance that cannot be objectively assessed. In such cases, the cost incentive is based on objective formulas inherent in the other contract types (*e.g.*, FPI, CPIF), and the award fee provision should not separately incentivize cost performance.

(c) Award fee incentives must not be used with a cost-plus-fixed-fee (CPFF) contract.

##### **1816.402-471 Base fee.**

(a) A base fee must not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.402-473(a)). In these circumstances, contractor performance during any award fee period is independent of and has no effect on subsequent performance periods or the final results at contract completion. For other contracts, such as those for hardware or software development, the procurement officer may authorize the use of a base fee not to exceed 3 percent. Base fee must not be used when an award fee incentive is used in conjunction with another contract type (*e.g.*, CPIF/AF).

(b) When a base fee is authorized for use in a CPAF contract, it must be paid only if the final award fee evaluation is "satisfactory" or better. (See 1816.402-473 and 1816.402-475) Pending final evaluation, base fee may be paid during the life of the contract at defined intervals on a provisional basis. If the final award fee evaluation is "unsatisfactory", all provisional base fee payments must be refunded to the Government.

#### **1816.402-472 Award fee evaluation periods.**

(a) Award fee evaluation periods, including those for interim evaluations, should be at least 6 months in length. When appropriate, the procurement officer may authorize shorter evaluation periods after ensuring that the additional administrative costs associated with the shorter periods are offset by benefits accruing to the Government. Where practicable, such as developmental contracts with defined performance milestones (e.g., Preliminary Design Review, Critical Design Review, initial system test), establishing evaluation periods at conclusion of the milestones rather than calendar dates, or in combination with calendar dates should be considered. An evaluation period must never be longer than 12 months.

(b) A portion of the total available award fee contract must be allocated to each of the evaluation periods. This allocation may result in an equal or unequal distribution of fee among the periods. The contracting officer must consider the nature of each contract and the incentive effects of fee distribution in determining the appropriate allocation structure.

#### **1816.402-473 Award fee evaluations.**

(a) *Service Contracts.* For contracts where the contract deliverable is the performance of a service over any given time period, contractor performance is definitively measurable within each evaluation period. In these cases, all evaluations are final, and the contractor keeps the fee earned in any period regardless of the evaluations of subsequent periods. Unearned award fee in any given period in a service contract is lost and must not be carried forward, or "rolled-over," into subsequent periods.

(b) *End Item Contracts.* For contracts, such as those for end item deliverables, where the true quality of contractor performance cannot be measured until the end of the contract, only the last evaluation is final. At that point, the total contract award fee pool is available, and the contractor's total performance is evaluated against the award fee plan to determine total earned award fee. In addition to the final evaluation, interim evaluations are done to monitor performance prior to contract completion, provide feedback to the contractor on the Government's assessment of the quality of its performance, and establish the basis for making interim award fee payments (see 1816.402-476(a)). These interim evaluations and associated interim award fee payments are superseded by the fee determination made in the final evaluation at contract completion. However, if the final award fee adjectival rating is higher or lower than the average adjectival rating of all the interim award fee periods, or if the final award fee score is eight base percentage points higher or lower than the average award fee score of all interim award fee periods (e.g. 80% to 88%), then the Head of the Contracting Activity (HCA) or the Deputy Chief Acquisition Officer (if the HCA is the Fee-Determining Official) must review and concur in the final award fee determination. The Government will then pay the contractor, or the contractor will refund to the Government, the difference between the final award fee determination and the cumulative interim fee payments.

(c) *Control of evaluations.* Interim and final evaluations may be used to provide past performance information during the source selection process in future acquisitions and should be marked and controlled as "Source Selection Information - See FAR 3.104". See FAR 42.1103

regarding the requirements for releasing Source Selection Information included in the Contractor Performance Assessment Reporting System (CPARS).

#### **1816.402-474 Award fee evaluation factors.**

(a) Explicit evaluation factors must be established for each award fee period. Factors must be linked to acquisition objectives which must be defined in terms of contract cost, schedule, and technical performance. If used, subfactors should be limited to the minimum necessary to ensure a thorough evaluation and an effective incentive.

(b) Evaluation factors will be developed by the contracting officer based upon the characteristics of an individual procurement. Cost control, schedule, and technical performance considerations must be included as evaluation factors in all CPAF contracts, as applicable. When explicit evaluation factor weightings are used, cost control must be no less than 25 percent of the total weighted evaluation factors. The predominant consideration of the cost control evaluation should be a measurement of the contractor's performance against the negotiated estimated cost of the contract. This estimated cost may include the value of undefinitized change orders when appropriate.

(c)(1) The technical factor must include consideration of risk management (including mission success, safety, security, health, export control, and damage to the environment, as appropriate) unless waived at a level above the contracting officer, with the concurrence of the project manager. The rationale for any waiver must be documented in the contract file. When safety, export control, or security are considered under the technical factor, the award fee plan must allow the following fee determinations, regardless of contractor performance in other evaluation factors, when there is a major breach of safety or security.

(i) For evaluation of service contracts under 1816.402-473(a), an overall fee rating of unsatisfactory for any evaluation period in which there is a major breach of safety or security.

(ii) For evaluation of end item contracts under 1816.402-473(b), an overall fee rating of unsatisfactory for any interim evaluation period in which there is a major breach of safety or security. To ensure that the final award fee evaluation at contract completion reflects any major breach of safety or security, in an interim period, the overall award fee pool must be reduced by the amount of the fee available for the period in which the major breach occurred if an unsatisfactory fee rating was assigned because of a major breach of safety or security.

(2) A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any "willful" or "repeat" violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(3) A major breach of security may occur on or off Government installations but must be directly related to the work on the contract. A major breach of security is an act or omission by the contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than \$250,000, or theft greater than \$250,000.

(4) The Assistant Administrator for Procurement must be notified prior to the determination of an unsatisfactory award fee rating because of a major breach of safety or security.

(d) In rare circumstances, contract costs may increase for reasons outside the contractor's control and for which the contractor is not entitled to an equitable adjustment. One example is a weather-related launch delay on a launch support contract. The Government must take such situations into consideration when evaluating contractor cost control.

(e) Emphasis on cost control should be balanced against other performance requirement objectives and must not be directly tied to earned value metrics such as the cost performance index (CPI), schedule performance index (SPI), cost variance (CV), or schedule variance (SV). The contractor should not be incentivized to pursue cost control to the point that overall performance is significantly degraded. For example, incentivizing an underrun that results in direct negative impacts on technical performance, safety, or other critical contract objectives is both undesirable and counterproductive. Therefore, evaluation of cost control must conform to the following guidelines:

(1) Normally, the contractor should be given an unsatisfactory rating for cost control when there is a significant overrun within its control. However, the contractor may receive a satisfactory or higher rating for cost control if the overrun is insignificant. Award fee ratings should decrease sharply as the size of the overrun increases. In any evaluation of contractor overrun performance, the Government must consider the reasons for the overrun and assess the extent and effectiveness of the contractor's efforts to control or mitigate the overrun.

(2) The contractor should normally be rewarded for an underrun within its control, up to the maximum award fee rating allocated for cost control, provided the adjectival rating for all other award fee evaluation factors is very good or higher (see FAR 16.402(c)(4)).

(3) The contractor should be rewarded for meeting the estimated cost of the contract, but not to the maximum rating allocated for cost control, to the degree that the contractor has prudently managed costs while meeting contract requirements. No award fee must be given in this circumstance unless the average adjectival rating for all other award fee evaluation factors is satisfactory or higher.

(f) When an AF arrangement is used in conjunction with another contract type, the award fee's cost control factor will only apply to a subjective assessment of the contractor's efforts to control costs and not the actual cost outcome incentivized under the basic contract type (e.g. CPIF, FPIF).

(g)(1) The contractor's performance against the subcontracting plan incorporated in the contract must be evaluated. Emphasis may be placed on the contractor's accomplishment of its goals for subcontracting with small business, small disadvantaged business, HUBZone small business, women-owned small business, veteran-owned small business, service-disabled veteran-owned small business concerns, and Historically Black Colleges and Universities – Minority Institutions (HBCU/MIs). The evaluation should consider both goals as a percentage of subcontracting dollars as well as a percentage of the total contract value.

(2) The contractor's achievements in subcontracting high technology efforts as well as the contractor's performance under the Mentor-Protégé Program, if applicable, may also be evaluated.

(3) The evaluation weight given to the contractor's performance against the considerations in paragraphs (g)(1) and (g)(2) of this section must be 10 percent of available award fee and must be separate from all other factors.

(h) When contract changes are anticipated, the contractor's responsiveness to requests for change proposals should be evaluated. This evaluation should include the contractor's submission of timely, complete proposals and cooperation in negotiating the change.

(i) Only the award fee performance evaluation factors set forth in the performance evaluation plan must be used to determine award fee scores.

(j) The Government may unilaterally modify the applicable award fee performance evaluation factors and performance evaluation areas prior to the start of an evaluation period. The contracting officer must notify the contractor in writing of any such changes 30 days prior to the start of the relevant evaluation period.

#### **1816.402-475 Award fee evaluation rating.**

(a) All award fee contracts must use the adjectival rating categories and associated descriptions as well as the award fee pool available to be earned percentages for each adjectival rating category contained in Table 16-1 in FAR 16.402-2. Contracting officers may supplement these descriptions with more specifics relative to their procurement but they cannot alter or delete the FAR adjectival rating descriptions.

(b) The following numerical scoring system must be used in conjunction with the FAR adjectival rating categories and associated descriptions (see FAR 16.402(c)(4), Table 16-1).

- (1) Excellent (100-91)
- (2) Very good (90-76)
- (3) Good (75-51)
- (4) Satisfactory (50)
- (5) Unsatisfactory (less than 50) No award fee must be paid for an unsatisfactory rating.

(c) As a benchmark for an evaluation to be rated "Excellent" overall, the contractor would typically be under cost, on or ahead of schedule, and providing outstanding technical performance.

(d) A weighted scoring system appropriate for the circumstances of the individual contract requirement should be developed. In this system, each evaluation factor (e.g., technical, schedule, cost control) is assigned a specific percentage weighting with the cumulative weightings of all factors totaling 100. During the award fee evaluation, each factor is scored from 0-100 according to the ratings defined in FAR 16.402(c)(4) Table 16-1, and 1816.402-475(b). The numerical score for each factor is then multiplied by the weighting for that factor to determine the weighted score. For example, if the technical factor has a weighting of 60 percent and the numerical score for that factor is 80, the weighted technical score is 48 (80 x 60 percent). The weighted scores for each evaluation factor are then added to determine the total award fee score.

#### **1816.402-476 Award fee payments and limitations.**

(a) *Interim Award Fee Payments.* The amount of an interim award fee payment (see 1816.402-473(b)) is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that interim period less any provisional payments (see paragraph (b) of this subsection) made during the period.

(b) *Provisional Award Fee Payments.* Provisional award fee payments are payments made within evaluation periods prior to an interim or final evaluation for that period. Provisional payments may be included in the contract and should be negotiated on a case-by-case basis. For a service contract, the total amount of award fee available in an evaluation period that may be provisionally paid is the lesser of a percentage stipulated in the contract (but not exceeding 80 percent) or the prior period's evaluation score. For an end item contract, the total amount of provisional payments in a period is limited to a percentage not to exceed 80 percent of the prior interim period's evaluation score, except for the first evaluation period which is limited to 80 percent of the available award fee for that evaluation period.

(c) *Fee Payment.* The Fee-Determining Official's rating for both interim and final evaluations will be provided to the contractor within 45 calendar days of the end of the period being evaluated. Any fee, interim or final, due the contractor will be paid no later than 60 calendar days after the end of the period being evaluated.

#### **1816.402-477 Award term.**

(a) An award term enables a contractor to become eligible for additional periods of performance or ordering periods under a service contract (as defined in FAR 37.001) by achieving and sustaining the prescribed performance levels under the contract. It incentivizes the contractor for maintaining superior performance by providing an opportunity for extensions of the contract term.

(b) Award terms are best suited for acquisitions where a longer-term relationship (generally more than five years) between the Government and a contractor would provide significant benefits to both. Motivating excellent performance, fostering contractor capital investment, and increasing the desirability of the award, thus potentially increasing competition, are benefits that may justify the use of award terms.

(c) While the administrative burden and cost of more frequent procurements to both the Government and potential offerors should be considered when determining whether to use award terms, this decision must be weighed against market stability, the potential changes and advancements in technology, and flexibility to change direction with mission changes and associated frequent procurements.

(d) Award terms may be used in conjunction with contract options under FAR 17.2. Award terms are similar to contract options in that they are conditioned on the Government's continuing need for the contract and the availability of funds. However, FAR 17.204-1(b)(3)(iv) states the contracting officer must determine that the contractor's performance has been acceptable, e.g., received satisfactory or better performance ratings. In contrast, to become eligible for an award term, the contractor must maintain a level of performance above acceptable as specified in the



Award Term Plan (see 1816.402-477(i)). In contracts with both option periods and award terms, the award term period of performance or ordering period must begin after completion of any option period of performance or ordering period.

(e) Contracts with award terms must include a base period of performance or ordering period and may include a designated number of option periods during which the Government will observe and evaluate the contractor's performance allowing the contractor to earn an award term. Additionally, as specified in the Award Term Plan, the contractor may also be evaluated for additional award terms during performance of an earned award term. If the contractor meets or exceeds the performance requirements, there is an on-going need for and desire to continue the contract, funds are available, and the contractor is not listed in the System for Award Management Exclusions, then the contractor may be eligible for contract extension for the period of the award term.

(f) Contracts with award terms must comply with FAR and NFS restrictions on the overall contract length.

(g) Award terms may only be used in acquisitions for services exceeding \$20 million dollars. Use of award terms for lower-valued acquisitions may be authorized in exceptional situations such as contract requirements having direct health or safety impacts, where the judgmental assessment of the quality of contractor performance is critical.

(h) Consistent with the Competition in Contracting Act and general procurement principles, the potential award term periods in a procurement must be priced, evaluated, and considered in the initial contract selection process to be valid.

(i) All contracts including award terms must be supported by an Award Term Plan that establishes criteria for earning an award term and the methodology and schedule for evaluating contractor performance. A copy of the Award Term Plan must be included in the contract. The contracting officer may unilaterally revise the Award Term Plan. Award Term Plans must—

(1) Identify the officials to include Term-Determining Official involved in the award term evaluation and their function;

(2) Identify and describe each evaluation factor, any subfactors, related performance standards, adjectival ratings, and numerical ranges or weights to be used. The contracting officer should follow the guidance at 1816.402-474 in establishing award term evaluation factors and 1816.402-475 in establishing adjectival rating categories, associated descriptions, numerical scoring system, and weighted scoring system;

(3) Specify the annual overall rating required for the contractor to be eligible for an award term that reflects a level of performance above acceptable and the number of award terms the contractor may qualify for based on the rating score;

(4) Identify the evaluation period(s) and the evaluation schedule to be conducted at stated intervals during the contract period of performance or ordering period so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected (e.g., six months, nine months, twelve months, or at other specific milestones), and when the decision points are for the determination that the contractor is eligible for an award term; and

(5) Identify the contract's base period of performance or ordering period, any option period(s), and total award-term periods(s). Award term periods must not exceed one year.

(j)(1) The Government has the unilateral right not to grant or to cancel award term periods and the associated Award Term Plans if—

(i) The contractor has failed to achieve the required performance measures for the corresponding evaluation period;

(ii) After earning an award term, the contractor fails to earn an award term in any succeeding year of contract performance, the contracting officer may cancel any award terms that the contractor has earned, but that have not begun;

(iii) The contracting officer notifies the contractor that the Government no longer has a need for the award term period before the time an award term period is to begin;

(iv) The contractor represented that it was a small business concern prior to award of the contract, the contract was set-aside for small businesses, and the contractor rerepresents in accordance with FAR clause 52.219-28, Post-Award Small Business Program Rerepresentation, that it is no longer a small business; or

(v) The contracting officer notifies the contractor that funds are not available for the award term.

(2) When an award term period is not granted or cancelled, any—

(i) Prior award term periods for which the contractor remains otherwise eligible are unaffected.

(ii) Subsequent award term periods are also cancelled.

(k) Cancellation of an award term period that has not yet commenced for any of the reasons set forth in paragraph (j) of this section must not be considered either a termination for convenience or termination for default and must not entitle the contractor to any termination settlement or any other compensation. If the award term is cancelled, a unilateral modification will cite the clause as the authority.

#### **1816.406 Contract clauses.**

##### **1816.406-70 NASA contract clauses.**

(a) As authorized by FAR 16.406(d), insert the clause at 1852.216-76, Award Fee for Service Contracts, in solicitations and contracts when an award-fee contract is contemplated, and the contract deliverable is the performance of a service.

(b) As authorized by FAR 16.406(d), insert the clause at 1852.216-77, Award Fee for End Item Contracts, in solicitations and contracts when an award fee contract is contemplated, and the contract deliverables are hardware or other end items for which total contractor performance cannot be measured until the end of the contract. -When the clause is used in a fixed-price award-fee contract, it must be modified by deleting references to base fee in paragraphs (a), and by deleting paragraph (c)(1), the last sentence of (c)(4), and the first sentence of (c)(5).

(c) The contracting officer may insert a clause substantially as stated at 1852.216-83, Fixed Price Incentive, in fixed-price-incentive solicitations and contracts utilizing firm or successive targets. For items subject to incentive price revision, identify the target cost, target profit, target price, and ceiling price for each item.

(d) Insert the clause at 1852.216-84, Estimated Cost and Incentive Fee, in cost-plus-incentive-fee solicitations and contracts.

(e) The contracting officer may insert the clause at 1852.216-85, Estimated Cost and Award Fee, in award-fee solicitations and contracts. When the contract includes performance incentives, use Alternate I. When the clause is used in a fixed-price award fee contract, it shall be modified to delete references to base fee and to reflect the contract type.

(f) As provided at 1816.402-270, insert a clause substantially as stated at 1852.216-88, Performance Incentive, when the primary deliverable(s) is (are) hardware and total estimated cost and fee is greater than \$25 million. A clause substantially as stated at 1852.216-88 may be included in lower dollar value supply or service contracts at the discretion of the contracting officer.

(g) Insert the clause at 1852.216-72, Award Term, in solicitations and contracts for services exceeding \$20 million when award terms are contemplated.

#### **Subpart 1816.5—Indefinite-Delivery Contracts**

##### **1816.505-70 -NASA contract clause.**

Insert the clause at 1852.216-80, Task Ordering Procedure, in solicitations and contracts when an indefinite-delivery, task order contract is contemplated. -The clause is applicable to both fixed-price and cost-reimbursement type contracts. The contracting officer must use the clause with its-

(a) Alternate I, if the cost type, fixed-price with prospective price redetermination, or fixed-price incentive contract does not include a NASA Form 533M reporting requirements; or

(b) Alternate II, if a fixed price contract is contemplated.

\* \* \* \* \*

### **PART 1852 SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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#### **Subpart 1852.2—Text of Provisions and Clauses**

\* \* \* \* \*

##### **1852.216-73 Estimated Cost and Cost Sharing.**

As prescribed in 1816.305-70(a), insert the following clause:

ESTIMATED COST AND COST SHARING  
(DEC 2025) (DEVIATION)

(a) It is estimated that the total cost of performing the work under this contract will be \$ \_\_\_\_\_.

(b) For performance of the work under this contract, the contractor shall be reimbursed for not more than \_\_\_\_ percent of the costs of performance determined to be allowable under the Allowable Cost and Payment clause. The remaining \_\_\_\_ percent or more of the costs of performance so determined shall constitute the Contractor's share, for which it will not be reimbursed by the Government.

(c) For purposes of the \_\_\_\_\_ [insert "Limitation of Cost" or "Limitation of Funds"] clause, the total estimated cost to the Government is hereby established as \$\_\_\_\_\_ (insert estimated Government share); this amount is the maximum Government liability.

(d) The contractor shall maintain records of all contract costs claimed by the Contractor as constituting part of its share. Those records shall be subject to audit by the Government. Costs contributed by the contractor shall not be charged to the Government under any other grant, contract, or agreement (including allocation to other grants, contracts, or agreements as part of an independent research and development program).

(End of clause)

**1852.216-74 Estimated Cost and Fixed Fee.**

As prescribed in 1816.305-70(b), insert the following clause:

\* \* \* \* \*

**1852.216-75 Payment of Fixed Fee.**

As prescribed in 1816.305-70(c), insert the following clause:

PAYMENT OF FIXED FEE  
(DEC 2025) (DEVIATION)

The fixed fee shall be paid in monthly installments based upon the percentage of completion of work as determined by the contracting officer.

(End of clause)

**1852.216-76 Award Fee for Service Contracts.**

As prescribed in 1816.406-70(a), insert the following clause:

AWARD FEE FOR SERVICE CONTRACTS  
(DEC 2025) (DEVIATION)

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract.

(b) Beginning 6\* months after the effective date of this contract, the Government shall evaluate the contractor's performance every 6\* months to determine the amount of award fee earned by the contractor during the period. The contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee-Determining Official (FDO) will determine the award fee amounts based on the contractor's performance in accordance with [*identify performance evaluation plan*]. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the contractor in writing of the evaluation results. The [*insert payment office*] will make payment based on [*Insert method of authorizing award fee payment*].

(d) The contracting officer may direct the withholding of earned award fee payments until a reserve is set aside in an amount that the contracting officer considers necessary to protect the Government's interest relative to an orderly and timely closeout of the contract. This reserve shall not exceed 15 percent of the contract's total potential award fee or \$100,000, whichever is less.

(e) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at [*identify location of award fee amounts*]. -Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(f)(1) Provisional award fee payments [*insert "will" or "will not", as applicable*] be made under this contract pending the determination of the amount of fee earned for an evaluation period. If applicable, provisional award fee payments will be made to the contractor on a [*insert the frequency of provisional payments (not more often than monthly)*] basis. The total amount of award fee available in an evaluation period that will be provisionally paid is the lesser of [*Insert a percent not to exceed 80 percent*] or the prior period's evaluation score.

(2) Provisional award fee payments will be superseded by the final award fee evaluation for that period. -If provisional payments exceed the final evaluation score, the contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the contracting officer.

(3) If the contracting officer determines that the contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the contracting officer deems appropriate. The contracting officer will notify the contractor in writing if it is determined that such discontinuance or reduction is appropriate.

(4) Provisional award fee payments [*insert "will" or "will not", as appropriate*] be made prior to the first award fee determination by the Government.

(g) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

\* [A period of time greater or lesser than 6 months may be substituted in accordance with 1816.402-472(a).]

(End of clause)

**1852.216-77 Award Fee for End Item Contracts.**

As prescribed in 1816.406-70(b), insert the following clause:

AWARD FEE FOR END ITEM CONTRACTS  
(DEC 2025) (DEVIATION)

(a) The contractor can earn award fee, or base fee, if any, from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216-85, "Estimated Cost and Award Fee" in this contract. All award fee evaluations, with the exception of the last evaluation, will be interim evaluations. At the last evaluation, which is final, the contractor's performance for the entire contract will be evaluated to determine total earned award fee. No award fee or base fee will be paid to the contractor if the final award fee evaluation is "poor/unsatisfactory."

(b) Beginning 6\* months after the effective date of this contract, the Government will evaluate the contractor's interim performance every 6\* months to monitor contractor performance prior to contract completion and to provide feedback to the contractor. The evaluation will be performed in accordance with [*identify performance evaluation plan*] to this contract. The contractor may submit a self-evaluation of performance for each period under consideration. -These self-evaluations will be considered by the Government in its evaluation. The Government will advise the contractor in writing of the evaluation results. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c)(1) Base fee, if applicable, will be paid in [*Insert "monthly", or less frequent period*] installments based on the percent of completion of the work as determined by the contracting officer.

(2) Interim award fee payments will be made to the contractor based on each interim evaluation. The amount of the interim award fee payment is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that period *less* any provisional payments made during the period. All interim award fee payments will be superseded by the final award fee determination.

(3) Provisional award fee payments will [*insert "not" if applicable*] be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the contractor on a [*insert the frequency of provisional payments (not more often than monthly)*] basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to [*Insert a percent not to exceed 80 percent*] of the prior interim evaluation score (see [*insert applicable cite*]), except for the first evaluation period which is limited to [*insert a percent not to exceed 80 percent*] of the available award fee for that evaluation period. Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. If provisional payments made exceed the interim evaluation score, the contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the contracting officer. If the Government determines that (i) the total amount of provisional fee payments will apparently substantially exceed the anticipated final evaluation score, or (ii) the prior interim evaluation is "poor/unsatisfactory," the contracting officer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate.

Written notification of the determination will be provided to the contractor with a copy to the Deputy Chief Financial Officer (Finance).

(4) All interim (and provisional, if applicable) fee payments will be superseded by the fee determination made in the final award fee evaluation. The Government will then pay the contractor, or the Contractor will refund to the Government the difference between the final award fee determination and the cumulative interim (and provisional, if applicable) fee payments. If the final award fee evaluation is "poor/unsatisfactory", any base fee paid will be refunded to the Government.

(5) Payment of base fee, if applicable, will be made based on submission of an invoice by the Contractor. Payment of award fee will be made by the *[insert payment office]* based on *[Insert method of making award fee payment, e.g., issuance of a unilateral modification by the contracting officer]*.

(d) The contracting officer may direct the withholding of interim award fee payments until a reserve is set aside in an amount that the contracting officer considers necessary to protect the Government's interest relative to an orderly and timely closeout of the contract. This reserve shall not exceed 15 percent of the contracts total potential award fee or \$100,000, whichever is less.

(e) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

\* [A period of time greater or lesser than 6 months may be substituted in accordance with 1816.402-472(a).]

(End of clause)

**1852.216-78 Firm-Fixed-Price.**

As prescribed in 1816.202-70, insert the following clause:

FIRM-FIXED-PRICE  
(DEC 2025) (DEVIATION)

The total firm-fixed-price of this contract is \$[Insert the appropriate amount].

(End of clause)

**1852.216-80 Task Ordering Procedure.**

As prescribed in 1816.505-70, insert the following clause:

TASK ORDERING PROCEDURE  
(DEC 2025) (DEVIATION)

(a) Only the contracting officer may issue task orders to the contractor, providing specific authorization or direction to perform work within the scope of the contract and as specified in the schedule. The contractor may incur costs under this contract in performance of task orders and task order modifications issued in accordance with this clause. No other costs are authorized unless otherwise specified in the contract or expressly authorized by the contracting officer.

(b) Prior to issuing a task order, the contracting officer shall provide the contractor with the following data:

(1) A functional description of the work identifying the objectives or results desired from the contemplated task order.

(2) Proposed performance standards to be used as criteria for determining whether the work requirements have been met.

(3) A request for a task plan from the contractor to include the technical approach, period of performance, appropriate cost information, and any other information required to determine the reasonableness of the contractor's proposal.

(c) Within \_\_\_\_ calendar days after receipt of the contracting officer's request, the contractor shall submit a task plan conforming to the request.

(d) After review and any necessary discussions, the contracting officer may issue a task order to the contractor containing, as a minimum, the following:

(1) Date of the order.

(2) Contract number and order number.

(3) Functional description of the work identifying the objectives or results desired from the task order, including special instructions or other information necessary for performance of the task.

(4) Performance standards, and where appropriate, quality assurance standards.

(5) Maximum dollar amount authorized (cost and fee or price). This includes allocation of award fee among award fee periods, if applicable.

(6) Any other resources (travel, materials, equipment, facilities, etc.) authorized.

(7) Delivery/performance schedule including start and end dates.

(8) If contract funding is by individual task order, accounting and appropriation data.

(e) The contractor shall provide acknowledgment of receipt to the contracting officer within \_\_\_\_ calendar days after receipt of the task order.

(f) If time constraints do not permit issuance of a fully defined task order in accordance with the procedures described in paragraphs (a) through (d), a task order which includes a ceiling price may be issued.

(g) The contracting officer may amend tasks in the same manner in which they were issued.

(h) In the event of a conflict between the requirements of the task order and the contractor's approved task plan, the task order shall prevail.

(End of clause)

ALTERNATE I  
(APR 2018)

As prescribed in 1816.505-70(a), insert the following paragraph (i):



(i) Contractor shall submit progress reports, as required. When required, the reports shall contain, at a minimum, the following information:

- (1) Contract number, task order number, and date of the order.
- (2) Total estimated dollar amount of task order(s).
- (3) Cost and hours incurred to date for each issued task order.
- (4) Costs and hours estimated to complete each issued task order.
- (5) Significant issues/problems associated with a task order.
- (6) Cost summary of the status of all task orders issued under the contract.
- (7) Invoice number.

ALTERNATE II  
(APR 2018)

As prescribed in 1816.505-70(b), insert the following paragraph (i):

(i) Contractor shall submit progress reports, as required. When required, the reports shall contain, at a minimum, the following information:

- (1) Contract number, task order number, and date of the order.
- (2) Price and billed amounts to date for each task order.
- (3) Significant issues/problems associated with the task order.
- (4) Status of all task orders issued under the contract.
- (5) Invoice number.

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**1852.216-81 Estimated Cost.**

As prescribed in 1816.305-70(d), insert the following clause:

\* \* \* \* \*

**1852.216-89 Assignment and Release Forms.**

As prescribed in 1816.305-70(f), insert the following clause:

ASSIGNMENT AND RELEASE FORMS  
(DEC 2025) (DEVIATION)

The contractor shall use the following forms to fulfill the assignment and release requirements of FAR clause 52.216-7, Allowable Cost and Payment:

[NASA Form 778](#), Contractor's Release;

[NASA Form 779](#), Assignee's Release;

[NASA Form 780](#), Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts; and

[NASA Form 781](#), Assignee's Assignment of Refunds, Rebates, Credits, and Other Amounts.

Computer generated forms are acceptable, provided that they comply with FAR clause 52.253-1, Computer Generated Forms.

(End of clause)

**1852.216-90 Allowability of legal costs incurred in connection with a whistleblower proceeding.**

As prescribed in 1816.305-70(g), use the following clause:

\* \* \* \* \*