



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Notice

PN 17-15

August 25, 2017

Award Terms (NFS Case 2016-N027)

PURPOSE: To revise the NASA Federal Acquisition Regulation Supplement (NFS) implementing a final rule published in the Federal Register at [82 FR 34416](#) on July 25, 2017 and effective August 24, 2017, regarding the use of award term incentives.

BACKGROUND: This rule revises the NFS to provide definitions, policy guidance, and a standard contract clause on the use of award term incentives. This policy builds on NASA's Award Term Contracting Pilot Program from the late 1990s, the policy set forth in Procurement Information Circular 06-02, Use of Award Term Incentive, practices used by other agency's award term policies, such as the Air Force, Department of Energy, Environmental Protection Agency, and Department of Treasury, as well as improvements resulting from comments provided during the review process. NASA published a proposed rule in the Federal Register at [81 FR 89038](#) on December 9, 2016. Two respondents submitted comments on the proposed rule, which were addressed in the final rule.

ACQUISITIONS AFFECTED BY CHANGES: This requirement is applicable to all solicitations issued and contracts awarded on or after the effective date of the final rule, August 25, 2017.

ACTION REQUIRED: Contracting officers shall follow the policy at NFS 1816.401, 1816.405-277, 1816.406-70, and use the NFS clause at 1852.216-72, Award Term, when planning for, seeking approval of, evaluating, or administering award term incentives.

PROVISION AND CLAUSE CHANGES: Clause 1852.216-72, Award Term (AUG 2017) is added. A revised NFS Clause Matrix is enclosed.

PARTS AFFECTED: Parts 1816 and 1852.

PIC or PCD CHANGES: Procurement Class Deviation (PCD) 17-01, Award Term Incentives, dated June 16, 2017, is cancelled.

TYPE OF RULE AND PUBLICATION DATE: This action includes both regulatory and nonregulatory NFS changes. The regulatory changes were published in a final rule in the Federal Register (82 FR 34416) as described above.

HEADQUARTERS CONTACT: Marilyn E. Chambers, Contract and Grant Policy Division, (202) 358-5054, email: marilyn.chambers@nasa.gov.

/s/

William P. McNally

Assistant Administrator for Procurement

Enclosures:

NFS Revisions

PART 1816
TYPES OF CONTRACTS
(Revised ~~March 24, 2017~~[August 25, 2017])

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1816.001 Definitions.

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[“*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.]

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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. The Guide is available at <http://www.hq.nasa.gov/office/procurement/regs/afguidee.html>.]

(d) Use of an incentive-~~or~~[,] award fee[, or award term] contract requires advance approval by the Assistant Administrator for Procurement. Requests for approval, that include Determination & Findings (D&F) cited in [FAR 16.401](#)(d), shall be submitted to Headquarters Office of Procurement, Program Operations Division.

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

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[1816.405-277 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\(c\)\(7\)](#) states the contracting officer must determine that the contractor's performance has been acceptable, e.g., received satisfactory 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\(i\)](#)). 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 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 be included in the contract. The contracting officer may unilaterally revise the Award Term Plan. Award Term Plans shall—

(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](#) in establishing award term evaluation factors and 1816.405-275 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 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 not be considered either a termination for convenience or termination for default, and shall 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.]

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1816.406-70 NASA contract clauses.

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

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PART 1852
SOLICITATION PROVISIONS AND CONTRACT CLAUSES
(Revised ~~January 17, 2017~~[August 25, 2017])

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SUBPART [1852.2](#) TEXTS OF PROVISIONS AND CLAUSES

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1852.215-85	Proposal Adequacy Checklist
[1852.216-72	Award term.]
1852.216-73	Estimated Cost and Cost Sharing.

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[1852.216-72 Award term.
As prescribed in [1816.406-70\(g\)](#), insert the following clause:

AWARD TERM
(AUG 2017)

- (a) Based on overall Contractor performance as evaluated in accordance with the Award Term Plan, the Contracting Officer may extend the contract for the number and duration of award terms as set forth in the Award Term Plan.
- (b) The Contracting Officer will execute any earned award term period(s) through a unilateral contract modification. All contract provisions continue to apply throughout the contract period of performance or ordering period, including any award term period(s).
- (c) The Government will evaluate offerors for award purposes by adding the total price for all options and award terms to the price for the basic requirement. This evaluation will not obligate the Government to exercise any options or award term periods.
- (d) The Award Term Plan is attached in Section J. The Award Term Plan provides the methodology and schedule for evaluating Contractor performance, determining eligibility for an award term, and, together with Agency need for the contract and availability of funding, serves as the basis for award term decisions. The Contracting Officer may unilaterally revise the Award Term Plan. Any changes to the Award Term Plan will be in writing and incorporated into the contract through a unilateral modification citing this clause prior to the commencement of any evaluation period. The Contracting Officer will consult with the Contractor prior to the issuance of a revised Award Term Plan; however, the Contractor's consent is not required.

(e) The award term evaluation(s) will be completed in accordance with the schedule in the Award Term Plan. The Contractor will be notified of the results and its eligibility to be considered for the respective award term no later than 120 days after the evaluation period set forth in the Award Term Plan. The Contractor may request a review of an award term evaluation which has resulted in the Contractor not earning the award term. The request shall be submitted in writing to the Contracting Officer within 15 days after notification of the results of the evaluation.

(f)(1) The Government has the unilateral right not to grant or to cancel award term periods and the associated Award Term Plan 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 has notified 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 this 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 has notified 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, except as provided in paragraph (g) of this clause; or

(ii) Subsequent award term periods are also cancelled.

(g) Cancellation of an award term period that has not yet started for any of the reasons set forth in paragraph (f) of this clause shall not be considered either a termination for convenience or termination for default, and shall not entitle the Contractor to any termination settlement or any other compensation.

(h) Cancellation of an award term period that has not yet commenced for any of the reasons set forth in paragraphs (f) and (g) of this clause shall not be considered either a termination for convenience or termination for default, and shall not entitle the Contractor to any termination settlement or any other compensation. If the award term is cancelled, a unilateral modification will cite this clause as the authority.

(i) Funds are not presently available for any award term. The Government's obligation under any award term is contingent upon the availability of appropriated funds from which payment can be made. No legal liability on the part of the Government for any award term payment may arise until funds are made available to the Contracting Officer for an award term and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)]

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SUBPART 1852.301—CLAUSE MATRIX

(Revised ~~January 17, 2017~~[August 24, 2017])

Clause Number	Title	Date	Prescribed In	P or C	UCF	IBR or FT	Fill In	Mod or Sub	App Dev	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	A&E	ID DEL	TRN	SAP	CI
1852.216-72	Award Term	AUG 2017	1816.406-70(g)	C	I	FT				A	A	A	A	A	A	A	A	A	A	A			