

**§ 61.58 [Corrected]**

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(e) *Other carriers.* (1) Tariff filings in the instances specified in paragraphs (d)(1) (i), (ii), and (iii) of this section must be made on at least 15 days' notice.

(i) Tariffs filed in the first instance by new carriers.

(ii) Tariffs filings involving new rates and regulations not previously filed at, from, to or via points on new lines; at, from to or via new radio facilities; or for new points of radio communication.

(iii) Tariff filings involving a change in the name of a carrier, a change in Vertical and Horizontal coordinates (or other means used to determine airline mileages), a change in the lists of mileages, a change in the lists of connecting, concurring or other participating carriers, text changes, or the imposition of termination charges calculated from effective tariff provisions. The imposition of termination charges does not include the initial filing of termination liability provisions.

(2) Tariff filings involving a change in rate structure, a new service offering, or a rate increase must be made on at least 45 days' notice.

(3) All tariff filings not specifically assigned a different period of public notice in this part must be made on at least 35 days' notice.

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BILLING CODE 1505-01-D

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 1816 and 1852****FAR Supplement Coverage of Award Fee Evaluations**

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This is a final rule amending the NASA FAR Supplement (NFS) coverage on award fee evaluations to correct inaccurate references and improve clarity.

**EFFECTIVE DATE:** March 18, 1998.

**FOR FURTHER INFORMATION CONTACT:** Tom O'Toole, NASA Office of Procurement, Contract Management Division (Code HK), (202) 358-0478.

**SUPPLEMENTARY INFORMATION:****Background**

NASA has different award fee evaluation procedures for service and end item contracts. For service

contracts, all award fee evaluations during the contract term are final. For end item contracts, evaluations during the contract term are "interim" evaluations that are superseded by a single final evaluation at contract completion. The NFS has inaccurate references associating interim evaluations with service contracts, and these are deleted by this rule. In addition, NASA allow for provisional payment of award fee, i.e., payments made during award fee periods in anticipation of the Government evaluation at the end of the period. References to provisional payments in the NFS are inconsistent, and this rule conforms these references. Finally, to improve its clarity, the NFS coverage is restructured and miscellaneous editorial changes are made. None of the NFS revisions in this rule change NASA policy.

**Impact**

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

**List of Subjects in 48 CFR Parts 1816 and 1852**

Government procurement.

**Deidre Lee,**

*Associate Administrator for Procurement.*

Accordingly, 48 CFR Parts 1816 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1816 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1)

**PART 1816—TYPES OF CONTRACTS**

2. In section 1816.405-271, paragraph (a) is revised to read as follows:

**1816.405-271 Base fee.**

(a) A base fee shall not be used on CPAF contracts for which the periodic award fee evaluations are final (1816.405-273(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 not be used when an award fee incentive is used in

conjunction with another contract type (e.g., CPIF/AF).

\* \* \* \* \*

3. In paragraph (a) of section 1816.405-272, the first sentence is revised to read as follows:

**1816.405-272 Award fee evaluation periods.**

(a) Award fee evaluation periods, including those for interim evaluations, should be at least 6 months in length.

\* \* \*

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4. Section 1816.405-273 is revised to read as follows:

**1816.405-273 Award fee evaluations.**

(a) *Service contracts.* On contracts where the contract deliverable is the performance of a service over any given time period, contractor performance is often 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 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)). These interim evaluations and associated interim award fee payments are superseded by the fee determination made in the final evaluation at contract completion. 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".

5. In section 1816.405-275, paragraph (b)(2) is revised to read as follows:

**1816.405-275 Award fee evaluation scoring.**

\* \* \* \* \*

(b) \* \* \*  
(2) *Very good* (90-81): Very effective performance, fully responsive to contract requirements; contract requirements accomplished in a timely, efficient, and economical manner for the most part; only minor deficiencies.

\* \* \* \* \*

6. Section 1816.405-276 is added to read as follows:

**1816.405-276 Award fee payments and limitations.**

(a) *Interim award fee payments.* The amount of an interim award fee payment (see 1816.405-273(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.

(c) *Fee payment.* The Fee Determination 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.

**1816.406-70 [Amended]**

7. In paragraph (a) of section 1816.406-70, the last sentence is removed.

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

8. In section 1852.216-76, the clause date is revised, the designated paragraph (f) is redesignated as paragraph (g) and republished, a new

paragraph (f) is added, and Alternate I to the clause is removed, to read as follows:

**1852.216-76 Award fee for service contracts.**

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

**Award Fee for Service Contracts**

*March 1998*

\* \* \* \* \*

(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. This determination is not subject to the Disputes clause.

(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 made by the Government under this contract are not subject to the Disputes clause.

\*[A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405-272(a).]

(End of clause)

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AB73**

**Endangered and Threatened Wildlife and Plants; Endangered Status for the Peninsular Ranges Population Segment of the Desert Bighorn Sheep in Southern California**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) determines the distinct vertebrate population segment of bighorn sheep (*Ovis canadensis*) (Peninsular bighorn sheep) occupying the Peninsular Ranges of southern California, to be an endangered species pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act). The Service originally proposed to list the Peninsular bighorn sheep throughout its range, which extends into Baja California, Mexico. However, because new information received during the comment periods indicated listing bighorn sheep populations in Baja California is not warranted, the final listing determination includes only the Peninsular bighorn sheep population segment in the United States. The synergistic effects of disease; low recruitment; habitat loss, degradation, and fragmentation; non-adaptive behavioral responses associated with residential and commercial development; and high predation rates coinciding with low bighorn sheep population numbers threaten the continued existence of these animals in southern California. This rule implements Federal protection and recovery provisions of the Act for the Peninsular bighorn sheep. Critical habitat is not being designated.

**DATES:** This rule is effective March 18, 1998.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

**FOR FURTHER INFORMATION CONTACT:** Arthur Davenport, at the above address (telephone: 760/431-9440).

**Background**

The bighorn sheep (*Ovis canadensis*) is a large mammal (family Bovidae) originally described by Shaw in 1804