

## Environmental Protection Agency

1516.406

### 1516.401-270 Definition.

Acceptable quality level (AQL) as used in this subpart means the minimum percent of deliverables which are compliant with a given performance standard that would permit a contractor to become eligible for an award term incentive. Because the performance necessary for eligibility for the award term incentive may be in excess of that necessary for the Government acceptance of contract deliverables, the AQLs associated with the award term incentive may exceed the AQLs associated with the acceptance of contract deliverables. For example, under contract X, acceptable performance is 75 percent of reports submitted to the Government within five days. However, to be eligible for an award term incentive, 85 percent of reports must be submitted to the Government within five days.

[73 FR 1980, Jan. 11, 2008]

### 1516.405-2 Cost-plus-award-fee contracts.

#### 1516.405-270 Definitions.

(a) *Performance Evaluation Board (PEB)*. Group of Government officials responsible for assessing the quality of contract performance and recommending the appropriate fee.

(b) *Fee Determination Official*. Individual responsible for reviewing the recommendations of the PEB and making the final determination of the amount of award fee to be awarded to the contractor.

[60 FR 43404, Aug. 21, 1995. Redesignated at 73 FR 1981, Jan. 11, 2008]

#### 1516.405-271 Limitations.

(a) No award fee may be earned if the Fee Determination Official determines that contractor performance has been satisfactory or less than satisfactory. A contractor may earn award fee only for performance rated above satisfactory or excellent. All award fee plans shall disclose to offerors the numerical rating necessary to be deemed "above satisfactory" or "excellent" for award fee purposes.

(b) The base fee shall not exceed three percent of the estimated cost of the contract, exclusive of the fee.

(c) Unearned award fee may not be carried forward from one performance period into a subsequent performance period unless approved by the FDO.

(d) The payment of award fee on a provisional basis is not authorized.

[60 FR 43404, Aug. 21, 1995. Redesignated at 73 FR 1981, Jan. 11, 2008]

### 1516.405-272 Waiver.

The Chief of the Contracting Office may waive the limitations in paragraphs (a), (b), and (d) of 1516.404-273 on a case-by-case basis when unusual or compelling circumstances exist. The waiver shall be supported by a justification and coordinated with the Procurement Policy Branch in the Office of Acquisition Management.

[60 FR 43404, Aug. 21, 1995. Redesignated at 73 FR 1981, Jan. 11, 2008]

### 1516.406 Contract clauses.

(a) The Contracting Officer shall insert the clause at 1552.216-70, Award fee (MAY 2000), in solicitations and contracts where a cost-plus-award-fee contract is contemplated.

(b) The Contracting Officer shall insert the clause at 1552.216-75, Base Fee and Award Fee Proposal (SEP 1995), in all solicitations which contemplate the award of cost-plus-award-fee contracts. The Contracting Officer shall insert the appropriate percentages.

(c) The Contracting Officer shall insert the clauses at 1552.216-77, Award Term Incentive, 1552.216-78, Award Term Incentive Plan, and 1552.216-79 Award Term Availability of Funds in solicitations and contracts when award term incentives are contemplated. The clauses at 1552.216-77 and 1552.216-78 may be used on substantially the same basis.

(d) If the Contracting Officer wishes to use the ratings set forth in the National Institutes of Health (NIH) Contractor Performance System (CPS) on the contract at hand as the basis for contractor eligibility for an award term incentive, the Contracting Officer shall insert the clause at 1552.216-78 with its Alternate I.

[60 FR 43404, Aug. 21, 1995, as amended at 64 FR 3876, Jan. 26, 1999; 65 FR 31500, May 18, 2000. Redesignated and amended at 73 FR 1981, Jan. 11, 2008]