

SUBPART 216.6—TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

(Revised December 7, 2011)

216.601 Time-and-materials contracts.

See DoD Class Deviation [2012-00016](#), Approval Threshold for Time-and-Materials and Labor-Hour Contracts and Preference for Cost-Plus-Fixed-Fee Term Contracts, issued on October 11, 2012. This deviation increases the approval threshold for the determination and findings required when using a time-and-materials or labor-hour contract type and expresses a preference for cost-plus-fixed-fee contract type. This deviation remains in effect until incorporated in the FAR or DFARS or otherwise rescinded.

(d) *Limitations.*

(i) The determination and findings shall contain sufficient facts and rationale to justify that no other contract type is suitable. At a minimum, the determination and findings shall—

(A) Include a description of the market research conducted;

(B) Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty;

(C) Establish that the requirement has been structured to minimize the use of time-and-materials requirements (e.g., limiting the value or length of the time-and-materials portion of the contract or order; establishing fixed prices for portions of the requirement); and

(D) Describe the actions planned to minimize the use of time-and-materials contracts on future acquisitions for the same requirements.

(ii) For indefinite-delivery contracts, the contracting officer shall—

(A) Structure contracts that authorize time-and-materials orders to also authorize orders on a cost-reimbursement, incentive, or fixed-price basis, to the maximum extent practicable; and

(B) Execute the determination and findings for—

(1) Each order placed on a time-and-materials basis if the indefinite-delivery contract also authorizes orders on a cost-reimbursement, incentive, or fixed-price basis; or

(2) The basic contract if the indefinite-delivery contract only authorizes time-and-materials orders. The determination and findings shall—

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(i) Contain sufficient facts and rationale to justify why orders on a cost-reimbursement, incentive, and fixed-price basis are not practicable; and

(ii) Be approved one level above the contracting officer.

(e) *Solicitation provisions.* Use the provision at FAR 52.216-29, Time-and-Materials/Labor-Hour Proposal Requirements – Non-Commercial Item Acquisition with Adequate Price Competition, with [252.216-7002](#), Alternate A, in solicitations contemplating the use of a time-and-materials or labor-hour contract type for non-commercial items if the price is expected to be based on adequate competition.

216.603 Letter contracts.

216.603-2 Application.

(c)(3) In accordance with 10 U.S.C. 2326, establish definitization schedules for letter contracts following the requirements at [217.7404-3\(a\)](#) instead of the requirements at FAR 16.603-2(c)(3).

216.603-3 Limitations.

See Subpart [217.74](#) for additional limitations on the use of letter contracts.

216.603-4 Contract clauses.

(b)(2) See [217.7405\(a\)](#) for additional guidance regarding use of the clause at FAR 52.216-24, Limitation of Government Liability.

(3) Use the clause at [252.217-7027](#), Contract Definitization, in accordance with its prescription at [217.7406\(b\)](#), instead of the clause at FAR 52.216-25, Contract Definitization.