



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(RESEARCH, DEVELOPMENT AND ACQUISITION)
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

31 March 2009

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Use of Time-and-Materials or Labor-Hour Contracts

Ref: (a) DPAP memorandum of March 20, 2008

Recent feedback from a Government Accountability Office (GAO) briefing on a review of time-and-materials (T&M) contracts for commercial services reveals a troubling trend of non-compliance with existing procurement regulations. Specifically, there are instances of required written determinations and findings (D&Fs) not being done or failing to include sufficient rationale justifying that no other contract type is suitable. In addition, there are instances where contracting officers improperly classified contracts as "fixed priced" because the contracts included fixed hourly rates.

Contracting officers, working closely with program personnel, are responsible for selecting a contract type that is suitable for the requirement--one that results in an appropriate balance of risk between the contractor and the government and promotes efficient, cost-effective performance. Contracting officers may not award a T&M or labor-hour (LH) contract unless a written determination and finding (D&F) is approved stating that no other contract type is suitable (FAR 12.207(b) and 16.601(d) refer). In some cases, the D&F must be approved by a level above the contracting officer or the Head of the Contracting Activity. In every case the D&F must sufficiently document the facts and rationale justifying use of these contract types (FAR 12.207(b) and DFARS 216.601(d) refer). To ensure T&M/LH contracts are used only when authorized, reference (a) directs we monitor closely these contracts for proper use and report spend activity. Accurate reporting in FPDS-NG is necessary to facilitate the reference (a) requirements.

Please disseminate this memorandum to your contracting officers and other personnel, as appropriate, as a reminder that use of T&M/LH contract types remains a concern within the Department. The improper use of these contract types is considered high-risk for the government and may cause wasteful spending, fraud or abuse to occur. Proper use of T&M/LH contracts will be reviewed as part of the PPMAP process. My point of contact for this memorandum is Evelyn Ortiz, telephone (703) 614-9640 or email evelyn.ortiz@navy.mil.


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**SUBJECT: Use of Time-and-Materials or Labor Hour Contracts for Commercial or
Non-commercial Requirements**

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