DEPARTMENT OF THE NAVY
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18 OCT 2012

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Class Deviation – Approval Threshold for Time-and-Material and Labor-Hour Contracts and Preference for Cost-Plus-Fixed-Fee Term Contracts

The attached Director of Defense Procurement and Acquisition Policy (DPAP) memorandum (same subject, dated October 11, 2012) effects a class deviation which identifies text to be used and additional requirements which must be met prior to award of time-and-materials (T&M) and labor hours (LH) contracts and T&M/LH orders. This is in lieu of FAR 16.601(d)(1) and DFARS 16.601(d).

The memorandum identifies exemptions and approval levels for these additional requirements. This class deviation is effective immediately and will remain in effect until it is incorporated in the DFARS, or is otherwise rescinded.

My point of contact for this is Denise Randolph. She can be reached on (703) 614-9767 or via Denise.Randolph@navy.mil .

Althea H. Coetzee
RDML, SC, USN
Executive Director
DASN(AP)

Attachment: As stated

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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OCT 11 2012

In reply refer to
DARS Tracking Number: 2012-O0016

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)
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DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Class Deviation – Approval Threshold for Time-and-Materials and Labor-Hour Contracts and Preference for Cost-Plus-Fixed-Fee Term Contracts

Effective immediately, prior to awarding time-and-materials (T&M) and labor-hour (LH) contracts, or T&M/LH orders, contracting officers shall use the attached text in lieu of FAR 16.601(d)(1) and DFARS 216.601(d)(i) and (ii). The limitations at FAR 16.601(d)(2) remain unchanged.

This class deviation requires that—

(1) The determination and findings for use of a T&M/LH contract or order in which the portion of the requirement performed on a T&M/LH basis exceeds $1 million, shall be approved by the senior contracting official within the contracting activity; and

(2) In addition to the current DFARS content requirements for the determination and findings, the contracting officer shall also address why a cost-plus-fixed-fee (CPFF) term type of contract is not appropriate.

(3) For acquisitions of noncommercial items where the contractor has an adequate accounting system, a CPFF term contract type is preferred over a T&M/LH contract type.

The additional internal approval level required by this deviation will increase oversight and management of T&M and LH contracts and orders, which inherently lack incentives for cost control and labor efficiency. This approval authority may not be delegated. Although

requirements to monitor contractor performance are in place, these types of contracts remain the least preferred business arrangements.

Contracts that support contingency or peacekeeping operations, or provide humanitarian assistance, disaster relief, or recovery from conventional, nuclear, biological, chemical, or radiological attacks are exempt from the requirements of this deviation.

This class deviation remains in effect until it is incorporated in the DFARS, or is otherwise rescinded. My point of contact is Mr. Dustin Pitsch, who may be reached at 571-372-6090 or Dustin.Pitsch@osd.mil.

Richard Ginman
Director, Defense Procurement
and Acquisition Policy

Attachment:
As stated

Class Deviation 2012-O0016

This deviation does not apply to contracts that—

- *Support contingency or peacekeeping operations; or*
- *Provide humanitarian assistance, disaster relief, or recovery from recovery from conventional, nuclear, biological, chemical, or radiological attack.*

PART 216—TYPES OF CONTRACTS

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

216.601 Time-and-materials contracts. (DEVIATION 2012-O0016))

(d) *Limitations.* **(1)(A)** ***Determination and findings required for time-and-materials or labor hour contracts.*** **A time-and-materials/labor hour contract or order may be used only if the contracting officer prepares a determination and findings that no other contract type is suitable. The determination and findings shall be signed by the contracting officer prior to execution of the base period or any option period of the contract.**

(1)If the base period plus any option period is three years or less.

(i) **For contracts and orders in which the portion of the requirement performed on a time-and materials/labor-hour basis exceeds $1 million, the determination and findings shall be approved by the senior contracting official within the contracting activity. This approval authority may not be delegated.**

(ii) **For contracts and orders in which the portion of the requirement performed on a time-and materials/labor-hour basis is less than or equal to $1 million, the determination and findings shall be approved one level above the contracting officer.**

(2) If the base period plus any option period exceeds three years. **The determination and findings shall be approved by the head of the contracting activity. This approval authority may not be delegated.**

(B) ***Content of determination and findings.*** 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—

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

(2) 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;

(*3*) Address why a cost-plus-fixed-fee term contract or order is not appropriate. If the acquisition is for noncommercial items and the contractor's accounting system is adequate, then a cost-plus-fixed-fee term contract type shall be preferred over a time-and-materials/labor-hour contract type.

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

(*5*) Describe the actions planned to minimize the use of time-and-materials/**labor-hour** contracts on future acquisitions for the same requirements.

(i) For indefinite-delivery **time-and-materials/labor hour** contracts, the contracting officer shall structure contracts that authorize time-and-materials/**labor hour** orders to also authorize orders on a cost-reimbursement, incentive, or fixed-price basis.