16.601 Time-and-materials contracts.

(a) Definitions for the purposes of Time-and-*Materials* Contracts.

Direct materials means those *materials* that enter directly into the *end product*, or that are used or consumed directly in connection with the furnishing of the *end product* or service.

Hourly rate means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are-

(1) Performed by the contractor;

(2) Performed by the subcontractors; or

(3) Transferred between divisions, subsidiaries, or *affiliates* of the contractor under a common control.

Materials means-

(1) *Direct materials*, including *supplies* transferred between divisions, subsidiaries, or *affiliates* of the contractor under a common control;

(2) Subcontracts for *supplies* and incidental services for which there is not a labor category specified in the contract;

(3) Other *direct costs* (*e.g.*, incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and

(4) Applicable *indirect costs*.

(b) *Description*. A time-and-*materials* contract provides for acquiring *supplies* or services on the basis of-

(1) Direct labor hours at specified fixed *hourly rates* that include wages, overhead, general and administrative expenses, and profit; and

(2) Actual cost for *materials* (except as provided for in 31.205-26(e) and (f)).

(c) *Application*. A time-and-*materials* contract *may* be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. See 12.207(b) for the use of time-and-material contracts for certain *commercial services*.

(1) *Government surveillance*. A time-and-*materials* contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

(2) *Fixed hourly rates*.

(i) The contract *shall* specify separate fixed *hourly rates* that include wages, overhead, general and

administrative expenses, and profit for each category of labor (see 16.601(f)(1)).

(ii) For *acquisitions* of other than *commercial products* or *commercial services* awarded without adequate price competition (see 15.403-1(c)(1)), the contract *shall* specify separate fixed *hourly rates* that include wages, overhead, general and administrative expenses, and profit for each category of labor to be performed by-

(A) The contractor;

(B) Each subcontractor; and

(C) Each division, subsidiary, or affiliate of the contractor under a common control.

(iii) For contract actions that are not awarded using competitive procedures, unless exempt under paragraph (c)(2)(iv) of this section, the fixed *hourly rates* for services transferred between divisions, subsidiaries, or *affiliates* of the contractor under a common control-

(A) *Shall* not include profit for the transferring organization; but

(B) *May* include profit for the prime contractor.

(iv) For contract actions that are not awarded using competitive procedures, the fixed *hourly rates* for services that meet the definition of "*commercial service*" that are transferred between divisions, subsidiaries, or *affiliates* of the contractor under a common control *may* be the established catalog or market rate when-

(A) It is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary or affiliate of the contractor under a common control; and

(B) The *contracting officer* has not determined the price to be unreasonable.

(3) *Material handling costs*. When included as part of material costs, material handling costs *shall* include only costs clearly excluded from the labor-hour rate. Material handling costs *may* include all appropriate *indirect costs* allocated to *direct materials* in accordance with the contractor's usual accounting procedures consistent with part 31.

(d) *Limitations*. A time-and-*materials* contract or order *may* be used only if-

(1) The *contracting officer* prepares a determination and findings that no other contract type is suitable. The determination and finding *shall* be-

(i) Signed by the *contracting officer* prior to the execution of the base period or any *option* periods of the contracts; and

(ii) Approved by the *head of the contracting activity* prior to the execution of the base period when the base period plus any *option* periods exceeds three years; and

(2) The contract or order includes a ceiling price that the contractor exceeds at its own risk. Also see 12.207 (b) for further limitations on use of time-and-*materials* or labor-hour contracts for *acquisition* of *commercial products* and *commercial services*.

(e) Post award requirements. Prior to an increase in the ceiling price of a time-and-*materials* or labor-hour contract or order, the *contracting officer shall*-

(1) Conduct an analysis of *pricing* and other relevant factors to determine if the action is in the best interest of the Government;

(2) Document the decision in the contract or order file; and

(3) When making a change that modifies the general scope of-

(i) A contract, follow the procedures at 6.303;

(ii) An order issued under the Federal Supply Schedules, follow the procedures at 8.405-6; or

(iii) An order issued under multiple award task and *delivery order* contracts, follow the procedures at 16.505(b)(2).

(f) *Solicitation provisions*.

(1) The *contracting officer shall* insert the provision at 52.216-29, Time-and-*Materials*/Labor-Hour Proposal Requirements—Other Than Commercial *Acquisition* With Adequate Price Competition, in *solicitations* contemplating use of a time-and-*materials* or labor-hour type of contract for the *acquisition* of other than *commercial products* or *commercial services*, if the price is expected to be based on adequate price competition. If authorized by agency procedures, the *contracting officer may* amend the provision to make mandatory one of the three approaches in paragraph (c) of the provision, and/or to require the identification of all subcontractors, divisions, subsidiaries, or *affiliates* included in a blended labor rate.

(2) The *contracting officer shall* insert the provision at 52.216-30, Time-and-*Materials*/Labor-Hour Proposal Requirements—Other Than Commercial *Acquisition* Without Adequate Price Competition, in *solicitations* for the *acquisition* of other than *commercial products* or *commercial services* contemplating use of a time-and-*materials* or labor-hour type of contract if the price is not expected to be based on adequate price competition.

(3) The *contracting officer shall* insert the provision at 52.216-31, Time-and-*Materials*/Labor-Hour Proposal Requirements—Commercial *Acquisition*, in *solicitations* contemplating use of a commercial time-and-*materials* or labor-hour contract.

Parent topic: Subpart 16.6 - Time-and-Materials, Labor-Hour, and Letter Contracts