# Subpart 216.3 - COST-REIMBURSEMENT CONTRACTS

**Parent topic:** Part 216 - TYPES OF CONTRACTS

## 216.301 RESERVED

### 216.301-3 Limitations.

For contracts in connection with a military construction project or a military family housing project, contracting officers shall not use cost-plus-fixed-fee, cost-plus-award-fee, or cost-plus-incentive-fee contract types (10 U.S.C. 3323 ). This applies notwithstanding a declaration of war or the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621) that includes the use of the Armed Forces.

## 216.306 Cost-plus-fixed-fee contracts.

(c) *Limitations*. For contracts in connection with a military construction project or military family housing project, see the prohibition at 216.301-3 .

(i) Except as provided in paragraph (c)(ii) of this section, annual military construction appropriations acts prohibit the use of cost-plus-fixed-fee contracts that—

(A) Are funded by a military construction appropriations act;

(B) Are estimated to exceed $25,000; and

(C) Will be performed within the United States, except Alaska.

(ii) The prohibition in paragraph (c)(i) of this section does not apply to contracts specifically approved in writing, setting forth the reasons therefor, in accordance with the following:

(A) The Secretaries of the military departments are authorized to approve such contracts that are for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C. 2801.

(B) The Secretary of Defense or designee must approve such contracts that are not for environmental work only or are for environmental work classified as construction.

## 216.307 Contract clauses.

(a) As required by section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), use the clause at 252.216-7009 , Allowability of Costs Incurred in Connection With a Whistleblower Proceeding—

(1) In task orders entered pursuant to contracts awarded before September 30, 2013, that include the clause at FAR 52.216-7, Allowable Cost and Payment; and

(2) In contracts awarded before September 30, 2013, that—

(i) Include the clause at FAR 52.216-7, Allowable Cost and Payment; and

(ii) Are modified to include the clause at DFARS 252.203-7002 , Requirement to Inform Employees of Whistleblower Rights, dated September 2013 or later.