12.207 Contract type.

(a) Except as provided in paragraph (b) of this section, agencies *shall* use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the *acquisition* of *commercial products* or *commercial services*.

(b)

(1) A time-and-materials contract or labor-hour contract (see subpart 16.6) *may* be used for the *acquisition* of *commercial services* when-

(i) The service is acquired under a contract awarded using-

(A) Competitive procedures (*e.g.*, the procedures in 6.102, the set-aside procedures in subpart 19.5, or competition conducted in accordance with part 13);

(B) The procedures for other than *full and open competition* in 6.3 provided the agency receives *offers* that satisfy the Government's expressed requirement from two or more responsible *offerors*; or

(C) The fair opportunity procedures in 16.505 (including discretionary small business set-asides under 16.505(b)(2)(i)(F)), if placing an order under a multiple-award delivery-order contract; and

(ii) The *contracting officer*-

(A) Executes a determination and findings (D&F) for the contract, in accordance with paragraph (b)(2) of this section (but see paragraph (c) of this section for indefinite-delivery contracts), that no other contract type authorized by this subpart is suitable;

(B) Includes a ceiling price in the contract or order that the contractor exceeds at its own risk; and

(C) Prior to increasing the ceiling price of a time-and-materials or labor-hour contract or order, *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).

(2) Each D&F required by paragraph (b)(1)(ii)(A) of this section *shall* contain sufficient facts and rationale to justify that no other contract type authorized by this subpart is suitable. At a minimum, the D&F *shall*-

(i) Include a description of the *market research* conducted (see 10.002(e));

(ii) 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 confidence;

(iii) Establish that the requirement has been structured to maximize the use of firm-fixed-price or fixed-price with economic price adjustment contracts (*e.g.*, by limiting the value or length of the time-and-material/labor-hour contract or order; establishing fixed prices for portions of the requirement) on future *acquisitions* for the same or similar requirements; and

(iv) Describe actions planned to maximize the use of firm-fixed-price or fixed-price with economic price adjustment contracts on future *acquisitions* for the same requirements.

(3) See 16.601(d)(1) for additional approval required for contracts expected to extend beyond three years.

(4) See 8.404(h) for the requirement for determination and findings when using Federal Supply Schedules.

(c)

(1) Indefinite-delivery contracts (see subpart 16.5) *may* be used when-

(i) The prices are established based on a firm-fixed-price or fixed-price with economic price adjustment; or

(ii) Rates are established for *commercial services* acquired on a time-and-materials or labor-hour basis.

(2) When an indefinite-delivery contract is awarded with services priced on a time-and-materials or labor-hour basis, *contracting officers shall*, to the maximum extent practicable, also structure the contract to allow issuance of orders on a firm-fixed-price or fixed-price with economic price adjustment basis. For such contracts, the *contracting officer shall* execute the D&F required by paragraph (b)(2) of this section, for each order placed on a time-and-materials or labor-hour basis. Placement of orders *shall* be in accordance with subpart 8.4 or 16.5, as applicable.

(3) If an indefinite-delivery contract only allows for the issuance of orders on a time-and-materials or labor-hour basis, the D&F required by paragraph (b)(2) of this section *shall* be executed to support the basic contract and *shall* also explain why providing for an alternative firm-fixed-price or fixed-price with economic price adjustment *pricing* structure is not practicable. The D&F for this contract *shall* be approved one level above the *contracting officer*. Placement of orders *shall* be in accordance with subpart 16.5.

(d) The contract types authorized by this subpart *may* be used in conjunction with an award fee and performance or delivery incentives when the award fee or incentive is based solely on factors other than cost (see 16.202-1 and 16.203-1).

(e) Use of any contract type other than those authorized by this subpart to acquire *commercial products* or *commercial services* is prohibited.

Parent topic: Subpart 12.2 - Special Requirements for the Acquisition of Commercial Products and Commercial Services