



UNITED STATES DEPARTMENT OF COMMERCE  
Chief Financial Officer and  
Assistant Secretary for Administration  
Washington, D.C. 20230

JUL 21 2009

## PROCUREMENT MEMORANDUM 2009-13

### ACTION

MEMORANDUM FOR: BUREAU PROCUREMENT OFFICIALS  
HEADS OF CONTRACTING OFFICES

**Signed**

FROM: Helen Hurcombe,  
Senior Procurement Executive  
and Director for Acquisition Management

SUBJECT: Documentation and Reporting for Time and Materials or Labor  
Hour Contracts for Commercial Services

### Background

The use of time and materials contracts, including labor hour contracts, for commercial services has been authorized in the Federal Acquisition Regulations since February 12, 2007. The Government Accountability Office conducted a review of the implementation of that FAR change including 1) execution of the required determination and findings for these contract types when procuring commercial services; and 2) accurate classification and reporting of these contracts and task orders as 'other than fixed-price'. The Government Accountability Office found that commercial services acquired through use of the General Services Administration's Federal Supply Schedule when time and materials or labor hour contracts resulted were generally not supported by the required determination and findings. The Government Accountability Office further found that these awards were misreported as fixed price based on the fixed hourly rates contained in the time and materials/labor hour contracts and task orders.

### Purpose

The purpose of this procurement memorandum is to ensure that the required determination and findings is prepared, as defined in FAR Subpart 12.207, for all time and material or labor hour contracts and task orders for commercial services including those awarded through General Services Administration's Federal Supply Schedules (FAR Subpart 8.4). Further, this procurement memorandum reinforces the requirement to accurately report awards of time and materials/labor hour contracts and task orders as other than fixed price.

### Applicability

This procurement memorandum is applicable to all time and material/labor hour contracts for commercial services including those awarded through use of the General Services Administration's Federal Supply Schedules.

## Required Actions

1. Regardless of the mechanism used for award of time and material or labor hour contracts and task orders (FAR Subpart 12 or FAR Subpart 8), the contracting officer shall prepare a determination and findings as prescribed in FAR Subpart 12.207(b):

*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 certainty;*
- (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.*

2. The contracting officer shall ensure that all required reporting including the Federal Procurement Data System accurately reflects the nature of the award as having used commercial item procedures and as time and material or labor hour contract or task order, *not* fixed price. The fixed hourly rates contained in time and material or labor hour contracts do not provide the basis for a fixed price contract.

If you have any questions, please contact Lori Donovan at [ldonovan@doc.gov](mailto:ldonovan@doc.gov) or (202)482-1716.