

Comparison of Regulations for T&M/LH Contracts

| | | Non-Commercial T&M/LH Contracts | | |
|--|---|---|---|---|
| | | Not Adequate Price Competition | Adequate Price Competition | |
| | | | Not DoD | DoD |
| Commercial T&M/LH Contracts | | | | |
| Basic Restrictions | Only authorized when no other contract type is suitable. | Same as commercial. | Same as commercial. | Same as commercial. |
| Competition Requirements | Must be awarded using the competitive procedures of FAR 6.102, set-aside procedures under FAR 19.5, or competitive procedures under FAR Part 13. | Can be awarded using any of the procedures authorized by the FAR. | Can be awarded using any of the procedures authorized by the FAR. | Can be awarded using any of the procedures authorized by the FAR. |
| | No sole source awards. | Can be sole source under FAR 6.3. | Can be sole source under FAR 6.3. | Can be sole source under FAR 6.3. |
| Determination and Finding (D&F) | Contracting officer (CO) must execute a D&F that no other contract type is suitable (FAR 16.601(d)). | Same as commercial. | Same as commercial. | Same as commercial. |
| | D&F signed by CO before the execution of the base period and any options periods. If the base period plus any option periods exceed three years, the D&F must be approved by the head of the contracting activity. | Same as commercial. | Same as commercial. | Same as commercial. |
| | D&F must- (1) Describe market research. (2) State why it is not possible to accurately estimate the extent of work, duration of work, or anticipated costs. (3) Establish that the requirement has been structured to maximize fixed-price (FP) contracts for future acquisitions. (4) Describe actions planned to maximize the use of FP contracts on future acquisitions. | N/A | N/A | N/A |
| | For indefinite delivery contracts that authorize T&M/LH orders- (1) Contract must be structured to maximize the use of FP orders. (2) If contract authorizes T&M/LH and FP orders, each T&M/LH order must have separate D&F. (3) If contract only authorizes T&M/LH orders, D&F must be approved one level above CO. | N/A | N/A | N/A |

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| Changes in Ceiling Price | CO must execute a determination that change is in the best interest of the procuring agency (FAR 12.207(b)(1)(ii)(C)). Determination must be documented in contract file (FAR 16.601(d)(2)). | CO required to justify the reasons for and amount of change (FAR 16.601(d)(2)). Justification must be documented in contract file (16.601(d)(2)). | CO required to justify the reasons for and amount of change (FAR 16.601(d)(2)). Justification must be documented in contract file (16.601(d)(2)). | CO required to justify the reasons for and amount of change (FAR 16.601(d)(2)). Justification must be documented in contract file (16.601(d)(2)). |
| Definition of Hourly Rates | The rates prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category in the contract that are performed by- (1) The contractor, (2) A subcontractor, or (3) An affiliate. | Same as commercial. | Same as commercial. | Same as commercial. |
| Payments for Hourly Rates | Hourly rates are paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Hourly rates include wages, overhead, G&A, and profit. Separate rates <u>are not</u> required for prime contractor labor, subcontractors, and affiliates. | Same as commercial. Same as commercial. Separate rates <u>are</u> required for prime contractor labor, each subcontractor, and each affiliate. | Same as commercial. Same as commercial. Same as commercial. | Same as commercial. Same as commercial. Separate rates <u>are</u> required for prime contractor labor, each subcontractor, and each affiliate. |
| Definition of Material | Direct materials (including supplies transferred between affiliates), subcontracts for supplies and incidental services that do not have a labor category specified in the contract, other direct costs, and indirect costs. | Same as commercial. | Same as commercial. | Same as commercial. |
| Payments for Materials | Commercial material is paid at the contractor's established catalog or market price. Noncommercial material and commercial material that the prime contractor does not have an established catalog or market price for is paid at contractor's actual costs – no profit. | Same as commercial. | Same as commercial. | Same as commercial. |

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| Payments for Other Direct Costs (ODC) | <p>ODC is paid at the contractor's actual costs.</p> <p>To be reimbursable, the categories of reimbursable ODC (e.g., travel, computer usage) must be listed in the contract.</p> | <p>Same as commercial.</p> <p>Reimbursed based on established accounting practices.</p> | <p>Same as commercial.</p> <p>Reimbursed based on established accounting practices.</p> | <p>Same as commercial.</p> <p>Reimbursed based on established accounting practices.</p> |
| Payments for Indirect Costs | <p>Fixed amount is negotiated at the time of contract award and paid on a pro-rata basis.</p> <p>The fixed amount is the total amount that is paid on the contract.</p> | <p>Contractor's actual costs.</p> | <p>Contractor's actual costs.</p> | <p>Contractor's actual costs.</p> |
| Re-Performance for Nonconforming Services | <p>Hourly rate less profit. Profit assumed to be 10% if not otherwise prescribed in the contract.</p> | <p>Hourly rate less profit.</p> | <p>Hourly rate less profit.</p> | <p>Hourly rate less profit.</p> |
| Gov't Access to Records | <p>Records necessary to verify-</p> <p>(1) Employees meet the specifications for labor categories billed.</p> <p>(2) Employee worked hours billed.</p> <p>(3) Amounts paid for amounts reimbursed at actual costs.</p> | <p>Standard access to records clause 52.215-2.</p> | <p>Standard access to records clause 52.215-2.</p> | <p>Standard access to records clause 52.215-2.</p> |
| Prompt Payment Act | <p>All</p> | <p>Service Contracts</p> | <p>Service Contracts</p> | <p>Service Contracts</p> |