

CHANGE REQUEST COVER SHEET

Change Request Number: 12-14

Date Received: 1/17/2012

Title: Justification for Time and Materials/Labor Hour Contracting

Name: Eugene Scott

Phone: 202-493-4639

Policy OR Guidance: Guidance

Section/Text Location Affected: T3.2.4-5 and T3.2.4-6

Summary of Change: The change reiterates that the justifications required in order to enter into a time and materials or labor hour contracting vehicle apply to indefinite delivery contracts and task orders as well as contracts.

Reason for Change: To ensure that the proper determinations are made prior to entering into time and materials or labor hour contracts

Development, Review, and/or Concurrence: The document was reviewed by the Procurement Policy Team manager; ARC acquisition; National Acquisition Evaluation Program and Office of Chief Counsel.

Target Audience: All AMS users

Potential Links within FAST for the Change: none

Briefing Planned: No

ASAG Responsibilities: Approve

Potential Links within FAST for the Change: none

Links for New/Modified Forms (or) Documents (LINK 1)

Links for New/Modified Forms (or) Documents (LINK 2)

Links for New/Modified Forms (or) Documents (LINK 3)

SECTIONS EDITED:

Procurement Guidance:

T3.2.4 - Types of Contracts

Types of Contracts

Section 5 : Indefinite Delivery [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.2.4 - Types of Contracts

Types of Contracts

Section 6 : Time-and-Materials / Labor-Hour [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

SECTIONS EDITED:

Section 5 : Indefinite Delivery

Old Content: Procurement Guidance:

T3.2.4 - Types of Contracts

Types of Contracts

Section 5 : Indefinite Delivery

a. *General.* There are three types of indefinite delivery contracts: definite quantity; requirements; and indefinite-quantity. An indefinite delivery contract permits flexibility in both quantity and delivery time, and in ordering products or services after requirements materialize. These contract types are appropriate when the exact times or exact quantities of future deliveries are not known at the time of contract award, and FAA wants a firm commitment from the contractor to accept all orders placed in accordance with the contract terms. Other considerations for indefinite delivery contracts include:

- (1) Contracts may provide for any appropriate cost or pricing arrangement.
- (2) Cost or pricing arrangements that provide for an estimated quantity of supplies or services (e.g., estimated number of labor hours) must comply with the appropriate cost and pricing procedures.
- (3) Prices remain fixed for the duration of the contract unless specific provisions are included for price adjustments.
- (4) A separate public announcement is not required for orders placed under a requirements or indefinite quantity contract.
- (5) Contract schedule should include the names of organizations authorized to issue orders.
- (6) The contract may include provisions for placing oral, electronic, or facsimile orders. Funds should be properly obligated and oral orders confirmed in writing.

b. *Definite Quantity.*

(1) Description:

Provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order.

(2) Use When:

(a) FAA can determine in advance that a definite quantity of supplies or services will be required during the contract period and the supplies or services are regularly available or will be available after a short lead-time.

(b) The FAA's total requirements are known but the delivery schedule or locations are not known in advance.

(3) Considerations:

(a) Limits FAA's and the contractor's obligation to the quantity specified in the contract.

(b) May also contain provisions to order option quantities.

c. *Indefinite Quantity.*

(1) Description:

(a) Limits FAA's obligation to the minimum quantity specified in the contract.

(b) Provides for delivery of an indefinite quantity within stated limits, of specific products or services during a fixed period; with deliveries to be scheduled by placing orders with the contractor.

(c) Also known as a delivery order contract.

(2) Use When:

(a) The FAA cannot predetermine, above a specified minimum, the precise quantities of supplies or services that will be required during the contract period.

(b) The FAA does not wish to commit itself for more than a minimum quantity.

(c) A recurring need is anticipated.

(d) Funds for other than the stated minimum quantity are obligated by each delivery order, and not by the contract itself.

(3) Considerations:

- (a) The schedule of items should include a realistic estimate of total orders to be placed during the contract term.
- (b) Contract may include a maximum or minimum quantity that FAA may order under delivery order and the maximum that it may order during a specific period of time.
- (c) The contract should contain a minimum quantity of supplies or services that the contractor may be required to deliver, if ordered. The minimum quantity should be more than nominal but should not exceed the amount that FAA is fairly certain to order.
- (d) Making multiple awards may be beneficial. In making this determination, the CO should exercise sound business judgment as part of acquisition planning. The administrative cost of multiple contracts may outweigh any potential benefits.
- (e) If multiple awards are anticipated, include a notice to offerors.

d. *Requirements Contract.*

(1) Description:

- (a) Provides for filling all actual product or service requirements of designated government activities during a specified period with delivery or performance scheduled by placing orders with the contractor.
- (b) Funds are obligated by each delivery order, not by the contract itself.
- (c) Also known as a delivery order contract.

(2) Use When:

- (a) The FAA anticipates recurring requirements but cannot predetermine the precise quantities of products or services that designated FAA activities will need during a definite period.
- (b) The contract states a realistic estimated total quantity.
- (c) The estimate is based on the most current information available, such as previous requirements or consumption.

(3) Considerations:

(a) Estimated requirements are not a representation to an offeror or contractor that the estimated quantity will be ordered, or that conditions affecting requirements will be stable or normal.

(b) Contract may include a maximum limit of the contractor's obligation to deliver and the FAA's obligation to order.

(c) Contract may specify minimum/maximum quantities that the FAA may order under each individual order and the maximum it may order during a specified period of time.

(d) If contract is to acquire work on existing FAA property (e.g., repair, modification or overhaul), the schedule should specify that failure of FAA to furnish such items in the amounts or quantities described in the schedule as 'estimated' or 'maximum' will not entitle the contractor to any equitable adjustment in price under the FAA property clause of the contract.

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Section 6 : Time-and-Materials / Labor-Hour

Old Content: Procurement Guidance:

T3.2.4 - Types of Contracts

Types of Contracts

Section 6 : Time-and-Materials / Labor-Hour

a. Description:

A time-and-materials (T&M) or labor-hour (LH) contract provides for acquiring supplies or services on the basis of direct labor hours at specified fixed hourly rates. Fixed hourly labor rates include wages, overhead, general and administrative expenses, and profit. A T&M contract also includes provisions for acquiring materials at actual cost (and may include a handling fee).

b. Use When:

A T&M or LH contract may be used when no other contract type is suitable, and it is not possible at the time of award to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

c. Considerations:

(1) *Justification.* The CO must document the basis for selecting a T&M or LH contract. This justification must explain:

(a) Why no other contract type is suitable;

(b) Why it is not possible to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence;

(c) The market research conducted; and

(d) How the requirement has been structured to best allow for another contract type with less risk (such as fixed-price) to FAA in future procurements. This may include transitioning individual line items to fixed-price (for example, materials), while keeping other line items as T&M (for example, installation services).

(2) *Approval of Long Term Contracts.* The Chief of the Contracting Office must approve any T&M or LH contract with a total performance period of more than five years (base period plus options, or contracts extended by modification). The CO documents the basis for the performance period, includes this information in the T&M or LH justification required by paragraph c. (1) above, and sends the justification to the COCO for approval.

(3) *Ceiling.* T&M or LH contracts must include a ceiling price that the contractor cannot exceed without the CO's approval. There should be a reasonable relationship between the ceiling price established at the time of award and the amount of work expected to be performed. The ceiling price should not exceed 110% of the funding required to support the anticipated work.

(4) *Labor Categories.* T&M or LH contracts should establish only those labor categories necessary for the required work. The program official and CO must jointly document the basis for selecting labor categories to be used. The contract should specify any minimum education, experience, and other qualifications required for each labor category.

(5) *Hourly Rates.* T&M or LH contracts must specify for each labor category, separate fixed hourly rates that include wages, overhead, general and administrative expense, and profit. For noncompetitive awards, the contract must specify fixed hourly rates for each labor category, whether performed by contractor personnel, subcontractor personnel, or employees of a division, subsidiary, or affiliate of the contractor under a common control.

(6) *Material Costs.*

(a) Materials are:

(1) Direct materials: Those materials that enter directly into the end product or are consumed in connection with the furnishing of the end product or service;

(2) Subcontracts: For supplies or incidental services for which there is not a labor category in the contract;

(3) Other direct costs: Includes incidental services for which there is not a labor category in the contract, travel, and computer usage charges; and

(4) Applicable indirect costs.

(b) Material costs are compensable only if the contract provides for such costs.

(c) When included as part of material costs, material handling costs (or fees) must include only costs excluded from the labor-hour rate. These costs may include all appropriate indirect costs allocated to direct materials in accordance with the contractor's usual accounting procedures.

(7) *Monitoring.* T&M or LH contracts provide limited incentive for a contractor to control costs or efficiently use labor. FAA personnel must closely monitor a contractor's performance to ensure efficient work methods and adequate cost controls are in place. Methods of monitoring generally relate to the dollar value and risk associated with the contract, and may include:

(a) *Random Sampling*. Random sampling is a statistically based method that assumes receipt of acceptable performance if a given percentage or number of scheduled assessments is found to be acceptable;

(b) *100% Inspection*. This surveillance/assessment type is preferred for those tasks that occur infrequently; including tasks that cannot be random sampled because the sample size for a small lot may exceed the lot size;

(c) *Periodic Surveillance*. Periodic sampling is similar to random sampling, but it is planned at specific intervals or dates; or

(d) *Customer Feedback*. Customer feedback is first hand information from the actual users of the service.

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b. Use When:

A T&M or LH contract may be used when no other contract type is suitable, and it is not possible at the time of award to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

c. Considerations:

(1) *Justification*. The CO must document the basis for selecting a T&M or LH contract, including task orders placed against an ordering vehicle. This justification must explain:

(a) Why no other contract type is suitable;

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(d) How the requirement has been structured to best allow for another contract type with less risk (such as fixed-price) to FAA in future procurements. This may include transitioning individual line items to fixed-price (for example, materials), while keeping other line items as T&M (for example, installation services).

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(4) *Labor Categories.* T&M or LH contracts should establish only those labor categories necessary for the required work. The program official and CO must jointly document the basis for selecting labor categories to be used. The contract should specify any minimum education, experience, and other qualifications required for each labor category.

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