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**COMMERCE ACQUISITION MANUAL
1316.1**

DEPARTMENT OF COMMERCE
SELECTING CONTRACT TYPES

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Table of Contents

SECTION 1 – OVERVIEW	1
1.1 BACKGROUND	1
1.2 PURPOSE	1
1.3 APPLICABILITY	1
1.4 POLICY	1
1.5 HIGH-RISK CONTRACTING AUTHORITIES	1
1.6 ROLES AND RESPONSIBILITIES	2
SECTION 2 – CONTRACT TYPE DECISIONS	7
2.1 CONTRACT TYPE SELECTION	7
2.2 CONSIDERATIONS	7
2.3 ANALYSIS OF CONTRACT TYPE DECISIONS.....	9
2.4 TRANSITION TO LOWER RISK CONTRACT TYPES.....	9
2.5 CONTRACT ADMINISTRATION AND AUDIT SERVICES	9
SECTION 3 – NONCOMPETITIVE AND SINGLE OFFER CONTRACTS.....	10
3.1 OVERVIEW	10
3.2 LIMITATIONS	10
3.3 DOCUMENTATION	10
3.4 EFFECTIVE USE AND MANAGEMENT	11
SECTION 4 – COST-REIMBURSEMENT CONTRACTS.....	13
4.1 OVERVIEW	13
4.2 LIMITATIONS	13
4.3 DOCUMENTATION	14
4.4 EFFECTIVE USE AND MANAGEMENT	14
SECTION 5 – TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS	16
5.1 OVERVIEW	16
5.2 LIMITATIONS	16
5.3 DOCUMENTATION	16
5.4 EFFECTIVE USE AND MANAGEMENT	17
SECTION 6 – INDEFINITE-DELIVERY CONTRACTS.....	19
6.1 OVERVIEW	19
6.2 LIMITATIONS	19
6.3 DOCUMENTATION	20
6.4 EFFECTIVE USE AND MANAGEMENT	20
6.5 TASK AND DELIVERY ORDER OSBUDSMAN	21
SECTION 7 – INCENTIVE CONTRACTS.....	22
7.1 OVERVIEW	22
7.2 LIMITATIONS	22
7.3 DOCUMENTATION	22
7.4 EFFECTIVE USE AND MANAGEMENT	23
APPENDIX A - DEFINITIONS.....	A-1
APPENDIX B – SURVEILLANCE PLAN TEMPLATE	B-1

SELECTING CONTRACT TYPES

SECTION 1 – OVERVIEW

1.1 Background

There is a wide selection of contract types available in the Federal Acquisition Regulation (FAR), in order to provide needed flexibility in acquiring supplies and services. Contract types vary according to the degree and type of responsibilities assumed by the contractor for the costs of performance and the amount and nature of the profit incentive offered for achieving or exceeding specified standards or goals. Government contracts should be structured to minimize risk and maximize value for the taxpayer. Generally, fixed-price contracts are best suited for achieving this goal because they provide the contractor with the greatest incentive for efficient and economical performance.

Contract types are grouped into two broad categories: fixed-price and cost-reimbursement. The spectrum of cost-type contracts include various incentive contracts in which the contractor's responsibility for performance, costs, and profit or fee incentives are tailored to the uncertainties involved in contract performance. In circumstances where there is considerable uncertainty regarding the requirement, other contract types such as cost-reimbursement, time-and-materials or labor-hour contracts may provide a more effective allocation of risk between the Government and contractor, with proper management and oversight.

The Office of Management and Budget (OMB) issued a memorandum entitled *Increasing Competition and Structuring Contracts for the Best Results* dated October 27, 2009, which provides guidelines for selecting the most appropriate contract type and maximizing competition. This memorandum also cautioned against the improper use of high-risk contract authorities such as: noncompetitive, cost-reimbursement, time-and-materials and labor-hour contracts.

1.2 Purpose

This Commerce Acquisition Manual (CAM) Chapter provides policy and guidance for effective use and management of contracts using high-risk contracting authorities.

1.3 Applicability

The requirements of this chapter are applicable to all acquisitions within the Department of Commerce (DOC, Department).

1.4 Policy

It is the policy of DOC to take appropriate actions to maximize competition, minimize the use of high-risk contracting authorities, mitigate risk when utilizing high-risk contracts, and employ sound practices to ensure the effective use, management, and oversight of all contracts.

1.5 High-Risk Contracting Authorities

The contracting authorities listed below are considered high-risk due to the potential of misuse or overspending when used inappropriately or without proper oversight and management:

- a. Noncompetitive Contracts. Noncompetitive contracts present a risk to the Government due to the position the Government faces when negotiating contracts without the benefit of a direct market mechanism to help establish pricing.
- b. Single Offer Contracts. Competitions that yield only one offer in response to a solicitation deprive the Government of the ability to consider alternative solutions in a reasoned and structured manner.

- c. Cost-reimbursement Contracts. Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit cost to be estimated with sufficient accuracy to use any type of fixed-price contract. Enhanced Government surveillance is required during performance to provide reasonable assurance that efficient methods and effective cost controls are used and consistent with contractor's proposal.
- d. Time-and-Materials Contracts. Time-and-materials contracts are a form of cost-reimbursement type contracts. Since time-and-materials contracts provide no positive profit incentive to the contractor for cost control or labor efficiency, this contract type may be used only when it is not possible, at the time of placing the contract, to estimate accurately the extent or duration of the work or anticipate costs with any reasonable degree of confidence.
- e. Labor-Hour Contracts. Labor-hour contracts are a variation of a time-and materials contract differing only in that the materials are not supplied by the contractor. Labor-hour contracts provide no positive profit incentive to the contractor for cost control or labor efficiency and may be used only when it is not possible, at the time of placing the contract, to estimate accurately the extent or duration of the work or anticipate costs with any reasonable degree of confidence.
- f. Incentive Contracts. Incentive contracts are appropriate when a firm-fixed-price contract is not appropriate and the required supplies or services can be acquired at lower costs and, in certain instances, improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance. Risks associated with incentive contracts are high because they are designed for circumstances where requirements may be difficult to define with sufficient specificity to measure objectively.
- g. Indefinite-Delivery Contracts. Indefinite-delivery contracts for very broadly stated services where it is intended that individual task orders will provide more specific direction on the actual services to be provided exposes the government to greater performance risk.

1.6 Roles and Responsibilities

1.6.1 Senior Procurement Executive (SPE)

The Senior Procurement Executive has overall responsibility for:

- a. Developing and implementing policies and procedures for acquisitions throughout the Department of Commerce;
- b. Overseeing the use of high-risk contracting authorities through normal oversight reviews of procurement offices;
- c. Approving written determinations of compelling reasons to award a task or delivery order contract in an amount estimated to exceed \$100M (including options) to a single source (FAR 16.504(c));
- d. Approving Justifications for Other than Full and Open Competition (JOFOC) for proposed contract actions in excess of \$75 million (FAR 6.304);
- e. Approving justifications and approvals for limiting sources for proposed orders and blanket purchase agreements (BPAs) established under the Federal Supply Schedules (FSS) in excess of \$75 million (FAR 8.405-6);

- f. Approving justifications and approvals for proposed sole source (including brand name) acquisitions or portions of an acquisition requiring a brand-name conducted under simplified acquisition procedures in excess of \$75 million (FAR 13.501);
- g. Approving justifications and approvals for exception to fair opportunity for proposed orders under indefinite-delivery contracts in excess of \$75 million (FAR 16.505); and
- h. Approving an exception to the one-year limitation for contracts awarded using unusual and compelling urgency authority (FAR 6.302-2).

1.6.2 Head of Contracting Activity (HCA)

The Head of Contracting Activity is responsible for:

- a. Contracting decisions required to be made by them in their capacity as HCA, or by those in their organizations having delegated authority for contract decision making;
- b. Designating authority to carry out the day-to-day functions of managing the organization contracting activity to the Senior Bureau Procurement Official;
- c. Approving justifications and approvals for limiting sources for proposed orders and BPAs established under FSS in excess of \$15 million up to \$75 million (FAR 8.405-6);
- d. Approving justifications and approvals for proposed sole source (including brand name) acquisitions or portions of an acquisition requiring a brand-name conducted under simplified acquisition procedures in excess of \$15 million up to \$75 million (FAR 13.501);
- e. Approving justifications and approvals for exception to fair opportunity for proposed orders under indefinite-delivery contracts in excess of \$15 million up to \$75 million (FAR 16.505); and
- f. Providing congressional notification within 30 days for single source task/delivery order contract awards in excess of \$100 million (including all options).

1.6.3 Senior Bureau Procurement Official (BPO)

The Senior Bureau Procurement Official is responsible for:

- a. Ensuring guidance for effective use and management of contracts using high-risk authorities is effectively implemented and used;
- b. Approving Determination and Findings for the use of incentive contracts (FAR 16.401);
- c. Approving Determination and Findings for time-and-materials contracts that no other contract type is suitable prior to execution of base period if base period plus any option periods exceed three years (FAR 16.601(d)(1)(ii));
- d. Approving a Determination and Findings for indefinite quantity contract solicitations for advisory and assistance services that exceed three years and \$15 million (including all options) (FAR 16.504);
- e. Submitting the Operating Unit's annual competition report;
- f. Serving as the Fee Determining Official on the Award-Fee Board (FAR 16.401(e)); and

- g. Implementing mechanisms such as contract review or peer review boards to facilitate analysis in determining the most appropriate contract type.

1.6.4 Fee-Determining Official (FDO)

The Fee-Determining Official is responsible for reviewing the recommendations of the Award-Fee Board in determining the amount of award-fee to be earned by the contractor for each evaluation period.

1.6.5 Office of Acquisition Management (OAM)

The Office of Acquisition Management is responsible for:

- a. Monitoring the Department's use and management of high-risk contracting authorities;
- b. Tracking and monitoring all department contracts and orders containing award-fee, award-term and incentive provisions;
- c. Reviewing Government Accountability Office (GAO) or the Office of Inspector General (OIG) issued reports related to the Department's use of high-risk contracting authorities, and monitoring corrective actions; and
- d. Establishing goals for reducing use of high-risk acquisition authorities and monitoring performance against those goals.

1.6.6 DOC Competition Advocate

The Department of Commerce Competition Advocate is responsible for:

- a. Promoting full and open competition of commercial items;
- b. Challenging barriers to the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses;
- c. Challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics;
- d. Making recommendations to increase full and open competition;
- e. Approving Justifications for Other than Full and Open Competition for proposed contract actions in excess of \$750,000 but not exceeding \$75 million (FAR 6.304); and
- f. Preparing the Department's annual competition report.

1.6.7 Operating Unit Competition Advocate

The Operating Unit Competition Advocate is responsible for:

- a. Promoting full and open competition of goods and service;
- b. Challenging requirements that are unnecessarily restrictive or present barriers to full and open competition;
- c. Challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics;

- d. Making recommendations to increase full and open competition;
- e. Challenging barriers to the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses;
- f. Approving Justifications for Other than Full and Open Competition for proposed contract actions that do not exceed \$750,000 (FAR 6.304);
- g. Approving justifications and approvals for limiting sources for proposed orders and BPAs established under FSS in excess of \$750,000, but do not exceed \$15 million (FAR 8.405-6);
- h. Approving justifications and approvals for proposed sole source (including brand name) acquisitions or portions of an acquisition requiring a brand-name conducted under simplified acquisition procedures in excess of 750,000, but do not exceed \$15 million (FAR 13.501);
- i. Approving justifications and approvals for exception to fair opportunity for proposed orders under indefinite-delivery contracts in excess of 750,000, but do not exceed \$15 million (FAR 16.505); and
- j. Preparing the Operating Unit's annual competition report.

1.6.8 Contracting Officer (CO)

The Contracting Officer is responsible for:

- a. Entering into, administering, and closing-out or terminating contracts;
- b. Promoting and providing for full and open competition;
- c. Determining what contract type is appropriate for an acquisition;
- d. Approving justifications and approvals for limiting sources for proposed orders and BPAs established under FSS above the simplified acquisition threshold, but do not exceed \$750,000 (FAR 8.405-6);
- e. Approving justifications and approvals for proposed sole source (including brand name) acquisitions or portions of an acquisition requiring a brand-name conducted under simplified acquisition procedures above the simplified acquisition threshold, but do not exceed \$750,000 (FAR 13.501);
- f. Approving justifications and approvals for exception to fair opportunity for proposed orders under indefinite-delivery contracts that exceed the simplified acquisition threshold, but do not exceed \$750,000 (FAR 16.505);
- g. Before agreeing on a contract type other than firm-fixed-price, ensuring the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type (FAR 16.104);
- h. Developing a Surveillance Plan in collaboration with the acquisition team, when applicable (FAR 46.4);

- i. Ensuring all required reporting including the Federal Procurement Data System accurately reflects the contract type used (FAR 4.604);
- j. Designating a properly trained Contracting Officer Representative prior to award where applicable (FAR 1.604);
- k. Taking appropriate actions to mitigate risk and ensure the effective use and management of high-risk contracting authorities (FAR 16.103).

1.6.9 Task and Delivery Order Ombudsman

The Task and Delivery Order Ombudsman is responsible for:

- a. Ensuring contractors are afforded a fair opportunity to be considered, consistent with the procedures in the contract (FAR 16.505).

END OF SECTION 1

SECTION 2 – CONTRACT TYPE DECISIONS

2.1 Contract Type Selection

The contract type should be commensurate with the level of risk, degree of uncertainty and best strategic incentive to stimulate outstanding performance and control costs. Selection of contract type should be unique to the circumstances of each individual requirement with the exception of sealed bidding. Contracts awarded using sealed bidding must be either firm-fixed-price, or fixed-price with economic adjustments.

A fixed-price contract type places maximum risk upon the contractor and imposes minimum risk and administrative burden on the Government. In a fixed-price arrangement, the contractor has full responsibility for all costs and resulting profit or loss and, therefore, has maximum incentive to control costs and perform effectively.

In contrast, cost-reimbursement contract types place minimum risk upon the contractor and impose increased risk and administrative burden on the Government. Under cost-reimbursement contracts, the contractor agrees to a specified level of effort to achieve the specified requirement, within the estimated amount established in the contract. If the contract is not fully performed by the time the contractor expends the funds, the contractor has no obligation for further performance, unless the contract is modified to increase costs.

The level of uncertainty within a requirement has a direct correlation to the level of risk. Requirements that are complex and unique to the Government create the likelihood of changes in technical direction and performance uncertainties, normally placing greater risk assumptions on the Government. Therefore, greater uncertainties would likely result in cost-reimbursement type contracts as costs risk shifts from the contractor to the Government.

2.2 Considerations

In accordance with FAR Subpart 16.104, the contracting officer should consider the following factors in selecting contract type:

- a. Price competition. Effective price competition normally results in realistic pricing, and a fixed-price contract is usually in the Government's interest.
- b. Price analysis. Price analysis, with or without competition, may provide a basis for selecting the contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered.
- c. Cost analysis. In the absence of effective price competition and if price analysis is not sufficient, the cost estimates of the Offeror and the Government provide basis for negotiating contract pricing arrangements. Uncertainties involved in performance and the possible impact upon costs should be identified and evaluated in order to negotiate a contract type that places a reasonable degree of cost responsibility upon the contractor.
- d. Type and complexity of the requirement. Complex requirements, particularly those unique to the Government, usually result in greater risk assumption by the Government. This is especially true for complex research and development contracts when performance uncertainties or the likelihood of changes make it difficult to estimate performance costs in advance. As a requirement recurs or as quantity production begins, the cost risk should shift to the contractor, and transition to a fixed-price contract should be considered.

- e. Combining contract types. If the entire contract cannot be firm-fixed price, the contracting officer shall consider whether or not a portion of the contract can be established on a firm-fixed-price basis.
- f. Urgency of the requirement. If urgency is a primary factor, the Government may choose to assume a greater proportion of risk or it may offer incentives tailored to performance outcomes to ensure timely contract performance.
- g. Period of performance or length of production run. In times of economic uncertainty, contracts extending over a relatively long period may require economic price adjustment or price redetermination clauses.
- h. Contractor's technical capability and financial responsibility. Contracting officers may conduct a Pre-award Survey to establish contractor's responsibility and financial and technical capability.
- i. Adequacy of the contractor's accounting system. Before agreeing on a contract type other than firm-fixed-price, the contracting officer shall ensure the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type.
- j. Concurrent contracts. If performance under the proposed contract involves concurrent operations under other contracts, the impact of those contracts, including their pricing arrangements, should be considered.
- k. Extent and nature of proposed subcontracting. If the contractor proposes extensive subcontracting, a contract type reflecting the actual risks to the prime contractor should be selected.
- l. Acquisition history. Contractor risk usually decreases as the requirement is repetitively acquired. In addition, product descriptions or descriptions of services to be performed can be defined more clearly.

2.2.1 Level of Uncertainty

The decision of selecting the most appropriate contract type is the principle method of allocating costs and performance risk between the Government and the contractor and requires careful consideration of the level of uncertainty regarding the requirement. The use of fixed-price contracts is preferred unless considerable uncertainty of the necessary resources to achieve the Government's objective and risks associated with adequately fulfilling the requirement cannot be managed by the contractor within economically reasonable parameters. The use of cost-reimbursement contracts allows the Government to absorb a greater portion of the risk and avoid costly contingencies that a contractor may be forced to offer on a fixed-price basis.

2.2.2 Hybrid Contracts

The use of a hybrid contract may offer an appropriate balance between the requirement, how fulfilling the requirement is priced and the level of risk the Government and contractor bear. In a hybrid contract, a portion of the requirement for which there is a basis for firm pricing can be awarded as firm-fixed-price while factors for which there remains considerable uncertainty can be acquired on a cost-reimbursement or time-and-material or labor-hour basis.

2.2.3 Use of Incentives to Motivate

Incentives enable the Government to reduce exposure to risk by tying payment of fees to contractor performance. Incentives should be considered to motivate effective cost control and encourage quality, timely performance, taking into consideration factors that are within the contractor's controls.

During the acquisition planning process, the acquisition team shall consider the type of incentives that will most likely motivate efficient and economical performance. The contracting officer should work in collaboration with the Program Manager and/or Contracting Officer Representative in developing incentive arrangements.

2.3 Analysis of Contract Type Decisions

In addition to appropriate Departmental review boards, Senior Bureau Procurement Officials shall utilize acquisition review processes and/or peer reviews to facilitate stronger analysis to determine the best contract type. The review process should include contracting personnel, as well as, Program Managers and other technical personnel. The reviews should produce constructive ideas and alternatives to test whether the basis cited to support the use of a high-risk contract type, such as complexity of the requirements, uncertain duration of the work, or lack of meaningful spend data exist and, if so, whether reasonable mitigation steps have been taken.

2.4 Transition to Lower Risk Contract Types

Over time, experience generally enables the Government to address uncertainties, making it possible to convert to more competitive and lower risk contract types that create a better incentive to provide the desired products or services within time and on budget. In addition, changing circumstances may make a lower risk contract type appropriate in later periods. FAR Subpart 16.103 cautions contracting officers to avoid protracted use of cost-reimbursement or time-and-materials and/or labor-hour contracts after experience provides a basis for firmer pricing.

When re-competing a requirement or exercising an option, if a decision is made that it is premature to transition to a lower risk contract type, contracting officers shall document and support their rationale not to transition. The documentation shall include a rationale explaining why it remains difficult to define the requirements with a reasonable degree of certainty; market research results identifying barriers to competition; and results of spend analysis that does not support firm-fixed pricing and/or competitive practices.

2.5 Contract Administration and Audit Services

Effective contract administration and contractor oversight are essential for successful acquisition outcomes, especially when using high-risk contracting authorities. Proper contract administration and oversight requires a series of functions as outlined in FAR 42.302. To ensure the contract administration and audit support functions are adequately conducted, Bureau Procurement Officials should identify contracts that may benefit from the use of contract administration and audit support services during acquisition planning.

The Defense Contract Management Agency (DCMA) and other agencies offer a wide variety of contract administration and support services that can be acquired through the use of interagency agreements. In addition, contract audit services may be obtained from the Defense Contract Audit Agency (DCAA),¹ or commercial sources.

END OF SECTION 2

¹ In light of Section 893 of the National Defense Authorization Act for FY16 signed by the President on November 25, 2015 generally prohibiting DCAA from providing audit support to non-Defense agencies, auditing services may be acquired through commercial sources such as those provided on GSA Schedule 520 until such restriction is lifted. Contracting Officers must ensure the cost of auditing support is included in the government cost estimate.

SECTION 3 – NONCOMPETITIVE AND SINGLE OFFER CONTRACTS

3.1 Overview

Obtaining full and open competition when acquiring goods and services increases the Government's buying power, as competition can drive down costs and potentially heighten performance, innovation and overall value. When an award is made noncompetitively or only one offer is received, the Government's risk of overspending or negotiating less desirable terms and conditions significantly increases. Therefore, to the maximum extent practicable, contracting officers shall promote and provide for full and open competition in awarding Government contracts.

3.2 Limitations

Contracting without providing for full and open competition or full and open competition after exclusion of sources is prohibited unless:

- a. Only one responsible source is available and no other supply or service will satisfy the requirement;
- b. The need is of such unusual and compelling urgency that the Government would be seriously injured if the supplies or services were not immediately acquired;
- c. Awarding to a specific source is necessary in order to maintain continuity of operations in the case of a national emergency or to achieve industrial mobilization; establish or maintain engineering, research or development capabilities; or acquire expert services;
- d. Precluded by the terms of an international agreement or treaty between the United States and a foreign government or international organization;
- e. Authorized or required by law or statute;
- f. National security would be compromised in disclosing the Government's requirements; or
- g. The agency head determines it is not in the public interest.

The lack of advance planning does not permit contracting without providing for full and open competition and this justification is not acceptable.

3.3 Documentation

The following documentation is required for awards to be made on a noncompetitive basis:

- a. Justification for Noncompetitive Action. A determination or justification and approval fully explaining the rationale for making an award on an other than full and open competition or noncompetitive basis with supporting documentation is required in accordance with:
 - i. FAR 6.303 for other than full and open competition;
 - ii. FAR 8.405-6 for limiting sources for proposed orders and blanket purchase agreements established under the Federal Supply Schedules;
 - iii. FAR 13.106 when soliciting from a single source for purchases not exceeding the simplified acquisition threshold;

- iv. FAR 13.501 for sole source (including brand name) acquisitions or portions of an acquisition requiring a brand-name conducted under simplified acquisition procedures for certain commercial items; and
 - v. FAR 16.505(b)(2) for exceptions to fair opportunity for proposed orders under indefinite-delivery contracts.
- b. Surveillance Plan. The contracting officer shall work with the acquisition team to develop a surveillance plan that describes how the Government will monitor, control, and mitigate risk of contract performance. The surveillance plan shall provide reasonable assurance that efficient methods and effective cost controls are utilized, and outline the roles and responsibilities of the Government personnel involved in surveillance and demonstrate the skills and capacity of the personnel to perform adequate contract award, management and oversight. The plan shall be signed by the Contracting Officer Representative (COR), Program Manager and Contracting Officer. *Appendix B* provides a suggested Surveillance Plan template.

3.4 Effective Use and Management

Noncompetitive and single offer contracts present a risk to the Government as they deprive the Government of the ability to consider alternative solutions in a reasoned and structured manner. The contracting officer shall take the following actions to mitigate risk when making awards on a noncompetitive basis or when a single offer is received:

- a. Ensure the Agency or Operation Unit Competition Advocate is actively involved in reviewing the requirement and recommendations provided by the Agency or Operation Unit Competition Advocate is implemented.
- b. Conduct market research, utilizing a variety of research tools, and clearly explain with supporting documentation why adequate competition is not attainable.
- c. Focus on requirements development and outreach to potential vendors to promote effective competition. Use of Requests for Information, pre-solicitation notices and conducting an Industry Day to elicit marketplace capabilities to aid in identifying potential solutions available commercially as well as potential barriers to competition.
- d. Limit the period of performance to the minimum period necessary to meet the requirement. The period of performance for actions awarded using unusual and compelling urgency shall not exceed the minimum period necessary for meeting the unusual and compelling urgency requirements, but no longer than one year or such period as specified by law, unless a longer period for performance is approved by the Senior Procurement Executive, in accordance with FAR Subpart 6.302-2.
- e. Ensure fair and reasonable pricing by obtaining the information and data needed, consistent with FAR Subpart 15.4.
- f. Regularly assess and report contractor's quality, timeliness, cost control, and concern for the customer in order to motivate quality contractor performance during the life of the contract.
- g. Engage the marketplace to determine how barriers to competition can be removed. Communicate with sources, including leading competitors and sources that expressed interest in the procurement (e.g., responded to a request for information, participated in an industry day, or contacted the OSD/OSDBU) but ultimately did not submit offers to understand the basis for their

decision not to participate and obtain recommendations that would encourage future competition.

- h. Conduct a spend analysis to evaluate the strength of competitive practices and identify opportunities for improvement for acquisitions in excess of the Simplified Acquisition Threshold.
- i. Develop a strategy to migrate to more competitive contracting.
- j. When applicable, at time of award of contracts for Professional and Management Support services, guidance shall be provided to the assigned government contract management personnel of their responsibility to provide greater scrutiny and enhanced degree of oversight and surveillance when managing services that closely support inherently governmental functions.
- k. When appropriate, effectively negotiate to minimize labor hour escalation costs or pricing that cross labor-hour adjustment periods.

END OF SECTION 3

SECTION 4 – COST-REIMBURSEMENT CONTRACTS

4.1 Overview

Cost-reimbursement contracts require the Government to reimburse the contractor for costs that are reasonable, allocable and allowable. The Government assumes the greatest performance risk with cost-reimbursement contracts since the contractor is only required to put forth its “best effort” in the performance of the contract. For this reason, cost-reimbursement contracts shall only be used when circumstances do not allow the requirement to be sufficiently defined or uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to benefit from the use of a fixed-price contract. The major types of cost–reimbursement contracts are:

- a. Cost-Sharing. In a cost-sharing contract, the contractor is reimbursed for an agreed-upon portion of its allowable costs and agrees to absorb the rest of its cost. The contractor receives no fee in this arrangement; instead, it anticipates other benefits for performing the contract.
- b. Cost-Plus-Incentive-Fee. A cost-plus-incentive-fee (CPIF) contract is a cost-reimbursement contract that provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. Under a CPIF contract, the contractor has the opportunity to increase its incentive (profit) for meeting Government cost and/or performance targets.
- c. Cost-Plus-Award-Fee. A cost-plus-award-fee (CPAF) contract is a cost-reimbursement contract that provides for a fee that consists of a base fee amount (which may be zero) that is negotiated prior to award, and an award fee amount, which is based on the Government’s subjective evaluation of contract performance. The award-fee is designed to motivate excellence in areas of cost, schedule, and technical performance.
- d. Cost-Plus-Fixed-Fee. A cost-plus-fixed-fee (CPFF) contract is a cost-reimbursement contract that pays the contractor a negotiated fee that is fixed at the inception of the contract. Although the fixed-fee does not vary with actual cost, it may be adjusted as a result of changes in the work to be performed under the contract. This contract type permits contracting for efforts that might otherwise present too great a risk to contractors, however, it provides the contractor minimal incentive to control costs. CPFF contracts can be one of two basic forms – completion form, which states a definitive target and specifies an end product, or a term form, which obligates the contractor to devote a specified level of effort for a stated time period.

4.2 Limitations

Limitations on the use of cost-reimbursement contracts include:

- a. Cost-reimbursement contracts may only be used when:
 - i. The contractor’s accounting system is adequate for determining costs related to the contract;
 - ii. Adequate Government resources are available to award and manage the contract type; and
 - iii. An appropriate Government surveillance plan is in place that provides reasonable assurance efficient methods and effective cost controls are utilized.
- b. With the exception of time-and-materials or labor hour contracts that meet the criteria prescribed in FAR 12.207(b)(1), the use of cost-reimbursement contracts is prohibited for the acquisition of commercial items.

- c. Where a CPFF contract type is used, the fee shall not exceed the statutory limitations outlined in FAR 15.404-4(c)(4)(i).
- d. When using CPAF, fees shall directly link to costs, timeliness, and quality of the Contractor's performance results as opposed to effort; and both payment of award-fees for unsatisfactory contractor performance and the practice of "roll over", where a Contractor is given a second chance to earn fees in a subsequent performance period that were not earned initially, is prohibited.
- e. The use of a CPAF contract shall not be permitted if either a CPIF or CPFF contract type is feasible.
- f. Award fees are the unilateral decision made solely at the discretion of the Government. The award-fee amount earned by the contractor and the methodology used for determining the award-fee are solely at the discretion of the Government.

4.3 Documentation

Contracting officers shall ensure the acquisition plan provides necessary rationale to support the decision to use cost-reimbursement contracts or in the absence of an acquisition plan, the contract file shall document at a minimum:

- a. Justification for Contract Type. A written determination fully explaining the rationale why the use of other than a firm-fixed price contract is appropriate.
- b. Contractor Accounting System. A determination and the basis for that determination, that the contractor's accounting system is adequate for determining costs related to the contract.
- c. Transition Plan. A discussion of the actions planned to minimize the use of other than firm-fixed price contracts on future acquisitions for the same requirement.
- d. Surveillance Plan. A surveillance plan that describes how the Government will monitor, control and mitigate the impact of any adverse contract performance. The surveillance plan shall: provide reasonable assurance that efficient methods and effective cost controls are utilized; outline the roles and responsibilities of the Government personnel involved in surveillance; and demonstrate the skills and capacity of Government personnel to perform adequate contract award, management and oversight. The plan shall be signed by the COR, Program Manager and Contracting Officer.

4.4 Effective Use and Management

Risks associated with cost-reimbursement contracts are high because they are utilized in circumstances where requirements are difficult to define with sufficient specificity to measure objectively. In addition, the development, negotiation, and management of cost-reimbursement contracts demand more in-depth programmatic knowledge and experience, a higher level and broader range of skills and greater resources than required for competitively awarded fixed-price contracts. Contracting officers shall take the following actions to mitigate risk and ensure the effective use and management of cost-reimbursement contracts:

- a. Designate an appropriately certified COR, prior to award, and ensure the COR has the skills and capacity to perform adequate contract management and oversight, including invoice reviews.

- b. Ensure the acquisition team is well trained in the proper role and use of cost-reimbursement contracts (e.g., monitoring level of effort, fee payments, applying progress payments, etc.).
- c. Implement appropriate Government surveillance to provide reasonable assurance that efficient methods and effective cost controls are in place.
- d. When cost, schedule, or performance variances are identified, increase management attention to ensure variances are eliminated or otherwise addressed.
- e. Link payment to performance on cost-plus-award-fee contracts. This shall include: tying fees to cost, timeliness, and quality of the contractor's performance; following prescribed standards for differentiating between levels of performance and the corresponding percentage of available award fee that can be earned; and prohibiting both the payment of award fees for unsatisfactory contractor performance and the practice of "roll over".
- f. Update the contractor accounting system determination every two years throughout the life of the contract to ensure the contractor's accounting system remains adequate for determining costs related to the contract.
- g. Develop a strategy to migrate to a lower risk contract type.
- h. Specify contract invoicing instructions that clearly detail supporting documentation necessary to validate and approve submitted invoices.
- i. Ensure that all required reporting, including the Federal Procurement Data System, accurately reflects the contract type.
- j. Obtain contract administration and support services, if necessary.
- k. Obtain audit support services to perform functions such as analyses and reviews for: defective pricing; compliance with cost accounting standards; financial capability; and adequacy of accounting systems, estimating systems, purchasing systems and/or earned valued management systems, if necessary.
- l. When applicable, at time of award of contracts for Professional and Management Support services, guidance shall be provided to the assigned government contract management personnel of their responsibility to provide greater scrutiny and enhanced degree of oversight and surveillance when managing services that closely support inherently governmental functions.
- m. When appropriate, effectively negotiate to minimize labor hour escalation costs or pricing that cross labor-hour adjustment periods.

END OF SECTION 4

SECTION 5 – TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS

5.1 Overview

Time-and-materials and labor-hour contracts are a form of cost-reimbursement contracts, therefore, they shall be used only when it is impossible to accurately, or with any degree of confidence define the effort, time, or cost required to provide a product or service. Since time-and-materials and labor-hour contracts provide no incentive to the contractor to control costs or improve labor efficiency, increased government surveillance of the contractor's performance is required to ensure the contractor is employing effective, cost-efficient methods.

Time-and-materials contracts have two price components: fixed hourly rates for direct labor hours, which include overhead, general and administrative expenses, profit, and wages; and materials at cost (including material handling costs, if appropriate).

Labor-Hour contracts are a variant of time-and-materials contracts differing only in that the materials are not furnished by the contractor. Labor-hour contracts provide fixed hourly rates that include overhead, G&A, profit, and rates for direct labor hours worked. Labor-hour contract types shall be used only to acquire services.

5.2 Limitations

A time-and-materials or labor-hour contract may be used only if:

- a. A Determination and Findings (D&F) stating that no other contract type is suitable prior to execution of base period. If base period plus any options exceed three years, the D&F must be approved by the BPO.
- b. The contract includes a ceiling price that the contractor exceeds at its own risk.

5.3 Documentation

Contracting officers shall ensure the contract file contains documentation to support the decision to use time-and-material or labor-hour contracts. The contract file shall document at a minimum:

- a. Determination and Findings. A D&F that no other contract type is suitable. The D&F must demonstrate the need for a time-and-material and/or labor-hour contract and explain why it is not possible at the time of placing the contract and/or order to estimate accurately the extent or duration of work or anticipated costs with any reasonable degree of confidence; include a description of the market research conducted; and 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 requirement.
 - i. When acquiring commercial items, the D&F must explain how 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.
- b. Surveillance Plan. Surveillance plan outlining how the Government will monitor, control, and mitigate the impact of any adverse contract performance. The surveillance plan shall: provide reasonable assurance that efficient methods and effective cost controls are utilized; outline the roles and responsibilities of the Government personnel involved in surveillance; and demonstrate the skills and capacity of Government personnel to perform adequate reviews

before payment is made. The plan shall be signed by the COR, Program Manager and Contracting Officer.

- c. Contractor Accounting System. Determination and the basis for that determination, that the contractor's accounting system is adequate for determining costs related to the contract.
- d. Ceiling Price. Justification for changes to the established ceiling price shall be documented in the contract file.

5.4 Effective Use and Management

Time-and-materials and labor-hour contracts can increase the risk of overspending to the Government. Therefore, the contracting officer shall take the following actions to mitigate risk and ensure effective use and management of time-and-materials and/or labor-hour contracts:

- a. Ensure the requirement is well defined with a clear vision of the desired end product with measurable milestones and deliverables.
- b. Designate an appropriately certified COR prior to award and ensure the COR has the skills and capacity to perform adequate invoice reviews.
- c. Ensure the acquisition team is well trained in the use of time-and-materials and/or labor-hour contracts (e.g. assessing pass through or indirect costs, understanding labor rates, etc.).
- d. Implement appropriate Government surveillance of contractor performance to give reasonable assurance that efficient methods and effective cost controls are used.
- e. Ensure that all required reporting, including the Federal Procurement Data System, accurately reflects the contract type as time-and-materials or labor-hour.
- f. Update the contractor accounting system determination every two years throughout the life of the contract to ensure the contractor's accounting system remains adequate for determining costs related to the contract.
- g. Develop a strategy to migrate to a lower risk contract type.
- h. Specify contract invoicing instructions that clearly detail supporting documentation necessary to validate and approve submitted invoices.
- i. Obtain contract administration and support services, if necessary.
- j. Obtain audit support services to perform functions such as analyses and reviews for: defective pricing; compliance with cost accounting standards; financial capability; and adequacy of accounting systems, estimating systems, purchasing systems and/or earned valued management systems, if necessary.
- k. Where applicable, at time of award of contracts for Professional and Management Support services, guidance shall be provided to the assigned government contract management personnel of their responsibility to provide greater scrutiny and enhanced degree of oversight and surveillance when managing services that closely support inherently governmental functions.

- I. When appropriate, effectively negotiate to minimize labor hour escalation costs or pricing that cross labor-hour adjustment periods.

END OF SECTION 5

SECTION 6 – INDEFINITE-DELIVERY CONTRACTS

6.1 Overview

The use of an indefinite-delivery contract is suitable for supplies or services when the need is recurring. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. There are three types of indefinite-delivery contracts, which are:

- a. Definite-Quantity. A definite-quantity contract may be used when the quantity of supplies or services can be determined in advance for a definite period and it is anticipated that the supplies or services are regularly available, or will be available after a short lead time. Deliveries or performance at designated locations can also be determined in advance of ordering.
- b. Requirements. When the Government anticipates recurring requirements but cannot predetermine the quantity of supplies or services needed during the contract period, a requirements contract may be appropriate. Requirements contracts contain an estimated total quantity, a maximum limit of contractor's liability, and a limit to the government's ordering obligation. Funds are obligated by each order and NOT by the contract.
- c. Indefinite-Quantity. In instances when it is not possible to determine the precise quantities of the requirement and the Government does not wish to commit itself for more than a minimum quantity, an indefinite-quantity contract may be suitable. With the use of indefinite-quantity contracts, the contractor provides (within stated limits), specified supplies or services, during a specified contract period. The contract contains the minimum Government obligation and a stated maximum order quantity.

6.2 Limitations

Limitations on the use of indefinite-delivery contracts are:

- a. A solicitation and contract for an indefinite-quantity contract must:
 - i. Specify provisions for the Government's minimum quantity obligation, which the contractor must furnish up to a stated maximum;
 - ii. Specify the period of the contract, including the number of options, and the period for which the Government may extend the contract under each option;
 - iii. Specify the total minimum and maximum quantities of supplies or services the Government will acquire under the contract;
 - iv. Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services being acquired;
 - v. State the ordering procedures, (including activities authorized for issuing orders and if applicable, authorization for placing oral orders), and the selection criteria that the Government intends to use to provide fair opportunity to awardees; and
 - vi. To the maximum extent practicable, indefinite-quantity contracts (except for advisory and assistance services) must give preference to making multiple awards under a single solicitation for the same or similar supplies or services to two or more sources.

- b. A solicitation proposing a single source indefinite-quantity contract for advisory and assistance services in excess of three years and \$15 million (including all options) may not be issued without a written determination that provides rationale that justifies the advisory and assistance services required are so unique or highly specialized that it is not practicable to make multiple awards; or the services are necessarily incident to, and not a significant component of the contract.
- c. No single source award can be made for a requirements or indefinite-quantity contract in an amount estimated to exceed \$100 million (including options) unless a determination is executed in accordance with 16.504(c)(1)(ii)(D) and approved by the Senior Procurement Executive.

6.3 Documentation

Contracting officers shall ensure the contract file contains documentation to support the decision to use the contract type selected. When using an indefinite-delivery contract, the contract file shall include the following:

- a. Determination and Findings. A D&F shall be prepared for the following:
 - i. Requirements and indefinite quantity contract solicitations for advisory and assistance services that exceed three years and \$15 million (including all options); and
 - ii. Single source indefinite-quantity awards in excess of \$100 million.
- b. Justifications and Approvals. A justification and approval signed by the Contracting Officer shall be prepared for the following:
 - i. Exceptions to fair opportunity for proposed orders above the simplified acquisition threshold; and
 - ii. Task orders for services that closely support the performance of inherently governmental functions. The justifications and approvals must provide an assessment of current and potential technical, cost, schedule and performance risks, the level of those risks and a mitigation plan.
- c. Mitigation Plan. The contracting officer shall work with the acquisition team to develop a mitigation plan that describes how the Government will monitor, control, and mitigate risk of contract performance, as well as steps to be taken when an identified risk occurs. The mitigation plan shall outline the roles and responsibilities of the Government personnel involved in oversight and demonstrate the skills and capacity of the personnel to perform adequate contract award, management and oversight. The mitigation plan shall be signed by the COR, Program Manager and Contracting Officer.
- d. Performance Metrics. When placing a task order under an indefinite-delivery contract for Professional and Management Support services, the actual task order shall identify specific performance metrics and outcomes that the oversight personnel will use to measure acceptability of contractor performance.

6.4 Effective Use and Management

The contracting officer shall take the following actions to mitigate risk and ensure effective use and management of indefinite delivery contracts:

- a. Ensure at least one properly trained and certified Assistant or Alternate Contracting Officer Representative (ACOR) or Point of Contact/Order Contact (P/OC) is designated for individual task orders under IDIQ contracts where someone other than the COR will have responsibility for monitoring performance on individual tasks (refer to CAM 1301.670 for ACOR and P/OC requirements).
- b. Provide guidance to inform the oversight personnel of the need for greater scrutiny and an enhanced degree of management oversight and surveillance when contracting for services that closely support inherently governmental functions – this should include an assessment of risks, mitigation plans for those risks, the actual occurrence of identified risks and steps to be taken when they are identified.
- c. Ensure consistent maximization of competition at the task and delivery order level.
- d. Require greater competitive rigor through the disclosure of significant factors and subfactors and their relative importance when conducting the “fair opportunity” process for orders over \$6 million.
- e. Use Federal Procurement Data System reports to evaluate the extent to which task and delivery order competition is being achieved.
- f. Obtain contract administration and support services, if necessary.
- g. Obtain audit support services to perform functions such as analyses and reviews for: defective pricing; compliance with cost accounting standards; financial capability; and adequacy of accounting systems, estimating systems, purchasing systems and/or earned valued management systems, if necessary.
- h. Task orders shall state specific performance metrics and outcomes that the government contract management personnel will use to measure acceptability of contractor performance.
- i. When applicable, at time of award of task orders for Professional and Management Support services, guidance shall be provided to the assigned government contract management personnel of their responsibility to provide greater scrutiny and enhanced degree of oversight and surveillance when managing services that closely support inherently governmental functions.
- j. When appropriate, effectively negotiate to minimize labor hour escalation costs or pricing that cross labor-hour adjustment periods.

6.5 Task and Delivery Order Ombudsman

In accordance with FAR Subpart 16.5, which requires agencies to designate an official who is independent of the contracting officer to serve as task order and delivery order ombudsman, the authority to serve as task and delivery order Ombudsman for the Department of Commerce has been delegated to the Director, Policy and Oversight Division. Task and delivery order ombudsman issues shall be submitted electronically to the OAM Mailbox at: OAM_Mailbox@doc.gov.

END OF SECTION 6

SECTION 7 – INCENTIVE CONTRACTS

7.1 Overview

In accordance with Federal Acquisition Regulation Subpart 16.4, incentive contracts should be used to achieve specific performance objectives established prior to contract award, such as delivering products and services on-time, within costs goals, and with promised performance outcomes. Incentive contracts include cost, performance and delivery incentives, which can be combined into a multiple incentive-fee contract that combines objectively and subjectively measured criteria to reward contractor performance while maximizing the Government's ability to use performance metrics that are predetermined, measurable, and targeted to desire contract outcomes. Awards provided in incentive contracts must be tied to demonstrated results, as opposed to effort, in meeting or exceeding specified performance standards.

An incentive-fee contract should be used when cost and performance targets are objective and can be predetermined, allowing a formula to adjust the negotiated fee based on variations relative to the targets. In contrast, award-fee contracts are a type of incentive contract to be used when it is not feasible to devise predetermined objective incentive targets based on cost, technical performance, or schedule, with the focus instead being on subjective criteria.

Incentive contracting is encouraged to the extent that it provides benefit and enhances contractor performance. As part of acquisition planning, the program office and contracting officer should consider whether incentive contracting is appropriate and, if so, determine which incentive method is most appropriate for the acquisition. The program office and contracting officer must work together to establish the goals/targets subject to the incentive; the criteria for attaining the goals/targets, and the process for evaluating and rewarding the contractor.

7.2 Limitations

Limitations on the use of incentive contracts are:

- a. Incentive- and award-fees must be directly tied to demonstrated acquisition outcomes such as cost, schedule, and performance results, as opposed to effort, in meeting or exceeding specific performance standards.
- b. The contractor's accounting system must be adequate for determining cost data applicable to the incentive contract type.
- c. The practice of providing a contractor with additional opportunities to obtain unearned fees that were initially unearned (also known as roll-over fees), is prohibited.
- d. Incentive fees shall not be paid if the contractor's performance has been determined to be below satisfactory or does not meet the requirements of the contract.
- e. Incentive contracts may not provide for other incentives without also providing a cost incentive (or constraint).

7.3 Documentation

Contracting officers shall ensure the contract file contains documentation to support the decision to use an incentive contract. The contract file shall document at a minimum:

- a. Determination and Findings. A D&F shall be executed for all incentive- and award-fee contracts justifying that the use of the contract type is in the best interest of the Government based on findings from the risk and cost benefit analysis conducted during acquisition planning, and

ensuring all suitability items in FAR Subpart 16.401(e)(1) are addressed for award-fee contracts. The D&F shall be approved by the Senior Bureau Procurement Official with a copy provided to the Senior Procurement Executive.

- b. Acquisition Plan. All acquisitions with award term, award fee, or incentive arrangements require development of a formal acquisition plan that must be approved by the appropriate Bureau or Departmental review board. The acquisition plan shall document analysis of market research data, and sufficiently state desired outcomes, performance requirements, milestones, risks and cost benefits for the contract type.
- c. Surveillance Plan. Surveillance plan outlining how the Government will monitor, control, and mitigate the impact of any adverse contract performance. The surveillance plan shall: provide reasonable assurance that efficient methods and effective cost controls are utilized; outline the roles and responsibilities of the Government personnel involved in surveillance; and demonstrate the skills and capacity of Government personnel to perform adequate reviews before payment is made. The plan shall be signed by the COR, Program Manager and Contracting Officer.
- d. Award-Fee Plan. All contracts and orders providing for award-fees shall be supported by an Award-Fee Plan that establishes the procedures for evaluating award-fee and an Award-Fee Board for conducting the award-fee evaluation. The Award-Fee Board shall at a minimum include the designated Program Manager, COR and Contracting Officer and chaired by a senior-level Program Official, preferably above the level of the Program Manager. The Award-Fee Plan shall be approved by the Bureau Procurement Official, serving as the Fee Determining Official, and a copy provided to the Senior Procurement Executive. The Award-Fee Plan shall:
 - i. Identify the award-fee evaluation criteria and how they are linked to acquisition objectives;
 - ii. Describe how the contractor's performance will be measured against the award-fee evaluation criteria;
 - iii. Document the adjectival rating and associated description as well as the award-fee pool earned percentages;
 - iv. Prohibit earning any award-fee when a contractor's overall cost, schedule, and technical performance is below satisfactory;
 - v. Provide for evaluation period(s) to be conducted at stated intervals during the contract period of performance so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected (e.g. six months, nine months, twelve months, or at specific milestones); and
 - vi. Define the total award-fee pool amount and how this amount is allocated across each evaluation period.

7.4 Effective Use and Management

The contracting officer shall take the following actions to mitigate risk and ensure effective use and management of incentive contracts:

- a. Directly link incentive fees to acquisition outcomes (i.e. cost, schedule, and performance results); and ensure fees are not earned if the contractor's performance is judged to be below satisfactory or does not meet the basic requirements of the contract.
- b. Designate an appropriately certified COR prior to award and ensure the COR has the skills and capacity to perform responsibilities.
- c. Ensure the acquisition team is prepared to effectively monitor and document costs, schedule, and performance as determined by established baselines and has sufficient resources to take corrective action if significant variances are identified.
- d. Implement appropriate Government surveillance of contractor performance to give reasonable assurance that efficient methods and effective cost controls are used.
- e. Develop a strategy to migrate to a lower risk contract type.
- f. Obtain contract administration and support services, if necessary.
- g. Obtain audit support services to perform functions such as analyses and reviews for: defective pricing; compliance with cost accounting standards; financial capability; and adequacy of accounting systems, estimating systems, purchasing systems and/or earned valued management systems, if necessary.
- h. When applicable, at time of award of contracts for Professional and Management Support services, guidance shall be provided to the assigned government contract management personnel of their responsibility to provide greater scrutiny and enhanced degree of oversight and surveillance when managing services that closely support inherently governmental functions.
- i. When appropriate, effectively negotiate to minimize labor hour escalation costs or pricing that cross labor-hour adjustment periods.

END OF SECTION 7
END OF CAM 1316.1

APPENDICES

APPENDIX A - DEFINITIONS

High-Risk Acquisition Authorities. Contracting authorities considered to have increased risk due to the potential of misuse or overspending when used inappropriately or without proper oversight and management, which includes Non-Competitive, Single Offer, Indefinite-Delivery, Incentive, Cost-Reimbursement, Labor Hour and Time-and-Material type contracts.

Noncompetitive Contract. A contract for the purchase of supplies or services that is entered into or proposed to be entered into after soliciting and negotiating with only one source.

APPENDIX B – Surveillance Plan Template

The Surveillance Plan shall at a minimum include the following:

Introduction

[Provide background information regarding the purpose of the requirement, general description total estimated cost, etc.]

Contract Type and Requirements

[Provide information on the type of contract and tasks to be performed under the contract.]

Surveillance Plan Objectives

[Provide information of the objectives of the surveillance plan.]

Roles and Responsibilities

[Outline roles and responsibilities of all members of the surveillance team and any limitations of authority.]

Team Members and Qualifications

[Identify team members and provide information regarding their qualifications. The section should demonstrate that personnel involved in the surveillance have demonstrated skills and capacity to perform effective management and oversight.]

Performance Standards

[Provide description of performance standards that will be used to evaluate contractor performance.]

Deliverables and Schedule

[Provide information regarding contract deliverables and delivery schedule.]

Performance Monitoring

[Provide description of how contractor performance will be monitored against the identified performance standards. The monitoring plan should provide reasonable assurance that efficient methods and effective cost controls are utilized.]

Risk Mitigation

[Provide plan for mitigating cost, schedule and performance risk.]