

Department of Commerce

1352.216-72

established. The established billing rates are currently as follows:

_____ [Insert billing rate]

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.216-71 Level of effort (cost-plus-fixed-fee, term contract).

As prescribed in 48 CFR 1316.307(b), insert the following clause:

Labor category	Base period	Option period I	Option period II	Option period III
xxxxxxxxxx	xxxx	xxxx	xxxx	xxxx
xxxxxxxxxx	xxxx	xxxx	xxxx	xxxx
Total Direct Labor	xxxx	xxxx	xxxx	xxxx

(c) The hours specified above are provided as estimates only. If the actual amount of hours incurred falls within 90% to 110% of this estimate, the fee shall not be adjusted.

(d) In the event that the contractor shall be required to provide less than 90% of the estimated DPLH, the fixed fee of the contract shall be equitably adjusted by unilateral modification to the contract. The fixed fee adjustment shall be based solely upon the difference between the DPLH actually provided and 90% of the estimated DPLH, calculated as follows:

$$\text{Adjusted Fixed Fee} = (\text{Actual DPLH} / (.9 \times \text{Estimated DPLH})) \times \text{Specified Fixed Fee}$$

(e) In the event that the contractor shall be required to provide more than 110% of the estimated DPLH, the fixed fee of the Contract shall be equitably adjusted by unilateral modification to the Contract. The fixed fee adjustment shall be based solely upon the difference between the DPLH actually provided and 110% of the estimated DPLH, calculated as follows:

$$\text{Adjusted Fixed Fee} = (\text{Actual DPLH} / (1.1 \times \text{Estimated DPLH})) \times \text{Specified Fixed Fee}$$

(f) These terms and conditions do not supersede the requirements of either FAR clause 52.232-20 "Limitation of Cost" or FAR clause 52.232-22 "Limitation of Funds."

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.216-72 Determination of award fee.

As prescribed in 48 CFR 1316.405-2, insert the following clause:

LEVEL OF EFFORT (COST-PLUS-FIXED-FEE, TERM CONTRACT) (APR 2010)

(a) In performance of the effort directed in this contract, the contractor shall provide the total of Direct Productive Labor Hours (DPLH) as specified in Part I, Section B during the term specified in Section _____. DPLH is defined as actual work hours exclusive of vacation, holidays, sick leave, and other absences.

(b) Only the DPLH categories indicated below shall be charged directly to the contract. It is estimated that the DPLH will be expended approximately as follows:

DETERMINATION OF AWARD FEE (APR 2010)

Based upon the quality of its performance and the results of the Government's performance evaluation, the contractor may earn an award fee.

(a) The total amount of award fee available under this contract is assigned according to the following:

[Insert appropriate information]

(b) A Performance Evaluation Plan shall be unilaterally established by the Government as part of the contract and used for the determination of award fees. This plan shall include the criteria that will be used to evaluate the contractor's performance and to determine the percentage of award fee (if any) available for each performance period.

(c) The criteria contained within the Performance Evaluation Plan may relate to:

- (1) Quality of performance of the contract requirements;
- (2) Effective management of the contract; and
- (3) Cost controls.

(d) The Performance Evaluation Plan may be revised unilaterally by the Government at any time during the period of performance, however unless mutually-agreed to a revision shall not affect the current evaluation period. Notification of such changes shall be provided to the contractor [insert number] calendar days prior to the start of the evaluation period to which the change will apply.

(e) At the conclusion of each evaluation period, and in accordance with the performance evaluation plan, a determination of the amount of the award fee earned shall be made in writing to the contractor by the Government Fee Determination Official (FDO). The FDO's unilateral determination of the amount of award fee earned in any evaluation period or a determination that no fee was earned shall be conclusive.

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(f) The contractor may submit a self-evaluation of its performance in an evaluation period. The FDO shall consider the self-evaluation, as the FDO deems appropriate.

(g) The contractor shall submit a voucher for payment of any earned award fee.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.216-73 Distribution of award fee.

As prescribed in 48 CFR 1316.406, insert the following clause:

DISTRIBUTION OF AWARD FEE (APR 2010)

(a) The total amount of award fee available under this contract is assigned according to the following:

[Insert appropriate information]

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee.

(c) In the event of contract termination for convenience, either in whole or in part, the amount of award fee available shall represent a prorated distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon submission by the contractor to the Contracting Officer's authorized representative of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without executing a contract modification.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.216-74 Task orders.

As prescribed in 48 CFR 1316.501-2-70, insert the following clause:

TASK ORDERS (APR 2010)

(a) In task order contracts, all work shall be initiated only by issuance of fully executed task orders issued by the Contracting Officer. The work to be performed under these orders must be within the scope of the contract. The Government is only liable for labor hours and costs expended under the terms and conditions of this contract to the extent that a fully executed task order has

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been issued and covers the required work and costs. Charges for any work not authorized shall be disallowed.

(b) For each task order under the contract, the Contracting Office shall send a request for proposal to the contractor(s). The request will contain a detailed description of the tasks to be achieved, a schedule for completion of the task order, and deliverables to be provided by the contractor.

(c) The contractor shall submit a proposal defining the technical approach to be taken to complete the task order, work schedule and proposed cost/price.

(d) After any necessary negotiations, the contractor shall submit a final proposal.

(e) Task orders will be considered fully executed upon signature of the Contracting Officer. The contractor shall begin work on the task order in accordance with the effective date of the order.

(f) The contractor shall notify the Contracting Officer of any instructions or guidance given that may impact the cost, schedule or deliverables of the task order. A formal modification to the task order must be issued by the Contracting Officer before any changes can be made.

(g) Task orders may be placed during the period of performance of the contract. Labor rates applicable to hours expended in performance of an order will be the contract rates that are in effect at the time the task order is issued.

(h) If multiple awards are made by the Government, the CO shall provide each awardee a fair opportunity to be considered for each task order over the micro-purchase threshold unless one of the exceptions at FAR 16.505(b) applies.

(End of Clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.216-75 Minimum and maximum contract amounts.

As prescribed in 48 CFR 1316.506(a), insert the following clause:

MINIMUM AND MAXIMUM CONTRACT AMOUNTS (APR 2010)

During the term of the contract, the Government shall place orders totaling a minimum of _____. The amount of all orders shall not exceed _____.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]