



ACQUISITION  
AND SUSTAINMENT

OFFICE OF THE ASSISTANT SECRETARY OF WAR  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

In reply refer to  
DARS Tracking Number: 2026-O0045

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Class Deviation—Revolutionary Federal Acquisition Regulation (FAR) Overhaul  
Part 16, Defense FAR Supplement (DFARS) Part 216

Effective March 16, 2026, contracting officers shall use—

- The revised FAR Part 16, Types of Contracts, published on the Revolutionary FAR Overhaul web page at <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-16> in lieu of the text codified at 48 CFR chapter 1 (<https://www.ecfr.gov>).
- The attached DFARS Part 216, Types of Contracts, in lieu of the text codified at 48 CFR chapter 2; and
- The attached DFARS Procedures, Guidance, and Information (PGI) 216, Types of Contracts, in lieu of the PGI text published on the Defense Pricing, Contracting, and Acquisition Policy web page at <https://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>.

This class deviation implements the following:

- Section 2 of E.O. 14275, Restoring Common Sense to Federal Procurement, which establishes the policy that the FAR “should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed.”

- Section 4(a) of E.O. 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base which requires the Secretary of War to eliminate or revise any unnecessary supplemental regulations or any other internal guidance, such as relevant parts of the Financial Management Regulation and Defense Federal Acquisition Regulation Supplement.
- The Office of Management and Budget memorandum, M-25-26 issued on May 2, 2025, titled, Overhauling the Federal Acquisition Regulation, which provided additional guidance to federal agencies regarding the FAR overhaul.

This class deviation remains in effect until rescinded or incorporated into the FAR, DFARS, and DFARS PGI. Inquiries regarding this class deviation can be addressed to [osd.pentagon.ousd-a-s.mbx.dfars@mail.mil](mailto:osd.pentagon.ousd-a-s.mbx.dfars@mail.mil).

John M. Tenaglia  
Principal Director,  
Defense Pricing, Contracting, and  
Acquisition Policy

Attachments:  
As stated

## **PART 216—TYPES OF CONTRACTS**

### **SUBPART 216.1—SELECTING CONTRACT TYPES**

#### **216.101 Policies.**

Do not use a cost-reimbursement line item for the acquisition of production of major defense acquisition programs, unless the exception at 234.7202(b)(2) applies. (Section 811 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239))

#### **216.102 Negotiating contract type.**

See PGI 216.102 for selecting and negotiating the most appropriate contract type for a given procurement.

#### **216.102-70 Research and development.**

Follow the procedures at PGI 216.102-70 for selecting the appropriate research and development contract type. See 235.170 for additional requirements when selecting contract type.

### **SUBPART 216.2—FIXED-PRICE CONTRACTS**

#### **216.203 Fixed-price contracts with economic price adjustment.**

##### **216.203-4 Contract clauses.**

(1) Insert the clauses at FAR 52.216-2, Economic Price Adjustment—Standard Supplies, FAR 52.216-3, Economic Price Adjustment—Semistandard Supplies, and FAR 52.216-4, Economic Price Adjustment—Labor and Material, only when—

- (i) The total contract price exceeds the simplified acquisition threshold; and
- (ii) Delivery or performance will not be completed within 6 months after contract award.

(2) Follow the procedures at PGI 216.203-4 when inserting an economic price adjustment clause based on cost indexes of labor or material.

##### **216.203-470 Additional provisions and clauses.**

(a) *Price adjustment for basic steel, aluminum, brass, bronze, or copper mill products.*

(1)(i) Contracting officers may insert the price adjustment clause at 252.216-7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, in fixed-price supply solicitations and contracts for basic steel, aluminum, brass, bronze, or copper mill products, such as sheets, plates, and bars, when an established catalog or market price exists for the particular product being acquired.

(ii) Do not exceed the 10 percent figure in paragraph (d)(1) of the clause unless approved at a level above the contracting officer.

(2) Insert the price adjustment provision at 252.216-7007, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products—

Representation, in solicitations that include the clause at 252.216-7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

(b) *Price adjustment for nonstandard steel items.*

(1) The contracting officer may insert the price adjustment clause at 252.216-7001, Economic Price Adjustment—Nonstandard Steel Items, in fixed-price supply contracts when—

(i) The contractor is a steel producer and actually manufacturers the standard steel mill item referred to in the “base steel index” definition of the clause; and

(ii) The items being acquired are nonstandard steel items made wholly or in part of standard steel mill items.

(2) When this clause is included in invitations for bids, remove Note 6 of the clause and all references to Note 6.

(3) Instruct offerors to complete all blanks in accordance with the applicable notes.

(4) Verify the price, when the clause is to provide for adjustment on a basis other than “established price” (see Note 6 of the clause).

(5) Do not exceed the 10 percent figure in paragraph (e)(4) of the clause unless approved at a level above the contracting officer.

(c) *Price adjustment for wage rates or material prices controlled by a foreign government.*

(1)(i) Contracting officers may insert the price adjustment clause at 252.216-7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government, in fixed-price supply and service solicitations and contracts when—

(A) The contract is to be performed wholly or in part in a foreign country; and

(B) A foreign government controls wage rates or material prices and may, during contract performance, impose a mandatory change in wages or prices of material.

(ii) Verify the base wage rates and material prices prior to contract award and prior to making any adjustment in the contract price.

(2) Insert the provision at 252.216-7008, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government—Representation, in solicitations that include the clause at 252.216-7003, Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government. If the solicitation includes the provision at FAR 52.204-7, do not separately list the provision 252.216-7008 in the solicitation.

## **SUBPART 216.3—COST-REIMBURSEMENT CONTRACTS**

### **216.301-3 Limitations.**

For contracts in connection with a military construction project or a military family housing project, contracting officers must not use cost-plus-fixed-fee, cost-plus-award-fee, or cost-plus-incentive-fee contract types (10 U.S.C 3323). This applies notwithstanding a declaration of war or the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621) that includes the use of the Armed Forces.

### **216.304 Cost-plus-fixed-fee contracts.**

#### **216.304-2 Limitations.**

For contracts in connection with a military construction project or military family housing project, see the prohibition at 216.301-3.

(1) Except as provided in paragraph (2) of this section, annual military construction appropriations acts prohibit the use of cost-plus-fixed-fee contracts that—

- (i) Are funded by a military construction appropriations act;
- (ii) Are estimated to exceed \$25,000; and
- (iii) Will be performed within the United States, except Alaska.

(2) The prohibition in paragraph (1) of this section does not apply to a contract if it is specifically approved in writing. That written approval must explain the reasons for granting an exception and follow the approval process described below:

(i) The Secretaries of the military departments are authorized to approve such contracts that are for environmental work only, provided the environmental work is not classified as construction, as defined by 10 U.S.C. 2801.

(ii) The Secretary of Defense or designee must approve such contracts that are not for environmental work only or are for environmental work classified as construction.

### **216.305 Contract clauses.**

(a) As required by section 827 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), insert the clause at 252.216-7009, Allowability of Costs Incurred in Connection With a Whistleblower Proceeding—

(1) (A) In task orders entered pursuant to contracts awarded before September 30, 2013, that include the clause at FAR 52.216-7, Allowable Cost and Payment; and

(B) In contracts awarded before September 30, 2013, that—

(1) Include the clause at FAR 52.216-7, Allowable Cost and Payment; and

(2) Are modified to include the clause at DFARS 252.203-7002,

Requirement to Inform Employees of Whistleblower Rights, dated September 2013 or later.

## **SUBPART 216.4—INCENTIVE CONTRACTS**

### **216.401 General.**

#### **216.401-1 Description.**

(c) See PGI 216.401-1(c) for information on incentive contracts.

#### **216.401-2 Limitations.**

The determination and findings justifying that the use of an incentive- or award-fee contract is in the best interest of the Government, may be signed by the head of contracting activity but no lower than—

(1) One level below the head of the contracting activity for award-fee contracts;  
or

(2) One level above the contracting officer for incentive-fee contracts.

#### **216.401-71 Objective criteria.**

(a) Use objective criteria to the maximum extent possible to measure contract performance. Objective criteria are associated with cost-plus-incentive-fee and fixed-price-incentive contracts.

(b) When objective criteria exist but the contracting officer determines that it is in the best interest of the Government to also incentivize subjective elements of performance, the most appropriate contract type is a multiple-incentive contract containing both objective incentives and subjective award-fee criteria (i.e., cost-plus-incentive-fee/award-fee or fixed-price-incentive/award-fee).

(c) See PGI 216.402-2(c) for guidance on the use of award-fee contracts.

### **216.402 Award fee.**

#### **216.402-2 Limitations.**

(c) Award-fee plans required in FAR 16.402-2(c) must be incorporated into all award-fee type contracts. Follow the procedures at PGI 216.402-2(c) when planning to award an award-fee contract.

#### **216.402-4 Cost-plus-award-fee contracts.**

(1) *Award-fee pool.* The award-fee pool is the total available award fee for each evaluation period for the life of the contract. The contracting officer must perform an analysis of appropriate fee distribution to ensure at least 40 percent of the award fee is available for the final evaluation so that the award fee is appropriately distributed over all evaluation periods to incentivize the contractor throughout performance of the contract. The percentage of award fee available for the final evaluation may be set below 40 percent if the contracting officer determines that a lower percentage is

appropriate and obtains the head of the contracting activity (HCA) approval. The HCA approval is not delegable.

(2) *Award-fee evaluation and payments.* Award-fee payments other than payments resulting from the evaluation at the end of an award-fee period are prohibited. This prohibition does not apply to base-fee payments. Provide the fee-determining official's rating for award-fee evaluations to the contractor within 45 calendar days of the end of the evaluation period. The final award-fee payment will be consistent with the fee-determining official's final evaluation of the contractor's overall performance against the cost, schedule, and performance outcomes specified in the award-fee plan.

(3) *Limitations.*

(i) The cost-plus-award-fee contract must not be used—

(A) To avoid—

(1) Establishing cost-plus-fixed-fee contracts when the criteria for cost-plus-fixed-fee contracts apply; or

(2) Developing objective targets so a cost-plus-incentive-fee contract can be used; or

(B) For either engineering development or operational system development acquisitions that have specifications suitable for simultaneous research and development and production. A contracting officer may use a cost-plus-award-fee contract for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(1) It is more advantageous; and

(2) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(ii) Do not apply the weighted guidelines method to cost-plus-award-fee contracts for either the base (fixed) fee or the award fee.

(iii) The base fee must not exceed three percent of the estimated cost of the contract exclusive of the fee.

(4) See PGI 216.402-4 for guidance on the use of cost-plus-award-fee contracts.

**216.402-470 Award fee reduction or denial for jeopardizing the health or safety of Government personnel.**

(a) *Definitions.* As used in this section—

“Covered incident” and “serious bodily injury,” are defined in the clause at 252.216-7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

(b) The contracting officer must include in the evaluation criteria of any award-fee plan, a review of contractor and subcontractor actions that jeopardized the health or safety of Government personnel, through gross negligence or reckless disregard for the safety of such personnel, as determined through—

(1) Conviction in a criminal proceeding, or finding of fault and liability in a civil or administrative proceeding (in accordance with section 823 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2010 (Pub. L. 111-84)); or

(2) If a contractor or a subcontractor at any tier is not subject to the jurisdiction of the U.S. courts, a final determination of contractor or subcontractor fault resulting from a DoD investigation (in accordance with section 834 of the NDAA for FY 2011 (Pub. L. 111-383)).

(c) In evaluating the contractor's performance under a contract that includes the clause at 252.216-7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, the contracting officer must consider reducing or denying award fees for a period, if contractor or subcontractor actions cause serious bodily injury or death of civilian or military Government personnel during such period. The contracting officer's evaluation must consider recovering all or part of award fees previously paid for such period.

**216.402-471 Award fee reduction or denial for failure to comply with requirements relating to performance of private security functions.**

(a) In accordance with section 862 of the NDAA for FY 2008, and section 831 of the NDAA for FY 2011, include a requirement to review contractor compliance with, or violation of, applicable requirements of the contract in any award-fee plan with regard to the performance of private security functions in an area of contingency operations, complex contingency operations, or other military operations or exercises that are designated by the combatant commander (see PGI 225.770).

(b) In evaluating the contractor's performance under a contract that includes the clause at 252.225-7039, Defense Contractors Performing Private Security Functions Outside the United States, the contracting officer must consider reducing or denying award fees for a period if the contractor fails to comply with the requirements of the clause during such period. The contracting officer's evaluation also must consider recovering all or part of award fees previously paid for such period.

**216.402-472 Contract clauses.**

Insert the clause at 252.216-7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, in all solicitations and contracts containing award-fee provisions.

**216.402-473 Other applications of award fees.**

See PGI 216.402-473 for guidance on other applications of award fees.

**216.403 Application of predetermined, formula-type incentives.**

**216.403-2 Performance incentives.**

(1) See PGI 216.403-2 for guidance on establishing performance incentives.

(2) Contracting officers must ensure requirements for the payment of incentive fees or the imposition of penalties are included in the solicitation for the engineering and manufacturing development or production of a weapon system, including embedded software, if the program manager or comparable requiring activity official exercising program manager responsibilities includes—

(i) Provisions for the payment of incentive fees based on achievement of design specification requirements for reliability and maintainability of weapons systems under the contract; or

(ii) The imposition of penalties to be paid by the contractor to the Government for failure to achieve such design specification requirements (10 U.S.C. 4328).

**216.404 Fixed-price incentive contracts.**

**216.404-170 Fixed-price incentive (firm target) contracts.**

See PGI 215.404-170 for guidance on the selection and use of fixed-price incentive (firm target) contracts.

**216.404-2 Fixed-price incentive (successive targets) contracts.**

See PGI 216.404-2 for guidance on the use of fixed-price incentive (successive targets) contracts.

**216.405 Cost-plus-incentive-fee contracts.**

See PGI 216.405 for guidance on the use of cost-plus-incentive-fee contracts.

**SUBPART 216.5—INDEFINITE-DELIVERY CONTRACTS**

**216.500 Scope.**

(d)(i) When awarding task orders or delivery orders for architect-engineer services under a multiple-award contract, follow the procedures for the selection of contractors and placement of orders at FAR 36.102 to implement 10 U.S.C. 3406(h)(1).

(ii) Contracting officers must not request additional information related to contractor qualifications, unless it is necessary to determine the most highly qualified contractor for the particular task order or delivery order (10 U.S.C. 3406(h)(2)).

**216.501 General.**

**216.501-270 Policies.**

(a)(i) For items with a shelf-life of less than six months, consider the use of indefinite-delivery type contracts with orders to be placed either—

(A) Directly by the users; or

(B) By central purchasing offices with deliveries direct to users.

(ii) Whenever an indefinite-delivery contract is issued, the issuing office must furnish all ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.301. This data must be

furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within three working days of the order.

(b) See 217.201-71(a) for limitations on the period for task order or delivery order contracts awarded by DoD pursuant to 10 U.S.C. 3403.

**216.504 Indefinite-quantity contracts.**

**216.504-3 Multiple award preference.**

(a)(4)(i) The senior procurement executive has the authority to make the determination authorized in FAR 16.504-3(a)(4)(i).

(A) In accordance with 10 U.S.C. 3403(d)(3), when making the determination at FAR 16.504-3(a)(4)(i)(A), the senior procurement executive must determine that the task or delivery orders expected under the contract are so integrally related that only a single source can “efficiently perform the work,” instead of “reasonably perform the work” as required by the FAR.

(a)(4)(ii) The congressional notification requirement at FAR 16.504-3(a)(4)(ii) does not apply to DoD.

(a)(4)(iii) In accordance with 10 U.S.C. 3403(d)(3), the determination at FAR 16.504-3(a)(4)(iii) is not required if a justification has been executed, in accordance with FAR 6.104 and section 206.104.

**216.505 Solicitation provisions and contract clauses.**

**216.505-70 Additional solicitation provisions and contract clause.**

(a) Insert the provisions at 252.215-7007, Notice of Intent to Resolicit, and 252.215-7008, Only One Offer, as prescribed at 215.271-6 and 215.110(3), respectively.

(b) Insert the clause at 252.216-7010, Postaward Debriefings for Task Orders and Delivery Orders, in competitive negotiated solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when a multiple-award contract is contemplated and task orders or delivery orders placed under the contract may be valued at \$10 million or more.

**216.506-70 Postaward procedures for placement of task and delivery orders.**

**216.506-701** Orders placed under indefinite-delivery contracts may be issued on DD Form 1155, Order for Supplies or Services.

**216.506-702** Departments and agencies must comply with the review, approval, and reporting requirements established in accordance with subpart 217.6 when placing orders under non-DoD contracts in amounts exceeding the simplified acquisition threshold.

**216.506-703** See 204.7603 for procedures on the required use of the Supplier Performance Risk System (SPRS) risk assessments.

(i) The contracting officer must ensure SPRS assessments of price risk and supplier risk are considered as a part of the award decision.

(ii) When placing an order for an end product identified by a material identifier that is available as described at PGI 204.7603, and item risk was not previously considered during award of the contract, the contracting officer must also consider SPRS assessments of item risk in the award decision.

(iii) Insert the provision at 252.204-7024, Notice on the Use of the Supplier Performance Risk System, as prescribed in 204.7604 to the extent permitted by the contract.

### **216.507 Additional ordering procedures for multiple-award contracts.**

#### **216.507-2 Fair opportunity procedures.**

(A) See 215.103-270 for the limitations and prohibitions on the use of the lowest price technically acceptable source selection process, which are applicable to orders placed against multiple award indefinite delivery contracts.

(B) See 217.870 for the prohibition on the use of reverse auctions for personal protective equipment and aviation critical safety items.

#### **216.507-5 Orders valued above \$7.5 million**

(c) *Postaward notices and debriefing.* In addition to the notice required by FAR part 15 and 16.507-5(c), a written or oral postaward debriefing of successful and unsuccessful awardees is required for task orders and delivery orders valued at \$10 million or more (section 818 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91)).

(ii) Follow the procedures at 215.301-1 and 215.301-270 when providing the postaward debriefing to successful and unsuccessful awardees for task orders or delivery orders valued at \$10 million or more.

#### **216.507-6 Exceptions to fair opportunity.**

(b) *Exceptions.* For an order exceeding the simplified acquisition threshold, that is a follow-on to an order previously issued for the same supply or service based on a justification for an exception to fair opportunity citing the authority at FAR 16.507-6(b)(2) or (3), follow the procedures at PGI 216.507-6(b).

#### **216.507-70 Orders under multiple award contracts.**

(a) If only one offer is received in response to an order exceeding the simplified acquisition threshold that is placed on a competitive basis, the contracting officer must follow the procedures at 215.271-6.

(b) See PGI 216.507-7 for guidance regarding minimum labor category qualifications for orders issued under multiple-award services contracts.

## SUBPART 216.6—TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

### 216.601 Time-and-materials contracts.

#### 216.601-370 Limitations.

(a)(1) *Approval of determination and findings for time-and-materials or labor-hour contracts.*

(i) *Base period plus any option periods is three years or less.*

(A) For contracts (including indefinite-delivery contracts) and orders in which the portion of the requirement performed on a time-and-materials or labor-hour basis exceeds \$1 million, the approval authority for the determination and findings must be the senior contracting official within the contracting activity. This authority may not be delegated.

(B) For contracts (including indefinite-delivery contracts) and orders in which the portion of the requirement performed on a time-and-materials or labor-hour basis is less than or equal to \$1 million, the determination and findings must be approved one level above the contracting officer.

(ii) *Base period plus any option periods exceeds three years.* The head of the contracting activity is the authority to approve the determination and findings. This authority may not be delegated.

(iii) *Exception.* The approval requirements in paragraphs (a)(1)(i) of this section do not apply to contracts that, as determined by the head of the contracting activity—

(A) Support contingency or humanitarian or peacekeeping operations;  
or

(B) Facilitate defense against or recovery from conventional, cyber, nuclear, biological, chemical or radiological attack;

(C) Facilitate the provision of international disaster assistance; or

(D) Support response to an emergency or major disaster.

(2) *Content of determination and findings.* The determination and findings must contain sufficient facts and rationale to justify that no other contract type is suitable. At a minimum, the determination and findings must—

(i) Include a description of the market research conducted;

(ii) Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of certainty;

(iii) Address why a cost-plus-fixed-fee term or other cost-reimbursement, incentive, or fixed-price contract or order is not appropriate; for contracts (including

indefinite-delivery contracts) and orders for other than commercial products or commercial services awarded to contractors with adequate accounting systems, a cost-plus-fixed-fee term contract type must be preferred over a time-and-materials or labor-hour contract type;

(iv) Establish that the requirement has been structured to minimize the use of time-and-materials and labor-hour requirements (e.g., limiting the value or length of the time-and-materials or labor-hour portion of the contract or order; establishing fixed prices for portions of the requirement); and

(v) Describe the actions planned to minimize the use of time-and-materials and labor-hour contracts on future acquisitions for the same requirements.

(3) *Indefinite-delivery contracts.* For indefinite-delivery contracts, structure contracts that authorize time-and-materials orders to also authorize orders on a cost-reimbursement, incentive, or fixed-price basis, to the maximum extent practicable.

#### **216.601-4 Solicitation provisions.**

(a) Insert the provision at FAR 52.216-29, Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition with Adequate Price Competition, with 252.216-7002, Alternate A, in solicitations contemplating the use of a time-and-materials or labor-hour contract type for other than commercial products or commercial services if the price is expected to be based on adequate competition.

#### **216.603 Letter contracts.**

##### **216.603-2 Application.**

(c) In accordance with 10 U.S.C. 3372, establish definitization schedules for letter contracts following the requirements at 217.7404-3(a) instead of the requirements at FAR 16.603-2(c).

##### **216.603-3 Limitations.**

See Subpart 217.74 for additional limitations on the use of letter contracts.

##### **216.603-4 Contract clauses.**

(b)(2) See 217.7405(a) for additional guidance regarding use of the clause at FAR 52.216-24, Limitation of Government Liability.

(3) Insert the clause at [252.217-7027](#), Contract Definitization, in accordance with its prescription at 217.7406(b), instead of the clause at FAR 52.216-25, Contract Definitization.

### **SUBPART 216.7—AGREEMENTS**

#### **216.703 Basic ordering agreements.**

##### **216.703-3 Limitations.**

The period during which orders may be placed against a basic ordering agreement may not exceed 5 years.

(d) Follow the procedures at PGI 216.703-3(d) for issuing orders under basic ordering agreements.

## SUBPART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### SUBPART 252.2—TEXT OF PROVISIONS AND CLAUSES

#### **252.216-7000 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.**

As prescribed in 216.203-470(a)(1), use the following clause:

#### ECONOMIC PRICE ADJUSTMENT—BASIC STEEL, ALUMINUM, BRASS, BRONZE, OR COPPER MILL PRODUCTS (JAN 2023)

(a) Definitions. As used in this clause—

“Established price” means a price which is an established catalog or market price for a commercial product sold in substantial quantities to the general public.

“Unit price” excludes any part of the price which reflects requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) As represented by the Contractor in its offer, the unit price stated for \_\_\_\_\_ (*Identify the item*) is not in excess of the Contractor's established price in effect on the date set for opening of bids (or the contract date if this is a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price.

(c) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any established price.

(1) Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased.

(2) This decrease shall apply to items delivered on or after the effective date of the decrease in the Contractor's established price.

(3) This contract shall be modified accordingly.

(d) If the Contractor's established price is increased after the date set for opening of bids (or the contract date if this is a negotiated contract), upon the Contractor's written request to the Contracting Officer, the corresponding contract unit price shall be increased by the same percentage that the established price is increased, and this contract shall be modified accordingly, provided—

(1) The aggregate of the increases in any contract unit price under this contract shall not exceed 10 percent of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within ten days of the change. If it is not, the

effective date of the increased unit price shall be the date of receipt of the request by the Contracting Officer; and

(3) The increased contract unit price shall not apply to quantities scheduled for delivery before the effective date of the increased contract unit price unless the Contractor's failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract.

(4) The Contracting Officer shall not execute a modification incorporating an increase in a contract unit price under this clause until the increase is verified.

(e) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and not delivered at the time of such cancellation, except as follows—

(1) The Contractor may, after that time, deliver any items that were completed or in the process of manufacture at the time of receipt of the cancellation notice, provided the Contractor notifies the Contracting Officer of such items within 10 days after the Contractor receives the cancellation notice.

(2) The Government shall pay for those items at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(3) Any standard steel supply item shall be deemed to be in the process of manufacture when the steel for that item is in the state of processing after the beginning of the furnace melt.

(f) Pending any cancellation of this contract under paragraph (e) of this clause, or if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract. The Contractor shall be paid for those deliveries at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(End of clause)

**252.216-7001 Economic Price Adjustment–Nonstandard Steel Items.**

As prescribed in 216.203-470(b), use the following clause:

**ECONOMIC PRICE ADJUSTMENT—NONSTANDARD STEEL ITEMS (JAN 2023)**

(a) *Definitions.* As used in this clause—

“Base labor index” means the average of the labor indices for the three months which consist of the month of bid opening (or offer submission) and the months immediately preceding and following that month.

“Base steel index” means the Contractor's established price (see Note 6) including all applicable extras of \$\_\_\_\_\_ per \_\_\_\_\_ (see Note 1) for \_\_\_\_\_ (see Note 2) on the date set for bid opening (or the date of submission of the offer).

“Current labor index” means the average of the labor indices for the month in which delivery of supplies is required to be made and the month preceding.

“Current steel index” means the Contractor's established price (see Note 6) for that item, including all applicable extras in effect \_\_\_ days (see Note 3) prior to the first day of the month in which delivery is required.

“Established price” is—

(1) A price which is an established catalog or market price of a commercial product sold in substantial quantities to the general public; and

(2) The net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price. (But see Note 6.)

“Labor index” means the average straight time hourly earnings of the Contractor's employees in the \_\_\_\_\_ shop of the Contractor's \_\_\_\_\_ plant (see Note 4) for any particular month.

“Month” means calendar month. However, if the Contractor's accounting period does not coincide with the calendar month, then that accounting period shall be used in lieu of “month.”

(b) Each contract unit price shall be subject to revision, under the terms of this clause, to reflect changes in the cost of labor and steel. For purpose of this price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified under the “base steel index” definition in paragraph (a) shall be \_\_\_\_\_ percent, and the proportion of the contract unit price attributable to the cost of steel shall be \_\_\_\_\_ percent. (See Note 5.)

(c)(1) Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the shop identified in paragraph (a) for any given month by the total number of straight time hours worked by those employees in that month.

(2) Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the “base labor index” and the “current labor index.”

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the “base steel index” and the “current steel index.”

(e)(1) Each contract unit price shall be revised for each month in which delivery of supplies is required to be made.

(2) The revised contract unit price shall apply to the deliveries of those quantities required to be made in that month regardless of when actual delivery is made.

(3) Each revised contract unit price shall be computed by adding—

(i) The adjusted cost of labor (obtained by multiplying \_\_\_\_\_ percent of the contract unit price by a fraction, of which the numerator shall be the current labor index and the denominator shall be the base labor index);

(ii) The adjusted cost of steel (obtained by multiplying \_\_\_\_ percent of the contract unit price by a fraction, of which the numerator shall be the current steel index and the denominator shall be the base steel index); and

(iii) The amount equal to \_\_\_\_ percent of the original contract unit price (representing that portion of the unit price which relates neither to the cost of labor nor the cost of steel, and which is therefore not subject to revision (see Note 5)).

(4) The aggregate of the increases in any contract unit price under this contract shall not exceed ten percent of the original contract unit price.

(5) Computations shall be made to the nearest one-hundredth of one cent.

(f)(1) Pending any revisions of the contract unit prices, the Contractor shall be paid the contract unit price for deliveries made.

(2) Within 30 days after final delivery (or such other period as may be authorized by the Contracting Officer), the Contractor shall furnish a statement identifying the correctness of—

(i) The average straight time hourly earnings of the Contractor's employees in the shop identified in paragraph (a) that are relevant to the computations of the “base labor index” and the “current labor index;” and

(ii) The Contractor's established prices (see Note 6), including all applicable extras for like quantities of the item that are relevant to the computation of the “base steel index” and the “current steel index.”

(3) Upon request of the Contracting Officer, the Contractor shall make available all records used in the computation of the labor indices.

(4) Upon receipt of the statement, the Contracting Officer will compute the revised contract unit prices and modify the contract accordingly. No modification to this contract will be made pursuant to this clause until the Contracting Officer has verified the revised established price (see Note 6).

(g)(1) In the event any item of this contract is subject to a total or partial termination for convenience, the month in which the Contractor receives notice of the termination, if prior to the month in which delivery is required, shall be considered the month in which delivery of the terminated item is required for the purposes of determining the current labor and steel indices under paragraphs (c) and (d).

(2) For any item which is not terminated for convenience, the month in which delivery is required under the contract shall continue to apply for determining those indices with respect to the quantity of the non-terminated item.

(3) If this contract is terminated for default, any price revision shall be limited to the quantity of the item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of the notice of termination.

(h) If the Contractor's failure to make delivery of any required quantity arises out of causes beyond the control and without the fault or negligence of the Contractor, within

the meaning of the clause of this contract entitled “Default,” the quantity not delivered shall be delivered as promptly as possible after the cessation of the cause of the failure, and the delivery schedule set forth in this contract shall be amended accordingly.

NOTES:

- 1 Offeror insert the unit price and unit measure of the standard steel mill item to be used in the manufacture of the contract item.
- 2 Offeror identify the standard steel mill item to be used in the manufacture of the contract item.
- 3 Offeror insert best estimate of the number of days required for processing the standard steel mill item in the shop identified under the “labor index” definition.
- 4 Offeror identify the shop and plant in which the standard steel mill item identified under the “base steel index” definition will be finally fabricated or processed into the contract item.
- 5 Offeror insert the same percentage figures for the corresponding blanks in paragraphs (b), (e)(3)(i), and (e)(3)(ii). In paragraph (e)(3)(iii), insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.
- 6 In negotiated acquisitions of nonstandard steel items, when there is no “established price” or when it is not desirable to use this price, this paragraph may refer to another appropriate price basis, e.g., an established interplant price.

(End of clause)

**252.216-7002 Alternate A, Time-and-Materials/Labor-Hour Proposal Requirements—Other Than Commercial Acquisition with Adequate Price Competition.**

As prescribed in 216.601-4(a), substitute the following paragraph (c) for paragraph (c) of the provision at FAR 52.216-29:

ALTERNATE A, TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL  
REQUIREMENTS—OTHER THAN COMMERCIAL ACQUISITION WITH  
ADEQUATE PRICE COMPETITION (JAN 2023)

(c) The offeror must establish fixed hourly rates using separate rates for each category of labor to be performed by each subcontractor and for each category of labor to be performed by the offeror, and for each category of labor to be transferred between divisions, subsidiaries, or affiliates of the offeror under a common control.

**252.216-7003 Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government.**

As prescribed in 216.203-470(c)(1), use the following clause:

ECONOMIC PRICE ADJUSTMENT—WAGE RATES OR MATERIAL PRICES  
CONTROLLED BY A FOREIGN GOVERNMENT (MAR 2012)

(a) As represented by the Contractor in its offer, the prices set forth in this contract—

(1) Are based on the wage rate(s) or material price(s) established and controlled by the government of the country specified by the Contractor in its offer; and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(b) If wage rates or material prices are revised by the government named in paragraph (a) of this clause, the Contracting Officer shall make an equitable adjustment in the contract price and shall modify the contract to the extent that the Contractor's actual costs of performing this contract are increased or decreased, as a direct result of the revision, subject to the following:

(1) For increases in established wage rates or material prices, the increase in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause increased the applicable wage rate(s) or material price(s), but only if the Contracting Officer receives the Contractor's written request for contract adjustment within 10 days of the change. If the Contractor's request is received later, the effective date shall be the date that the Contracting Officer received the Contractor's request.

(2) For decreases in established wage rates or material prices, the decrease in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause decreased the applicable wage rate(s) or material price(s). The decrease in contract unit price(s) shall apply to all items delivered on and after the effective date of the government's rate or price decrease.

(c) No modification changing the contract unit price(s) shall be executed until the Contracting Officer has verified the applicable change in the rates or prices set by the government named in paragraph (a) of this clause. The Contractor shall make available its books and records that support a requested change in contract price.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of this contract.

(End of clause)

**252.216-7004 Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.**

As prescribed in 216.402-472, use the following clause:

AWARD FEE REDUCTION OR DENIAL FOR JEOPARDIZING THE HEALTH OR SAFETY OF GOVERNMENT PERSONNEL (SEP 2011)

(a) *Definitions.* As used in this clause—

“Covered incident”—

(i) Means any incident in which the Contractor, through a criminal, civil, or administrative proceeding that results in a disposition listed in paragraph (a) (ii) of this definition—

(A) Has been determined in the performance of this contract to have caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel; or

(B) Has been determined to be liable for actions of a subcontractor of the Contractor that caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel.

(ii) Includes those incidents that have resulted in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil proceeding, a finding of fault or liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damage of \$5,000 or more.

(C) In an administrative proceeding, a finding of fault and liability that results in—

(1) The payment of a monetary fine or penalty of \$5,000 or more; or

(2) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(D) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in subparagraphs (a)(ii)(A), (a)(ii)(B), or (a)(ii)(C).

(E) In a DoD investigation of the Contractor or its subcontractors at any tier not subject to the jurisdiction of the U.S. courts, a final determination by the Secretary of Defense of Contractor or subcontractor fault (see DFARS 216.402-470).

“Serious bodily injury” means a grievous physical harm that results in a permanent disability.

(b) If, in the performance of this contract, the Contractor’s or its subcontractor’s actions cause serious bodily injury or death of civilian or military Government personnel, the Government may reduce or deny the award fee for the relevant award fee period in which the covered incident occurred, including the recovery of all or part of any award fees paid for any previous period during which the covered incident occurred.

(End of clause)

**252.216-7005 Reserved.**

**252.216-7006 Reserved**

**252.216-7007 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products—Representation.**

As prescribed in 216.203-470(a)(2), use the following provision:

**ECONOMIC PRICE ADJUSTMENT—BASIC STEEL, ALUMINUM, BRASS,  
BRONZE, OR COPPER MILL PRODUCTS—REPRESENTATION  
(MAR 2012)**

(a) Definitions. The terms “established price” and “unit price,” as used in this provision, have the meaning given in the clause 252.216-7000, Economic Price Adjustment--Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

(b) By submission of its offer, the offeror represents that the unit price stated in this offer for \_\_\_\_\_ (*Identify the item*) is not in excess of the offeror’s established price in effect on the date set for opening of bids (or the contract date if this is to be a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the offeror from its catalog, list, or schedule price.

(End of provision)

**252.216-7008 Economic Price Adjustment—Wage Rates or Material Prices  
Controlled by a Foreign Government—Representation.**

As prescribed in 216.203-470(c)(2), use the following provision:

**ECONOMIC PRICE ADJUSTMENT—WAGE RATES OR MATERIAL PRICES  
CONTROLLED BY A FOREIGN GOVERNMENT—REPRESENTATION  
(MAR 2012)**

(a) By submission of its offer, the offeror represents that the prices set forth in this offer—

(1) Are based on the wage rate(s) or material price(s) established and controlled by the government of \_\_\_\_\_ (*Offeror insert name of host country*); and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(End of provision)

**252.216-7009 Allowability of Legal Costs Incurred in Connection with a  
Whistleblower Proceeding.**

As prescribed in 216.305, use the following clause:

**ALLOWABILITY OF LEGAL COSTS INCURRED IN CONNECTION WITH A  
WHISTLEBLOWER PROCEEDING (DEC 2022)**

Pursuant to 10 U.S.C. 3750, notwithstanding FAR clause 52.216-7, Allowable Cost and Payment—

(a) The restrictions of FAR 31.205-47(b) on allowability of costs related to legal and other proceedings also apply to any proceeding brought by a contractor employee submitting a complaint under 10 U.S.C. 4701, entitled “Contractor employees: protection from reprisal for disclosure of certain information;” and

(b) Costs incurred in connection with a proceeding that is brought by a contractor employee submitting a complaint under 10 U.S.C. 4701 are also unallowable if the result is an order to take corrective action under 10 U.S.C. 4701.

(End of clause)

**252.216-7010 Postaward Debriefings for Task Orders and Delivery Orders.**  
As prescribed at 216.505-70, use the following clause:

POSTAWARD DEBRIEFINGS FOR TASK ORDERS AND DELIVERY ORDERS  
(OCT 2025)

(a) *Postaward debriefing.*

(1) Upon timely request, the Government will provide a written or oral postaward debriefing for task orders or delivery orders valued at \$15 million or more to the Contractor, regardless of whether the Contractor's offer for the task order or delivery order was successful or unsuccessful, while protecting the confidential and proprietary information of other contractors. The request is considered timely if received within 3 days of notification of task order or delivery order award.

(2) If a required postaward debriefing is provided—

(i) The debriefed Contractor may submit additional written questions related to the required and provided debriefing within 2 business days after the date of the debriefing;

(ii) The agency will respond in writing to timely submitted additional questions within 5 business days after receipt; and

(iii) The postaward debriefing will not be considered to be concluded until the later of—

(A) The date that the postaward debriefing is delivered, orally or in writing; or

(B) If additional written questions related to the debriefing are timely received, the date the agency delivers its written response.

(b) *Task order or delivery order performance.* The Government may suspend performance of or terminate the awarded task order or delivery order upon notice from the Government Accountability Office of a protest filed within the time periods listed in paragraphs (b)(1) through (3) of this clause, whichever is later:

(1) Within 10 days after the date a task order or delivery order is issued, where the value exceeds \$25 million (10 U.S.C. 3406(e)).

(2) Within 5 days after a debriefing date offered to the protestor under a timely debriefing request in accordance with Federal Acquisition Regulation (FAR) 15.506 unless an earlier debriefing date is negotiated as a result.

(3) Within 5 days after a postaward debriefing under FAR 15.506 is concluded in accordance with Defense Federal Acquisition Regulation Supplement 215.506-70(b).

Attachment A1  
DARS Tracking Number: 2026-00045  
Revolutionary Federal Acquisition Regulation (FAR) Overhaul Part 16  
Defense FAR Supplement (DFARS) Part 216

(End of clause)

## **PGI 216—TYPES OF CONTRACTS**

### **PGI 216.1—SELECTING CONTRACT TYPES**

#### **PGI 216.102 Negotiating contract type.**

Follow the procedures in the Director, Defense Procurement and Acquisition Policy memorandum dated April 1, 2016, entitled "[Guidance on Using Incentive and Other Contract Types](#)," when selecting and negotiating the most appropriate contract type for a given procurement.

#### **PGI 216.102-70 Research and development.**

(1) *General.* There are several categories of research and development (R&D) contracts: research, exploratory development, advanced development, engineering development, and operational systems development (see DFARS 235.001 for the definition of research and development). Each category has a primary technical or functional objective. Different parts of a project may fit several categories. The contract type must fit the work required, not just the classification of the overall program.

##### *(2) Research and exploratory development.*

- (i) Price is not necessarily the primary factor in determining the contract type.
- (ii) The nature of the work to be performed will usually result in a cost-plus award fee, cost-plus fixed fee term, cost-no-fee, or cost-sharing contract.
- (iii) If the Government and the contractor can identify and agree upon the level of contractor effort required, the contracting officer may select a firm fixed-price level-of-effort contract, except see DFARS 235.170.
- (iv) If the Government and the contractor agree that an incentive arrangement is desirable and capable of being evaluated after completion of the work, the contracting officer may use an incentive type contract.

##### *(3) Advanced development.*

- (i) The nature of the work to be performed often results in a cost-plus fixed fee completion type contract.
- (ii) Contracting officers may select incentive contracts if—
  - (A) Realistic and measurable targets are identified; and
  - (B) Achievement of those targets is predictable with a reasonable degree of accuracy.
- (iii) Contracting officers should not use contracts with only cost incentives where—

- (A) There will be a large number of major technical changes; or
  - (B) Actions beyond the control of the contractor may influence the contractor's achievement of cost targets.
- (4) Engineering development and operational systems development.
- (i) When selecting contract types, also consider—
    - (A) The degree to which the project is clearly defined, which in turn affects the contractor's ability to provide accurate cost estimates;
    - (B) The need for effort that will overlap that of earlier stages;
    - (C) The need for firm technical direction by the Government; and
    - (D) The degree of configuration control the Government will exercise.
  - (ii) For development efforts, particularly for major defense systems, the preferred contract type is cost reimbursement.
  - (iii) Contracting officers should use fixed-price type contracts when risk has been reduced to the extent that realistic pricing can occur; e.g., when a program has reached the final stages of development and technical risks are minimal, except see DFARS 235.170.

## **PGI 216.2—FIXED-PRICE CONTRACTS**

### **PGI 216.203 Fixed-price contracts with economic price adjustment.**

#### **PGI 216.203-4 Contract clauses.**

Contracting officers should use caution when incorporating Economic Price Adjustment (EPA) provisions in contracts. EPA provisions can result in significant and unanticipated price increases which can have major adverse impacts to a program. EPA provisions should be used only when general economic factors make the estimating of future costs too unpredictable within a fixed-price contract. The primary factors that should be considered before using an EPA provision include volatility of labor and/or material costs and contract length. In cases where cost volatility and/or contract length warrant using an EPA provision, the provision must be carefully crafted to ensure an equitable adjustment to the contract. Accordingly, contracting officers should always request assistance from their local pricing office, the Defense Contract Management Agency, or the Defense Contract Audit Agency when contemplating the use of an EPA provision.

For adjustments based on cost indexes of labor or material, use the following guidelines:

- (1) Do not make the clause unnecessarily complex.

(2) Normally, the clause should not provide either a ceiling or a floor for adjustment unless adjustment is based on indices below the six-digit level of the Bureau of Labor Statistics (BLS)—

- (i) Producer Price Index;
- (ii) Employment Cost Index for wages and salaries, benefits, and compensation costs for aerospace industries (but see paragraphs (3) and (6) of this subsection); or
- (iii) North American Industry Classification System (NAICS) Code.

(3) DoD contracting officers may no longer use the BLS employment cost index for total compensation, aircraft manufacturing (NAICS Code 336411, formerly Standard Industrial Classification Code 3721, Aircraft) in any EPA clause in DoD contracts. This index is ineffective for use as the basis for labor cost adjustments in EPA clauses in DoD contracts.

The BLS employment cost index for wages and salaries, aircraft manufacturing may still be used in EPA clauses for labor costs. If a BLS index for benefits is desired, contracting officers should use a broader based index that will smooth the effects of any large pension contributions, such as the employment cost index for benefits, total private industry. If a total compensation index is desired, contracting officers should consider the creation of a hybrid index by combining the above referenced indices at a predetermined percentage. For example, a hybrid total compensation index could consist of 68 percent employment cost index for wages and salaries, aircraft manufacturing, and 32 percent of the employment cost index for benefits, private industry.

(4) Normally, the clause should cover potential economic fluctuations within the original contract period of performance using a trigger band. Unless the economic fluctuation exceeds the trigger value, no EPA clause adjustments are made.

(5) The clause must accurately identify the index(es) upon which adjustments will be based.

(i) It must provide for a means to adjust for appropriate economic fluctuation in the event publication of the movement of the designated index is discontinued. This might include the substitution of another index if the time remaining would justify doing so and an appropriate index is reasonably available, or some other method for repricing the remaining portion of work to be performed.

(ii) Normally, there should be no need to make an adjustment if computation of the identified index is altered. However, it may be appropriate to provide for adjustment of the economic fluctuation computations in the event there is such a substantial alteration in the method of computing the index that the original intent of the parties is negated.

(iii) When an index to be used is subject to revision (e.g., the BLS Producer Price Indexes), the EPA clause must specify that any economic price adjustment will be based on a revised index and must identify which revision to the index will be used.

(6) The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to contract performance, but it must be broad enough to minimize the effect of any single company, including the anticipated contractor(s).

(7) Construction of an index is largely dependent upon three general series published by the U.S. Department of Labor, BLS. These are the—

(i) Industrial Commodities portion of the Producer Price Index;

(ii) Employment Cost Index for wages and salaries, benefits, and compensation costs for aerospace industries (but see paragraphs (3) and (6) of this subsection); and

(iii) NAICS Code.

(8) Normally, do not use more than two indices, i.e., one for labor and one for material.

(9) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

(10) The clause should not provide for an adjustment beyond the original contract performance period, including options. The start date for the adjustment may be the beginning of the contract or a later time, as appropriate, based on the projected rate of expenditures.

(11) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to the total contract price) in lieu of actual cost incurred.

(i) If the clause is to be used in a competitive acquisition, determine the labor and material allocations, with regard to both mix of labor and material and rate of expenditure by percentage, in a manner which will, as nearly as possible, approximate the average expenditure profile of all companies to be solicited so that all companies may compete on an equal basis.

(ii) If the clause is to be used in a noncompetitive acquisition, the labor and material allocations may be subject to negotiation and agreement.

(iii) For multiyear contracts, establish predetermined expenditure profile tables for each of the annual increments in the multiyear buy. Each of the second and subsequent year tables must be cumulative to reflect the total expenditures for all increments funded through the latest multiyear funding.

(12) The clause should state the percentage of the contract price subject to price adjustment.

- (i) Normally, do not apply adjustments to the profit portion of the contract.
  - (ii) Examine the labor and material portions of the contract to exclude any areas that do not require adjustment. For example, it may be possible to exclude—
    - (A) Subcontracting for short periods of time during the early life of the contract which could be covered by firm-fixed-priced subcontracting;
    - (B) Certain areas of overhead, e.g., depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges;
    - (C) Labor costs for which a definitive union agreement exists; and
    - (D) Those costs not likely to be affected by fluctuation in the economy.
  - (iii) Allocate that part of the contract price subject to adjustment to specific periods of time (e.g., quarterly, semiannually, etc.) based on the most probable expenditure or commitment basis (expenditure profile).
- (13) The clause should provide for definite times or events that trigger price adjustments. Adjustments should be frequent enough to afford the contractor appropriate economic protection without creating a burdensome administrative effort. The adjustment period should normally range from quarterly to annually.
- (14) When the contract contains cost incentives, any sums paid to the contractor on account of EPA provisions must be subtracted from the total of the contractor's allowable costs for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges, rather than dollar ranges, above and below target costs, structure the EPA clause to maintain the original contract incentive range in dollars.
- (15) The EPA clause should provide that once the labor and material allocations and the portion of the contract price subject to price adjustment have been established, they remain fixed through the life of the contract and must not be modified except in the event of significant changes in the scope of the contract. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment. However, subsequent modifications may include a change to the delivery schedule or significantly change the amount of, or mix of, labor or material for the contract. In such cases, it may be appropriate to prospectively apply EPA coverage. This may be accomplished by—
- (i) Using an EPA clause that applies only to the effort covered by the modification;
  - (ii) Revising the baseline data or period in the EPA clause for the basic contract to include the new work; or
  - (iii) Using an entirely new EPA clause for the entire contract, including the new work.

(16) Consistent with the factors in paragraphs (1) through (15) of this subsection, it may also be appropriate to provide in the prime contract for similar EPA arrangements between the prime contractor and affected subcontractors to allocate risks properly and ensure that those subcontractors are provided similar economic protection.

(17) When EPA clauses are included in contracts that do not require submission of certified cost or pricing data as provided for in FAR 15.403-2, the contracting officer must obtain adequate data to establish the baseline from which adjustments will be made. The contracting officer may require verification of the data submitted to the extent necessary to permit reliance upon the data as a reasonable baseline.

## **PGI 216.4—INCENTIVE CONTRACTS**

### **PGI 216.401 General.**

#### **PGI 216.401-1 Description.**

(c) Incentive contracts. See the DPCAP Price, Cost, and Finance “Pricing Topics” webpage at <https://www.acq.osd.mil/asda/dpc/pcf/pricing-topics.html> for links to contract incentives training, tools, and a guidebook.

#### **PGI 216.402 Award fee.**

##### **PGI 216.402-2 Limitations.**

(c) Award-fee contracts.

(i) It is DoD policy to utilize objective criteria, whenever possible, to measure contract performance. In cases where an award-fee contract must be used due to lack of objective criteria, the contracting officer must consult with the program manager and the fee determining official when developing the award-fee plan. Award-fee criteria must be linked directly to contract cost, schedule, and performance outcomes objectives.

(ii) Award fees must be tied to identifiable interim outcomes, discrete events or milestones, as much as possible. Examples of such interim milestones include timely completion of preliminary design review, critical design review, and successful system demonstration. In situations where there may be no identifiable milestone for a year or more, consideration should be given to apportioning some of the award fee pool for a predetermined interim period of time based on assessing progress toward milestones. In any case, award fee provisions must clearly explain how a contractor’s performance will be evaluated.

(iii) The head of the contracting activity for each defense agency must retain the D&F for (a) all acquisition category (ACAT) I or II programs, and (b) all non-ACAT I or II contracts with an estimated value of \$50 million or more. The head of the contracting activity must forward the D&Fs for ACAT I programs to Defense Pricing, Contracting, and Acquisition Policy/Contract Policy directorate (DPCAP/CP) within 1 month of the end of the quarter. Copies of D&Fs on all contracts must also be included in the contract file.

**PGI 216.402-4 Cost-plus-award-fee contracts.**

(1) Although weighted guidelines do not apply per DFARS 216.402-4(3)(ii) when definitizing a contract action, the contracting officer must, nevertheless, separately assess and document the reduced cost risk on the contract for—

- (i) The period up to the date of definitization; as well as
- (ii) The remaining period of performance (see DFARS 217.7404-6).

(2) Normally, award fee is not earned when the fee-determining official has determined that contractor performance has been submarginal or unsatisfactory.

(3) The basis for all award fee determinations must be documented in the contract file.

(4) The cost-plus-award-fee contract is also suitable for level of effort contracts where mission feasibility is established but measurement of achievement must be by subjective evaluation rather than objective measurement. See Table 16-1, Performance Evaluation Criteria, for sample performance evaluation criteria and Table 16-2, Contractor Performance Evaluation Report, for a sample evaluation report.

(5) The contracting activity may—

- (i) Establish a board to—
  - (A) Evaluate the contractor's performance; and
  - (B) Determine the amount of the award or recommend an amount to the contracting officer; and
- (ii) Afford the contractor an opportunity to present information on its own behalf.

**PGI 216.402-473 Other applications of award fees.**

The “award amount” portion of the fee may be used in other types of contracts under the following conditions:

(1) The Government wishes to motivate and reward a contractor for—

(i) Purchase of capital assets (including machine tools) manufactured in the United States, on major defense acquisition programs; or

(ii) Management performance in areas which cannot be measured objectively and where normal incentive provisions cannot be used. For example, logistics support, quality, timeliness, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation.

(2) The “base fee” (fixed amount portion) is not used.

(3) The chief of the contracting office approves the use of the “award amount.”

(4) An award review board and procedures are established for conduct of the evaluation.

(5) The administrative costs of evaluation do not exceed the expected benefits.

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<b>TABLE 16-1, PERFORMANCE EVALUATION CRITERIA</b>						
		<b>Submarginal</b>	<b>Marginal</b>	<b>Good</b>	<b>Very Good</b>	<b>Excellent</b>
A Time of Delivery.	(A-1) Adherence to plan schedule.	Consistently late on 20% plans	Late on 10% plans w/o prior agreement	Occasional plan late w/o justification.	Meets plan schedule.	Delivers all plans on schedule & meets prod. Change requirements on schedule.
	(A-2) Action on Anticipated delays.	Does not expose changes or resolve them as soon as recognized.	Exposes changes but is dilatory in resolution on plans.	Anticipates changes, advise Shipyard but misses completion of design plans 10%.	Keeps Shipyard posted on delays, resolves independently on plans.	Anticipates in good time, advises Shipyard, resolves independently and meets production requirements.
	(A-3) Plan Maintenance.	Does not complete interrelated systems studies concurrently.	System studies completed but constr. Plan changes delayed.	Major work plans coordinated in time to meet production schedules.	Design changes from studies and interrelated plant issued in time to meet product schedules.	Design changes, studies resolved, and test data issued ahead of production requirements.
B Quality of Work.	(B-1) Work Appearance.	25% dwgs. Not compatible with Shipyard repro. processes and use.	20% not compatible with Shipyard repro. processes and use.	10% not compatible with Shipyard repro. processes and use.	0% dwgs prepared by Des. Agent not compatible with Shipyard repro. processes and use.	0% dwgs. Presented incl. Des. Agent, vendors, subcontr. Not compatible with Shipyard repro processes and use.
	(B-2) Thoroughness and Accuracy of Work.	Is brief on plans tending to leave questionable situations for Shipyard to resolve.	Has followed guidance, type and standard dwgs.	Has followed guidance, type and standard dwgs. Questioning and resolving doubtful areas.	Work complete with notes and thorough explanations for anticipated questionable areas.	Work of highest caliber incorporating all pertinent data required including related activities.
	(B-3) Engineering Competence.	Tendency to follow past practice with no variation to meet reqmts. job in hand.	Adequate engrg. To use & adapt existing designs to suit job on	Engineered to satisfy specs., guidance plans and material provided.	Displays excellent knowledge of constr. Reqmts. considering systems	Exceptional knowledge of Naval shipwork & adaptability to work process incorporating

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<b>TABLE 16-1, PERFORMANCE EVALUATION CRITERIA</b>						
		<b>Submarginal</b>	<b>Marginal</b>	<b>Good</b>	<b>Very Good</b>	<b>Excellent</b>
			hand for routine work.		aspect, cost, shop capabilities, and procurement problems.	knowledge of future planning in Design.
<b>B</b> Quality of Work (Cont'd)	(B-4) Liaison Effectiveness	Indifferent to requirements of associated activities, related systems, and Shipyard advice.	Satisfactory but dependent on Shipyard of force resolution of problems without constructive recommendations to subcontr. or vendors.	Maintains normal contract with associated activities depending on Shipyard for problems requiring military resolution.	Maintains independent contact with all associated activities, keeping them informed to produce compatible design with little assistance from Shipyard.	Maintains expert contact, keeping Shipyard informed, obtaining info from equip, supplies w/o prompting of Shipyard.
	(B-5)	Constant surveillance required to keep job from slipping—assign to low priority to satisfy needs.	Requires occasional prodding to stay on schedule & expects Shipyard resolution of most problems.	Normal interest and desire to provide workable plans with average assistance & direction by Shipyard.	Complete & accurate job. Free of incompatibilities with little or no direction by Shipyard.	Develops complete and accurate plans, seeks out problem areas and resolves with assoc. act. ahead of schedule.
<b>C</b> Effectiveness in Controlling and/or Reducing Costs	(C-1) Utilization of Personnel	Planning of work left to designers on drafting boards.	Supervision sets & reviews goals for designers.	System planning by supervisory, personnel, studies checked by engineers.	Design parameters established by system engineers & held in design plans.	Mods. to design plans limited to less than 5% as result lack engrg. System correlation.
	(C-2) Control Direct Charges (Except Labor)	Expenditures not controlled for services.	Expenditures reviewed occasionally by supervision.	Direct charges set & accounted for on each work package.	Provides services as part of normal design function w/o extra charges.	No cost overruns on original estimates absorbs service demands by Shipyard.
	(C-3) Performance to Cost Estimate	Does not meet cost estimate for original work	Does not meet cost estimate for original work	Exceeds original est. on change orders 10%	Exceeds original est. on changing	Never exceeds estimates of original

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<b>TABLE 16-1, PERFORMANCE EVALUATION CRITERIA</b>						
		<b>Submarginal</b>	<b>Marginal</b>	<b>Good</b>	<b>Very Good</b>	<b>Excellent</b>
		or changes 30% time.	or changes 20% time.	time and meets original design costs.	orders 5% time.	package or change orders.

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<b>TABLE 16-2, CONTRACTOR PERFORMANCE EVALUATION REPORT</b>						
Ratings Excellent			Period of _____ Contract Number _____			
Very Good			Contractor _____			
Marginal			Date of Report _____			
Submarginal			PNS Technical Monitor/s _____			
CATEGORY	CRITERIA	RATING	ITEM FACTOR	EVALUATION RATING	CATEGORY FACTOR	EFFICIENCY RATING
A	TIME OF DELIVERY					
	A-1 Adherence to Plan Schedule	_____ x	.40	=	_____	
	A-2 Action on Anticipated Delays	_____ x	.30	=	_____	
	A-3 Plan Maintenance	_____ x	.30	=	_____	
	Total Item Weighted Rating				_____ x .30	= _____
B	QUALITY OF WORK					
	B-1 Work Appearance	_____ x	.15	=	_____	
	B-2 Thoroughness and Accuracy of Work	_____ x	.30	=	_____	
	B-3 Engineering Competence	_____ x	.20	=	_____	
	B-4 Liaison Effectiveness	_____ x	.15	=	_____	
	B-5 Independence and Initiative	_____ x	.15	=	_____	
	Total Item Weighted Rating				_____ x .40	= _____

C	EFFECTIVE- NESS IN CONTROL- LING AND/OR REDUCING COSTS C-1 Utilization of Personnel	_____	x	.30	=	_____
	C-2 Control of all Direct Charges Other than Labor	_____	x	.30	=	_____
	C-3 Performance to Cost Estimate	_____	x	.40	=	_____
	Total Item Weighted Rating	_____	x	.30	=	_____
TOTAL WEIGHT RATING _____						
Rated by: _____						
Signature(s) _____						

NOTE: Provide supporting data and/or justification for below average or outstanding item ratings.

**PGI 216.403 Application of predetermined, formula-type incentives.**

**PGI 216.403-2 Performance incentives.**

Contractor performance incentives should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

**PGI 216.404 Fixed-price incentive contracts.**

**PGI 216.404-170 Fixed-price incentive (firm target) contracts.**

(1) *Use of FPIF contract.*

(i) *Not mandatory.* Contracting officers must carefully consider whether to use a fixed-price incentive (firm target) (FPIF) contract, especially for acquisitions moving from development to production. DFARS does not mandate the use of FPIF for initial production and each acquisition situation must be evaluated in terms of the degree and nature of the risk presented in order to select the proper contract type.

(ii) *Considerations.* Volume 4, chapter 1, of the Contract Pricing Reference Guide provides a detailed discussion of the considerations involved in selecting the proper contract type. For example:

(A) It is not in the Government's best interest to use FPIF when the cost risk is so great that establishing a ceiling price is unrealistic.

(B) It is also not in the Government's best interest to use firm-fixed-price (FFP) contracts on production programs until costs have become stable. Therefore, FPIF contracts should be considered in production and sole source follow-on programs where actual costs on prior FFP contracts have varied by more than 3-4 percent from the costs considered negotiated. Contracting officers are reminded that actual costs on prior contracts for the same item or essentially the same item, regardless of contract type or data reporting requirements of the prior contract, are cost and pricing data on the pending contract, and must be obtained from the contractor on production programs when certified cost or pricing data are required.

(C) For sole source major systems procurements, contracting officers should utilize FPIF contracts instead of FFP contracts unless the reasons for significant variation are well understood and actions have been taken to ensure that significant variation will not recur. In addition, when options are included as described in PGI 217.201-70, the use of FPIF contracts is both highly recommended and encouraged, because both parties will be assuming more risk in pricing multiple years of requirements.

(2) *Incentive arrangement.* Contracting officers should consider share lines and ceiling prices for fixed-price incentive (firm target) contracts, with 120 percent ceiling and a 50/50 share ratio as the point of departure for establishing the incentive arrangement. While the DFARS does not mandate the use of these share ratios or ceiling percentage, it is not unreasonable to expect that upon entering into production, risks have been mitigated to the point that the DFARS recommended point of departure for an FPIF incentive arrangement would be normal.

(3) *Analyzing risk.*

(i) *Quantification of risk.*

(A) The first step is establishing a target cost for which the probability of an underrun and overrun are considered equal and therefore, the risks and rewards are shared equally, hence the 50/50 share is the point of departure. Equally important is determining that the contractor has a high probability of being able to accomplish the effort within a ceiling percentage of 120 percent. In accomplishing both these steps, the analysis of risk is essential.

(B) Too often, risk is evaluated only in general terms without attempting to quantify the risk posed by the various elements of cost. Also, a contracting officer may incorrectly fall back on the share ratios and ceiling percentages negotiated on prior contracts or other programs, without examining the specific risks.

(C) Whether being used to select the proper contract type or establishing share lines and ceiling price on an FPIF contract, the analysis of risk as it pertains to the prime contractor is key. From a contractor's perspective, all risks, including technical and schedule risk, have financial ramifications. Technical and schedule risks, if realized, generally translate into increased effort, which means increased cost. Therefore, all risk can be translated into cost risk and quantified. Risk always has two components that must be considered in the quantification: the magnitude of the impact and the probability that it will occur.

(D) When cost risk is quantified, it is much easier to establish a reasonable ceiling percentage. The ceiling percentage is applicable to the target cost on the prime contract. It is important to understand the degree of risk that various cost elements pose in

relation to that target cost. A discussion of the major cost elements and the risk implications follows in paragraphs (3)(ii) through (iv) of this section.

(ii) *Subcontracts and material cost and risk.*

(A) In many prime contractors' contracts, a substantial amount of risk is borne by subcontractors, not the prime contractor, via negotiated firm-fixed-price (FFP) subcontracts. In the case of FFP subcontracts, the subcontractor is obligated to deliver at the negotiated price. The risk to the prime contractor is the supplier's failure to perform or perform on time. Generally, that risk is considered to be low by both the prime and the subcontractor as evidenced by the FFP contract type. In addition, the prime contractor will normally have priced effort for material management or subcontract administration to ensure timely performance on the part of the suppliers. This effort may be bid directly or indirectly (e.g., as part of an overhead expense) depending on the contractor's accounting practices.

(B) The impact of negotiated FFP subcontracts on the prime contractor's risk can be significant. A prime contract with a 120 percent ceiling price provides overrun protection to the prime contractor equal to 20 percent of the target cost on the contract. However, if FFP subcontracts represent half of the total contract cost, then half of the target cost is subject to little or no cost risk on the part of the prime contractor. Therefore, the overrun protection provided by 20 percent of the target cost is really closer to 40 percent protection of the prime's cost that is truly at risk to the prime contractor, which likely is significantly overstated. Thus, a ceiling price less than 120 percent in this risk situation would be more appropriate.

(C) For subcontracts that have not yet been negotiated between the prime and subcontractor at the time of negotiation of the prime contract, the degree of risk is essentially limited to the difference between the price proposed by the subcontractor and the subcontract value included in the prime contractor's proposal.

(D) For subcontracts that are not FFP, the risk to the prime is based on the risk represented by the subcontractors' contractual relationship with the prime. If the subcontract is FPIF and has a 50/50 share ratio and 120 percent ceiling, the prime's risk is 50 percent of each dollar of overrun up to the ceiling amount. An analysis of the subcontractor's risk would be necessary to determine the probability of reaching the ceiling price.

(iii) *Direct labor cost and risk.*

(A) The risk in direct labor is in the hours needed to perform the effort and the risk in the labor rates paid to employees. There is generally little risk in the direct labor rates. However, there are various levels of risk in the direct labor hours needed by the prime contractor to accomplish the contract requirements. This risk can be driven by a number of factors including technical complexity, schedule constraints, or availability of personnel, parts, or tooling. Risks vary by task and the key is to identify the major tasks and assess the "what if" impact at the total contract cost level.

(B) Schedule is often correctly cited as a risk factor, but it is important to understand and quantify the probability and impact of a potential schedule slip. Generally, any schedule slip can only affect the prime contractor's in-house cost. Therefore, any schedule impact should be assessed on the impact it would have on the prime contractor's performance of its tasks.

(C) However, it is wrong to assume the worst-case scenario that a schedule delay results in an extension of the entire prime contractor workforce for the period of the delay. A responsible contractor will take steps to minimize both the delay and the impact of that delay. For instance, a production schedule assumes an optimal sequencing of tasks which presumes the timely arrival and availability of parts from suppliers or other in-house sources. A delay in receiving parts as planned could require a resequencing of tasks and could adversely affect the efficiency of performing a number of tasks, but it will not cause the entire workforce to be idle during the delay.

(iv) *Indirect (e.g., overhead) cost and risk.* Overhead and other indirect costs (e.g., general and administrative expense) can represent a significant portion of the prime contractor's in-house cost. Indirect expense (hereafter referred to as overhead) poses potential cost growth risk or the opportunity for cost reduction from the following two perspectives:

(A) *Actual overhead rate.* (1) First, the actual overhead rate could be different than that proposed. Proposed overhead rates, even those covered by a forward pricing rate agreement, are based on forecasts of overhead expenses and the bases to which they are applied. The final overhead rate that is actually applied (charged) to a contract will be based on the actual overhead expenses and the actual base, each of which could be considerably different than estimated. The net effect could be a higher or lower overhead rate than estimated.

(2) In general, the risk in an overhead rate tends to be driven more by fluctuations in the base than in the expenses. This is because overhead expenses are made up of expenses that consist of "fixed" (e.g., depreciation) and variable (e.g., fringe benefits) in nature. When the actual base turns out to be lower than the estimated base, the fixed costs are spread over a smaller base resulting in a higher overhead rate. In general, if the actual base is greater than estimated, a lower overhead rate will result.

(3) In assessing this risk, the contracting officer should consider the contractor's ability to predict overhead rates based on comparing proposed versus actual rates for prior years. In making this comparison, it is important to do so in a manner consistent with the proposal being reviewed. For instance, if the majority of overhead costs on the proposal being reviewed occur two years in the future, the comparison should look at the contractor's accuracy in predicting overhead rates two years in advance. For example, in looking at the 2009 actual overhead rate, what did the contractor propose for 2009 in its 2007 forward pricing rate proposal?

(B) *Actual base cost.* If the actual base cost on the contract (e.g., direct labor dollars) is different than that proposed, the contract will be charged overhead costs according to the actual base costs on that contract. If the contractor overruns direct labor, even if the actual labor overhead rate was the same as proposed, that rate would be applied to a higher base resulting in increased overhead dollars on that contract. The opposite would be true if the contractor underruns direct labor on the contract. Since this aspect of risk is tied to the base cost on the contract, the risk is the same as it is for those base costs (e.g., direct labor, material).

**PGI 216.404-2 Fixed-price incentive (successive targets) contracts.**

The formula specified in FAR 16.404-2(a)(3) does not apply for the life of the contract. It is used to fix the firm target profit for the contract. To provide an incentive consistent with the circumstances, the formula should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

**PGI 216.405 Cost-plus-incentive-fee contracts.**

Give appropriate weight to basic acquisition objectives in negotiating the range of fee and the fee adjustment formula. For example—

(1) In an initial product development contract, it may be appropriate to provide for relatively small adjustments in fee tied to the cost incentive feature, but provide for significant adjustments if the contractor meets or surpasses performance targets; and

(2) In subsequent development and test contracts, it may be appropriate to negotiate an incentive formula tied primarily to the contractor's success in controlling costs.

**PGI 216.5 INDEFINITE-DELIVERY CONTRACTS**

**PGI 216.507 Additional ordering procedures for multiple-award contracts.**

**PGI 216.507-6 Exceptions to fair opportunity.**

(b) *Exceptions.* For an order exceeding the simplified acquisition threshold, that is a follow-on to an order previously issued for the same supply or service based on a justification for an exception to fair opportunity citing the authority FAR 16.507-6(b)(2) or (3)—

(i) The justification must include a copy of the previous justification to assist the approval authority in determining whether the actions to remove or overcome any barriers that led to the exception to fair opportunity cited on the previous justification were completed; and

(ii) The approval authority must determine whether the planned actions were completed. If the actions were not completed, the justification for the follow-on action must be approved by the approval authority one-level above the approval authority for the previous justification (see FAR 16.507-6(e)). If the previous justification was approved by the Senior Procurement Executive (SPE), the approval remains at the SPE level.

**PGI 216.507-70 Orders under multiple-award contracts.**

(b) For task orders issued under multiple-award indefinite-delivery indefinite-quantity services contracts, contracting officers must, when minimum labor category qualifications exist in the underlying contract—

(1) Ensure solicitations contain minimum labor category qualifications deemed necessary for successful task order performance, such as education and years of work experience, that are consistent with the contract's requirements;

(2) When allowed under the terms of the contract, identify any exceptions from labor category qualifications, such as education and years of work experience, proposed by the contractor as an alternative. When exceptions exist, contracting officers must—

(i) Identify any proposed exception from the labor category qualifications in the contract file, considering any potential performance and price impacts on the agency's requirements, and

(ii) Document the reasons for accepting any proposed alternatives to the contract requirements; and

(3) Include verification procedures within the quality assurance surveillance plan to ensure contractor personnel providing the service meet qualification requirements identified for the labor categories specified in the task order and contract. Verification, such as validation of contractor personnel education and years of relevant work experience, ensures the Government receives adequate services, as identified in task order and contract performance requirements (see FAR 46.104 and 46.407).

## **PGI 216.7—AGREEMENTS**

### **PGI 216.703 Basic ordering agreements.**

#### **PGI 216.703-3 Limitations.**

(d)(i) Individual orders under a basic ordering agreement must be individually closed following completion of the orders (see FAR 4.804).

(ii) The office issuing the agreement must furnish all authorized ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under DFARS 204.602 or, in the case of civilian agencies, the Federal Procurement Data System reporting requirement. Data furnished to civilian agencies must contain uncoded information about the data elements and the meanings of the codes to permit these users to translate the data into the federal format. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within 3 working days of the order.

(iii) Any activity listed in the agreement may issue orders on DD Form 1155, Order for Supplies or Services, or Standard Form 26, Award/Contract.