

SUBPART 216.3—COST-REIMBURSEMENT CONTRACTS

(Revised September 30, 2013)

216.301-3 Limitations.

See Class Deviation [2013-O0009](#), entitled *Prohibition on the Use of Cost-Type Contracts for Production of Major Defense Acquisition Programs*, dated March 11, 2013, which prohibits the use of a cost-type contract for the production of a major defense acquisition program except as provided in section 811 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239), which is effective until it is incorporated into the DFARS or is otherwise rescinded.

216.306 Cost-plus-fixed-fee contracts.

(c) Limitations.

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

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

(ii) The prohibition in paragraph (c)(i) of this section does not apply to contracts specifically approved in writing, setting forth the reasons therefor, in accordance with the following:

(A) 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.

(B) 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.

216.307 Contract clauses.

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

(1) 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

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- (2) In contracts awarded before September 30, 2013, that—
 - (i) Include the clause at FAR 52.216-7, Allowable Cost and Payment; and
 - (ii) Are modified to include the clause at DFARS [252.203-7002](#), Requirement to Inform Employees of Whistleblower Rights, dated September 2013 or later.