



Highlights of [GAO-09-579](#), a report to congressional committees

Why GAO Did This Study

Federal agencies have used time-and-materials (T&M) contracts to purchase billions of dollars in services. These contracts are risky because the government bears the risk of cost overruns. Effective February 2007, the Federal Acquisition Regulation (FAR) was revised, pursuant to a statutory change, to allow T&M contracts to be used to acquire commercial services under FAR Part 12, which uses a streamlined procurement process. Certain safeguards were included in FAR Part 12, including a requirement that contracting officers prepare a detailed determination and findings (D&F) that no other contract type is suitable. Based on a mandate to review the use of T&M contracts for commercial services, we assessed (1) agencies' reported use of such contracts and what they acquired, (2) the degree to which agencies complied with the new safeguards, and (3) the applicability of the safeguards to General Services Administration (GSA) schedule contracts. GAO reviewed contracts and orders at DOD and civilian agencies and spoke with contracting officials.

What GAO Recommends

GAO recommends that OFPP take steps to clarify the FAR regarding labor-hour contracts and to explicitly apply the Part 12 safeguards to the GSA schedules program, and that it provide guidance to contracting officials on the Part 12 D&F. In oral comments, OFPP agreed with our recommendations. The other six agencies in our review also concurred or had no comment.

View [GAO-09-579](#) or [key components](#).
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CONTRACT MANAGEMENT

Minimal Compliance with New Safeguards for Time-and-Materials Contracts for Commercial Services and Safeguards Have Not Been Applied to GSA Schedules Program

What GAO Found

From February 2007 to December 2008, agencies reported using commercial item procedures under FAR Part 12 to buy a variety of services through T&M contracts; examples include emergency nursing services on Indian reservations and gunsmith services for the FBI. The reported value of these contracts was \$4.4 billion—or less than 1 percent of the total federal dollars obligated for services during this period. Of the \$4.4 billion, \$3.1 billion had gone through GSA's schedules program. GAO identified about another \$6 billion, in addition to the \$3.1 billion, in T&M obligations for commercial services under GSA schedule contracts. The reliability of the data reported as T&M contracts using FAR Part 12 procedures is questionable. Of the 149 contracts GAO reviewed, 28 had been miscoded as acquiring commercial services or as T&M contracts. Another issue that indicates a potential underreporting of T&M contracts for commercial services is that contracting officials across the agencies had the mistaken impression that the fixed labor rate in T&M contracts makes these contracts fixed-price. GAO raised this issue with officials from the Office of Federal Procurement Policy (OFPP)—chair of the federal acquisition regulatory council—who agreed that clarification on what constitutes a fixed-price versus labor hour contract would be beneficial. Further, GAO found that contracting officials had different opinions of what generally constitutes a commercial service. Some viewed services intended to meet a specific government requirement as noncommercial, while others viewed similar services as commercial.

The Part 12 D&F was rarely used for the contracts GAO reviewed. The D&F must incorporate four elements, such as a description of the market research conducted. Of 82 contracts reviewed that were explicitly subject to this D&F requirement, only 5 included all the required elements, and 9 partially met the requirement. Of the remaining contracts, 33 had no D&F at all and 35 included the less stringent D&F applicable to noncommercial T&M services. GAO found a general lack of awareness of the Part 12 D&F requirement at the agencies in this review. Agencies' internal management and legal reviews generally did not detect the failure to include the D&F. OFPP officials expressed concern about the lack of compliance with the D&F requirement.

The Part 12 D&F requirement has not been applied to the GSA schedules program. GSA officials stated that the GSA Administrator has discretion about what procedures apply to the program. In a legal opinion to GAO on whether the statutory changes regarding T&M contracts for commercial services apply to the schedules program, GSA concluded that the applicability is uncertain but stated that existing regulations satisfy concerns about use of T&M under the schedules program. GAO notes that these regulations do not require the same level of detailed analysis as does the Part 12 D&F. Further, there is no indication that the statutory requirements cannot apply to items or services under the schedules program. GSA officials said they are in the process of developing a Part 12 D&F for the entire schedules program, but it is not clear how this D&F will act as a safeguard when T&M orders are used.