



**THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

INTERNAL CONTROL AND ACCOUNTABILITY DIRECTIVES

DIRECTIVE 31 - SPECIAL AUDIT PROCEDURES FOR INFORMATION TECHNOLOGY CONSULTING AND OTHER INFORMATION TECHNOLOGY PROFESSIONAL SERVICES PAYMENT REQUESTS UNDER CONTRACTS SPECIFYING PAYMENT TO A VENDOR BASED ON TIME.

(Effective May 1, 2014; applies to all contracts solicited on or after July 1, 2014)

INTRODUCTION

This Directive is applicable to Time-and-Materials Contracts and to Labor-Hour Contracts for IT Professional Services. It does not apply to contracts that are purely Fixed Price Contracts; however, agencies are encouraged to use Fixed Price Contracts whenever feasible as they provide greater protection that contract objectives will be timely met at a reasonable cost to the City.

This Directive sets forth a uniform procedure for agencies to follow when processing information technology ("IT") consulting Vendor ("IT Consultant") payment requests for IT consulting services ("ITCS"), systems integration ("SI"), project management and quality assurance ("PMQA"), and/or other IT Professional Services contracts. Compliance with the Directive's guidelines will facilitate a consistent standard for contract management oversight and internal controls, proper preparation and authorization of payment vouchers by City agencies, and verification of Consultant time associated with IT Consulting and IT Professional Services Contracts.

This Directive is issued pursuant to the Office of the Comptroller's authority as established in Chapter 5, Section 93 of the New York City Charter. IT consulting and/or other IT Consultant payment vouchers are subject to periodic audit by the Office of the Comptroller.

1.0 GENERAL INFORMATION

1.1 Organization

- 1.0 General Information
- 2.0 Requirements for IT Consulting and/or Other IT Technology Professional Service Vendor Payment Requests

1.2 Definitions

For the purposes of this Directive, the terms listed below have the following definitions:

“Consultant” means any individual furnished by, through, or on behalf of the Contractor, including through its employees, agents and Subcontractors, to perform the Contractor’s obligations under the Contract.

“Contract” means a written agreement between the City and a Contractor in an amount generally in excess of the small purchase limits that gives rise to obligations that are enforced and recognized by law.

“Contractor” means a company or a person having a Contract with a governmental body.

“Fixed Price Contract” means a Contract where the amount of payment does not depend on the amount of resources or time expended and provides for a firm price or, in appropriate cases, an adjustable price, for pre-determined outcomes or work products under the Contract. Time-and-Materials and Labor Hour Contracts are not Fixed Price Contracts.

“GSA” means the United States General Services Administration.

“Hourly Bill Rate” means the price per hour per individual that the Contractor, Consultant or Subcontractor receives for the services provided under the Contract. The Hourly Bill Rate is calculated by applying the Personnel Markup to the Hourly Wage Rate.

“Hourly Wage Rate” means the Total Compensation per hour per individual that the Contractor, Consultant or Subcontractor personnel will receive for services provided under the Contract, regardless of potential subcontracting layers. Where individuals are not compensated on an hourly basis, Hourly Wage Rate shall mean the employee’s periodic Total Compensation divided by the number of hours the individual is expected to work during the period.

“Information Technology” or “IT” means systems, services, or a combination or components thereof including, but not limited to, hardware, software, firmware, and telecommunications that integrate and process data; and services including, but not

limited to, planning, consulting, project managing, developing requirements definitions, analyzing, designing, programming, testing, training, implementing, as well as conversion, capacity management, quality assurance, creation, maintenance, operation, and/or repair of computer systems networks or components thereof.¹

“Key Personnel” means Contractor personnel identified in a proposal or agreement who have unique skills, knowledge, training, and experience such that the Contractor’s representation that it would engage or employ such individuals on the project was a material consideration in the selection of the Contractor for the project.

“Labor-Hour Contract” is a variation of the Time-and-Materials Contract, differing only in that materials are not supplied by the Contractor.

“Materials Markup” means, for equipment such as hardware and/or software, the price charged to the City above the amount actually paid, after taking into account any rebates, refunds, and/or discounts to the Contractor, Consultant or Subcontractor.

“OGS” means the New York State Office of General Services.

“Personnel Markup” means, for Contractor, Consultant or Subcontractor personnel, the price charged to the City above the Total Compensation actually paid to the Contractor, Consultant or Subcontractor’s personnel. Personnel Markup refers to the price difference between the Hourly Bill Rate the City pays and the Hourly Wage Rate the Contractor, Consultant or Subcontractor receives.

“Professional Services” means services other than human/client services that require specialized skills and the exercise of judgment.

“Project Oversight Employee” means an agency designated project team member who possesses sufficient subject matter knowledge and understanding of Contractor’s responsibilities to effectively review and approve Consultant Timesheets—Contractors’, Consultants’ and Subcontractors internal approval notwithstanding. In circumstances where an agency has limited size, functions or staff resources, project oversight may be supported by a temporary employee, or a non-City employee who has been contracted for the express purpose of providing independent PMQA services (so long as there exists no conflict between his/her affiliation(s) outside of the project and his/her duties supporting the Project Oversight Employee). However, a City employee must function as the Project Oversight Employee who provides functional oversight for the Contractor’s work and documents that oversight by approving all certified Consultant time prior to payment. (See Section 2.2.2 (b)).

“Services” means the furnishing of labor, time, or effort by a Contractor. This term does not include employment agreements or collective bargaining agreements.

¹ Although there is no definition of “technology” in the General Municipal Law, State Finance Laws Section 160(10) defines the term to mean “either a good or a service or a combination thereof that results in a technical method of achieving a practical purpose or in improvements in productivity.”

“Subcontractor” means an individual or business the Contractor enters into an agreement with to perform all or part of the services under Contract.

“Time-and-Materials Contract” means a Contract where payment is or may be wholly or partially² based on volume of services performed, usually at specified Hourly Bill Rates, as well as equipment, supplies, and incidental services for which there is not a labor category specified in the contract.

“Timesheet” means a certified report submitted by each individual member working on the project, whose work is being charged to the City on a Time-and-Materials or Labor-Hour basis by the Consultant or Subcontractor. Timesheets must be submitted on a regular basis, but no less frequently than once per month, in a format established in the Contract in order to ensure accurate reporting of the Hourly Wage Rate and the Hourly Bill Rate for audit purposes. At a minimum, Timesheets must contain the number of hours worked per day rounded to the nearest quarter hour, detailed description by project or activity per day tied to identified personnel and tracking a specific Contract activity, task or project deliverable, and work location (meaning on-site or off-site) for reported hours.

“Total Compensation” means the combined value of salaries and wages and fringe benefits, paid to or on behalf of the individual, excluding the employer’s share of payroll taxes and any stock-option or other equity based compensation and also excluding discretionary performance based bonuses or similar payments

“Vendor” means an actual or potential Contractor.

1.3 Effective Date

This Directive is effective immediately and shall be applicable to all Contracts solicited on or after July 1, 2014.

1.4 Assistance

Requests for assistance or questions concerning this directive should be addressed to the Comptroller’s Directives/Policy Unit’s Directive Hotline at (212) 669-3675, or by emailing directives@comptroller.nyc.gov, or writing The Office of the Comptroller, ATTN: Directives/Policy Unit, Municipal Building, One Centre Street, Room 200 South, New York, NY 10007.

² Contracts that are not categorized as wholly Time-and-Materials may include some work or optional work, or other components, for which the Contractor would receive Time-and-Materials based payments.

1.5 Office of the Comptroller's Authority

This Directive is issued pursuant to the Office of the Comptroller's authority as established in Chapter 5, Section 93 of the New York City Charter. IT consulting and/or other IT Consultant payment vouchers are subject to periodic audit by the Office of the Comptroller.

1.6 Internet Availability

An inventory of existing Office of the Comptroller's Internal Control and Accountability Directives, with download and print capability, are available on the Office of the Comptroller's website at <http://comptroller.nyc.gov/general-information/comptroller-directives>.

2.0 REQUIREMENTS FOR INFORMATION TECHNOLOGY CONSULTING AND/OR OTHER INFORMATION TECHNOLOGY PROFESSIONAL SERVICES PAYMENT REQUESTS

The Office of the Comptroller has designated the following standards for all agencies:

All agency personnel who prepare requests authorizing payments for IT Consultants Time-and-Materials or Labor-Hour Contracts or task orders are subject to the provisions of this Directive. The Office of the Comptroller monitors agency payment request preparation activities as an ongoing practice and may issue future Directives that apply the following or subsequently developed payment request audit procedures to other kinds of Contracts where payment is based on hours worked by Contractor personnel.

If an agency staff member suspects fraud, he or she must refer the incident to the New York City Department of Investigation and follow the reporting requirements in Mayoral Executive Order 16, Section 4.d., "Investigations," dated July 26, 1978.

2.1 Related Regulation

Agencies that audit payment requests for IT consulting Contracts must also comply with Directive #2, *Procedures for the Audit of Payment Requests under Cost Reimbursable Contracts*, which provides procedures agency staff must use for auditing requests issued against cost reimbursable contracts.

2.2 Before Approving an IT Consultant Vendor Payment Request:

Agencies are required to examine all Timesheets prepared or submitted by the Contractor, Subcontractor, or Consultant to verify the markups or rates used and that special qualifications exist as required by the Contract.³

2.2.1 (a). Markups

Markups to cover costs above Hourly Wage Rates for Consultants and the cost of materials may be paid provided that agencies document within the Contract the amount of any allowable Personnel and/or Materials Markups. If the Contract allows any fluctuation to the Personnel and/or Materials Markups, agencies must document the review and approval process before authorizing a payment.

If a cost component is otherwise paid for by the City or reimbursed to the Contractor or Subcontractor, it may not be factored into any Markups. Unless otherwise specified in the Contract, cost components covered by one type of Markup should not be duplicated or in any way applied within the other Markup.

For purposes of establishing uniform Contract cost reporting and audit procedures, agencies should document the cost components that may be covered by Personnel Markups, which could include customarily defined overhead and general expenses, taking into account the employer's share of payroll taxes, where applicable, and profit. Contractors may request that the information provided to the City related to its Personnel Markup calculations, such as wage or profit analysis models, be deemed proprietary and treated as confidential by agencies.

To promote uniform Contract cost reporting and audit procedures across City agencies, materials and equipment, including hardware and software provided under IT consulting Contracts, must have documented maximum allowable Materials Markups that may cover the cost of required configuration or customization work, less any rebates, refunds, allowances, credits or discounts received by the Contractor, Consultant or Subcontractor that agencies should receive the benefit of.

While auditing payment vouchers before authorizing payment agencies should compare payment requests to Contract provisions regarding the amount of Markups and the allowable costs and deductions included in such Markups. Markups cannot be applied to services or the cost of materials intended to replace or correct previously delivered services or to materials or other deliverables that failed to meet Contract requirements.⁴

³ For intergovernmental contracts, agencies are required to review hourly rates against contracted hourly rates and listed OGS/GSA not-to-exceed rates.

⁴ This assumes agencies have assessed liquidated damages, if applicable, and/or assessed any applicable retainage fees according to service level agreement provisions and/or inspection or acceptance procedures for the deficient work or materials has been determined separately.

In the interest of standardizing Contract audits and related Contractor disclosures, as well as promoting transparency and accountability in IT procurement, where there are no express Personnel Markups in Labor-Hour Contracts, agencies should still document the cost components of Consultants' hourly rates prior to authorizing payment vouchers and/or approving Timesheets. Where such information or data are deemed proprietary by the Contractor, it should be kept confidential by City agencies to the extent permitted by law.

2.2.1 (b). Qualification Reviews

Agencies are required to obtain and review resumes or comparable documents describing the education and experience of the Contractor's Key Personnel assigned to the project, as well as any other Contractor, Consultant or Subcontractor personnel whose Timesheets are subject to review by the agency and/or for whose services the City will make Contract payments based on hours worked. Agencies must verify that proposed personnel have the qualifications to meet the contractual specifications for a Consultant at the Consultant's proposed title and Hourly Bill Rate before making any payments for the Consultant's work.

2.2.2 (a). Timesheets

For purposes of authorizing and auditing Contract payments based on accurate, directly observable and timely recorded information, IT Consultant Contracts must specify time reporting intervals of no longer than monthly and require that for each interval the Contractor provide Timesheets that contain:

- Reasonably detailed narrative descriptions of all work done each day by each identified Consultant, tied to a specific, trackable Contract activity or deliverable, and rounded to the nearest quarter hour;
- Lunch hours or other work breaks;
- Work locations for each project or activity; and
- Certifications by the Consultant and by his/her on-site supervisor.⁵ Certification by off-site supervisors is only permitted in the case of the highest level Consultant manager on site. If work is not conducted on-site, or an individual Consultant has no on-site supervisor, the agency official responsible for managing that Consultant must certify the Consultant's Timesheet, attesting at a minimum that he or she has regularly observed or communicated with the Consultant during the period and believes the time reported reasonably corresponds to the effort and/or progress made during that period.

Timesheets, which must be certified, must be approved by the Contractor and submitted to the agency for review within a reasonable time frame from the date of work performance, but no longer than one month, unless extraordinary

⁵ In order to properly prepare and authorize payment vouchers, overtime requests must be approved in writing and for documented project-specific reasons by the agency in advance of Contractor personnel performing the work.

circumstances arise and the agency contract manager documents in writing the necessity for, and approves, an extension.⁶

2.2.2 (b). Project Oversight

To ensure that Contract payments are properly documented and vouchers are appropriately authorized prior to disbursements, agencies are required to have one or more Project Oversight Employees assigned to oversee the Consultants, as members of the specific project team, who have sufficient knowledge of both the project and of the Consultant's assignments to understand whether appropriate progress has been made within the time frames established or for the hours charged. Project Oversight Employees must approve certified Contractor and/or Consultant Timesheets, or up to a monthly compendium thereof, within one month after submission,⁷ indicating that the reported hours and work descriptions are, in the Project Oversight Employee's best judgment following necessary inquiries with the Consultant, reasonably based on his/her observations, project and/or task order tracking, any Timesheet or payment request reconciliations and general oversight responsibilities.

A designated agency employee, other than the Project Oversight Employee or the contract manager, who is responsible for reviewing payment request and auditing payment request submissions, must verify that all approved Timesheets submitted for the period billed in each payment request are tied to trackable contract activities or deliverables. The designated agency employee must require the resubmission of any Timesheets showing discrepancies in the qualifications of IT Consultants' rates or hours, or inadequate progress on deliverables, after further appropriate review and reconciliation by the Project Oversight Employee Consultant.

⁶ The City may choose to require Contractors and/or Subcontractors to utilize an automated time-keeping system provided by the City.

⁷ The failure of an agency to meet this requirement will not constitute a waiver of any of the agency's rights to later review, reject or disapprove Timesheets or payment vouchers under the Contract.