

Federal Acquisition Regulation

Subpart 16.2—Fixed-Price Contracts

16.201 General.

Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances. The contracting officer shall use firm-fixed-price or fixed-price with economic price adjustment contracts when acquiring commercial items.

[48 FR 42219, Sept. 19, 1983, as amended at 60 FR 48248, Sept. 18, 1995]

16.202 Firm-fixed-price contracts.

16.202-1 Description.

A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. The contracting officer may use a firm-fixed-price contract in conjunction with an award-fee incentive (see 16.404) and performance or delivery incentives (see 16.402-2 and 16.402-3) when the award fee or incentive is based solely on factors other than cost. The contract type remains firm-fixed-price when used with these incentives.

[48 FR 42219, Sept. 19, 1983, as amended at 68 FR 13201, Mar. 18, 2003]

16.202-2 Application.

A firm-fixed-price contract is suitable for acquiring commercial items (see parts 2 and 12) or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications (see part 11) when

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the contracting officer can establish fair and reasonable prices at the outset, such as when—

- (a) There is adequate price competition;
- (b) There are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis or supported by valid cost or pricing data;
- (c) Available cost or pricing information permits realistic estimates of the probable costs of performance; or
- (d) Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

[48 FR 42219, Sept. 19, 1983, as amended at 60 FR 48248, Sept. 18, 1995]

16.203 Fixed-price contracts with economic price adjustment.

16.203-1 Description.

(a) A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon the occurrence of specified contingencies. Economic price adjustments are of three general types:

(1) *Adjustments based on established prices.* These price adjustments are based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the contract end items.

(2) *Adjustments based on actual costs of labor or material.* These price adjustments are based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance.

(3) *Adjustments based on cost indexes of labor or material.* These price adjustments are based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

(b) The contracting officer may use a fixed-price contract with economic price adjustment in conjunction with an award-fee incentive (see 16.404) and performance or delivery incentives (see 16.402-2 and 16.402-3) when the award

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fee or incentive is based solely on factors other than cost. The contract type remains fixed-price with economic price adjustment when used with these incentives.

[48 FR 42219, Sept. 19, 1983, as amended at 68 FR 13201, Mar. 18, 2003]

16.203-2 Application.

A fixed-price contract with economic price adjustment may be used when (i) there is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance, and (ii) contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract. Price adjustments based on established prices should normally be restricted to industry-wide contingencies. Price adjustments based on labor and material costs should be limited to contingencies beyond the contractor's control. For use of economic price adjustment in sealed bid contracts, see 14.408-4.

(a) In establishing the base level from which adjustment will be made, the contracting officer shall ensure that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor under economic price adjustment clause.

(b) In contracts that do not require submission of cost or pricing data, the contracting officer shall obtain adequate information to establish the base level from which adjustment will be made and may require verification of data submitted.

[48 FR 42219, Sept. 19, 1983, as amended at 50 FR 1742, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 60 FR 34739, July 3, 1995]

16.203-3 Limitations.

A fixed-price contract with economic price adjustment shall not be used unless the contracting officer determines that it is necessary either to protect the contractor and the Government against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices.

48 CFR Ch. 1 (10-1-05 Edition)**16.203-4 Contract clauses.**

(a) *Adjustment based on established prices—standard supplies.* (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-2, Economic Price Adjustment—Standard Supplies, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitations and contracts when all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) The requirement is for standard supplies that have an established catalog or market price.

(iii) The contracting officer has made the determination specified in 16.203-3.

(2) If all the conditions in subparagraph (a)(1) above apply and the contracting officer determines that the use of the clause at 52.216-2 is inappropriate, the contracting officer may use an agency-prescribed clause instead of the clause at 52.216-2.

(3) If the negotiated unit price reflects a net price after applying a trade discount from a catalog or list price, the contracting officer shall document in the contract file both the catalog or list price and the discount. (This does not apply to prompt payment or cash discounts.)

(b) *Adjustment based on established prices—semistandard supplies.* (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-3, Economic Price Adjustment—Semistandard Supplies, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitations and contracts when all of the following conditions apply:

(i) A fixed price contract is contemplated.

(ii) The requirement is for semistandard supplies for which the prices can be reasonably related to the prices of nearly equivalent standard supplies that have an established catalog or market price.

(iii) The contracting officer has made the determination specified in 16.203-3.

(2) If all conditions in subparagraph (b)(1) above apply and the contracting officer determines that the use of the clause at 52.216-3 is inappropriate, the contracting officer may use an agency-

prescribed clause instead of the clause at 52.216-3.

(3) If the negotiated unit price reflects a net price after applying a trade discount from a catalog or list price, the contracting officer shall document in the contract file both the catalog or list price and the discount. (This does not apply to prompt payment or cash discounts.)

(4) Before entering into the contract, the contracting officer and contractor must agree in writing on the identity of the standard supplies and the corresponding contract line items to which the clause applies.

(5) If the supplies are standard, except for preservation, packaging, and packing requirements, the clause prescribed in 16.203-4(a), shall be used rather than this clause.

(c) *Adjustments based on actual cost of labor or material.* (1) The contracting officer shall, when contracting by negotiation, insert a clause that is substantially the same as the clause at 52.216-4, Economic Price Adjustment—Labor and Material, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitation and contracts when all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) There is no major element of design engineering or development work involved.

(iii) One or more identifiable labor or material cost factors are subject to change.

(iv) The contracting officer has made the determination specified in 16.203-3.

(2) If all conditions in subparagraph (c)(1) above apply and the contracting officer determines that the use of the clause at 52.216-4 is inappropriate, the contracting officer may use an agency-prescribed clause instead of the clause at 52.216-4.

(3) The contracting officer shall describe in detail in the contract Schedule—

(i) The types of labor and materials subject to adjustment under the clause;

(ii) The labor rates, including fringe benefits (if any) and unit prices of materials that may be increased or decreased; and

(iii) The quantities of the specified labor and materials allocable to each unit to be delivered under the contract.

(4) In negotiating adjustments under the clause, the contracting officer shall—

(i) Consider work in process and materials on hand at the time of changes in labor rates, including fringe benefits (if any) or material prices;

(ii) Not include in adjustments any indirect cost (except fringe benefits as defined in 31.205-6(m)) or profit; and

(iii) Consider only those fringe benefits specified in the contract Schedule.

(d) *Adjustments based on cost indexes of labor or material.* The contracting officer should consider using an economic price adjustment clause based on cost indexes of labor or material under the circumstances and subject to approval as described in subparagraphs (1) and (2) below.

(1) A clause providing adjustment based on cost indexes of labor or materials may be appropriate when—

(i) The contract involves an extended period of performance with significant costs to be incurred beyond 1 year after performance begins;

(ii) The contract amount subject to adjustment is substantial; and

(iii) The economic variables for labor and materials are too unstable to permit a reasonable division of risk between the Government and the contractor, without this type of clause.

(2) Any clause using this method shall be prepared and approved under agency procedures. Because of the variations in circumstances and clause wording that may arise, no standard clause is prescribed.

[48 FR 42219, Sept. 19, 1983, as amended at 52 FR 19803, May 27, 1987; 60 FR 48217, Sept. 18, 1995; 62 FR 259, Jan. 2, 1997]

16.204 Fixed-price incentive contracts.

A fixed-price incentive contract is a fixed-price contract that provides for adjusting profit and establishing the final contract price by a formula based on the relationship of final negotiated total cost to total target cost. Fixed-price incentive contracts are covered in subpart 16.4, Incentive Contracts. See 16.403 for more complete descriptions, application, and limitations for

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these contracts. Prescribed clauses are found at 16.406.

[48 FR 42219, Sept. 19, 1983, as amended at 59 FR 11387, Mar. 10, 1994; 62 FR 12695, Mar. 17, 1997]

16.205 Fixed-price contracts with prospective price redetermination.**16.205-1 Description.**

A fixed-price contract with prospective price redetermination provides for (a) a firm fixed price for an initial period of contract deliveries or performance and (b) prospective redetermination, at a stated time or times during performance, of the price for subsequent periods of performance.

16.205-2 Application.

A fixed-price contract with prospective price redetermination may be used in acquisitions of quantity production or services for which it is possible to negotiate a fair and reasonable firm fixed price for an initial period, but not for subsequent periods of contract performance.

(a) The initial period should be the longest period for which it is possible to negotiate a fair and reasonable firm fixed price. Each subsequent pricing period should be at least 12 months.

(b) The contract may provide for a ceiling price based on evaluation of the uncertainties involved in performance and their possible cost impact. This ceiling price should provide for assumption of a reasonable proportion of the risk by the contractor and, once established, may be adjusted only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

16.205-3 Limitations.

This contract type shall not be used unless—

(a) Negotiations have established that (1) the conditions for use of a firm-fixed-price contract are not present (see 16.202-2), and (2) a fixed-price incentive contract would not be more appropriate;

(b) The contractor's accounting system is adequate for price redetermination;

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(c) The prospective pricing periods can be made to conform with operation of the contractor's accounting system; and

(d) There is reasonable assurance that price redetermination actions will take place promptly at the specified times.

16.205-4 Contract clause.

The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-5, Price Redetermination—Prospective, in solicitations and contracts when a fixed-price contract is contemplated and the conditions specified in 16.205-2 and 16.205-3(a) through (d) apply.

16.206 Fixed-ceiling-price contracts with retroactive price redetermination.**16.206-1 Description.**

A fixed-ceiling-price contract with retroactive price redetermination provides for (a) a fixed ceiling price and (b) retroactive price redetermination within the ceiling after completion of the contract.

16.206-2 Application.

A fixed-ceiling-price contract with retroactive price redetermination is appropriate for research and development contracts estimated at \$100,000 or less when it is established at the outset that a fair and reasonable firm fixed price cannot be negotiated and that the amount involved and short performance period make the use of any other fixed-price contract type impracticable.

(a) A ceiling price shall be negotiated for the contract at a level that reflects a reasonable sharing of risk by the contractor. The established ceiling price may be adjusted only if required by the operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

(b) The contract should be awarded only after negotiation of a billing price that is as fair and reasonable as the circumstances permit.

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(c) Since this contract type provides the contractor no cost control incentive except the ceiling price, the contracting officer should make clear to the contractor during discussion before award that the contractor's management effectiveness and ingenuity will be considered in retroactively redetermining the price.

16.206-3 Limitations.

This contract type shall not be used unless—

(a) The contract is for research and development and the estimated cost is \$100,000 or less;

(b) The contractor's accounting system is adequate for price redetermination;

(c) There is reasonable assurance that the price redetermination will take place promptly at the specified time; and

(d) The head of the contracting activity (or a higher-level official, if required by agency procedures) approves its use in writing.

16.206-4 Contract clause.

The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-6, Price Redetermination—Retroactive, in solicitations and contracts when a fixed-price contract is contemplated and the conditions in 16.206-2 and 16.206-3(a) through (d) apply.

16.207 Firm-fixed-price, level-of-effort term contracts.

16.207-1 Description.

A firm-fixed-price, level-of-effort term contract requires (a) the contractor to provide a specified level of effort, over a stated period of time, on work that can be stated only in general terms and (b) the Government to pay the contractor a fixed dollar amount.

16.207-2 Application.

A firm-fixed-price, level-of-effort term contract is suitable for investigation or study in a specific research and development area. The product of the contract is usually a report showing the results achieved through application of the required level of effort. However, payment is based on the effort

expended rather than on the results achieved.

16.207-3 Limitations.

This contract type may be used only when—

(a) The work required cannot otherwise be clearly defined;

(b) The required level of effort is identified and agreed upon in advance;

(c) There is reasonable assurance that the intended result cannot be achieved by expending less than the stipulated effort; and

(d) The contract price is \$100,000 or less, unless approved by the chief of the contracting office.

Subpart 16.3—Cost-Reimbursement Contracts

16.301 General.

16.301-1 Description.

Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.

16.301-2 Application.

Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

16.301-3 Limitations.

(a) A cost-reimbursement contract may be used only when—

(1) The contractor's accounting system is adequate for determining costs applicable to the contract; and

(2) Appropriate Government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.