52.216—13—52.216—14  [Reserved]

52.216—15 Predetermined Indirect Cost Rates.

As prescribed in 16.307(g), insert the following clause:

PREDETERMINED INDIRECT COST RATES (APR 1998)

(a) Notwithstanding the Allowable Cost and Payment clause of this contract, the allowable indirect costs under this contract shall be obtained by applying predetermined indirect cost rates to bases agreed upon by the parties, as specified below.

(b)(1) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(2) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with FAR subpart 31.3 in effect on the date of this contract.

(d) Predetermined rate agreements in effect on the date of this contract shall be incorporated into the contract Schedule. The Contracting Officer (or cognizant Federal agency official) and Contractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The agreement shall specify (1) the agreed-upon predetermined indirect cost rates, (2) the bases to which the rates apply, (3) the period for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The indirect cost rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The agreement is incorporated into this contract upon signature.

(e) Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the Contracting Officer (or cognizant Federal agency official), subject to appropriate adjustment when the final rates for that period are established.

(f) Any failure by the parties to agree on any predetermined indirect cost rates under this clause shall not be considered a dispute within the meaning of the Disputes clause. If for any fiscal year (or other period specified in the Schedule) the parties fail to agree to predetermined indirect cost rates, the allowable indirect costs shall be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.

(g) Allowable indirect costs for the period from the beginning of performance until the end of the Contractor's fiscal year (or other period specified in the Schedule) shall be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

(End of clause)

52.216—16 Incentive Price Revision—Firm Target.

As prescribed in 16.406(a), insert the following clause:

INCENTIVE PRICE REVISION—FIRM TARGET (OCT 1997)

(a) General. The supplies or services identified in the Schedule as Items [Contracting Officer insert Schedule line item numbers] are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these items exceed the ceiling price of $____. Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this contract and (2) subject to price revision in accordance with the terms of this clause shall be identified as such in a modification to this contract.

(b) Definition. Costs, as used in this clause, means allowable costs in accordance with part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(c) Data submission. (1) Within [Contracting Officer insert number of days] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this clause, the Contractor shall submit in the format of Table 15–2, FAR 15.406, or in any other form on which the parties agree—

(i) A detailed statement of all costs incurred to the end of that month in performing all work under the items;

(ii) An estimate of costs of further performance, if any, that may be necessary to
complete performance of all work under the items:

(iii) A list of all residual inventory and an estimate of its value; and

(iv) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by subparagraph (1) above within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) Price revision. Upon the Contracting Officer's receipt of the data required by paragraph (c) above, the Contracting Officer and the Contractor shall promptly establish the total final price of the items specified in (a) above by applying to final negotiated cost an adjustment for profit or loss, as follows:

(1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows:

(i) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.

(ii) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit, less [Contracting Officer insert percent] percent of the amount by which the total final negotiated cost exceeds the total target cost.

(iii) If the total final negotiated cost is less than the total target cost, the adjustment is the total target profit plus [Contracting Officer insert percent] percent of the amount by which the total final negotiated cost is less than the total target cost.

(e) Contract modification. The total final price of the items specified in paragraph (a) above shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(f) Adjusting billing prices. (1) Pending execution of the contract modification provided for in paragraph (d) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices shown in this contract.

(2) If at any time it appears from information provided by the contractor under subparagraph (g)(2) below that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that final cost under this contract will be substantially greater than the target cost.

(g) Quarterly limitation on payments statement. This paragraph (g) shall apply until final price revision under this contract has been completed.

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government and for which final prices have not been established;

(2) Any billing price adjustment shall be reflected in a contract modification and shall not affect the determination of the total final price under paragraph (d) above. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(2) Within 30 days after the end of each quarter thereafter, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph (g) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established.
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with subparagraph (d)(2) above, when the amount stated under subdivision (ii), immedi-
ately above, differs from the aggregate tar-
get costs of the supplies or services; and
(i) The total amount of all invoices or
vouchers for supplies delivered (or services
performed) and accepted by the Government
(including amounts applied or to be applied
to liquidate progress payments).

(2) Notwithstanding any provision of this
contract authorizing greater payments, if on
any quarterly statement the amount under
subdivision (1)(iv) above exceeds the sum
due the Contractor, as computed in accordance
with subdivisions (1)(i), (ii), and (iii) above,
the Contractor shall immediately refund or
credit to the Government the amount of this
excess. The Contractor may, when appro-
priate, reduce this refund or credit by the
amount of any applicable tax credits due the
Contractor under 26 U.S.C. 1481 and by the
amount of previous refunds or credits ef-
acted under this clause. If any portion of the
excess has been applied to the liquidation of
progress payments, then that portion may,
instead of being refunded, be added to the
unliquidated progress payment account con-
sistent with the Progress Payments clause.
The Contractor shall provide complete de-
tails to support any claimed reductions in
refunds.

(3) If the Contractor fails to submit the
quarterly statement within 45 days after the
end of each quarter and it is later deter-
mimed that the Government has overpaid the
Contractor, the Contractor shall repay the
excess to the Government immediately. Un-
less repaid within 30 days after the end of the
statement submittal period, the amount of the
excess shall bear interest, computed
from the date the quarterly statement was
due to the date of repayment, at the rate es-
ablished in accordance with the Interest
clause.

(h) Subcontracts. No subcontract placed
under this contract may provide for payment
on a cost-plus-a-percentage-of-cost basis.

(i) Disagreements. If the Contractor and the
Contracting Officer fail to agree upon the
total final price within 60 days (or within
such other period as the Contracting Officer
may specify) after the date on which the
data required by paragraph (c) above are to
be submitted, the Contracting Officer shall
promptly issue a decision in accordance with
the Disputes clause.

(j) Termination. If this contract is termi-
nated before the total final price is estab-
lished, prices of supplies or services subject
to price revision shall be established in ac-
cordance with this clause for (1) completed
supplies and services accepted by the Gov-
ernment and (2) those supplies and services
not terminated under a partial termination.
All other elements of the termination shall
be resolved in accordance with other applica-
table clauses of this contract.

(k) Equitable adjustment under other
clauses. If an equitable adjustment in the contract
price is made under any other clause of this
contract before the total final price is estab-
lished, the adjustment shall be made in the
total target cost and may be made in the
maximum dollar limit on the total final
price, the total target profit, or both. If the
adjustment is made after the total final
price is established, only the total final price
shall be adjusted.

(1) Exclusion from target price and total final
price. If any clause of this contract provides
that the contract price does not or will not
include an amount for a specific purpose,
then neither any target price nor the total
final price includes or will include any
amount for that purpose.

(m) Separate reimbursement. If any clause of
this contract expressly provides that the
cost of performance of an obligation shall be
at Government expense, that expense shall
not be included in any target price or in the
total final price, but shall be reimbursed sep-
ately.

(n) Taxes. As used in the Federal, State,
and Local Taxes clause or in any other
clause that provides for certain taxes or du-
ties to be included in, or excluded from,
the contract price, the term contract price in-
cludes the total target price or, if it has been
established, the total final price. When any
of these clauses requires that the contract
price be increased or decreased as a result of
changes in the obligation of the Contractor
to pay or bear the burden of certain taxes or
duties, the increase or decrease shall be
made in the total target price or, if it has
been established, in the total final price, so
that it will not affect the Contractor’s profit
or loss on this contract.

(End of clause)

Alternate I (APR 1984). As prescribed in
16.406(a), add the following para-
graph (o) to the basic clause:

(o) Provisioning and options. Parts, other
supplies, or services that are to be furnished
under this contract on the basis of a provi-
sioning document or Government option
shall be subject to price revision in accord-
ance with this clause. Any prices established
for these parts, other supplies, or services
under a provisioning document or Govern-
ment option shall be treated as target prices.
Target cost and profit covering these parts,
other supplies, or services may be estab-
lished separately, in the aggregate, or in any
combination, as the parties may agree.

[48 FR 42478, Sept. 19, 1983, as amended at 61
FR 67426, Dec. 20, 1996; 62 FR 12696, Mar. 17,

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