52.215-11 Price Reduction for Defective Certified Cost or Pricing Data-Modifications.

As prescribed in 15.408(c), insert the following clause:

Price Reduction for Defective *Certified Cost or Pricing Data*-Modifications (Jun 2020)

(a) This clause *shall* become operative only for any modification to this contract involving a *pricing* adjustment expected to exceed the threshold for submission of certified cost or *pricing* data in Federal *Acquisition* Regulation (FAR) 15.403-4(a)(1) on the date of execution of the modification, except that this clause does not apply to any modification if an exception under FAR 15.403-1(b) applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished *certified cost or pricing data* that were not complete, accurate, and current as certified in its Certificate of Current *Cost or Pricing Data*, (2)a subcontractor or prospective subcontractor furnished the Contractor certified cost or *pricing* data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current *Cost or Pricing Data*, or (3) any of these parties furnished data of any description that were not accurate, the price or cost *shall* be reduced accordingly and the contract *shall* be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract *shall* be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective *certified cost or pricing data*.

(d)

(1) If the *Contracting Officer* determines under paragraph (b) of this clause that a price or cost reduction *should* be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current *certified cost or pricing data* had been submitted.

(ii) The *Contracting* Officer *should* have known that the *certified cost or pricing data* in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the *Contracting Officer*.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or *Pricing* Data.

(2)

(i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the *Contracting Officer* based upon the facts *shall* be allowed against the amount of a contract price reduction if-

(A) The Contractor certifies to the *Contracting Officer* that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the *certified cost or pricing data* were available before the "as of" date specified on its Certificate of Current Cost or *Pricing* Data, and that the data were not submitted before such date.

(ii) An offset *shall* not be allowed if-

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current *Cost or Pricing Data*; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current *Cost or Pricing Data*.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor *shall* be liable to and *shall* pay the *United States* at the time such overpayment is repaid-

(1) Interest compounded daily, as required by 26U.S.C.6622, on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted *certified cost or pricing data* that were incomplete, inaccurate, or noncurrent.

(End of clause)

Parent topic: 52.215 [Reserved]