# 52.216-5 Price Redetermination-Prospective.

As prescribed in 16.205-4 , insert the following clause:

Price Redetermination-Prospective (Jan 2022)

(a) *General*. The unit prices and the total price stated in this contract *shall* be periodically redetermined in accordance with this clause, except that-

(1) The prices for *supplies* delivered and services performed before the first effective date of price redetermination (see paragraph (c) of this clause) *shall* remain fixed; and

(2) In no event *shall* the total amount paid under this contract exceed any ceiling price included in the 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) *Price redetermination periods*. For the purpose of price redetermination, performance of this contract is divided into successive periods. The first period *shall* extend from the date of the contract to _____, (see Note(1)) and the second and each succeeding period *shall* extend for _____ *[insert appropriate number]* months from the end of the last preceding period, except that the parties *may* agree to vary the length of the final period. The first *day* of the second and each succeeding period *shall* be the effective date of price redetermination for that period.

(d) Data submission.

(1) Not more than _____ nor less than _____ (see Note (2)) days before the end of each redetermination period, except the last, the Contractor *shall* submit-

(i) Proposed prices for *supplies* that *may* be delivered or services that *may* be performed in the next succeeding period, and-

(A) An estimate and breakdown of the costs of these *supplies* or services in the format of Table 15-1, FAR 15.408, or in any other form on which the parties *may* agree;

(B) Sufficient data to support the accuracy and reliability of this estimate; and

(C) An explanation of the differences between this estimate and the original (or last preceding) estimate for the same *supplies* or services; and

(ii) A statement of all costs incurred in performing this contract through the end of the _____ month (see Note (3)) before the submission of proposed prices in the format of Table 15-1, FAR 15.408 (or in any other form on which the parties *may* agree), with sufficient supporting data to disclose unit costs and cost trends for-

(A) *Supplies* delivered and services performed; and

(B) Inventories of work in process and undelivered contract *supplies* on hand (estimated to the extent necessary).

(2) The Contractor *shall* also submit, to the extent that it becomes available before negotiations on redetermined prices are concluded-

(i) Supplemental statements of costs incurred after the date stated in subdivision (d)(1)(ii) of this section for-

(A) *Supplies* delivered and services performed; and

(B) Inventories of work in process and undelivered contract *supplies* on hand (estimated to the extent necessary); and

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

(3) If the Contractor fails to submit the data required by paragraphs (d)(1) and (2) of this section, within the time specified, the *Contracting Officer may* suspend payments under this contract until the data are furnished. If 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.

(e) *Price redetermination*. Upon the *Contracting Officer*'s receipt of the data required by paragraph (d) of this section, the *Contracting Officer* and the Contractor *shall* promptly negotiate to redetermine fair and reasonable prices for *supplies* that *may* be delivered or services that *may* be performed in the period following the effective date of price redetermination.

(f) *Contract modifications*. Each negotiated redetermination of prices *shall* be evidenced by a modification to this contract, signed by the Contractor and the *Contracting Officer*, stating the redetermined prices that apply during the redetermination period.

(g) *Adjusting billing prices*. Pending execution of the *contract modification* (see paragraph (f) of this section), the Contractor *shall* submit *invoices* or vouchers in accordance with the billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined price will be substantially greater than the current billing prices, the parties *shall* negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment *shall* be reflected in a *contract modification* and *shall* not affect the redetermination of prices under this clause. After the *contract modification* for price redetermination is executed, the total amount paid or to be paid on all *invoices* or vouchers *shall* be adjusted to reflect the agreed-upon prices, and any requested additional payments, refunds, or credits *shall* be made promptly.

(h) *Quarterly limitation on payments statement*. This paragraph (h) applies only during periods for which firm prices have not been established.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor *shall* submit to the *contract administration office* (with a copy to the *contracting office* and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing-

(i) The total contract price of all *supplies* delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the *supplies* delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (h)) 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; and

(iv) 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) The statement required by paragraph (h)(1) of this section need not be submitted for any quarter for which either no costs are to be reported under subdivision (h)(1)(ii) of this section, or revised billing prices have been established in accordance with paragraph (g) of this section, and do not exceed the existing contract price, the Contractor's price-redetermination proposal, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (h)(1)(iv) of this section exceeds the sum due the Contractor, as computed in accordance with subdivisions (h)(1)(i), (ii), and (iii) of this section, the Contractor *shall* immediately refund or credit to the Government the amount of this excess. The Contractor *may*, when appropriate, reduce this refund or credit by the amount of previous refunds or credits affected 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, consistent with the Progress Payments clause. The Contractor *shall* provide complete details to support any claimed reductions in refunds.

(4) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter 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 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 established in accordance with the Interest clause.

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

(j) *Disagreements*. If the Contractor and the *Contracting Officer* fail to agree upon redetermined prices for any price redetermination period within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (d) of this section are to be submitted, the *Contracting Officer shall* promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (f), (g), and (h) of this section, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision *shall* be treated as an executed *contract modification*. Pending final settlement, price redetermination for subsequent periods, if any, *shall* continue to be negotiated as provided in this clause.

(k) *Termination*. If this contract is terminated, prices *shall* continue to be established in accordance with this clause for (1) completed *supplies* and services accepted by the Government 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 applicable clauses of this contract.

Notes:

(1) Express in terms of units delivered, or as a date; but in either case the period *should* end on the last *day* of a month.

(2) Insert the number of days chosen so that the Contractor's submission will be late enough to reflect recent cost experience (taking into account the Contractor's accounting system), but early enough to permit review, audit (if necessary), and negotiation before the start of the prospective period.

(3) Insert "first," except that "second" *may* be inserted if necessary to achieve compatibility with the Contractor's accounting system.

(End of clause)

**Parent topic:** 52.216 [Reserved]