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Parent topic: General Services Administration Acquisition Manual

Subpart 516.2 - Fixed Price Contracts

516.203 Fixed-price contracts with economic price adjustment (EPA).

516.203-2 Application.

(a) Changes to a Government contract price that result from a change in the actual cost of labor

based on Department of Labor wage determinations are addressed in FAR Subparts 22.4 and 22.10.

(b) Changes to a Government contract price that result from a change in designated indicators should be processed as follows:

(1) The contracting officer shall evaluate the reasonableness of the proposed market indicator. The indicator should:

(i) Be used only when general economic factors make the estimating of future costs unpredictable within a fixed-price contract;

(ii) Be considered before using an EPA including volatile labor and/or material cost and contractual length;

(iii) Be relevant to the service or product solicited;

(iv) Have an established history;

(v) Be published regularly;

(vi) Be reasonably available in the future; and

(vii) Should not provide for an adjustment beyond the original contract period of performance, including options. The start date for the adjustment may be the beginning of the contract or a later time, as appropriate, based on the projected rate of expenditures.

(2) Selection of the indicators to be used and determination of how they will be applied are negotiable and must be determined prior to award. For example, a broad-based market indicator, such as that issued by the Bureau of Labor Statistics, can be applied uniformly to all categories if the contractor routinely applies across the board wage increases. If a contractor's wage changes vary by skills, the economic price adjustment should be based on specific matched categories.

(3) The contracting officer and the contractor shall agree on the economic price adjustment prior to the completion of negotiations. The contracting officer shall document the file.

(c) If, during the course of the contract, the contractor proposes a change in price adjustment methods, the contracting officer should require appropriate consideration from the contractor for any lowering of the contractor's risk.

516.203-3 Limitations.

(a) When including an economic price adjustment clause, the contracting officer shall document, in the contract file, the determination required by FAR 16.203-3.

(b) The contracting director must approve any of the following actions:

(1) If an economic price adjustment clause provides for price increases during the first 12 months of a multiyear contract, a determination to include an economic price adjustment clause in a solicitation or contract of one year or less is needed.

(2) The use in a contract of any economic price adjustment clause that was not included in the initial solicitation. This includes any clause that provides for price adjustment during the first 12

months of a multiyear contract.

(c) The contracting director may raise the price ceiling (the aggregate of permitted price increases during a 12-month period) during the contract period when both of the following conditions are met:

(1) A supplier requests that the ceiling be raised.

(2) Analysis of current market conditions reveals that most suppliers of similar supplies or services are affected. If the price ceiling is raised, the contracting officer must modify the contract to reflect the revised ceiling.

516.203-4 Contract clauses.

(a) *Special Order Program Contracts*. In multiyear solicitations and contracts, after making the determination required by FAR 16.203-3, use 552.216-71, Economic Price Adjustment—Special Order Program Contracts, or a clause prepared as authorized in paragraph (a)(3) of this subsection.

(1) If the contract includes one or more options to extend the term of the contract, use the clause with its Alternate I or a clause substantially the same as 552.216-71 with its Alternate I suitably modified.

(2) In a contract requiring a minimum adjustment before the price adjustment mechanism is effectuated, use the basic clause with Alternate II or with Alternate I and Alternate II.

(3) If the Producer Price Index is not an appropriate indicator for price adjustment, modify the clause to use an alternate indicator for adjusting prices. Similarly, if other aspects of 552.216-71 are not appropriate, use an alternate clause following established procedures.

(b) *Adjustments based on cost indexes of labor or material.*

(1) If the contracting officer decides to provide for adjustments based on cost indexes of labor or material, prepare a clause that defines each of the following elements:

(i) The type of labor and/or material subject to adjustment;

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

(iii) The index(es) that will be used to measure changes in price levels and the base period or reference point from which changes will be measured; and

(iv) The period during which the price(s) will be subject to adjustment.

(2) The contracting director must approve use of this clause.

Subpart 516.4 - Incentive Contracts

516.403 [Reserved]

516.403-2 Fixed-price incentive contracts.

The formula specified in FAR 16.403-2(a)(1)(iii) does not apply for the life of the contract. Instead, it is used to fix the firm target profit for the contract. In order to provide an incentive consistent with the circumstances, the formula should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

516.405 [Reserved]

516.405-1 Cost-reimbursement incentive contracts.

Appropriate weight shall be given to basic acquisition objectives in negotiating the range of fee and the fee adjustment formula. For example—

(a) In an initial product development contract, it may be appropriate to provide for relatively small adjustments in fee tied to the cost incentive feature, but provide for significant adjustments if the contractor meets or surpasses performance targets; and

(b) In subsequent development and test contracts, it may be appropriate to negotiate an incentive formula tied primarily to the contractor's success in controlling costs.

Subpart 516.5 - Indefinite-Delivery Contracts

516.500 Scope of section.

COs shall follow the INFORM procedures in section 515.370 for all applicable orders.

516.500-1 General.

Solicitations under indefinite delivery contracts that are not set-aside should consider inclusion of a small business participation evaluation factor as described in 515.304.

516.505 Ordering.

(a) *Use of Lowest Price Technically Acceptable*. Lowest price technically acceptable may be a useful evaluation process when placing task or delivery orders. FAR 16.505(b)(1)(ii)(F) prescribes when this process is appropriate to use. For assisted acquisitions for DoD, DFARS 216.505(b)(1)(A) prescribes the required LPTA considerations. A contracting officer should not use this process without doing the following:

(1) *Documentation requirements*. If the contract's ordering instructions allow for the use of the lowest price technically acceptable, the rationale for why this method of evaluation is being utilized

should be clearly described in the acquisition plan (see FAR 7.105(b)(4)). The rationale should include a description as to why utilizing this methodology will not harm the Government.

(b) *Task-order and delivery-order ombudsman*. C

(1) *Contract Level*. For solicitations and contracts when GSA multiple-award indefinite-delivery indefinite-quantity (IDIQ) contracts are contemplated, contracting officers shall reference http://www.gsa.gov/ombudsman when completing paragraph (a) of FAR clause 52.216-32, Task-Order and Delivery-Order Ombudsman.

(2) *Order Level* .

(i) *GSA orders*. For task and delivery orders placed by GSA under multiple-award, multiple-agency IDIQ contracts, contracting officers shall reference http://www.gsa.gov/ombudsman when completing paragraph (d) of Alternate I FAR Clause 52.216-32.

(ii) *Non-GSA orders*. For task and delivery orders placed by agencies other than GSA under GSA multiple-award, multiple-agency IDIQ contracts, ordering activity contracting officers shall reference the contact information of that ordering agency's task-order and delivery-order ombudsman when completing paragraph (d) of Alternate I FAR Clause 52.216-32.

516.506 Solicitation provisions and contract clauses.

(a) In solicitations and contracts for Special Order Program items, when the contract authorizes the Federal Acquisition Service (FAS) and other activities to issue delivery or task orders, insert the clause at 552.216-72, Placement of Orders. If only FAS will issue delivery or task orders, insert the clause with its Alternate I.

(b) If the clause at 552.216-72 is prescribed, insert the provision at 552.216-73, Ordering Information, in solicitations for Special Order Program items and in other FAS Program solicitations. Use 552.216-73 Alternate I when 552.216-72 Alternate I is prescribed.

(c) The Contracting Officer may insert clause 552.216-75 in solicitations and GSA-awarded IDIQ contracts, not including Federal Supply Schedule (FSS) contracts. This clause should be included in all GSA-awarded Governmentwide acquisition contracts and multi-agency contracts. See 538.273 for clauses applicable to FSS contracts.

Subpart 516.6 - Time-and-Materials, Labor-Hour, and Letter Contracts

516.601 Time-and-materials contracts.

For a D&F for a time-and-material contract exceeding three years, the D&F must be approved by the HCA. HCAs may designate approval authority for the D&F to a level no lower than the Contracting Executive (see FAR 16.601(d)).]

516.603 Letter contracts.

516.603-70 Additional limitations on the use of letter contracts for architect-engineer (A-E) services under the PBS Design Excellence Program.

(a) *Requirement for a price proposal*. The proposed A-E must provide a price proposal for the non-design effort before the award of a letter contract. In accordance with FAR 52.216-25, a complete price proposal is required before definitization.

(b) *Contents of each letter contract*. The contracting officer must include the following information in the letter contract:

(1) The scope. The scope of the letter contract must authorize only the A-E to perform those services that are independent of the design effort (for example, feasibility studies, existing facility surveys or site investigation, etc.). The A-E shall not begin any design effort before the letter contract is definitized for the entire scope of the project.

(2) A definitization schedule. Include dates for each of the following:

(i) Submission of the design fee proposal.

(ii) Start of negotiations.

(iii) Definitization. This date must be no later than 120 days after the date of the letter contract.

(3) The letter contract must comply with FAR 16.6.

(c) *Unilateral price decision*. If the contracting officer issues a unilateral price decision, the maximum contract amount must not exceed a reasonable price for the excludable items plus the six percent statutory fee limitation for the project.