

Federal Acquisition Regulation

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Officer insert Contractor's participation] cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than ___ [*Contracting Officer insert percentage*] percent or less than ___ [*Contracting Officer insert percentage*] percent of the target cost.

(2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) above, and within the minimum and maximum fee limitations in subparagraph (1) above, when the total allowable cost is increased or decreased as a consequence of (i) payments made under assignments or (ii) claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.

(3) If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this contract.

(4) For the purpose of fee adjustment, *total allowable cost* shall not include allowable costs arising out of—

(i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;

(ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;

(iii) Any direct cost attributed to the Contractor's involvement in litigation as required by the Contracting Officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;

(iv) The purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance—Liability to Third Persons clause;

(v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Government Property clause; or

(vi) Any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.

(5) All other allowable costs are included in *total allowable cost* for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.

(f) *Contract modification*. The total allowable cost and the adjusted fee determined as

provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and Contracting Officer.

(g) *Inconsistencies*. In the event of any language inconsistencies between this clause and provisioning documents or Government options under this contract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 61 FR 69296, Dec. 31, 1996; 62 FR 12721, Mar. 17, 1997]

52.216-11 Cost Contract—No Fee.

As prescribed in 16.307(e), insert the following clause in solicitations and contracts when a cost-reimbursement contract is contemplated that provides no fee and is not a cost-sharing contract. This clause may be modified by substituting \$10,000 in lieu of \$100,000 as the maximum reserve in paragraph (b) if the Contractor is a nonprofit organization.

COST CONTRACT—NO FEE (APR 1984)

(a) The Government shall not pay the Contractor a fee for performing this contract.

(b) After payment of 80 percent of the total estimated cost shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or \$100,000, whichever is less.

(End of clause)

Alternate I (APR 1984). In a contract for research and development with an educational institution or a nonprofit organization, for which the contracting officer has determined that withholding of a portion of allowable costs is not required, delete paragraph (b) of the basic clause.

[48 FR 42478, Sept. 19, 1983, as amended at 72 FR 27389, May 15, 2007]

52.216-12 Cost-Sharing Contract—No Fee.

As prescribed in 16.307(f), insert the following clause in solicitations and contracts when a cost-sharing contract is contemplated. This clause may be

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modified by substituting \$10,000 in lieu of \$100,000 as the maximum reserve in paragraph (b) if the contract is with a nonprofit organization.

COST-SHARING CONTRACT—NO FEE (APR 1984)

(a) The Government shall not pay to the Contractor a fee for performing this contract.

(b) After paying 80 percent of the Government's share of the total estimated cost of performance shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the Government's share of the total estimated cost shown in the Schedule or \$100,000, whichever is less.

(End of clause)

Alternate I (APR 1984). In a contract for research and development with an educational institution, for which the contracting officer has determined that withholding of a portion of allowable cost is not required, delete paragraph (b) of the basic clause.

[48 FR 42478, Sept. 19, 1983, as amended at 72 FR 27389, May 15, 2007]

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 estab-

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lish 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 execution.

(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)

[48 FR 42478, Sept. 19, 1983, as amended at 61 FR 31622, June 20, 1996; 62 FR 64916, Dec. 9, 1997; 63 FR 9065, Feb. 23, 1998; 72 FR 27389, May 15, 2007]

52.216-16 Incentive Price Revision—Firm Target.

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