

Department of Justice

§ 100.21

that were not complete, accurate, and current;

(ii) A subcontractor or prospective subcontractor furnished the cost data to the carrier that were not complete, accurate, and current; or

(iii) Any of these parties furnished data of any description that were not accurate.

(2) Any reduction in the negotiated cost under §100.19(c)(1) due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount by which either the actual subcontract or the actual cost to the carrier, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the carrier, provided that the actual subcontract cost was not itself affected by defective cost data.

(3) If the FBI determines under §100.19(c)(1) that a cost reduction should be made, the carrier shall not raise the following matters as a defense:

(i) The carrier or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the costs of the agreement would not have been modified even if accurate, complete, and current cost data had been submitted;

(ii) The FBI should have known that the cost data at issue were defective even though the carrier or subcontractor took no affirmative action to bring the character of the data to the attention of the FBI;

(iii) The carrier or subcontractor did not submit accurate cost data. Except as prohibited, an offset in an amount determined appropriate by the FBI based upon the facts shall be allowed against the cost reimbursement of an agreement amount reduction if the carrier certifies to the FBI that, to the best of the carrier's knowledge and belief, the carrier is entitled to the offset in the amount requested and the carrier proves that the cost data were available before the date of agreement on the cost of the agreement (or cost of the modification) and that the data were not submitted before such date. An offset shall not be allowed if the understated data were known by the carrier to be understated when the agree-

ment was signed; or the Government proves that the facts demonstrate that the agreement amount would not have increased even if the available data had been submitted before the date of agreement on cost; or

(4) In the event of an overpayment, the carrier shall be liable to and shall pay the United States at that time such overpayment as was made, with simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the carrier to the date the Government is repaid by the carrier at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

§ 100.20 Confidentiality of trade secrets/proprietary information.

With respect to any information provided to the FBI under this part that is identified as company proprietary information, it shall be treated as privileged and confidential and only shared within the government on a need-to-know basis. It shall not be disclosed outside the government for any reason inclusive of Freedom of Information requests, without the prior written approval of the company. Information provided will be used exclusively for the implementation of CALEA. This restriction does not limit the government's right to use the information provided if obtained from any other source without limitation.

§ 100.21 Alternative dispute resolution.

(a) If an impasse arises in negotiations between the FBI and the carrier which precludes the execution of a cooperative agreement, the FBI will consider using mediation with the goal of achieving, in a timely fashion, a consensual resolution of all outstanding issues through facilitated negotiations.

(b) Should the carrier agree to mediation, the costs of that mediation process shall be shared equally by the FBI and the carrier.

(c) Each mediation shall be governed by a separate mediation agreement prepared by the FBI and the carrier.