

## COST OR PRICING DATA AND COST ACCOUNTING STANDARDS

The Federal Acquisition Regulation (FAR) clauses, in effect on the date hereof, which have been identified in Buyer's order, are incorporated herein by reference. In such clauses, unless otherwise specifically stated, the term "Contractor" means Seller except in the term "prime contractor", "subcontractor" means Seller's subcontractor, "Contract" means this order except in the term "prime contract", and "Contracting officer" means the government contracting officer for the prime contract or authorized representative.

- A.  The following clauses are applicable to this order:
1. AUDIT-NEGOTIATION - FAR 52.215-2. "Government" means Government or Buyer except in paragraph f., and "Contracting Officer" means Contracting Officer and Buyer except in paragraph f..
  2. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - FAR 52.215-22, or 52.215-10, with the following changes;
    - (a) In subdivision (3) of paragraph (a) insert "of this order" after "price or cost".
    - (b) In paragraph (c), "Contracting Officer" means "Contracting Officer or Buyer".
    - (c) In paragraphs (c)(1)(ii) and (c)(2)(i) "Contracting Officer" means "Contracting Officer or Buyer". In paragraph (c)(2)(i)(A) delete "to the Contracting Officer". In paragraph (C)(2)(ii)(B) "Government" means "Government or Buyer".
  3. SUBCONTRACTOR COST OR PRICING DATA - FAR 52.215-24, or 52.215-12. The certificate required by paragraph (b) is that set forth in FAR 15.804-4, or 15.406-2, substituting Buyer's name for "Contracting Officer"
  4. In addition to any other remedies provided by law or under this order, if Buyer is subjected to any liability as the result of Seller's or its lower-tier subcontractor's failure to comply with the requirements of these provisions, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense (excluding profit) resulting from such failure.
- B.  The following clauses are applicable to this order:
1. AUDIT-NEGOTIATION - FAR 52.215.2. "Government" means Government or Buyer except in paragraph (f), and "Contracting Officer" means Contracting Officer and Buyer except in paragraph (f).

2. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA-MODIFICATIONS - FAR 52.215-23, or 52.215-11. "Contracting Officer" means Contracting Officer or Buyer. In paragraph (d)(2)(i)(A) delete "to the Contracting Officer". In paragraph (d)(2)(ii)(B) "Government" means "Government or Buyer".
  3. SUBCONTRACT COST OR PRICING DATA-MODIFICATION - FAR 52.215-25, or 52.215-13. The certificate required by paragraph (c) is that set forth in FAR 15.804-4, or 15.406-2 substituting Buyer's name for "Contracting Officer".
  4. In addition to any other remedies provided by law or under this order, if Buyer is subjected to any liability as the result of Seller's or its lower-tier subcontractor's failure to comply with the requirements of these provisions, then Seller agrees to indemnify and hold Buyer harmless to the full extent of any loss, damage, or expense (excluding profit) resulting from such failure.
- C.  COST ACCOUNTING STANDARDS - FAR 52.230-2. Delete paragraph (b).
- D.  ADMINISTRATION OF COST ACCOUNTING STANDARDS - FAR 52.230-6. Add "Buyer and the" before "Contracting Officer" in paragraph (f).
- E.  DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES - FAR 52.230-3. Delete paragraph (b).
- F.  CONSISTENCY IN COST ACCOUNTING PRACTICES - FAR 52.230-4.

THE FOLLOWING "DISPUTES" PROVISION APPLIES ONLY TO THE CLAUSES OF THIS FLYSHEET LISTED BELOW. IT IS NOT APPLICABLE TO COST REIMBURSEMENT ORDERS.

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA  
 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS  
 COST ACCOUNTING STANDARDS  
 DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES

DISPUTES

- A. Any dispute arising under this order concerning the above named clauses which is not settled by agreement of the parties or as provided below may be settled by appropriate legal proceedings. Pending any decision, appeal or judgment referred to in this clause or the settlement of any dispute arising under any of the above named clauses, Seller shall proceed diligently with the performance of this order.

- B. If a decision arising under the prime contract is made by the Contracting Officer and such decision is also related to the above named clauses of this order, said decision, if binding upon Buyer under the prime contract, shall in turn be binding upon Buyer and Seller with respect to such decision insofar as it relates to this order; provided, however, that if Seller is adversely affected by any such decision made by the Contracting Officer, and if Buyer elects not to appeal such decision pursuant to the "Disputes" clause of the prime contract, Buyer shall promptly notify Seller. If Seller thereafter timely requests Buyer to appeal such decision, Buyer shall do so. If Buyer appeals such decision, whether at its election or at Seller's request, any decision upon such an appeal, if binding upon Buyer under the prime contract, shall in turn be binding upon Buyer and Seller under this order with respect to such decision insofar as it relates to this order.
- C. If any such appeal is denied or otherwise decided adversely to Seller's interest, or if Seller is otherwise adversely affected by any decision made by any representative of the Government on any decision arising under the prime contract which is also related to this order, from which an appeal under the "Disputes" clause in the prime contract is not available, said decision, if binding upon Buyer under the prime contract, shall in turn be binding upon Buyer and Seller with respect to such decision insofar as it relates to this order; provided, however, that if Seller is adversely affected by any such decision, and if Buyer elects not to bring suit against the Government with respect to such decision, Buyer shall notify Seller with reasonable promptness. If Seller timely requests Buyer to bring suit against the Government, Buyer shall do so. If Buyer brings suit against the Government with respect to any such decision, whether at its election or at Seller's request, a final judgment in any such suit, if binding upon Buyer under the prime contract shall in turn be binding upon Seller and Buyer under this order with respect to the decision insofar as it relates to this order.
- D. If necessary for jurisdiction under the Contract Disputes Act, Buyer shall certify Seller's claim and proceed with the appeal only if Buyer is satisfied that the Seller's claim is in good faith, that the supporting data are accurate and complete to the best of its knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the Buyer believes the Government is liable. Buyer's position on whether or not it is satisfied shall be reasonable and shall not be used to arbitrarily deny Seller certification. Seller shall indemnify Buyer against any liability incurred as a result of acting hereunder at Seller's request, including furnishing such certification.
- E. If any such appeal or suit is taken or brought by Buyer, whether at its election or at Seller's request, Seller shall assist Buyer in its prosecution thereof in every reasonable manner and Seller shall be afforded reasonable opportunity to participate in the prosecution thereof to the extent Seller's interest may be affected. To the extent requested by Buyer, Seller shall prosecute for Buyer any appeal or suit taken or brought at Seller's request and, in such event, Buyer shall assist Seller in every reasonable manner. All costs and expenses incurred by Seller and Buyer in prosecuting any appeal or suit taken or brought at Seller's request shall be paid by Seller. Where possible, Buyer shall in good faith consult with Seller concerning the presentation to the Contracting Officer or other cognizant representatives of the Government of the matters referred to in paragraphs B and C above to the extent they may affect Seller's interest.

- F. If as a result of any decision or judgment which is binding upon Seller and Buyer, as above provided, Buyer is unable to obtain reimbursement from the Government under the prime contract for, or is required to refund or credit to the Government, any amount with respect to any item of cost or fee for which Buyer has reimbursed Seller, Seller shall, on demand, promptly repay such amount to Buyer.
- G. The rights and obligations described herein shall survive completion of and final payment under this order.

