

52.216-17 INCENTIVE PRICE REVISION--SUCCESSIVE TARGETS (OCT 1997) - ALT I (APR 1984)

(a) *General.* The supplies or services identified in the Bid Schedule as Item No. 0002 “Construction Phase Services” are subject to price revision in accordance with this clause; provided, **that in no event shall the total final price of this item exceed the ceiling price of One Hundred Five Million Five Hundred Thousand dollars (\$105,500,000.00).** The price of this item shown in the Bid Schedule is the initial target price, which includes an initial target profit of three (3%) percent of the initial target cost. Any supplies or services that are to be --

(1) Ordered separately under, or otherwise added to, this contract; and

(2) Subject to price revision in accordance with this clause shall be identified as such in a modification to this 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) Submitting data for establishing the firm fixed price or a final profit adjustment formula.

(1) Within 45 days after receipt of the 95% design documents and copies for bidding, the Contractor shall submit their initial target cost (ITC), initial target profit (ITP) (not to exceed 3% of the ITC), and all necessary supporting documentation to substantiate the initial target costs. The purpose of submitting the initial target costs and initial target profit is to indicate to the Government the contractor's ability to deliver the project within the total ceiling price of the project as stated in paragraph (a) above (i.e. \$103,500,000.00). If the Contractor provides assurances satisfactory to the Contracting Officer that the Contractor can complete the project within the ceiling price identified in paragraph (a) above [i.e. the ITC + ITP + Construction

Reserve < Ceiling Price] and within the time frame identified in the revised FAR 52.211-10 “Commencement, Prosecution and Completion of Work”, the Contracting Officer may elect to exercise optional Bid Schedule Item No. 0002, “Construction Phase Services” prior to establishment of a Firm Target Price and issue notice to proceed (NTP). See paragraph (2) below for discussion of the construction reserve. In addition to the Contractor providing necessary documentation to substantiate his ITC and ITP, the Contractor shall identify all assumptions and conditions included in determination of the ITC/ITP. These items may include conditions or assumptions that the contractor has identified during his review of the 95% design documents and the expectation that substantial changes to the design would not occur between the 95% and 100% design. The contractor shall include with his ITC/ITP a detailed breakdown of each element of cost (material, labor, overhead, profit, subcontracts). For all subcontracts valued in excess of \$100,000, the contractor shall include at least three subcontractor quotations for the anticipated subcontract work. The contractor shall document

the selection recommendations of the subcontracts to the Government as part of their 100% design firm target price.

2) **Within 30 days after receipt of the 100% design documents** and copies for bidding, the Contractor shall submit their final firm target cost (FTC), and firm target profit (FTP) (subject to the requirements of paragraph d below). The FTC shall include all costs of the work, whether sub-contracted or self-performed. The firm target costs shall not include contingencies, rather the costs shall include the Contractor's expectation as to "what it should cost assuming reasonable economy and efficiency" and it shall include all direct, indirect, and overhead (field office and home office overhead) costs. The firm target cost shall not include the contractor's profit. The firm target cost shall not include "construction reserve". The **construction reserve is an amount not to exceed 2% of the firm target cost**. It is a separate cost element outside of the FTC and FTP, but will be included in the firm target price [i.e. $FTC + FTP + \text{Construction Reserve} = \text{Firm Target Price}$]. The construction reserve funds shall be reserved for changes

as defined in the **Construction Reserve Matrix** dated 12 April 2004. During the execution of the construction, the construction reserve funds shall be **controlled jointly** by the Government and the Contractor and shall be used only after the Contracting Officer or Administrative Contracting Officer approves such a request by the Contractor. If during the prosecution of the contract, the Contractor minimizes the use of the funds designated as construction reserve, the Contractor will share with the Government in these savings. **The Contractor shall receive 45% of the excess construction reserve funds as an adjustment to the contract amount.** The Government shall retain all remaining construction reserve funds, unless the Government elects to use these funds for changes to the contract. Final adjustment to the contract amount under this clause of the contract will be executed by a modification to the contract.

(3) Firm target profit: The dollar amount which adequately reflects the contractor's acceptable financial return relative to the degree of risk and investment associated with this contract.

(4) Ceiling Price: The “not to exceed” dollar amount as stated in paragraph (a) above. The ceiling price limits the Government’s liability, except for any price adjustments authorized by the changes clause, other equitable adjustment clauses in this contract, and/or any “new” scope of work added to the contract by supplemental agreement.

(5) The Contractor shall submit the following data in support of the firm target cost:

(i) A proposed firm fixed price or total firm target price detailing all direct and indirect costs (including such items as supplies, materials, labor, sub-contract costs, and indirect costs) necessary to construct the facility as described in the 100% design documents (plans and specifications).

(ii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred

plus an estimate of costs to complete performance, in the format of Table 15-2, FAR 15.408 (or in any other form on which the parties may agree), together with –

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

(B) An explanation of the differences between this estimate and the original estimate used to establish the initial target prices.

(d) Establishing firm fixed price or final profit adjustment formula.
Upon the Contracting Officer's receipt of the data required by paragraph (c) above, **the Contracting Officer and the Contractor shall promptly establish either a firm fixed price or a profit adjustment formula for determining final profit, as follows:**

(1) The parties shall negotiate a total firm target cost, based upon the data submitted under paragraph (c) of this section.

- (2) If the total firm target cost is more than the total initial target cost, the total initial target profit shall be decreased. If the total firm target cost is less than the total initial target cost, the total initial target profit shall be increased. **The initial target profit shall be increased or decreased by 0.5 percent of the difference between the total initial target cost and the total firm target cost.** (Profit on cost changes resulting from owner requested changes will be addressed outside of this adjustment.) The resulting amount shall be the total firm target profit; provided, that in no event shall the total firm target profit be less than 1.5 percent or more than 3 percent of the total initial cost.
- (3) If the total firm target cost plus the total firm target profit plus the construction reserve represent a reasonable price for performing that part of the contract subject to price revision under this clause, the parties **may agree on a firm fixed price**, which shall be evidenced by a contract modification signed by the Contractor and the Contracting Officer.

(4) Failure of the parties to agree to a firm fixed price shall not constitute a dispute under the Disputes clause. If agreement is not reached, or if establishment of a firm fixed price is inappropriate, the Contractor and the Contracting Officer shall **establish a profit adjustment formula** under which the total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, determined as follows:

(i) If the total final negotiated cost is equal to the total firm target cost, the adjustment is the total firm target profit.

(ii) If the total final negotiated cost is greater than the total firm target cost, the adjustment is the total firm target profit, less 10 percent of the amount by which the total final negotiated cost exceeds the total firm target cost.

(iii) If the total final negotiated cost is less than the total firm target cost, the adjustment is the total firm target profit, plus 10 percent of the amount by which the total final negotiated cost is less than the total firm target cost.