

## Federal Acquisition Regulation

## 16.203-4

made and may require verification of data submitted.

[48 FR 42219, Sept. 19, 1983, as amended at 50 FR 1742, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 60 FR 34739, July 3, 1995]

### 16.203-3 Limitations.

A fixed-price contract with economic price adjustment shall not be used unless the contracting officer determines that it is necessary either to protect the contractor and the Government against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices.

### 16.203-4 Contract clauses.

(a) *Adjustment based on established prices—standard supplies.* (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-2, Economic Price Adjustment—Standard Supplies, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitations and contracts when all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) The requirement is for standard supplies that have an established catalog or market price.

(iii) The contracting officer has made the determination specified in 16.203-3.

(2) If all the conditions in subparagraph (a)(1) above apply and the contracting officer determines that the use of the clause at 52.216-2 is inappropriate, the contracting officer may use an agency-prescribed clause instead of the clause at 52.216-2.

(3) If the negotiated unit price reflects a net price after applying a trade discount from a catalog or list price, the contracting officer shall document in the contract file both the catalog or list price and the discount. (This does not apply to prompt payment or cash discounts.)

(b) *Adjustment based on established prices—semistandard supplies.* (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-3, Economic Price Adjustment—Semistandard Supplies, or an agency-prescribed clause as authorized in subparagraph (2) below, in so-

licitations and contracts when all of the following conditions apply:

(i) A fixed price contract is contemplated.

(ii) The requirement is for semistandard supplies for which the prices can be reasonably related to the prices of nearly equivalent standard supplies that have an established catalog or market price.

(iii) The contracting officer has made the determination specified in 16.203-3.

(2) If all conditions in subparagraph (b)(1) above apply and the contracting officer determines that the use of the clause at 52.216-3 is inappropriate, the contracting officer may use an agency-prescribed clause instead of the clause at 52.216-3.

(3) If the negotiated unit price reflects a net price after applying a trade discount from a catalog or list price, the contracting officer shall document in the contract file both the catalog or list price and the discount. (This does not apply to prompt payment or cash discounts.)

(4) Before entering into the contract, the contracting officer and contractor must agree in writing on the identity of the standard supplies and the corresponding contract line items to which the clause applies.

(5) If the supplies are standard, except for preservation, packaging, and packing requirements, the clause prescribed in 16.203-4(a), shall be used rather than this clause.

(c) *Adjustments based on actual cost of labor or material.* (1) The contracting officer shall, when contracting by negotiation, insert a clause that is substantially the same as the clause at 52.216-4, Economic Price Adjustment—Labor and Material, or an agency-prescribed clause as authorized in subparagraph (2) below, in solicitation and contracts when all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) There is no major element of design engineering or development work involved.

(iii) One or more identifiable labor or material cost factors are subject to change.

(iv) The contracting officer has made the determination specified in 16.203-3.