

## Federal Acquisition Regulation

52.216-10

form of payment to the Contractor's subcontractors under similar cost standards.

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 23607, June 4, 1985; 56 FR 29138, June 25, 1991; 61 FR 31661, June 20, 1996; 61 FR 67419, Dec. 20, 1996; 61 FR 69296, Dec. 31, 1996; 62 FR 12721, Mar. 17, 1997; 62 FR 64916, Dec. 9, 1997; 63 FR 9065, Feb. 23, 1998; 65 FR 16283, Mar. 27, 2000; 66 FR 65360, Dec. 18, 2001; 67 FR 6119, Feb. 8, 2002]

### 52.216-8 Fixed Fee.

As prescribed in 16.307(b), insert the following clause in solicitations and contracts when a cost-plus-fixed-fee contract (other than a facilities contract or a construction contract) is contemplated.

#### FIXED FEE (MAR 1997)

(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule; provided that after payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee 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 15 percent of the total fixed fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(End of clause)

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

### 52.216-9 Fixed Fee—Construction.

As prescribed in 16.307(c), insert the following clause in solicitations and contracts when a cost-plus-fixed-fee construction contract is contemplated:

#### FIXED FEE—CONSTRUCTION (MAR 1997)

(a) The Government shall pay to the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting Officer, but subject to the withholding provisions of paragraph (c) below.

(c) After the payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee 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 15 percent of the total fixed fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(End of clause)

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

### 52.216-10 Incentive Fee.

As prescribed in 16.307(d), insert the following clause in solicitations and contracts when a cost-plus-incentive-fee contract (other than a facilities contract) is contemplated:

#### INCENTIVE FEE (MAR 1997)

(a) *General.* The Government shall pay the Contractor for performing this contract a fee determined as provided in this contract.

(b) *Target cost and target fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) below.

(1) *Target cost*, as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) below.

(2) *Target fee*, as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost

initially negotiated, adjusted in accordance with paragraph (d) below.

(c) *Withholding of payment.* Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the Contracting Officer may withhold further payment of fee 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 15 percent of the applicable fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(d) *Equitable adjustments.* When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this contract.

(e) *Fee payable.* (1) The fee payable under this contract shall be the target fee increased by      [*Contracting Officer insert Contractor's participation*] cents for every dollar that the total allowable cost is less than the target cost or decreased by      [*Contracting 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.

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(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 or a facilities 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.

### 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 (other than a facilities contract) is contemplated. This clause may be 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 Con-

tracting 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.

### 52.216-13 Allowable Cost and Payment—Facilities.

As prescribed in 16.307(g), insert the following clause:

ALLOWABLE COST AND PAYMENT—FACILITIES  
(FEB 2002)

(a) *General.* (1) For the performance of any work, duty, or obligation specified in this contract to be at Government expense, the Government shall pay the Contractor all allowable costs as determined by the Contracting Officer in accordance with the contract terms and section 31.106 of the Federal Acquisition Regulation (FAR) in effect on the contract date.

(2) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement does not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred for any work, duty, or obligation performed under this contract, but not reimbursable under it.

(b) *Invoicing.* (1) The Government will make payments to the Contractor when requested once each month. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for the performance of this contract.

(2) Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act. Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

(3) The designated payment office will make interim payments for contract financing on the \_\_\_\_\_ [Contracting Officer insert