

3.3.1-12 Limitation of Cost (February 2003)

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the TSA more than (1) the estimated cost specified in the "Schedule" or, (2) if this is a cost-sharing contract, the TSA 's share of the estimated cost specified in the "Schedule". The Contractor agrees to use its best efforts to perform the work specified in the "Schedule" and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the TSA 's and the Contractor's share of the cost.

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that-

(1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the "Schedule"; or

(2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause-

(1) The TSA is not obligated to reimburse the Contractor for costs incurred in excess of:

(i) the estimated cost specified in the "Schedule" or,

(ii) if this is a cost-sharing contract, the estimated cost to the TSA specified in the "Schedule";

(2) The Contractor is not obligated to continue performance under this contract (including actions under the "Termination" clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the "Schedule", until the Contracting Officer:

(i) notifies the Contractor in writing that the estimated cost has been increased and

(ii) provides a revised estimated total cost of performing this contract.

If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the "Schedule".

(e) No notice, communication, or representation in any form other than that specified in subparagraph (d)(2) above, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the TSA . In the absence of the specified notice, the TSA is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the TSA specified in the "Schedule", whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the "Schedule" is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the

same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the TSA specified in the "Schedule", unless they contain a statement increasing the estimated cost.

(h) If this contract is terminated or the estimated cost is not increased, the TSA and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(End of clause)

PRESCRIPTION

Shall be used in RFI/RFP's and contracts (in accordance with 31 U.S.C. 1301 and 42 U.S.C. 2459) if a fully funded cost reimbursement contract is anticipated except those for consolidated facilities, facilities acquisition, or facilities use, whether or not the contract provides for payment of a fee.