

## **PART 5416—TYPES OF CONTRACTS**

### **Subpart 5416.2—Fixed Price Contracts**

Sec.

5416.203 Fixed-price contracts with economic price adjustment.

5416.203-1 Description.

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5416.203-4 Contract clauses.

AUTHORITY: Fixed Price Contracts

SOURCE: 64 FR 41835, Aug. 2, 1999, unless otherwise noted.

### **Subpart 5416.2—Fixed Price Contracts**

#### **5416.203 Fixed-price contracts with economic price adjustment.**

##### **5416.203-1 Description.**

(a)(S-90) Adjustments based on established prices. Established prices may reflect industry-wide and/or geographically based market price fluctuations for commodity groups, specific supplies or services, or contract end items.

(c)(S-90) Adjustments based on cost indexes of labor or materials. These price adjustments may also be based on increases or decreases in indexes for commodity groups, specific supplies or services, or contract end items.

##### **5416.203-3 Limitations.**

(S-90) A fixed price contract with economic price adjustment may also be used to provide for price adjustments authorized in this section.

##### **5416.203-4 Contract clauses.**

(S-90) When the contracting officer determines that an existing EPA clause is not appropriate, the contracting officer may develop and use another EPA clause in accordance with 5416.203-1 (a)(S-90) or (c)(S-90). Established prices and cost indexes need not reflect changes in the costs or established prices of a specific contractor. The established price or cost index may be derived from sales prices in the marketplace, quotes, or assessments as reported or made available in a consistent manner in a publication, electronic database, or other form, by an independent trade association, Governmental body, or other third party independent of the contractor. More than

one established price or cost index may be combined in a formula for economic price adjustment purposes in the absence of an appropriate single price or cost index.

## **PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, 48 CFR part 1, subpart 1.3 and 48 CFR part 201, subpart 201.3

### **Subpart 5452.2—Texts of Provisions and Clauses**

#### **5452.249 Allocation.**

The Defense Fuel Supply Center is authorized to use the following clause in domestic and overseas petroleum solicitations/contracts, including those for Canal Zone and Puerto Rico, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation.

ALLOCATION (DFSC 1995) (DEVIATION) (9F01)

##### **(a) Reduced Supplies.**

If, for any cause beyond the control and without the fault or negligence of the Contractor, the total supply of crude oil and/or refined petroleum product is reduced below the level that would have otherwise been available to the Contractor, the Contractor allocates to its regular customers its remaining available supplies of crude oil or product, then the Contractor may also allocate to the U.S. Government supplies to be delivered under this contract, provided—

(1) Prompt notice of and evidence substantiating the necessity to allocate and describing the allocation rate for all the Contractor's customers are submitted to the Contracting Officer;

(2) Allocation among the Contractor's regular customers is made on a fair and reasonable basis (except where allocation on a different basis is required by a governmental authority, agency or instrumentality); and

(3) Reduction of the quantity of product due the Government under this contract shall not exceed the pro rata amount by which the Contractor reduces delivery to its other contractual customers.

##### **(b) Additional Supplies.**

If, after the event causing the shortage of crude oil and/or refined petroleum product as described in (a) above, additional supply becomes available to the Contractor, the Contracting Officer may choose any one of the following three possible courses of action: