

UNIT 63: PRICE AND FEE ADJUSTMENTS

October 2003

Overall Duty Adjust the price or fee.

Overall Conditions Given a contract that provides for price or fee adjustment.

Overall Standard Adjust price or fee in accordance with the terms of the contract. When negotiations are required, assure that the results of the negotiations are fair and reasonable.

Part A: Economic Price Adjustments

Sub-Duty Adjust the price.

Additional Conditions Given a fixed price contract with economic price adjustment terms and conditions.

Sub-Duty Standard Accurately apply the contract requirements adjusting the price. Make adjustments based on verified data. The final price must not exceed any ceiling established in the contract.

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Part B: Incentive Price Adjustments

Sub-Duty Adjust billing prices and negotiate final price.

Additional Conditions Given a fixed-price incentive contract with a firm target or successive targets.

Sub-Duty Standard Accurately apply the contractual formula for adjusting billing prices and negotiating the total final price. The final price must not exceed the ceiling price established in the contract.

Part C: Award Fee Adjustments

Sub-Duty Determine the amount of the award fee.

Additional Conditions Given a fixed-price or cost-reimbursement contract with award-fee terms and conditions.

Sub-Duty Standard Correctly implement the contractual procedure for determining award fee. Award fee must not exceed the total amount available for award fee established in the contract.

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Part D: Incentive Fee Adjustments

Sub-Duty Adjust the fee.

Additional Conditions Given a cost-plus-incentive-fee contract.

Sub-Duty Standard Accurately apply the contractual formula for determining the fee. The final fee must not be more than the maximum fee or less than the minimum fee set in the contract.

Part E: Price Redeterminations

Sub-Duty Negotiate the price for each period.

Additional Conditions Given a fixed-price with prospective price redetermination or fixed-ceiling-price contract with retroactive price redetermination.

Sub-Duty Standard Correctly implement the contractual procedure for negotiating prices.

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Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
15.403-5(b)(1)		Cost or pricing data format.
16.203		Fixed-price contracts with economic price adjustment.
16.204		Fixed-price incentive contracts.
16.205		Fixed-price contracts with prospective price redetermination.
16.206		Fixed-ceiling-price contracts with retroactive price redetermination.
16.304		Cost-plus-incentive-fee contracts.
16.305		Cost-plus-award-fee contracts.
16.4		Incentive contracts.
42.703-1(c)(2)		Use of final indirect cost rates in negotiating the final price of fixed-price incentive and redeterminable contracts.
52.216-2		Economic price adjustments – standard supplies.
52.216-3		Economic price adjustments – semistandard supplies.
52.216-4		Economic price adjustments – labor and material.
52.216-5		Price redetermination – prospective.
52.216-6		Price redetermination – retroactive.
52.216-10		Incentive fee.
52.216-16		Incentive price revision – firm target.
52.216-17		Incentive price revision – successive targets.
52.249-14		Excusable delays.

Other KSAs

1. Ability to calculate price or fee adjustments in accordance with the terms of the contract.
2. Ability to identify, collect, manage, and use the information required for price or fee adjustment.
3. Ability to analyze information and make accurate conclusions related to price or fee adjustment.
4. Ability to attend to the details associated with price or fee adjustment.
5. Ability to maintain the honesty and integrity of the acquisition process.

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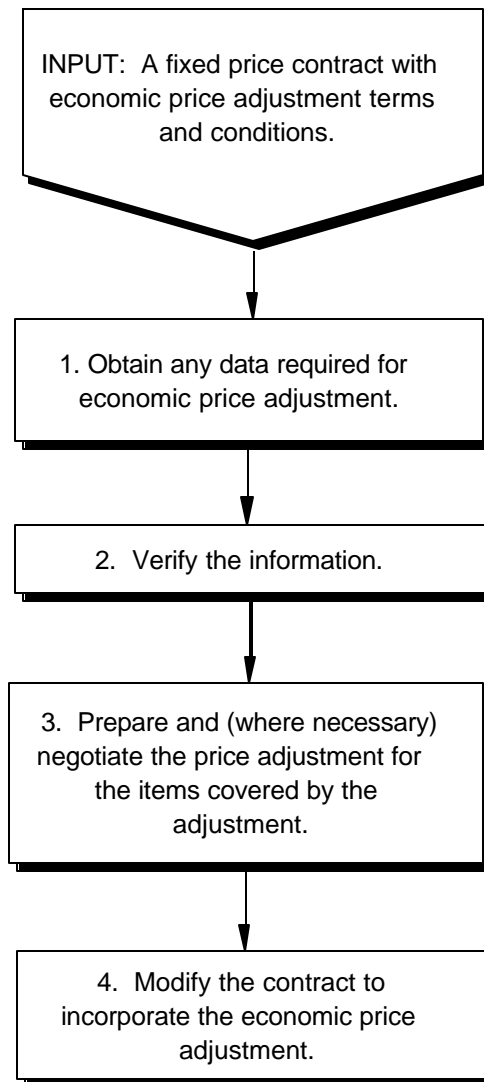
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Other Policies and References (Annotate As Necessary):

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Part A: Economic Price Adjustments

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UNIT 63: PRICE AND FEE ADJUSTMENTS

Part A: Economic Price Adjustments

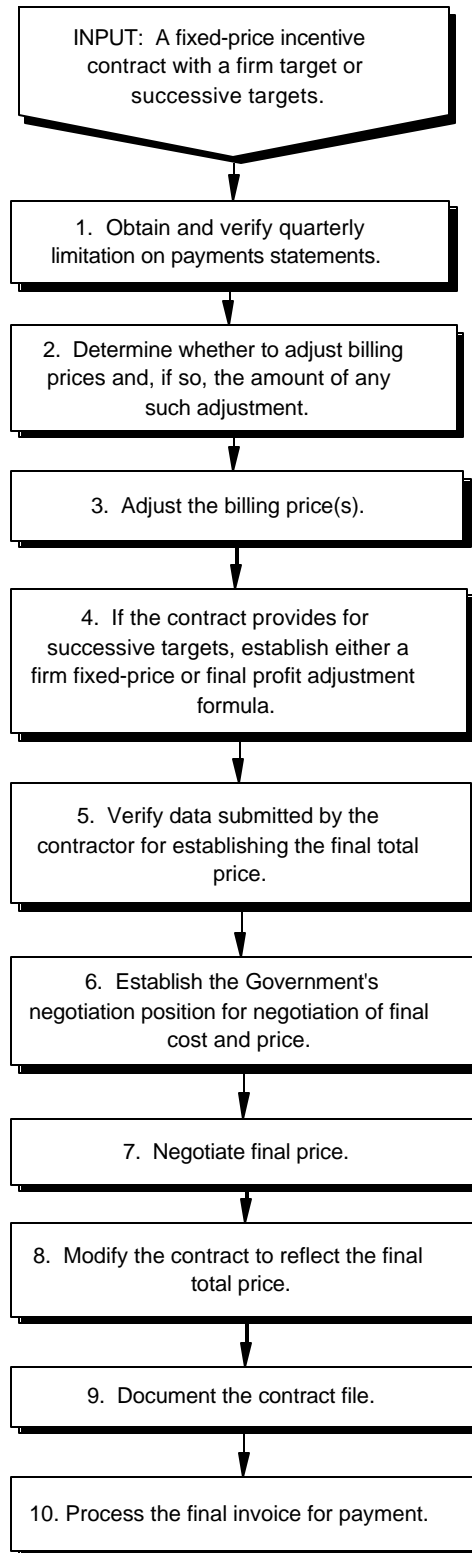
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Tasks	Related Standards
<p>1. Obtain any data required for economic price adjustment.</p>	<p>Obtain all data required from the contractor or other sources to implement the contract clause as the basis for an economic price adjustment. Depending on the clause in the contract, obtain information such as:</p> <ul style="list-style-type: none"> • The effective date and amounts of increases or decreases in applicable established prices (FAR 52.216-2 or 52.216-3); • Causes, effective dates, and amounts of increases or decreases in rates of pay for labor or units prices for material shown in the Schedule (per 52.216-4); or • Changes in cost indexes of labor or material.
<p>2. Verify the information.</p>	<p>Check the information to assure that it is accurate and conforms to contract requirements. For example, when the price change is based on a change in an established price, verify the changes in the established price.</p>
<p>3. Prepare and (where necessary) negotiate the price adjustment for the items covered by the adjustment.</p>	<p>Follow the requirements of the economic price adjustment clause in the contract. Do not exceed any limits on the price adjustment in the contract clause.</p> <p>The economic price adjustment may cover all contract items or only units delivered during a particular period of time.</p> <p>Negotiate only when required or permitted by the contract economic price adjustment clause (e.g., FAR 52.216-4(b)).</p>
<p>4. Modify the contract to incorporate the economic price adjustment</p>	<p>A bilateral modification is required whenever the amount of adjustment is established through contract negotiation. A bilateral modification is best even when applying a clear-cut formula, because it represents agreement on formula calculations and avoids later questions.</p>

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Part B: Incentive Price Adjustments

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Part B: Incentive Price Adjustments

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Tasks	Related Standards
1. Obtain and verify quarterly limitation on payments statements.	Each statement should be: <ul style="list-style-type: none">• On time within 45 days of the end of each quarter of the contractor's fiscal year;• Complete in accordance with the requirements of FAR 52.216-16(g) or 52.216-17(i);• Consistent with other available data; and• Otherwise in compliance with contract requirements.
2. Determine whether to adjust billing prices and, if so, the amount of any such adjustment.	If at any time it appears from information provided by the contractor in the quarterly limitation on payments statement that the then-current billing prices will be substantially greater than the estimated final prices, negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that final cost under this contract will be substantially greater than the target cost.
3. Adjust the billing price(s).	Negotiate adjusted billing price(s): <ul style="list-style-type: none">• Base the Government negotiation position on the information presented by the contractor in the quarterly limitation on payments statement and other available information.• Do not agree to any price that would exceed the ceiling price. Incorporate the negotiated billing price change using a bilateral contract modification.

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Tasks

Related Standards

<p>4. If the contract provides for successive targets, establish either a firm fixed-price or final profit adjustment formula.</p>	<p>When establishing the firm fixed-price or final profit adjustment formula:</p> <ul style="list-style-type: none">• Analyze the contractor data submitted in accordance with FAR 52.216-17(c).• Establish negotiation positions based on the:<ul style="list-style-type: none">– Contractor data;– Other available information; and– Analysis results.• Negotiate with the contractor to:<ul style="list-style-type: none">– Establish a firm target cost.– Establish a firm target profit. Based on the firm target cost, adjust profit using the sharing arrangement negotiated in the successive targets contract.• Establish a final pricing arrangement.<ul style="list-style-type: none">– If the total firm target cost plus the adjusted profit represents a reasonable price reach agreement on a firm fixed-price contract.– If agreement is not reached on a firm fixed-price contract negotiate a profit adjustment formula for use in arriving at the final contract.• Modify the contract to reflect either the agreed-upon firm fixed-price or the profit adjustment formula. Failure to agree does not constitute a dispute under the Disputes clause.
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Tasks

Related Standards

<p>5. Verify data submitted by the contractor for establishing the final total price.</p>	<p>Verify that the data:</p> <ul style="list-style-type: none">• Were submitted within the number of days specified in the contract after the end of the month in which the contractor delivered the last unit of supplies and completed the services specified in the contract.<ul style="list-style-type: none">– If the contractor fails to submit the data on time and it is later determined that the Government overpaid the contractor, the contractor must repay the excess to the Government immediately.– Unless repaid within 30 days after the end of the data submittal period, the amount of the excess must bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.• Include:<ul style="list-style-type: none">– A detailed statement of all costs incurred up to the end of that month in performing all work under the items;– An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;– A list of all residual inventory and an estimate of its value; and– Any other relevant data that the Contracting Officer may reasonably require.• Are consistent with other available data; and• Are otherwise in compliance with contract requirements (e.g., submitted in the required format).
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Part B: Incentive Price Adjustments

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Tasks	Related Standards
6. Establish the Government's negotiation position for negotiation of final cost and price.	<p>Adjust total target cost and/or price before establishing final price (FAR 52.216-16(k), (l), (m), and (n) or 52.216-17(m), (n) and (p)).</p> <ul style="list-style-type: none">• If an equitable adjustment in the contract price is made before the total final price is established, the adjustment:<ul style="list-style-type: none">– Must be made in the total target cost;– May be made in the maximum dollar limit on the total final price, the total target profit, or both; and– If the adjustment is made after the total final price is established, only the total final price shall be adjusted.• If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.• If the contract expressly provides that a cost of performance must be at Government expense, that expense must not be included in any target price or in the total final price, and must be reimbursed separately.• When any of tax clause requires that the contract price be increased or decreased as a result of changes in the obligation of the contractor to pay or bear the burden of certain taxes or duties, the increase or decrease must be made in the total target price or, if it has been established, in the total final price, so that it will not affect the contractor's profit or loss on this contract. <p>Apply the requirements of FAR 52.216-16 or 52.216-17 and performance incentives to develop the profit objective. Assure that the objective price does not exceed the price ceiling. If the contract began as a successive targets contract, assure that objective (including the adjustments in Task 6) does not exceed the ceiling price set in the original contract.</p>

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Part B: Incentive Price Adjustments

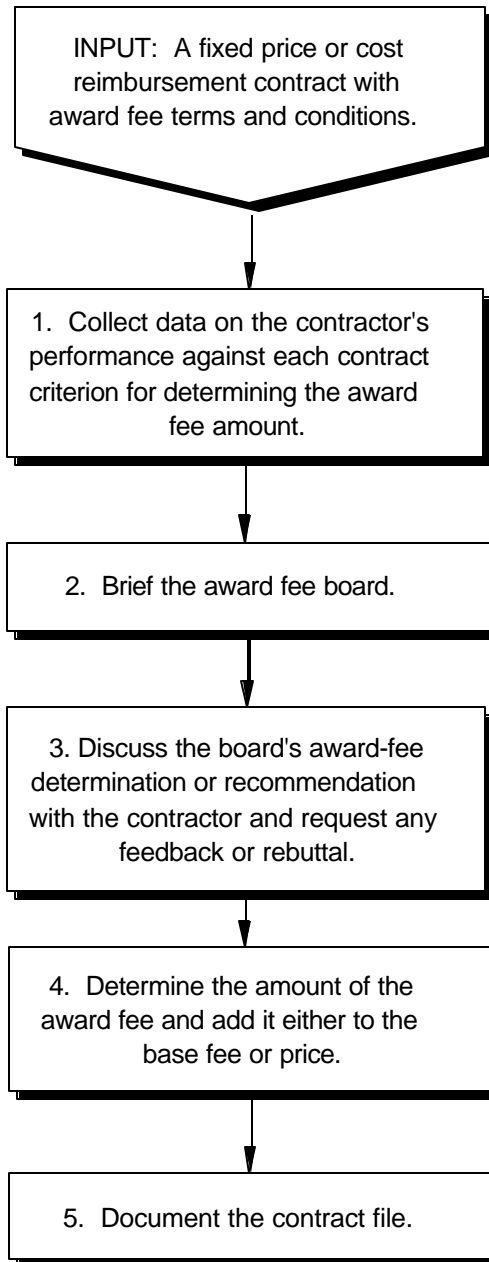
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Tasks	Related Standards
7. Negotiate final price.	<p>Assure that final price does not exceed any applicable price ceilings.</p> <p>If an agreement on total final price cannot be reached within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required by the contract are to be submitted, issue a decision in accordance with the Disputes clause.</p>
8. Modify the contract to reflect the final total price.	Use a bilateral contract modification to establish the final contract price.
9. Document the contract file.	<p>Contract file documentation should include:</p> <ul style="list-style-type: none">• A copy of the contractor's final cost proposal;• Any analysis of the proposal; and• A price negotiation memorandum.
10. Process the final invoice for payment.	<p>When reviewing the final invoice:</p> <ul style="list-style-type: none">• Identify and apply any deductions or withholdings or additions, and process the invoice for final payment.• If the contractor has been overpaid, take action to obtain the overpayment from the contractor. <p>If the contract expressly provides that a cost of performance must be at Government expense, that expense must be reimbursed separately.</p>

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Part C: Award Fee Adjustments

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Tasks	Related Standards
1. Collect data on the contractor's performance against each contract criterion for determining the award fee amount.	<p>A cost-plus-award-fee (CPAF) or fixed-price contracts with award fee (FPAF) should provide for evaluation of contract performance and a decision on a portion of the award fee at stated intervals during contract performance.</p> <p>Collect data for each evaluation based on the evaluation criteria stated in the contract.</p>
2. Brief the award fee board.	<p>FAR 16.404(b)(3) requires establishment of an award-fee board as one of the conditions for using an FPAF contract. The contracting activity may also establish an award-fee board for a cost-plus-award-fee contract. The purpose of the board is to evaluate contractor performance and either determine the amount of award fee or recommend an amount to the contracting officer.</p> <p>When briefing the board:</p> <ul style="list-style-type: none">• Present the contract award-fee evaluation criteria and the award-fee plan developed based on those criteria.• Provide any relevant data from performance monitoring.• Request the board to:<ul style="list-style-type: none">– Apply the award-fee evaluation criteria;– Rate or recommend a rating of overall performance; and– Document their findings as prescribed in the contract clause and agency policy.

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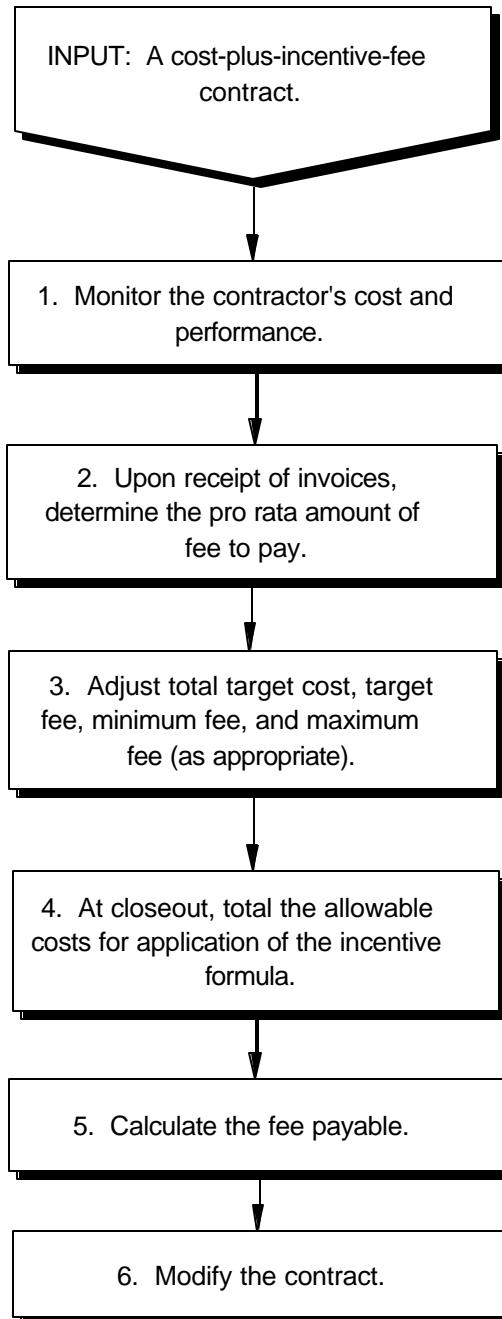
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Tasks	Related Standards
3. Discuss the board's award-fee determination or recommendation with the contractor and request any feedback or rebuttal.	<p>Discuss the reasons for the rating and listen to any contractor feedback or rebuttal. Discussions should be designed to:</p> <ul style="list-style-type: none">• Identify facts that may alter the board's evaluation; and• Improve contractor understanding of why the contractor did or did not receive all available award fee so that the contractor will be better able to improve performance in the future. <p>Whenever practicable, award-fee board members should participate in these discussions. That is particularly true when the board has the ultimate responsibility for making the award-fee determination.</p>
4. Determine the amount of the award fee and add it either to the base fee or price.	<p>The amount of the award fee should be reasonable based on the:</p> <ul style="list-style-type: none">• Contract award-fee clause;• Award-fee plan;• Agency policy; and• Available information on contractor performance. <p>While award fee clauses generally provide that the award-fee determination is the unilateral decision of the Government (FAR 16.405(a)), the Armed Forces Board of Contract Appeals (ASBCA) ruled in 1993 (ASBCA No. 43184, 94-1 BCA ¶26,590) that it retained jurisdiction over a contractor claim concerning the amount of the award fee, because the amount to which the contractor was entitled was subject to the board's authority under the Contract Disputes Act to review whether the actions of the Government were arbitrary or capricious.</p>
5. Document the contract file.	<p>Documentation should be adequate to demonstrate that the award-fee decision was reasonable based on the facts and not arbitrary or capricious.</p>

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Part D: Incentive Fee Adjustments

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Tasks	Related Standards
<p>1. Monitor the contractor's cost and performance.</p>	<p>Monitor the contractor's cost against target cost using all available information. Measure performance against any performance incentive targets set in the contract. Use information from sources, such as:</p> <ul style="list-style-type: none"> • Contractually required cost/schedule analysis and reporting, including: <ul style="list-style-type: none"> – Cost performance reports under earned value management system (EVMS) guidelines; and – Cost/schedule status reports. • Contractually required cost information, including: <ul style="list-style-type: none"> – Contract funds status reports; – Progress payment requests; – Cost-reimbursement vouchers; – Contract progress reports; or – Limitation of cost/funds notices. • Contractor production management reports and analyses, including: <ul style="list-style-type: none"> – Phase planning or Gantt charts; – Production flow charts; – Program evaluation and review technique (PERT) network analyses; or – Progress review meetings. • Observation by Government personnel.
<p>2. Upon receipt of invoices, determine the pro rata amount of fee to pay.</p>	<p>Generally prorate an amount for fee based on the target fee in the schedule. Exceptions:</p> <ul style="list-style-type: none"> • Pay on the basis of a lower fee when monitoring indicates that the contractor will not achieve the target(s). • Pay on the basis of a higher fee when monitoring clearly indicates that the Contractor will earn a fee significantly above the target fee. • After paying out 85% of the applicable fee, determine a retainage (if any) – not to exceed 15% of the fee or \$100,000 (whichever is less).

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Part D: Incentive Fee Adjustments

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Tasks	Related Standards
<p>3. Adjust total target cost, target fee, minimum fee, and maximum fee (as appropriate).</p>	<p>Adjust target cost, target fee, minimum fee, and maximum fee (as appropriate), when:</p> <ul style="list-style-type: none"> • The contract work is increased or decreased by a contract modification; or • Any equitable adjustment in the target cost is authorized under any other clause <p>Any appropriate adjustment must be stated in a supplemental agreement to the contract.</p>
<p>4. At closeout, total the allowable costs for application of the incentive formula.</p>	<p>Accurately calculate the total allowable cost for fee adjustment. Exclude costs arising from:</p> <ul style="list-style-type: none"> • The causes listed in the Excusable Delay clause (FAR 52.249-14), to the extent that they are beyond the control and without the fault or negligence of the contractor or any subcontractor. • Implementation of statutes, court decisions, written rulings, or regulations that raise the contractor's taxes, if effected after negotiation of the target cost. • The contractor's involvement in litigation as required by the Contracting Officer pursuant to a contract clause (direct costs only). • Purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer. • Claims for reimbursement for liabilities to third persons pursuant to the Insurance—Liability to Third Persons clause. • Any claim, loss, or damage resulting from a risk for which the contractor has been relieved of liability by the Government Property clause. • 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. • Any other activity whose cost is specifically excluded by the contract from total allowable cost for fee adjustment.

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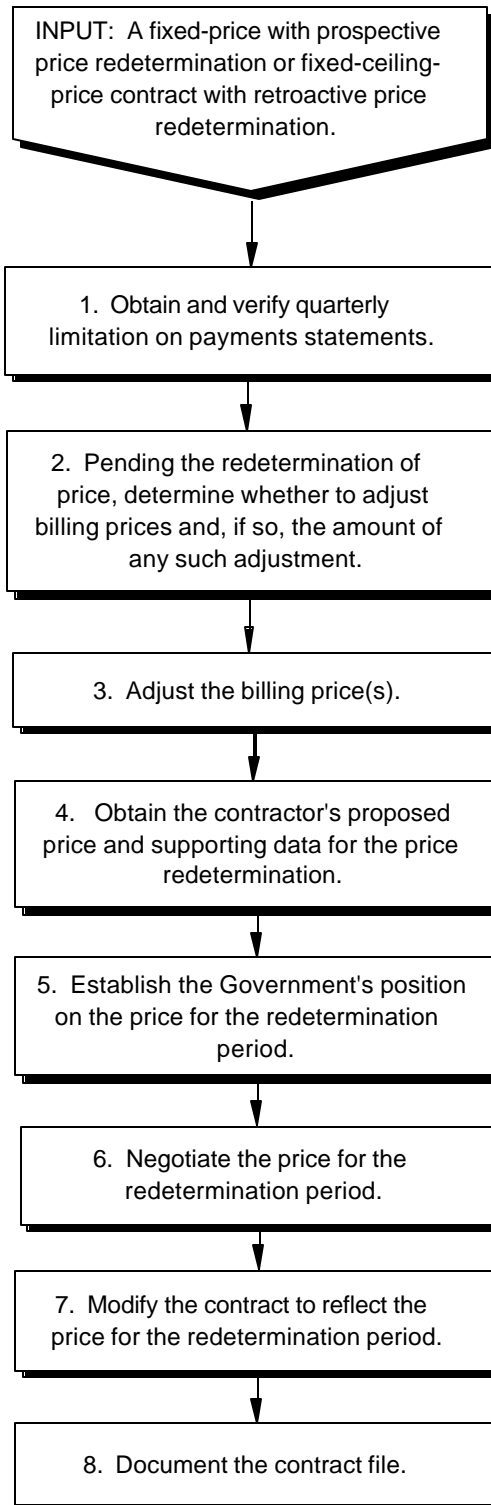
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Tasks	Related Standards
5. Calculate the fee payable.	Accurately apply the formula from FAR 52.216-10(e), as modified under any equitable adjustments. In addition, apply any performance incentives included in the contract.
6. Modify the contract.	The total allowable cost and the adjusted fee determined under FAR 52.216-10 must be evidenced by a bilateral contract modification.

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Part E: Price Redeterminations

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Part E: Price Redeterminations

October 2003

Tasks	Related Standards
1. Obtain and verify quarterly limitation on payments statements.	Each statement should be: <ul style="list-style-type: none">• On time within 45 days of the end of each quarter of the contractor's fiscal year;• Complete in accordance with the requirements of FAR 52.216-5(h) or 52.216-6(g);• Consistent with other available data; and• Otherwise in compliance with contract requirements.
2. Pending the redetermination of price, determine whether to adjust billing prices and, if so, the amount of any such adjustment.	If at any time before price redetermination it appears that the then-current billing prices will be substantially greater than the estimated final prices, negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices when the then-current billing prices will be substantially less than the estimated final prices. Total price must not exceed any price ceiling set in the contract.
3. Adjust the billing price(s).	Negotiate adjusted billing price(s): <ul style="list-style-type: none">• Base the Government negotiation position on the information presented by the contractor in the quarterly limitation on payments statement and other available information.• Do not agree to any price that would exceed any ceiling price set in the contract. Incorporate the negotiated billing price change using a bilateral contract modification.

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Part E: Price Redeterminations

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Tasks	Related Standards
<p>4. Obtain the contractor's proposed price and supporting data for the price redetermination.</p>	<p>The period for price redetermination will depend on the contract type.</p> <ul style="list-style-type: none"> • For a fixed-price contract with prospective price redetermination, pricing will be for subsequent contract periods. • For a fixed-ceiling-price contract with retroactive price redetermination, pricing will normally be for the entire completed contract. <p>The contractor's data submission should be:</p> <ul style="list-style-type: none"> • On time in accordance with the contract; • Complete in accordance with the requirements of FAR 52.216-5(c) or 52.216-6(c); • Consistent with other available data; and • Otherwise in compliance with contract requirements.
<p>5. Establish the Government's position on the price for the redetermination period.</p>	<p>Consider all available information, including:</p> <ul style="list-style-type: none"> • The contractor's proposal; • Actual cost information obtained from the proposal or other sources; • Any analysis of the proposal by technical or audit personnel; and • Any other relevant information that is available.
<p>6. Negotiate the price for the redetermination period.</p>	<p>Assure that price does not exceed any applicable price ceilings.</p> <p>If an agreement on total final price cannot be reached within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required by the contract are to be submitted, issue a decision in accordance with the Disputes clause.</p>
<p>7. Modify the contract to reflect the price for the redetermination period.</p>	<p>Use a bilateral contract modification to establish the price for the period.</p>
<p>8. Document the contract file.</p>	<p>Contract file documentation should include:</p> <ul style="list-style-type: none"> • A copy of the contractor's cost proposal; • Any analysis of the proposal; and • A price negotiation memorandum.