

INCENTIVE PRICE REVISION - FIRM TARGET (Jan 2006)

(a) General. The supplies or services identified in the Agreement as item numbers _____ are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these items exceed the ceiling price of _____ dollars (\$_____). Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this Agreement and (2) subject to price revision in accordance with the terms of this clause shall be identified as such in a modification to this Agreement.

(b) Definition. "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this Agreement.

(c) Data Submission. (1) Within _____ days after the end of the month in which the Seller has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) above, the Seller shall submit on the Company's Contract Pricing Proposal form or in any other form on which the parties agree:

- (i) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;
- (ii) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;
- (iii) A list of all residual inventory and an estimate of its value; and
- (iv) Any other relevant data that the Company may reasonably require.

(2) If the Seller fails to submit the data required by subparagraph (1) above within the time specified and it is later determined that the Company has overpaid the Seller, the Seller shall repay the excess to the Company immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall 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.

(d) Price Revision. Upon the Company's receipt of the data required by paragraph (c) above, the Company and the Seller shall promptly establish the total final price of the items specified in (a) above by applying to final negotiated cost an adjustment for profit or loss, as follows:

(1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for supplies delivered (or services performed) and accepted by the Company and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows:

- (i) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.
- (ii) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit, less _____ percent of the amount by which the total final negotiated cost exceeds the total target cost.
- (iii) If the final negotiated cost is less than the total target cost, the adjustment is the total target profit plus _____ percent of the amount by which the total final negotiated cost is less than the total target cost.

(e) Agreement Modification. The total final price of the items specified in paragraph (a) above shall be evidenced by a modification to this Agreement, signed by the Seller and the Company. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the Agreement, except to the extent that:

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this Agreement.

(f) Adjusting Billing Prices. (1) Pending execution of the Agreement modification (see paragraph (e) above), the Seller shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices shown in this Agreement.

(2) If at any time it appears from information provided by the Seller under subparagraph (g)(2) below that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall 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 Seller's submission of factual data showing that final cost under this Agreement will be substantially greater than the target cost.

(3) Any billing price adjustment shall be reflected in an Agreement modification and shall not affect the determination of the total final price under paragraph (d) above. After the Agreement modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) Quarterly Limitation on Payments Statement. This paragraph (g) shall apply until final price revision under this Agreement has been completed.

(1) Within 45 days after the end of each quarter of the Seller's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Company under this Agreement, and for each quarter thereafter, the Seller shall submit to the Company a statement, cumulative from the beginning of the Agreement, showing:

(i) The total Agreement price of all supplies delivered (or services performed) and accepted by the Company and for which final prices have been established;

