



NAVFAC
Naval Facilities Engineering Systems Command

ECONOMIC PRICE ADJUSTMENT (EPA)

Garry Murphy

Division Director Core Construction

Amy Hoffer

Project Manager TDC

NAVFAC SE

22 March 2023

AGENDA

- **Economic Price Adjustment, A DoD perspective**
- **FAR 16.203 – EPA Description, Application, Limitations**
- **Policy & Guidance**
- **Active NAVFAC SE Procurement with EPA - N69450-23-R-0005**

DoD Perspective on EPA

- In June of 2022 the U.S. Department of Defense (DoD) issued a memorandum to provide guidance on the use of economic price adjustments (EPAs) in existing and prospective DoD contracts in response to contracting officers' (COs) and contractors' concerns over inflation.
- **WHAT DOES IT MEANS FOR INDUSTRY:** Inflation is an issue that impacts all contractors, especially those performing on fixed-price contracts. The effects of inflation have even driven some contractors to consider requesting that the Government terminate their long-term contracts for convenience. In light of the rising costs of supplies and labor, contractors should be cognizant of provisions in their existing and prospective contracts with the Government that may enable them to increase their prices to combat inflation.
- The Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) both include EPA clauses that COs can include in fixed-price contracts. See, e.g., FAR 52.216-4; DFARS 252.216-7000. The clauses provide for upward and downward revision of the stated contract price(s) upon the occurrence of specified contingencies. Adjustments are based on established prices, actual costs of labor or material, or cost indexes of labor or material.

- In a memo issued on May 25, 2022 to the procurement and acquisition leadership of DoD departments, DoD provided guidance on the use of EPAs. The guidance is meant both to help COs understand when it is appropriate to recognize cost increases due to inflation under existing contracts and to offer considerations for the proper use of EPA clauses when entering into new contracts. The memo states that EPA clauses serve to “mitigate specially covered cost risks to both parties as a result of industry-wide contingencies beyond any individual contractor’s control,” including contingencies like inflation.
- The memo emphasizes that EPA clauses should be used in a manner that is fair to both the Government and the contractor. DoD states that EPA clauses “may be an appropriate tool to equitably balance the risk of inflation” for contracts that are currently “being developed or negotiated during this period of unusually high inflation.”

The memo provides the following guidance that contractors should note:

- As required by DFARS 216.230-4-70, COs must consider contract length as a primary consideration when deciding whether to use an EPA clause. The DFARS also requires the total contract price to exceed the simplified acquisition threshold.

Economic Price Adjustment

FAR 16.203-1 Description

- (a) A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon the occurrence of specified contingencies. Economic price adjustments are of three general types:
 - (1) Adjustments based on established prices. These price adjustments are based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the contract end items.
 - (2) Adjustments based on actual costs of labor or material. These price adjustments are based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance.
 - (3) Adjustments based on cost indexes of labor or material. These price adjustments are based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.
- (b) The contracting officer may use a fixed-price contract with economic price adjustment in conjunction with an award-fee incentive (see 16.404) and performance or delivery incentives (see 16.402-2 and 16.402-3) when the award fee or incentive is based solely on factors other than cost. The contract type remains fixed-price with economic price adjustment when used with these incentives.

FAR 16.203-2 Application

- A fixed-price contract with economic price adjustment may be used when (i) there is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance, and (ii) contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract. Price adjustments based on established prices should normally be restricted to industry-wide contingencies. Price adjustments based on labor and material costs should be limited to contingencies beyond the contractor's control.
- (a) In establishing the base level from which adjustment will be made, the contracting officer shall ensure that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor under economic price adjustment clause.
- (b) In contracts that do not require submission of certified cost or pricing data, the contracting officer shall obtain adequate data to establish the base level from which adjustment will be made and may require verification of data submitted.

FAR 16.203-3 Limitations

- A fixed-price contract with economic price adjustment shall not be used unless the contracting officer determines that it is necessary either to protect the contractor and the Government against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices.

Policy and Guidance

- **Federal Acquisition Regulation (FAR) 16.203:
Fixed-price contracts with economic price adjustment**
- **FAR Clause 52.216-4: Implementation of the guidance
ECONOMIC PRICE ADJUSTMENT--LABOR AND MATERIAL (JAN 2017)**

(a) The Contractor shall notify the Contracting Officer if, at any time during contract performance, the rates of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) below, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

Policy and Guidance - FAR 52.216-4 (cont.)

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) above, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases in the labor rates (including fringe benefits) and unit prices of material shown in the Schedule results in an adjustment allowable under subparagraph (c)(3) below. The Contracting Officer shall modify this contract (1) to include the price adjustment and its effective date and (2) to revise the labor rates (including fringe benefits) or unit prices of material as shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There shall be no adjustment for (i) supplies or services for which the production cost is not affected by such changes, (ii) changes in rates or unit prices other than those shown in the Schedule, or (iii) changes in the quantities of labor or material used from those shown in the Schedule for each item.

Policy and Guidance - FAR 52.216-4 (cont.)

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of at least 3 percent of the then-current total contract price. This limitation shall not apply, however, if, after final delivery of all line items, either party requests an adjustment under paragraph (b) above.

(4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.

(d) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

Current Procurement with EPA

- **Solicitation N69450-23-R-0005-P658 NUCLEAR REGIONAL MAINTENANCE FACILITY, SUBMARINE BASE, KINGS BAY, GEORGIA**

52.216-4 ECONOMIC PRICE ADJUSTMENT--LABOR AND MATERIAL (JAN 2017)

(a) The Contractor shall notify the Contracting Officer if, at any time during contract performance, the rate of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph of this clause, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) of this clause, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases in the labor rates (including fringe benefits) and unit prices of material shown in the Schedule results in an

Current Procurement with EPA (cont'd)

adjustment allowable under paragraph (c)(3) of this clause. The Contracting Officer shall modify this contract (1) to include the price adjustment and its effective date and (2) to revise the labor rates (including fringe benefits) or unit prices of material as shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There shall be no adjustment for-

(i) Supplies or services for which the production cost is not affected by such changes,

(ii) Changes in rates or unit prices other than those shown in the Schedule, or

(iii) Changes in the quantities of labor or material used from those shown in the Schedule for each item.

Current Procurement with EPA (cont'd)

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control

and without its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of at least 3 percent of the then-current total contract price. This limitation shall not apply, however, if, after final delivery of all line items, either party requests an adjustment under paragraph (b) of this clause.

(4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 30 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause

(d) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

Current Procurement with EPA (cont'd)

(e) The following Schedule lists the Materials/Commodities subject to FAR 52.216-4 Economic Price Adjustment-Material

Contractor shall include a unit cost (excludes indirect costs and profit) for any commodity in the Schedule for which the contractor determines EPA to be applicable. Contractor may propose on the entire EPA list. Only those materials/commodities that the contractor proposes a unit cost will be subject to adjustments in accordance with FAR 52.216-4. Any items for which the Contractor chooses not to provide a price, Contractor shall put N/A in the unit cost. These items shall not be subject to any future adjustments.

The below schedule is a sampling, not the complete list

CLIN 0001	MATERIAL/COMMODITY	QUANTITY	UNIT	UNIT
EXHIBIT LINE ITEMS (ELINS)	DESCRIPTION			COST (excludes indirect costs & profit)
A001	Wiring - Lightning protection cable, copper, 220 lb per thousand feet	4,500	LF	\$_____/LF
A002	Wiring - Fire alarm cable, FEP teflon, 150 volt, to 200 Deg.C, #22, 4 pair	11,516	LF	\$_____/LF
A003	Wiring - Medium-cable single cable, aluminum, XLP shielding, 15 kV, 750 kcmil	10,622	LF	\$_____/LF

Material That Have Been “EPAed”

- **Construction materials that have had sufficient price escalation and/or volatility in the past to be included in EPA clauses for Navy contracts include:**
 - **Steel pipe**
 - **Steel rebar**
 - **Steel piles**
 - **Steel sheetpile**
 - **Copper wiring**
 - **Ready-mix concrete**
 - **Marine concrete**
 - **Concrete bearing piles**
 - **On-road and off-road diesel fuel**

Current Procurement with EPA

- **P658 Nuclear Regional Maintenance Facility, SUBASE Kings Bay, GA**
- **EPA allowed for 36 commodities**
 - Total unit price increases as a result of adjustment should not exceed 30% of the unit price.
- **Commodity list identifies the maximum quantity of the commodity subject to the EPA clause**
 - These quantities may not fully represent the quantities the project may require
- **Contractor can choose to not participate in EPA for a commodity by placing “N/A” as the unit price**

REFERENCES

- **FAR 16.2 Fixed Price Contracts**
- **FAR 16.203 Fixed-price contracts with economic price adjustment**
- **DFAR 216.203-4 Contract Clauses**
- **PGI 216.2 Fixed Price Contracts**
- **PGI 216.203 Fixed-price contracts with economic price adjustment**
- **PGI 216.203-4 Contract Clauses**
- **RFP N69450-23-R-0005**