

## Price Fixing (Non-qualifying Contracts)

**DEFCON 643**  
Edition 12/21

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1. The Authority shall pay fair and reasonable prices to the Contractor in respect of the Contractor Deliverables, such prices to be fixed as soon as practicable by agreement between the Authority and the Contractor.
  2. In the event of delay in fixing prices, fair and reasonable provisional prices shall be fixed by the Authority, and the Authority reserves the right to alter from time to time the provisional prices so fixed. The Authority shall pay to the Contractor the amount by which any sum payable on the basis of the prices finally fixed exceeds any sum paid on the basis of the provisional prices and the Contractor shall pay to the Authority the amount by which any sum paid on the basis of provisional prices exceeds the sum payable on the basis of prices finally fixed. In the event of any alteration of the provisional prices similar provisions for payment and repayment shall apply.
  3. For the purpose of fixing prices the Contractor shall (subject to clause 4 below) at all times before prices have been finally fixed:
    - a. maintain a record of details of the costs of production or performance of the Contractor Deliverables (including, for example, details of times taken and of wage rates paid) as may be available from their normal accounting procedures and any further detail of those costs as the Authority may from time to time reasonably require (including details of the costs of production or performance of such substantial parts of any of the Contractor Deliverables as the Authority may specify in any such requirement) as being necessary for the purpose of determining such costs with reasonable accuracy: provided that a requirement under this sub-clause shall not apply so as to impose any obligation on the Contractor to maintain a record of any such further details in respect of any costs of production or performance of the Contractor Deliverables incurred before the date on which that requirement is made; and
    - b. when requested by the Authority, provide a summary of any of the costs mentioned in sub-clause 3.a. above in such form and detail as the Authority may reasonably require;
    - c. provide such facilities as the Authority may reasonably require for its representatives to visit the Contractor's premises and examine:
      - (1) any or all of the processes involved in the manufacture or performance of the Contractor Deliverables in order to estimate the costs; and
      - (2) the records maintained under sub-clause 3.a. above;
    - d. maintain and on request provide details of their plans for the manufacture or performance of the Contractor Deliverables as the Authority may reasonably require. The details shall, on request by the Authority, be confirmed or brought up to date in any respect which might significantly affect the costs of production or performance of the Contractor Deliverables; and

- e. maintain and on request provide such details as the Authority may reasonably require in order that it may be satisfied that the prices paid by the Contractor to sub-contractors and suppliers are fair and reasonable.
4. Where, at any time after the Contract has been made, the Contractor quotes to the Authority a firm price for any of the Contractor Deliverables, then clause 3 above (except sub-clause 3.c.(1)) shall cease to apply in relation to those Contractor Deliverables (but not in relation to any other of the Contractor Deliverables) after the expiration of such period as shall be specified in the Contract for the purposes of this clause, commencing with the date on which the quotation is made: provided that where the Authority is of the opinion that it is necessary that clause 3 should continue to apply for the purpose of reaching agreement on fair and reasonable prices for the Contractor Deliverables in question, and gives notice to the Contractor in writing that the period should be extended, then clause 3 shall continue to apply in relation to those Contractor Deliverables for such further period as may be specified in the notice or in any subsequent notice given. Further to the provisions of DEFCON 526 a written notice under the terms of this clause shall not be effective unless it is signed on behalf of the Authority by one of its officers not below the level of Director Commercial.
5. If, in connection with or for the purposes of the Contract, at any time before prices for the Contractor Deliverables have been finally fixed, any sub-contract, the price of which exceeds £250,000 (or a greater amount as agreed between the parties and specified in the Contract), is placed by the Contractor with a sub-contractor (including a subsidiary company or firm) otherwise than by acceptance of the lowest acceptable competitive tender, then, unless otherwise agreed in writing by the Authority, the Contractor shall:
- a.
- (1) include, in any such sub-contract which is not a fixed price sub-contract, the provisions set out in Part I of the Appendix to this Condition and, in any such sub-contract which is a fixed price sub-contract, the provisions set out in Part II of that Appendix; or
  - (2) at their discretion and provided the Authority does not direct to the contrary, include clause 3.a, 3.b. and 3.c. and clause 5 of DEFCON 127 (where 'Contractor' is replaced by 'sub-contractor') in sub-contracts not exceeding £250,000 (or such other amount as agreed between the parties and specified in the Contract); and
- b. take all reasonable steps to secure the due observance by the sub-contractor of their obligations under the said provisions.
6. In this clause, the expression 'fixed price sub-contract' means a sub-contract in which the prices are fixed at the time the sub-contract is made, including those which contain provision for variation of any prices so fixed by reason only of changes in wage rates or prices of materials.
7. Except where necessary for proper compliance with the requirements of any person acting in the capacity of an arbitrator under any provision of the Contract, the Authority shall not disclose to any person outside any Central Government Body any information obtained by it in consequence of the application of any of the provisions of this Condition.

## **Appendix To DEFCON 643**

### **Part I - Provisions to be Included in Sub-contracts, Including Those with a Subsidiary Company or Firm, Which are Not Fixed Price Sub-contracts**

1. Fair and reasonable prices shall be paid to the sub-contractor in respect of the Contractor Deliverables to be supplied or performed under this sub-contract, such prices to be fixed as soon as practicable by agreement between the Contractor and the sub-contractor.
2. In the event of delay in fixing prices, fair and reasonable provisional prices shall be fixed by the Contractor and the Contractor reserves the right to alter from time to time the provisional prices so fixed. The Contractor shall pay to the sub-contractor the amount by which any sum payable on the basis of the prices finally fixed exceeds any sum paid on the basis of the provisional prices and the sub-contractor shall pay to the Contractor the amount by which any sum paid on the basis of provisional prices exceeds the sum payable on the basis of prices finally fixed. In the event of any alteration of the provisional prices similar provisions for payment and repayment shall apply.
3. The sub-contractor shall, at all times before prices for the Contractor Deliverables under this sub-contract have been finally fixed:
  - a. maintain a record of details of the costs of production or performance of the Contractor Deliverables (including, for example, details of times taken and of wage rates paid) as may be available from their normal accounting procedures and any further detail of those costs as the Authority, may from time to time reasonably require (including details of the costs of production or performance of such substantial parts of any of the those Contractor Deliverables as the Authority may specify in any such requirement) as being necessary for the purpose of determining such costs with reasonable accuracy: provided that a requirement under this sub-clause shall not apply so as to impose any obligation on the sub-contractor to maintain a record of any such further details in respect of any costs of production or performance of the Contractor Deliverables incurred before the date on which that requirement is made;
  - b. when requested by the Authority, provide to the Authority a summary of any of the costs mentioned in sub-clause 3.a. above in such form and detail as the Authority may reasonably require;
  - c. provide such facilities as the Authority may reasonably require for its representatives to visit the sub-contractor's premises and examine:
    - (1) any or all of the processes involved in the manufacture or performance of those Contractor Deliverables in order to estimate the costs of their production or performance; and
    - (2) the records maintained under sub-clause 3.a. above; and
  - d. maintain and on request provide details to the Authority of their plans for the manufacture or performance of those Contractor Deliverables as the

Authority may reasonably require. The details shall on request by the Authority, be confirmed or brought up to date in any respect which might significantly affect the costs of production or performance of those Contractor Deliverables.

4. For the purpose of estimating the cost of production or performance of the Contract Deliverables to be supplied or performed under the main contract, the sub-contractor shall, at all times before prices for those Contractor Deliverables have been finally fixed (whether before or after the prices for the Contractor Deliverables to be supplied or performed under this sub-contract have been finally fixed), provide such facilities as the Authority may reasonably require for its representatives to visit the sub-contractor's premises and examine any or all of the processes involved in, and the plans for, the manufacture or performance of those Contractor Deliverables.

5. In this clause, the expression 'the main contract' means the Contract between the Authority and the Contractor in connection with which, or for the purposes of which, this sub-contract has been made.

## **Part II - Provisions to be Included in Sub-contracts Which are Fixed Price Sub-contracts Including Those with a Subsidiary Company or Firm**

(See clause 5 of DEFCON 643 for definition of a fixed price contract)

1. For the purpose of estimating the costs of production or performance of the Contractor Deliverables under the main contract, the sub-contractor shall, at all times before prices for those Contractor Deliverables have been finally fixed, provide such facilities as the Authority may reasonably require for its representatives to visit the sub-contractor's premises and examine any or all of the processes involved in, and the plans for, the manufacture or performance of the Contractor Deliverables under this sub-contract.

2. In this clause, the expression 'the main contract' means the Contract between the Authority and the Contractor in connection with which, or for the purposes of which, this sub-contract has been made.