

Pricing on Ascertained Costs

DEFCON 653

Edition 12/14

1. Subject to the provisions in the Contract of any Limitation of Liability clause, any maximum amount stated to be payable under the Contract, or any cost over-run / under-run sharing arrangements, and to the following clauses of this Condition, the Authority will pay a Contract Price fixed by agreement between the Authority and the Contractor on the basis of:

- a. the costs properly incurred for the purposes of the Contract of:
 - (1) wages and salaries constituting a direct charge to the work to be performed under the Contract, including work in respect of the provision of special jigs and tools;
 - (2) materials, bought-out parts and sub-contracted work including such costs in respect of the provision of special jigs and tools;
- b. overhead and administration charges appropriate to the Contract; and
- c. a sum for profit to be agreed and specified in the Contract.

2. The Contractor shall supply such particulars of costs in connection with the Contract as may be reasonably required by the Authority and permit the same to be verified by the representatives of the Authority by inspection of its books, accounts and other documents and records. This clause does not apply where DEFCON 812 is included in the Contract.

3. The Contractor undertakes to maintain and on request supply such details as the Authority may reasonably require in order that it may be satisfied that the prices paid by the Contractor to its subsidiary companies or firms and to sub-contractors and suppliers are fair and reasonable.

4. Where interim statements of cost are called for in the Contract or the Contractor submits a request for final settlement they shall forward a completed DEFFORM 812 (Contract Costs Statement) to the Commercial Officer identified in the Appendix to the Contract (DEFFORM 111). The Contractor shall submit their final Contract Costs Statement no later than nine months or such other period specified in the Contract after all work under the Contract has been completed.

- a. If interim statements of cost are not provided within the time specified in the Contract the Authority may, after giving reasonable notice, defer any interim payment then due until the overdue statement has been provided.
- b. Contract Costs Statements, whether interim or final, may include declared estimated figures covering any reasonable amounts that cannot be determined accurately without undue delay. These estimated figures should not normally exceed 2% of the value of the cost statement.
- c. DEFFORM 812 may only be modified with the approval of the Authority's investigating accountant.
- d. The Contractor shall include provisions equivalent to this clause 4 in any sub-contract that includes Appendix 1 to this Condition.

5. The total amount payable under the Contract shall be subject to the Authority being satisfied through, as appropriate, the provisions of clauses 2-4 and Appendices 1, 2 and 3 of this Condition, that the charges under sub-clauses 1.a and 1.b are fair and reasonable. If the Authority is not so satisfied such charges shall be reduced to such amount as is fair and reasonable.

6. Pending the fixing of prices in accordance with clauses 1 to 4 above, fair and reasonable provisional prices may 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 the provisional prices exceeds the sum payable on the basis of the prices finally fixed. In the event of any alteration of the provisional prices similar provisions for payment and repayment shall apply.

7. If, in connection with or for the purposes of the Contract, any sub-contract of the value £100,000 or more 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, except in so far as the Authority otherwise agrees in writing, the Contractor shall:

- a. include in any such sub-contract in which provision is made for the price to be fixed subsequently by reference to the cost incurred in carrying out the sub-contract, provisions as set out in the Appendix 1 to this Condition;
- b. include in any such sub-contract which is not to be priced by reference to costs incurred and which is a fixed price sub-contract (see clause 9 below), the provisions set out in Appendix 2 to this Condition;
- c. include in any such sub-contract which is not to be priced reference to costs incurred and which is not a fixed price sub-contract (see clause 9 below) when the sub-contract is let, the provisions set out in Appendix 3 to this Condition;
- d. take all reasonable steps to secure the due observance by the sub-contractor of their obligations under those conditions; and
- e. notify the Authority:
 - (1) when a sub-contract subject to Appendix 2 or 3 of this Condition is placed, stating the name of the sub-contractor, the nature of the work and the expected completion date;
 - (2) when a fixed or provisional price is agreed for the sub-contract; and
 - (3) when delivery or work under the sub-contract is complete.

8. Where notifications under clause 7.e are made to the Authority the provisions of clause 4 of Appendix 3, or Appendix 2 as appropriate, shall cease to apply after a period of six months, or such other period as may be agreed, from the date of notification of pricing or on completion of the sub-contract, whichever is later. In any event, the provisions of clause 4 of Appendix 3, or Appendix 2 as appropriate, shall cease to apply after completion of the main Contract.

9. In this Condition, 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.

10. Except in so far as it is necessary for proper compliance with the requirements of any person duly 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 provision of this Condition.

Appendix 1

Provisions to be Included in Sub-contracts Priced on the Basis of Ascertained Costs, Including With a Subsidiary Company or Firm

1. The sub-contractor shall supply details of costs in connection with the sub-contract as may be reasonably required by the Authority and permit the same to be verified by the representative of the Authority by inspection of its books, accounts and other documents and records. This clause does not apply if the sub-contract includes the provisions set out in Appendix 1 to DEFCON 812.
2. Subject to the maximum amount, if any, stated to be payable under the sub-contract, the total amount payable under the sub-contract shall be subject to the Authority being satisfied, either from an inspection of the costs of the sub-contractor or otherwise, that fair and reasonable charges have been made in respect of:
 - a. the costs properly incurred for the purposes of the sub-contract of:
 - (1) wages and salaries constituting a direct charge to the work to be performed under the sub-contract, including work in respect of the provision of special jigs and tools; and
 - (2) materials, bought-out parts and sub-contracted work including such costs in respect of the provision of special jigs and tools;
 - b. overhead and administration charges appropriate to the sub-contract; and
 - c. a sum for profit to be agreed in the Contract.

Appendix 2

Provisions to be Included in a Sub-contract (Including With a Subsidiary Company or Firm) Not Priced on Ascertained Costs and Which is a Fixed Price Sub-contract

(See DEFCON 653 clause 9 for definition of a 'fixed price sub-contract')

1. For the purpose of determining the costs of production of the Contractor 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, provide such facilities as the Authority (that is to say, the Secretary of State for Defence acting on behalf of the Crown) 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 of the Contractor Deliverables to be supplied or performed 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.

Appendix 3

Provisions to be Included in a Sub-contract (Including With a Subsidiary Company or Firm) Not Priced on Ascertained Costs and Not a Fixed Price Sub-contract

(See DEFCON 653 clause 9 for definition of a 'fixed price sub-contract')

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 to be supplied or performed under this sub-contract have been finally fixed:
 - a. maintain a record of details of the costs of production of the those Contractor Deliverables (including, for example, details of times taken and of wage rates paid) as may be available from its normal accounting procedures and of such further details of those costs as the Authority (that it is to say, the Secretary of State for Defence acting on behalf of the Crown), may from time to time reasonably require (including details of the costs of production of such substantial parts of any of 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 further details as mentioned above in respect of any costs of production of the Contractor Deliverables incurred before the date on which that requirement is made;
 - b. when requested by the Authority, supply 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 of the 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 supply to the Authority details of its plans for the manufacture of those Contractor Deliverables as the Authority may

reasonably require. Such 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 of the Contractor Deliverables.

4. For the purpose of determining the cost of production of the Contractor 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 of the those Contractor Deliverables.