

52.215-23 Limitations on Pass-Through Charges.

As prescribed in 15.408(n)(2), use the following clause:

Limitations on Pass-Through Charges (Jun 2020)

(a) *Definitions.* As used in this clause-

Added value means that the Contractor performs *subcontract* management functions that the *Contracting Officer* determines are a benefit to the Government (e.g., processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).

Excessive pass-through charge, with respect to a Contractor or *subcontractor* that adds *no or negligible value* to a contract or *subcontract*, means a charge to the Government by the Contractor or *subcontractor* that is for *indirect costs* or profit/fee on work performed by a *subcontractor* (other than charges for the costs of managing *subcontracts* and any applicable *indirect costs* and associated profit/fee based on such costs).

No or negligible value means the Contractor or *subcontractor* cannot demonstrate to the *Contracting Officer* that its effort added value to the contract or *subcontract* in accomplishing the work performed under the contract (including task or delivery orders).

Subcontract means any contract, as defined in Federal Acquisition Regulation (FAR)2.101, entered into by a *subcontractor* to furnish *supplies* or services for performance of the contract or a *subcontract*. It includes but is not limited to *purchase orders*, and changes and modifications to *purchase orders*.

Subcontractor, as defined in FAR 44.101, means any supplier, distributor, vendor, or firm that furnishes *supplies* or services to or for a prime Contractor or another *subcontractor*.

(b) *General.* The Government will not pay excessive pass-through charges. The *Contracting Officer* shall determine if excessive pass-through charges exist.

(c) *Reporting.* Required reporting of performance of work by the Contractor or a *subcontractor*. The Contractor shall notify the *Contracting Officer* in writing if-

(1) The Contractor changes the amount of *subcontract* effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or *delivery order*. The notification shall identify the revised cost of the *subcontract* effort and shall include verification that the Contractor will provide added value; or

(2) Any *subcontractor* changes the amount of lower-tier *subcontractor* effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its *subcontract*. The notification shall identify the revised cost of the *subcontract* effort and shall include verification that the *subcontractor* will provide added value as related to the work to be performed by the lower-tier *subcontractor(s)*.

(d) *Recovery of excessive pass-through charges.* If the *Contracting Officer* determines that excessive

pass-through charges exist;

(1) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in FAR subpart 31.2; and

(2) For applicable DoD fixed-price contracts, as identified in 15.408(n)(2)(i)(B), the Government *shall* be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price.

(e) *Access to records.*

(1) The *Contracting Officer*, or authorized representative, *shall* have the right to examine and audit all the Contractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.

(2) For those *subcontracts* to which paragraph (f) of this clause applies, the *Contracting Officer*, or authorized representative, *shall* have the right to examine and audit all the *subcontractor's* records (as defined at FAR 52.215-2(a)) necessary to determine whether the *subcontractor* proposed, billed, or claimed excessive pass-through charges.

(f) *Subcontracts.* The Contractor *shall* insert the substance of this clause, including this paragraph (f), in all cost-reimbursement *subcontracts* under this contract that exceed the *simplified acquisition threshold*, as defined in FAR 2.101 on the date of *subcontract* award, except if the contract is with DoD, then insert in all cost-reimbursement *subcontracts* and fixed-price *subcontracts*, except those identified in FAR 15.408(n)(2)(i)(B)(2), that exceed the threshold for obtaining *cost or pricing data* in FAR 15.403-4 on the date of *subcontract* award.

(End of clause)

Alternate I (Oct 2009). As prescribed in 15.408 (n)(2)(iii), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) *General.* The Government will not pay excessive pass-through charges. The *Contracting Officer* has determined that there will be no excessive pass-through charges, provided the Contractor performs the disclosed value-added functions.

Parent topic: 52.215 [Reserved]