

FAR Case 2008-031, Limitations on
Pass-Through Charges

(Baseline: FAR through FAC 2005-31,
Effective 19 March 2009)

Interim Rule

- Additions to Baseline: [Bold and brackets]
- Deletions from Baseline: ~~Strikethrough~~

PART 15--CONTRACTING BY NEGOTIATION

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15.408 Solicitation provisions and contract clauses.

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[(n) *Limitations on Pass-Through Charges.*

(1) The contracting officer shall insert the provision at 52.215-xx, **Limitations on Pass-Through Charges - Identification of Subcontract Effort**, in solicitations containing the clause at 52.215-yy.

(2) (i) Except as provided in (ii), the contracting officer shall insert the clause 52.215-yy, **Limitations on Pass-Through Charges**, in solicitations and contracts including task or delivery orders as follows:

(A) For civilian agencies, insert the clause when--

(1) The total estimated contract or order value exceeds the simplified acquisition threshold as defined in section 2.101 and

(2) The contemplated contract type is expected to be a cost-reimbursement type contract as defined in 16.3; or

(B) For DoD, insert the clause when--

(1) The total estimated contract or order value exceeds the threshold for obtaining cost or pricing data in 15.403-4; and

(2) The contemplated contract type is expected to be any contract type except-

(a) A firm-fixed-price contract awarded on the basis of adequate price competition;

(b) A fixed-price contract with economic price adjustment awarded on the basis of adequate price competition;

(c) A firm-fixed-price contract for the acquisition of a commercial item; or

(d) A fixed-price contract with economic price adjustment, for the acquisition of a commercial item.

(ii) The clause may be used when the total estimated contract or order value is below the thresholds identified in 15.408(n)(1)(i) and (ii) and for any contract type, when the contracting officer determines that inclusion of the clause is appropriate.

(iii) Use the clause 52.215-yy with its Alternate 1 when the contracting officer determines that the prospective contractor has demonstrated that its functions provide added value to the contracting effort and there are no excessive pass-through charges.]

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PART 31--CONTRACT COST PRINCIPLES AND PROCEDURES

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31.203 Indirect costs.

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[(i) Indirect costs related to excessive pass-through charges, as defined in the clause at 52.215-yy, are unallowable.]

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PART 52--SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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[52.215-XX Limitations on Pass-Through Charges--Identification of Subcontract Effort.

As prescribed in 15.408(n)(1), use the following provision:

LIMITATIONS ON PASS-THROUGH CHARGES--IDENTIFICATION OF SUBCONTRACT EFFORT (DATE)

(a) *Definitions.* Added value, excessive pass-through charge, subcontract, and subcontractor, as used in this provision, are defined in the clause of this solicitation entitled "Limitations on Pass-Through Charges" (FAR 52.215-yy).

(b) *General.* The offeror's proposal shall exclude excessive pass-through charges.

(c) *Performance of work by the Contractor or a subcontractor.*

(1) The offeror shall identify in its proposal the total cost of the work to be performed by the offeror, and the total cost of the work to be performed by each subcontractor, under the contract, task order, or delivery order.

(2) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, the offeror shall identify in its proposal--

(i) The amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s); and

(ii) A description of the added value provided by the offeror as related to the work to be performed by the subcontractor(s).

(3) If any subcontractor proposed under the contract, task order, or delivery order intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract, the offeror shall identify in its proposal--

(i) The amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s); and

(ii) A description of the added value provided by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

(End of provision)

52.215-yy Limitations on Pass-Through Charges.

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

LIMITATIONS ON PASS-THROUGH CHARGES (DATE)

(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 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)(1)(ii)(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) *Flowdown*. 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, except if the contract is with DoD, then insert in all cost-reimbursement contracts and fixed-price subcontracts, except those identified in 15.408(n)(1)(ii)(B), that exceed the threshold for obtaining cost or pricing data in accordance with FAR 15.403-4.

(End of clause)

Alternate I (date). As prescribed in 15.408(n)(4), 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.]