

Excessive Pass-Through Charges  
DFARS Case 2006-D057  
Interim Rule

**PART 215—CONTRACTING BY NEGOTIATION**

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**215.408 Solicitation provisions and contract clauses.**

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[(3) Use the provision at 252.215-XXXX, Excessive Pass-Through Charges - Identification of Subcontract Effort, and the clause at 252.215-YYYY, Excessive Pass-Through Charges, in all solicitations and contracts (including task or delivery orders) except for—

(i) Firm-fixed-price contracts awarded on the basis of adequate price competition;

(ii) Fixed-price contracts with economic price adjustment, awarded on the basis of adequate price competition;

(iii) Firm-fixed-price contracts for the acquisition of a commercial item; or

(iv) Fixed-price contracts with economic price adjustment, for the acquisition of a commercial item.]

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**PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES**

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**[231.201-2 Determining allowability.**

(a) In addition to the requirements at FAR 31.201-2(a), a cost is allowable only when it complies with the clause at 252.215-YYYY, Excessive Pass-Through Charges.

**231.203 Indirect costs.**

(d) Excessive pass-through charges, as defined in the clause at 252.215-YYYY, are unallowable.]

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**PART 252–SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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**[252.215-XXXX Excessive Pass-Through Charges - Identification of Subcontract Effort.**

As prescribed in 215.408(3), use the following provision:

**EXCESSIVE PASS-THROUGH CHARGES -  
IDENTIFICATION OF SUBCONTRACT EFFORT (XXX 2007)**

(a) *Definition.* "Excessive pass-through charge," as used in this provision, is defined in the clause of this solicitation entitled "Excessive Pass-Through Charges" (DFARS 252.215-YYYY).

(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 percent of effort it intends to perform, and the percent expected 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 applicable to the work to be performed by the subcontractor(s); and

(ii) A description of the value added 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 applicable to the work to be performed by the lower-tier

subcontractor(s); and

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

(End of provision)

252.215-YYYY Excessive Pass-Through Charges.

As prescribed in 215.408(3), use the following clause:

**EXCESSIVE PASS-THROUGH CHARGES (XXX 2007)**

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

“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 on work performed by a subcontractor (other than charges for the costs of managing subcontracts and applicable indirect costs and profit based on such costs).

“No or negligible value” means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added substantive value to the contract or subcontract in accomplishing the work performed under the contract.

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

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

(1) If the Contractor changes the amount of subcontract effort identified in its proposal such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, the Contractor shall provide the Contracting Officer with a description of the value added by the Contractor as related to the subcontract effort.

(2) If any subcontractor identified in the proposal changes the amount of lower-tier subcontractor effort such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract, the Contractor shall provide the Contracting Officer with a description of the value added by the subcontractor as

related to the work to be performed by the lower-tier subcontractor(s).

(3) If any subcontractor not identified in the proposal subcontracts to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract, the Contractor shall provide the Contracting Officer with a description of the value added by the subcontractor 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 fixed-price contracts, the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price; and

(2) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart 231.2 of the Defense FAR Supplement.

(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 subcontracts under this contract, except for—

(1) Firm-fixed-price subcontracts awarded on the basis of adequate price competition;

(2) Fixed-price subcontracts with economic price adjustment, awarded on the basis of adequate price competition;

(3) Firm-fixed-price subcontracts for the acquisition of a commercial item; or

(4) Fixed-price subcontracts with economic price adjustment, for the acquisition of a commercial item.

(End of clause)]