including this paragraph (e), in all subcontracts expected to exceed the threshold in FAR 15.403–4(a)(1) for submission of cost or pricing data.

(End of clause)

[60 FR 42651, Aug. 16, 1995; 60 FR 44548, Aug. 28, 1995; 62 FR 51271, Sept. 30, 1997]

52.214–27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.

As prescribed in 14.201–7(b), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at FAR 15.403–4(a)(1), except that this clause does not apply to a modification if an exception under FAR 15.403–1(b) applies.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) above.

(c) Any reduction in the contract price under paragraph (b) above due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; *provided*, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense—

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted;

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract; or

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing

data which were incomplete, inaccurate, or noncurrent.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 53 FR 10830, Apr. 1, 1988; 55 FR 52797, Dec. 21, 1990; 56 FR 67415, Dec. 30, 1991; 60 FR 48218, Sept. 18, 1995; 62 FR 51271, Sept. 30, 1997]

52.214–28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.

As prescribed in 14.201–7(c), insert the following clause:

SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at (FAR) 48 CFR 15.403–4(a)(1), and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403–4(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.403–4(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403–1(b) applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection 15.406–2 of the Federal Acquisition Regulation that, to the best of its knowledge and belief, the data submitted under paragraph (b) above were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at FAR 15.403–4(a)(1).

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 50 FR 1747, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 56 FR 67415, Dec. 30, 1991; 59 FR 62499, Dec. 5, 1994; 60 FR 48218, Sept. 18, 1995; 62 FR 51271, Sept. 30, 1997]

52.214–29 Order of Precedence—Sealed Bidding.

As prescribed in 14.201–7(d), insert the following clause:

ORDER OF PRECEDENCE—SEALED BIDDING (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

(End of clause)

[51 FR 2666, Jan. 17, 1986, as amended at 60 FR 48218, Sept. 18, 1995]

52.214–30 Annual Representations and Certifications—Sealed Bidding.

As prescribed in 14.201–6(u), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—SEALED BIDDING (JAN 1997)

The bidder has (check the appropriate block):

☐ (a) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated _____ [*insert date of signature on submission*], which are incorporated herein by reference, and are current, accurate, and complete as of the date of this bid, except as follows [*insert changes that affect only this solicitation; if "none," so state*]:

_____

☐ (b) Enclosed its annual representations and certifications.

(End of provision)

[62 FR 238, Jan. 2, 1997]

52.214–31 Facsimile Bids.

As prescribed in 14.201–6(v), insert the following provision:

FACSIMILE BIDS (DEC 1989)

(a) Definition. *Facsimile bid*, as used in this solicitation, means a bid, modification of a