

3-807.4 Defective Cost or Pricing Data.

(a) Where any price to the Government must be negotiated largely on the basis of cost or pricing data submitted by the contractor, it is essential that the data be accurate, complete and current and in appropriate cases so certified by the contractor (see 3-807.3 and 3-807.4). If an agreed price includes amounts which can only be attributed to erroneous or incomplete cost or pricing data, it is not a fair price and the resultant profits are not earned profits. Where negotiations are to be conducted on the basis of full disclosure, failure of one party to proceed on that basis undercuts full mutual assent to the price negotiated so that, in this sense, the price is not fully agreed to, and fairness warrants its adjustment. If such certified cost or pricing data is subsequently found to be inaccurate, incomplete or non-current, the Government is entitled to an adjustment of the negotiated price, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. The clauses set forth in 7-104.29 are designed to give the Government in such a case an enforceable contract right to a price adjustment, that is, to a reduction in the price to what it would have been if the contractor had submitted accurate, complete and current data. In arriving at a price adjustment under a clause, the contracting officer should, after review of the record of the contract negotiation (see 3-811), consider the following:

(1) The time when cost or pricing data was reasonably available to the contractor. Certain data such as overhead expenses and production records may not be reasonably available except on normal periodic closing dates. Also, the data on numerous minor material items may be reasonably available only as of a cut-off date prior to agreement on price because the volume of transactions would make the use of any later date impracticable. Furthermore, except where a single item is used in substantial quantity, the net effect of any changes to the prices of such minor items would likely be insignificant. Notwithstanding the foregoing, significant matters, such as changes in the labor base or in the prices of major material items, are important to contractor management and to the Government, and the related data would be expected to be current on the date of agreement on price and therefore will be treated as reasonably available as of that date.

(2) In establishing that the defective data caused an increase in the contract price, the contracting officer is not expected to reconstruct the negotiation or to speculate on what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price. The natural and probable consequence of defective data is an increase in the contract price in the amount of the defect plus related burden and profit or fee; therefore, unless there is a clear indication that the defective data was not used, or was not relied upon, the contract price should be reduced in that amount.