PGI Part 215 - CONTRACTING BY NEGOTIATION

Parent topic: PGI Defense Federal Acquisition Regulation

PGI 215.1 -SOURCE SELECTION PROCESSES AND TECHNIQUES

PGI 215.101 RESERVED

PGI 215.101-2-70 Limitations and prohibitions.

(a) *Limitations*.

(1)(vi) Contracting officers shall obtain guidance from the requiring activity when it is unclear whether a supply is “predominately expendable in nature” or “nontechnical,” or has a “short life expectancy” or “short shelf life.” In such situations, contracting officers shall only use the lowest price technically acceptable source selection process if the requiring activity establishes that the goods to be procured are predominantly expendable in nature, are nontechnical, or have a short life expectancy or short shelf life.

(vii) The contracting officer shall document the contract file with a determination from the requiring activity that the lowest priced offer reflects full life-cycle costs for the supply or service. For additional information on life-cycle costs for supplies, see DoD Instruction 4140.01, DoD Supply Chain Material Management Policy. For services, full life-cycle costs are equal to the contract cost of the services.

PGI 215.3 -SOURCE SELECTION

PGI 215.300 -Scope of subpart.

See the policy tab for Principal Director, Defense Pricing, Contracting, and Acquisition Policy

memorandum dated August 20, 2022, entitled "Department of Defense Source Selection Procedures," that provides the procedures to be used within DoD when conducting negotiated, competitive acquisitions utilizing FAR part 15 procedures.

PGI 215.303 Responsibilities.

(b)(2) The source selection plan—

(A) Shall be prepared and maintained by a person designated by the source selection authority or as prescribed by agency procedures; and

(B) Shall be coordinated with the contracting officer and senior advisory group, if any, within the source selection organization.

PGI 215.304 Evaluation factors and significant subfactors.

(c)(i)(A) Evaluation factors may include—

(*1*) The extent to which such firms are specifically identified in proposals;

(*2*) The extent of commitment to use such firms (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

(*3*) The complexity and variety of the work small firms are to perform;

(*4*) The realism of the proposal;

(*5*) Past performance of the offerors in complying with requirements of the clauses at FAR 52.219-8, Utilization of Small Business Concerns, and 52.219-9, Small Business Subcontracting Plan; and

(6) The extent of participation of such firms in terms of the value of the total acquisition.

(v) Using authority granted in section 806 of Pub. L. 111-383 to exclude a source based on supply chain risk requires an evaluation factor for supply chain risk, as specified at DFARS 239.73. Evaluating supply chain risk requires review of the supply chain, including all information technology subcontractors and suppliers that are proposed for use at any time in the performance of the contract and may involve the use of all-source intelligence information. The requiring activity is responsible for obtaining any necessary all-source intelligence information and must inform the contracting officer and source selection authority of the results of the review for use in evaluating offers.

PGI 215.370 Evaluation factor for employing or subcontracting with members of the Selected Reserve.

PGI 215.370-2 Evaluation factor.

(1) This evaluation factor may be used as an incentive to encourage contractors to use employees or

individual subcontractors who are members of the Selected Reserve.

(2) As with all evaluation factors and subfactors, the contracting officer should consider the impact the inclusion of this factor will have on the resulting contract and weight it accordingly.

PGI 215.371 Only one offer.

PGI 215.371-2 Promote competition.

(a) For competitive solicitations in which more than one potential offeror expressed an interest in an acquisition, but only one offer was ultimately received, the Contracting Officer shall—

(1) Seek feedback (e.g., issue an RFI) after award from potential offerors expected to submit an offer; and

(2) Document any feedback received in the contract file.

(b) Agencies shall use any feedback received when considering how to overcome barriers to competition for future requirements.

PGI 215.4 - CONTRACT PRICING

PGI 215.402 Pricing policy.

(1) Contracting officers must purchase supplies and services from responsible sources at fair and reasonable prices. The Truthful Cost and Pricing statute (10 U.S.C. chapter 271 and 41 U.S.C. chapter 35) requires offerors to submit certified cost or pricing data if a procurement exceeds the Truthful Cost and Pricing threshold and none of the exceptions to certified cost or pricing data requirements applies. Under the Truthful Cost and Pricing statute, the contracting officer obtains accurate, complete, and current data from offerors to establish a fair and reasonable price (see FAR 15.403). The Truthful Cost and Pricing statute also allows for a price adjustment remedy if it is later found that a contractor did not provide accurate, complete, and current data.

(2) When certified cost or pricing data are not required, and the contracting officer does not have sufficient data to determine price reasonableness, FAR 15.402(a)(2) requires the offeror to provide whatever data the contracting officer needs in order to determine fair and reasonable prices.

(3) Obtaining sufficient data from the offeror is particularly critical in situations where an item is determined to be a commercial product or service in accordance with FAR 2.101and the contract is being awarded on a sole source basis. This includes commercial sales data of products or services sold in similar quantities and, if such data is insufficient, cost data to support the proposed price.

(4) See PGI 215.404-1 and the Department of Defense Guidebook for Acquiring Commercial Items, Part B: Pricing Commercial Items , for more detailed procedures and guidance on obtaining data needed to determine fair and reasonable prices.

PGI 215.403 Obtaining certified cost or pricing data.

PGI 215.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. chapter 271 and 41U.S.C. chapter 35).

(b) *Exceptions to certified cost or pricing data requirements*. Even if an exception to certified cost or pricing data applies, the contracting officer is still required to determine price reasonableness. In order to make this determination, the contracting officer may require data other than certified cost or pricing data, including data related to prices and cost data that would otherwise be defined as certified cost or pricing data if certified.

(c)(3) *Commercial products or commercial services* . See the Department of Defense Guidebook for Acquiring Commercial Items, Part B: Pricing Commercial Items , for detailed guidance about techniques and approaches to pricing commercial products and commercial services.

(4) *Waivers*.

(A) *Exceptional case TINA waiver*.

(*1*) In determining that an exceptional case TINA waiver is appropriate, the head of the contracting activity (HCA) must exercise care to ensure that the supplies or services could not be obtained without the waiver and that the determination is clearly documented. See DPAP March 23, 2007, policy memorandum . The intent is not to relieve entities that normally perform Government contracts subject to TINA from an obligation to certify that cost or pricing data are accurate, complete, and current. Instead, waivers must be used judiciously, in situations where the Government could not otherwise obtain a needed item without a waiver. A prime example would be when a particular company offers an item that is essential to DoD's mission but is not available from other sources, and the company refuses to submit certified cost or pricing data. In such cases, a waiver may be appropriate. However, the procuring agency should, in conjunction with the waiver, develop a strategy for procuring the item in the future that will not require such a waiver (e.g., develop a second source, develop an alternative product that satisfies the department's needs, or have DoD produce the item).

(*2*) *Senior procurement executive coordination*. An exceptional case TINA waiver that exceeds $100 million shall be coordinated with the senior procurement executive prior to granting the waiver.

(*3*) *Waiver for part of a proposal*. The requirement for submission of certified cost or pricing data may be waived for part of an offeror's proposed price when it is possible to clearly identify that part of the offeror's cost proposal to which the waiver applies as separate and distinct from the balance of the proposal. In granting a partial waiver, in addition to complying with the requirements in DFARS 215.403-1(c)(4), the (HCA) must address why it is in the Government's best interests to grant a partial waiver, given that the offeror has no objection to certifying to the balance of its cost proposal.

(*4*) *Waivers for unpriced supplies or services*. Because there is no price, unpriced supplies or services cannot be subject to cost or pricing data certification requirements. The Government cannot agree in advance to waive certification requirements for unpriced supplies or services, and may only consider a waiver at such time as an offeror proposes a price that would otherwise be subject to certification requirements.

(B) The annual report of waiver of TINA requirements shall include the following:

Title: Waiver of TINA Requirements

(1) Contract number, including modification number, if applicable, and program name.

(2) Contractor name.

(3) Contracting activity.

(4) Total dollar amount waived.

(5) Brief description of why the item(s) could not be obtained without a waiver. See DPAP March 23, 2007, policy memorandum.

(6) Brief description of the specific steps taken to ensure price reasonableness.

(7) Brief description of the demonstrated benefits of granting the waiver.

PGI 215.403-3 Requiring data other than certified cost or pricing data.

To the extent that certified cost or pricing data are not required by FAR 15.403-4 and there is no other means for the contracting officer to determine that prices are fair and reasonable, the offeror is required to submit "data other than certified cost or pricing data" (see definition at FAR 2.101). In accordance with FAR 15.403-3(a), the offeror must provide appropriate data on the prices at which the same or similar items have previously been sold, adequate for determining the reasonableness of the price. The following clarifies these requirements:

(1) *Data other than certified cost or pricing data*. When certified cost or pricing data are not required, the contracting officer must obtain whatever data is necessary in order to determine the reasonableness of the price. The FAR defines this as "data other than certified cost or pricing data." When TINA does not apply and there is no other means of determining that prices are fair and reasonable, the contracting officer must obtain appropriate data on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price. Sales data must be comparable to the quantities, capabilities, specifications, etc., of the product or service proposed. Sufficient steps must be taken to verify the integrity of the sales data, to include assistance from the Defense Contract Management Agency, the Defense Contract Audit Agency, and/or other agencies if required. See PGI 215.404-1 (DFARS/PGI view) for more detailed procedures for obtaining data from offerors to determine price reasonableness.

(2) Previously been sold. Contracting officers shall request offerors to provide data related to prior sales (or "offered for sale") in support of price reasonableness determinations.

(3) Adequacy of sales data for pricing. The contracting officer must determine if the prior sales data is sufficient for determining that prices are fair and reasonable. If the sales data is not sufficient, additional data shall be obtained, including cost data if necessary. See PGI 215.404-1 (DFARS/PGI view) for more detailed procedures for obtaining whatever data is needed to determine fair and reasonable prices.

(4) *Analysis of historical prices paid by the Government*.

(i) The contracting officer shall consider prices paid by the Government and commercial customers. The contracting officer shall not rely solely on a prior price paid by the Government, without further

analysis (see FAR 15.404).

(A) The contracting officer shall verify and document that sufficient analysis was performed to determine that the prior price was fair and reasonable. Sometimes, due to exigent situations, supplies or services are purchased even though an adequate price or cost analysis could not be performed. The problem is exacerbated when other contracting officers assume these prices were adequately analyzed and determined to be fair and reasonable.

(B) The contracting officer also shall investigate and document the following considerations:

(*1*) verify that the quantities were similar for pricing purposes, making adjustments as necessary to ensure comparability with the current quantity requirement;

(*2*) Consider whether the historical purchases were recent enough to be relevant for the purpose of establishing price reasonableness of the current acquisition, and escalate or deflate the historical prices as appropriate to facilitate comparison to the current proposed price; and

(*3*) Validate that the terms and conditions associated with the historical purchases were comparable to the current terms and conditions, or adjust the historical prices in a manner that accounts for the materially differing terms and conditions .

(ii) Not verifying that a previous analysis was performed, or the consistencies in quantities, has been a recurring issue on sole source commercial products and commercial services reported by oversight organizations. Sole source commercial products and commercial services require extra attention to verify that previous prices paid on Government contracts were sufficiently analyzed and determined to be fair and reasonable.

(iii) At a minimum, a contracting officer reviewing price history shall discuss the basis of previous prices paid with the contracting organization that previously bought the item. These discussions shall be documented in the contract file.

(5) *Canadian Commercial Corporation.* All contracts with the Canadian Commercial Corporation (CCC) are placed in accordance with the practices, policies and procedures of the Government of Canada covering procurement for defense purposes (See PGI 225.870). Contracting Officers may rely on the confirmation and endorsement of the offer from the Canadian Commercial Corporation at 225.870-3(a) as an endorsement of the cost/price as no more than would be charged to the Canadian government.

(i) When 252.215-7003 or 252.215-7004 are included in a solicitation with the Canadian Commercial Corporation, the data required by paragraph (b)(i) and (ii), in concert with the confirmation and endorsement of the offer, is intended to meet the requirements of FAR 15.404-1 for documentation of fair and reasonable pricing.

(ii) Use of 252.215-7003 or 252.215-7004 in sole source acquisitions not meeting the threshold at 215.408(2)(i)(A) or (ii)(A)*(1)* or competitive acquisitions at any dollar value shall be supported by a determination and finding justifying the anticipated need for data other than certified cost or pricing data to determine a fair and reasonable price.

(iii) When the contracting officer anticipates the need for additional data to establish a fair and reasonable price, specific data should be requested at time of solicitation as detailed in DFARS 252.215-7003.

(iv) Examples of clause use:

Scenario	Requirement
Sole source to CCC, fixed price, with estimated value of $600 million.	Include provision and clause in accordance with 215.408(2)(i)(A)*(2)*and (ii)(A(*1*)*(ii)*, respectively, because estimated value exceeds $500 million.
Sole source to CCC, cost reimbursement, with estimated value of $800,000.	Include provision and clause in accordance with 215.408(2)(i)(A)*(1)*and (ii)(A(*1*)*(i)*, respectively, because estimated value exceeds $750,000.
Sole source to CCC, cost-reimbursement, with estimated value of $500,000.	Do not include provision and clause, unless D&F is approved in accordance with 215.408(2)(i)(B)and (ii)(A)(*2*)), respectively, because estimated value does not exceed $750.000.
Sole source to CCC, fixed price, with estimated value of $800,000	Do not include provision and clause, unless D&F is approved in accordance with 215.408(2)(i)(B)and (ii)(A)(*2*)), respectively, because estimated value does not exceed $500 million.
Modifications to contracts that include the clause 252.215-7004.	If 252.215-7004 is included in the contract, then data are required for modifications valued above the simplified acquisition threshold, or a higher threshold specified in the solicitation by the contracting officer, in accordance with 252.215-7004(b).

(6) *Reporting requirements*.

(i) All contracting officers are required to document, collect, and provide a report in the standard digital format (see paragraph (ii) of this section to the (HCA) of all denials of contracting officer requests to offerors/contractors for data other than certified cost or pricing data that are not resolved through the elevation process at PGI 215.404-1 (a)(i)(A) and, therefore, require a determination by the (HCA) in accordance with FAR 15.403-3(a)(4).

(ii) The (HCA) shall consolidate and validate this information for all impacted contracts and modifications regardless of dollar value and submit the information in the standard digital format available at https://www.acq.osd.mil/dpap/dars/pgi/docs/Denials_Template_1-24-21. A completed report or note of no findings is required to the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (DPCAP). Reports are due to DPCAP 30 days after the end of each quarterly reporting period. Transmit reports electronically to DPCAP at osd.pentagon.ousd-a-s.mbx.dpc-pcf@mail.mil.

(7) *Delegation.* The HCA may delegate, no lower than one level above the contracting officer, the authority to determine whether it is in the best interest of the Government to issue an award in accordance with DFARS 215.403-3(a)(4). This designee may be the individual responsible for approval of the prenegotiation objective (see DFARS 215.406-1), unless that individual is the contacting officer.

PGI 215.404 Proposal analysis.

PGI 215.404-1 Proposal analysis techniques.

(a) *General*.

(i) The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable.

(A) When the contracting officer needs data to determine price reasonableness and the offeror will not furnish that data, use the following sequence of steps to resolve the issue:

(*i*) The contracting officer should make it clear what data is required and why it is needed to determine fair and reasonable prices, and should be flexible in requesting data in existing formats with appropriate explanations from the offeror.

(*ii*) If the offeror refuses to provide the data, the contracting officer should elevate the issue within the contracting activity.

(*iii*) Contracting activity management shall, with support from the contracting officer, discuss the issue with appropriate levels of the offeror's management.

(*iv*) If the offeror continues to refuse to provide the data, contracting activity management shall elevate the issue to the head of the contracting activity for a decision in accordance with FAR 15.403-3(a)(4).

(*v*) The contracting officer shall document the contract file to describe—

(*a*) The data requested and the contracting officer's need for that data;

(*b*) Why there is currently no other alternative but to procure the item from this particular source; and

(*c*) A written plan for avoiding this situation in the future (e.g., develop a second source by…; bring the procurement in house to the Government by…).

(*vi*) Consistent with the requirements at FAR 15.304 and 42.1502 and the DoD Guide to Collection and Use of Past Performance Information, Version 3, dated May 2003, the contracting officer shall, unless exempted by the HCA, provide input into the past performance system, noting the offeror's refusal to provide the requested information.

(B) In some cases, supplies or services that are not subject to TINA may require a cost analysis (see paragraph (c) of this section). This will occur when a price analysis is not sufficient for determining prices to be fair and reasonable. In such cases, the contracting officer should consider the need for a Defense Contract Audit Agency audit of the cost data.

(C) Particular attention should be paid to sole source commercial products or commercial services. While the order of preference at FAR 15.402 must be followed, if the contracting officer cannot determine price reasonableness without obtaining data other than cost or pricing data from the offeror, at a minimum, the contracting officer must obtain appropriate data on the prices at which the same or similar items have been sold previously (often previous sales data was the basis of the commercial item determination and must be requested during price analysis of the data provided by the offeror). If previous sales data is not sufficient to determine price reasonableness, the

contracting officer must obtain “data other than certified cost or pricing data” and, if necessary, perform a cost analysis.

(D) Analysis of termination proposals, including termination of any contract scope, should not rely solely on earned value management budgets or estimates for estimating the costs of all work deleted, or the cost of deleted work already performed (reference FAR Subpart 15.4, Table 15-2—Instructions for Submitting Cost/Price Proposals When Certified Cost or Pricing Data are Required, columns (2) and (3) of section III.B., Change Orders, Modifications, and Claims).

(b) *Price analysis* .

(i) See the Department of Defense Guidebook for Acquiring Commercial Items, Part B: Pricing Commercial Items, for detailed guidance about techniques and approaches to pricing commercial products and commercial services.

(v) Contracting officers must obtain and document sufficient data to confirm that previous prices paid by the Government were based on a thorough price and/or cost analysis. For example, it would not be sufficient to use price(s) from a database paid by another contracting officer without understanding the type of analysis that was performed to determine the reasonableness of the price(s), and without verifying that the quantities were similar for pricing purposes. This does not necessarily need to be another analysis, but there should be coordination with the other office that acknowledges an analysis was performed previously.

(vii) See the Department of Defense Guidebook for Acquiring Commercial Items, Part B: Pricing Commercial Items, for information about how to obtain advisory assistance from the DoD cadre of experts in the Defense Contract Management Agency (DCMA) Commercial Item Group (CIG) via email at dcma.boston-ma.eastern-rc.mbx.Commercial@mail.mil or at http://www.dcma.mil/commercial-item-group/.

(c) *Cost analysis*.

(i) When the contracting officer cannot obtain sufficient data to perform a price analysis in accordance with the pricing steps in FAR 15.404-1(b), a cost analysis is required.

(ii) When a solicitation is not subject to TINA and a cost analysis is required, the contracting officer must clearly communicate to the offeror the cost data that will be needed to determine if the proposed price is fair and reasonable.

(iii) To the extent possible, when cost or pricing data are not required to be submitted in accordance with Table 15-2 of FAR 15.408, the contracting officer should accept the cost data in a format consistent with the offeror’s records.

(iv) The contracting officer must always consider the need for field pricing support from the Defense Contract Management Agency, the Defense Contract Audit Agency, and/or other agencies.

(e) *Technical analysis*. Requesting technical assistance is particularly important when evaluating pricing related to items that are “similar to” items being purchased or commercial products or commercial services that are “of a type” or require “minor modifications.” Technical analysis can assist in pricing these types of items by identifying any differences between the item being acquired and the “similar to” item. In particular, the technical review can assist in evaluating the changes that are required to get from the “similar to” item, to the item being solicited, so the contracting officer can determine sufficient price/cost analysis techniques when evaluating that the price for the item being solicited is fair and reasonable. See the Department of Defense Guidebook for Acquiring

Commercial Items, Part B: Pricing Commercial Items, for information about how to obtain advisory assistance from the DoD cadre of experts in the (DCMA) (CIG) via email at dcma.boston-ma.eastern-rc.mbx.Commercial@mail.mil or at http://www.dcma.mil/commercial-item-group/.

(h) *Review and justification of pass-through contracts*.

(2)(A) This requirement applies to acquisitions that include the clause at FAR 52.215-23, Limitations on Pass-Through Charges, as prescribed at FAR 15.408(n)(2)(i)(B). When considering alternative approaches or making the determination that the contracting approach selected is in the best interest of the Government as required by FAR 15.404-1(h)(2), consider the following elements:

(*1*) The requirement, proposed prime contractor, and overall proposed contract value.

(*2*) The information provided in response to the provision at FAR 52.215-22, Limitations on Pass-Through Charges—Identification of Subcontract Effort, regarding the subcontracts, and the estimated value of the proposed subcontracts.

(*3*) The availability of alternative existing contracts that would allow direct access to the subcontractor, such as existing indefinite delivery/indefinite quantity contracts, Federal Supply Schedule contracts, or Governmentwide agency contracts. Perform market research as appropriate.

(*4*) Potential cost savings of directly contracting with the subcontractor.

(*5*) Feasibility of competition for the subcontracted effort or justification for single source procurement.

(*6*) Potential impacts to the contracting and program schedule for implementing a direct contract with the subcontractors or conducting a competition for the subcontracted effort.

(*7*) Changes in performance risk as result of eliminating prime contractor oversight and substituting direct government oversight. Risks may include loss of prime contractor knowledge of integration and program requirements, availability of government contracting and contract administration personnel, reduced system or program accountability of the prime contractor who is no longer responsible for the entire effort, impact on warranties.

(*8*) Subcontractor past performance and experience directly managing programs of this size.

(B) DoD components shall include reviews of compliance in routine procurement management reviews or other inspections.

PGI 215.404-2 Data to support proposal analysis.

(a) *Field pricing assistance.* See PGI 215.404-2(c) regarding when to request audit assistance.

(i) The contracting officer should consider requesting field pricing assistance for—

(A) Fixed-price proposals exceeding the certified cost or pricing data threshold;

(B) Cost-type proposals exceeding the certified cost or pricing data threshold from offerors with material weaknesses; or

(C) Cost-type proposals exceeding $10 million from offerors without material weaknesses.

(ii) The contracting officer should not request field pricing support for proposed contracts or modifications in an amount less than that specified in paragraph (a)(i) of this subsection. An exception may be made when a reasonable pricing result cannot be established because of—

(A) A lack of knowledge of the particular offeror; or

(B) Sensitive conditions (e.g., a change in, or unusual problems with, an offeror’s internal systems).

(c) *Audit assistance for prime contracts or subcontracts.*

(i) The contracting officer should consider requesting audit assistance from DCAA for—

(A) Fixed-price proposals exceeding $10 million;

(B) Cost-type proposals exceeding $100 million.

(ii) The contracting officer should not request DCAA audit assistance for proposed contracts or modifications in an amount less than that specified in paragraph (c)(i) of this subsection unless there are exceptional circumstances explained in the request for audit. (See PGI 215.404-2 (a)(i) for requesting field pricing assistance without a DCAA audit.)

(iii) If, in the opinion of the contracting officer or auditor, the review of a prime contractor's proposal requires further review of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor), the contracting officer should inform the administrative contracting officer (ACO) having cognizance of the prime contractor before the review is initiated.

(iv) Notify the appropriate contract administration activities when extensive, special, or expedited field pricing assistance will be needed to review and evaluate subcontractors' proposals under a major weapon system acquisition. If audit reports are received on contracting actions that are subsequently cancelled, notify the cognizant auditor in writing.

(v) Requests for audit assistance for subcontracts should use the same criteria as established in paragraphs (c)(i) and (c)(ii) of this subsection.

PGI 215.404-3 Subcontract pricing considerations.

(a) The contracting officer should consider the need for field pricing analysis and evaluation of lower-tier subcontractor proposals, and assistance to prime contractors when they are being denied access to lower-tier subcontractor records.

(i) When obtaining field pricing assistance on a prime contractor’s proposal, the contracting officer should request audit or field pricing assistance to analyze and evaluate the proposal of a subcontractor at any tier (notwithstanding availability of data or analyses performed by the prime contractor) if the contracting officer believes that such assistance is necessary to ensure the reasonableness of the total proposed price. Such assistance may be appropriate when, for example—

(A) There is a business relationship between the contractor and the subcontractor not conducive to independence and objectivity;

(B) The contractor is a sole source supplier and the subcontract costs represent a substantial part of the contract cost;

(C) The contractor has been denied access to the subcontractor's records;

(D) The contracting officer determines that, because of factors such as the size of the proposed subcontract price, audit or field pricing assistance for a subcontract at any tier is critical to a fully detailed analysis of the prime contractor's proposal;

(E) The contractor or higher-tier subcontractor has been cited for having significant estimating system deficiencies in the area of subcontract pricing, especially the failure to perform adequate cost analyses of proposed subcontract costs or to perform subcontract analyses prior to negotiation of the prime contract with the Government; or

(F) A lower-tier subcontractor has been cited as having significant estimating system deficiencies.

(ii) It may be appropriate for the contracting officer or the ACO to provide assistance to a contractor or subcontractor at any tier, when the contractor or higher-tier subcontractor has been denied access to a subcontractor's records in carrying out the responsibilities at FAR 15.404-3 to conduct price or cost analysis to determine the reasonableness of proposed subcontract prices. Under these circumstances, the contracting officer or the ACO should consider whether providing audit or field pricing assistance will serve a valid Government interest.

(iii) When DoD performs the subcontract analysis, DoD shall furnish to the prime contractor or higher-tier subcontractor, with the consent of the subcontractor reviewed, a summary of the analysis performed in determining any unacceptable costs included in the subcontract proposal. If the subcontractor withholds consent, DoD shall furnish a range of unacceptable costs for each element in such a way as to prevent disclosure of subcontractor proprietary data.

(iv) Price redeterminable or fixed-price incentive contracts may include subcontracts placed on the same basis. When the contracting officer wants to reprice the prime contract even though the contractor has not yet established final prices for the subcontracts, the contracting officer may negotiate a firm contract price—

(A) If certified cost or pricing data on the subcontracts show the amounts to be reasonable and realistic; or

(B) If certified cost or pricing data on the subcontracts are too indefinite to determine whether the amounts are reasonable and realistic, but—

(*1*) Circumstances require prompt negotiation; and

(*2*) A statement substantially as follows is included in the repricing modification of the prime contract:

> As soon as the Contractor establishes firm prices for each subcontract listed below, the Contractor shall submit (in the format and with the level of detail specified by the Contracting Officer) to the Contracting Officer the subcontractor's cost incurred in performing the subcontract and the final subcontract price. The Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect the final subcontract price.

(v) If the selection of the subcontractor is based on a trade-off among cost or price and other non-cost factors rather than lowest price, the analysis supporting subcontractor selection should include a discussion of the factors considered in the selection (also see FAR 15.101 and 15.304 and DFARS

215.304). If the contractor's analysis is not adequate, return it for correction of deficiencies.

(vi) The contracting officer shall make every effort to ensure that fees negotiated by contractors for cost-plus-fixed-fee subcontracts do not exceed the fee limitations in FAR 15.404-4(c)(4).

PGI 215.404-70 DD Form 1547, Record of Weighted Guidelines Method Application.

(1) The DD Form 1547—

(i) Provides a vehicle for performing the analysis necessary to develop a profit objective; and

(ii) Provides a format for summarizing profit amounts subsequently negotiated as part of the contract price.

(2) The contracting officer shall—

(i) Use and prepare a DD Form 1547 whenever a structured approach to profit analysis is required by DFARS 215.404-4(b) (see DFARS 215.404-71, 215.404-72, and 215.404-73 for guidance on using the structured approaches). Administrative instructions for completing the form are in PGI 253.215-70 .

(ii) Ensure that the DD Form 1547 is accurately completed. The contracting officer is responsible for the correction of any errors detected by the management system auditing process.

PGI 215.404-71 Weighted guidelines method.

PGI 215.404-71-4 Facilities capital employed.

(c) *Use of DD Form 1861 - Field pricing support.*

(i) The contracting officer may ask the ACO to complete the forms as part of field pricing support.

(ii) When the Weighted Guidelines Method is used, completion of the DD Form 1861 requires data not included on the Form CASB-CMF, i.e., distribution percentages of land, building, and equipment for the business unit performing the contract. Choose the most practical method for obtaining this data, for example—

(A) Contract administration offices could obtain the data through the process used to establish factors for facilities capital cost of money or could establish advance agreements on distribution percentages for inclusion in field pricing reports;

(B) The corporate ACO could obtain distribution percentages; or

(C) The contracting officer could request the data through a solicitation provision.

PGI 215.406 RESERVED

PGI 215.406-1 Prenegotiation objectives.

(a) Also consider—

(i) Data resulting from application of work measurement systems in developing prenegotiation objectives; and

(ii) Field pricing assistance personnel participation in planned prenegotiation and negotiation activities.

(b) Prenegotiation objectives, including objectives related to disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports, shall be documented and reviewed in accordance with departmental procedures.

(i) *Significant Disagreements.* (A) Contracting officers and contract auditors have complementary roles in the contracting process and are expected to collaborate to determine fair and reasonable contract values, in accordance with Director, Defense Procurement and Acquisition Policy memorandum dated December 4, 2009, Subject: Resolving Contract Audit Recommendations. When a significant disagreement arises on questioned costs, the contracting officer and the auditor shall discuss the basis of the disagreement. The contracting officer shall document that discussion and their disagreement in a written communication to the auditor. The contracting officer shall also document the disagreement in the prenegotiation objective (or pre-business clearance). The contracting officer may then proceed with negotiations when the prenegotiation objectives are approved.

(B) A significant disagreement is defined as the contracting officer planning to sustain less than 75-percent of the total recommended questioned costs in a Defense Contract Audit Agency (DCAA) audit report of a contractor proposal for an initial contract or a contract modification with a value equal to or greater than $10 million. It does not apply to costs that DCAA has categorized as unsupported or unresolved in its audit report.

(ii) *Adjudication Procedures.* DCAA has 3 days to elevate the issues within the contracting officer's activity after receipt of the contracting officer's written communication confirming the disagreement. Furthermore, DCAA may appeal the significant issues up the chain of command as established in each component's "Resolving Contract Audit Recommendations" policy. If issues remain, the Director, DCAA may escalate from the Defense component's head of contracting activity or senior procurement executive, to the Principal Director, DPCAP. If the DCAA Director believes that the Principal Director, DPCAP has not adequately addressed the matter, the disagreement may finally be elevated to the Under Secretary of Defense for Acquisition and Sustainment, , and the Comptroller.

(iii) Notwithstanding the above, the Director, DCAA, may always raise audit issues to the Principal Director, DPCAP.

(c) *Cost estimates for program baselines and contract negotiations for major defense acquisition programs.*

(i) For the purpose of contract negotiations and obligation of funds under this paragraph, the Government shall prepare cost analyses and targets based on the Government's reasonable expectation of successful contractor performance in accordance with the contractor's proposal and previous experience.

(ii) Cost estimates developed for baseline descriptions and other program purposes by the Director of Cost Assessment and Program Evaluation pursuant to its functions, do not meet the criteria described in paragraph (c)(i) of this subsection and, thus, shall not be used for purposes of developing the Government's contract negotiation position or for the obligation of funds. However, the Government may consider the data used to develop such estimates when developing the cost analyses and targets described in paragraph (c)(i) of this subsection.

(d) See Frequently asked 'Questions and Answers" at http://www.acq.osd.mil/dpap/cpic/cp/sec_808_NDAA.html relating to the limitations placed on the Department of Defense for aggregate annual amounts available for contracted services in accordance with section 808 of the National Defense Authorization Act for Fiscal year 2012, P.L. 112-81 and DFARS Class Deviation 2012-O0012, Limitation on Amounts Available for Contracted Services, dated July 31, 2012.

PGI 215.406-2 Certificate of current cost or pricing data.

(c)(i) Prior to the start of negotiations, contracting officers should notify offerors and contractors that—

(A) A Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2, shall be submitted as soon as practicable after agreement on price (preferably within 5 days after price agreement), but before contract award or execution of a modification (except for unpriced actions such as letter contracts).

(B) A Certificate of Current Cost or Pricing Data that deviates from the language specified in FAR 15.406-2, or has been amended to include certification of data submitted after the date of price agreement, will not be accepted.

(ii) If any data is submitted after the date of price agreement, contracting officers shall—

(A) Notify offerors in writing that such data will not be reviewed until after contract award and will be dispositioned in accordance with FAR 15.407-1 and FAR clause 52.215-10 or 52.215-11, as applicable; or

(B) Consider the previous price agreement null and void, and prior to award—

(*1*) Reopen negotiations to assess the impact of the data submitted after the date of price agreement ("sweep data");

(*2*) Reestablish price agreement based on cost or pricing data that is accurate, complete, and current as of the date of the revised agreement on price; and

(*3*) Request a new Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2, to include the sweep data and any new or revised data submitted after the previous certification.

(iii) If a contractor persistently submits untimely "sweep" data or fails to timely submit cost or pricing data or the certification that the data are accurate, complete, and current as of the data of price agreement, the contracting officer should refer the matter to the Defense Contract Audit Agency (DCAA) via the Administrative Contracting Officer, Divisional Administrative Contracting Officer, or Corporate Administrative Contracting Officer, as appropriate, for consideration in DCAA's review of the adequacy of the contractor's estimating system.

PGI 215.406-3 Documenting the negotiation.

(a)(7) Include the principal factors related to the disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports.

(10) The documentation—

(A) Shall address significant deviations from the prenegotiation profit objective;

(B) Should include the DD Form 1547, Record of Weighted Guidelines Application (see DFARS 215.404-70), if used, with supporting rationale;

(C) Shall address the rationale for not using the weighted guidelines method when its use would otherwise be required by DFARS 215.404-70; and

(D) Shall be marked “FOR OFFICIAL USE ONLY”, as appropriate and in accordance with DoD Manual 5200.01, Volume 4.

(11) The contracting officer is responsible to ensure the approved prenegotiation and post negotiation noncompetitive business clearance documents (e.g., price negotiation memoranda) are uploaded into the Contract Business Analysis Repository (CBAR) at https://piee.eb.mil/ for the purpose of sharing negotiation experience with other contracting officers preparing to negotiate. This includes both noncompetitive actions using the procedures at FAR part 12, Acquisition of Commercial Products and Commercial Services, as well as noncompetitive actions using the procedures at FAR part 15, Contracting by Negotiation, that are valued in excess of $25 million and awarded on or after June 24, 2013 (and for all definitized or awarded actions over $100 million, which occurred on or after October 1, 2012).

(A) Business clearance documents uploaded to CBAR shall be marked "FOR OFFICIAL USE ONLY (FOUO)" at the top and bottom of the face or cover page, and on the bottom of each page containing FOUO, including the back page or cover.

(B) The business clearance documents uploaded to CBAR shall be signed by the contracting officer and shall include all other signatures required by local policy/procedure.

(C) The documentation shall be uploaded to CBAR no later than 30 days after award of the contract action associated with the negotiation and shall include both the prenegotiation objectives required by FAR 15.406-1 and PGI 215.406-1 , and the record of negotiations (i.e. the Price Negotiation Memoranda required by FAR 15.406-3 and PGI 215.406-3). The contracting officer shall complete the “description of acquisition” field with keywords and searchable terms to identify the products and services acquired. Additionally, the contracting officer shall complete the “comments” field of the CBAR record to summarize unique features and aspects of the negotiation in order to prompt other contracting teams to inquire further to learn from their peers’ prior experience.

(D) If an initial indefinite-delivery indefinite-quantity (IDIQ) task or delivery order contract contemplates issuance of task or delivery orders that will invoke negotiated rates or values from the basic contract, then the business clearance record for the basic IDIQ contract shall be uploaded if the estimated value of the contract (e.g. ceiling price) exceeds the prescribed dollar threshold. To the extent individual task or delivery orders entail a negotiation (i.e. did not simply incorporate prices established at the basic contract level), a business clearance record for the individual task or delivery orders that exceed the prescribed dollar thresholds shall be uploaded to CBAR.

(E) For additional information about obtaining access to and training for the CBAR database, see the Director, Defense Contract Management Agency memorandum, dated April 2, 2013. Click here.

PGI 215.407 RESERVED

PGI 215.407-2 Make-or-buy programs.

(d) *Solicitation Requirements*. Consider the following factors when deciding whether to request a make-or-buy plan—

(1) The prime contractor's assumption of risk;

(2) The prime contractor's plant capacity;

(3) The prime contractor's degree of vertical integration;

(4) The prime contractor's internal resources;

(5) The anticipated contract type;

(6) The complexity, uniqueness, or configuration maturity associated with the end item or its subsystems;

(7) Critical path items;

(8) The impact on contract overhead rates with respect to maintaining work in-house;

(9) The industrial base that could potentially satisfy some system requirements, based on market survey;

(10) Proprietary data and/or trade secrets;

(11) Potential product quality concerns associated with items that would be subject to subcontracting;

(12) Integrated master schedule timelines and their tolerances for variation;

(13) The availability and experience of program office personnel to credibly analyze and evaluate a submission; and

(14) Socioeconomic considerations, e.g. small business or labor surplus area concerns.

(f) *Evaluation, negotiation, and Agreement*. When a make-or-buy plan is required, listed below are factors that may be considered when evaluating a submission—

(1) Prime contractor past performance, especially with respect to subcontract management;

(2) Prime contractor make-or-buy history;

(3) Adequacy of contractor's existing make-or-buy processes, including cost and technical risk considerations;

(4) Component availability through existing sources, e.g. available inventory, or other Government contracts;

(5) Prime contractor plant capacity;

(6) The adequacy of the prime contractor's technical, financial and personnel capabilities; and

(7) Prime contractor justification that is provided with respect to items it does not normally make.

PGI 215.407-4 Should-cost review.

(b) *Program should-cost review*.

(2) DoD contracting activities should consider performing a program should-cost review before award of a definitive contract for a major system as defined by DoDI 5000.2. See DoDI 5000.2 regarding industry participation.

(c) *Overhead should-cost review*.

(1) Contact the Defense Contract Management Agency (DCMA) (http://www.dcma.mil/) for questions on overhead should-cost analysis.

(2)(A) DCMA or the military department responsible for performing contract administration functions (e.g., Navy SUPSHIP) should consider, based on risk assessment, performing an overhead should-cost review of a contractor business unit (as defined in FAR 2.101) when all of the following conditions exist:

(*1*) Projected annual sales to DoD exceed $1 billion;

(*2*) Projected DoD versus total business exceeds 30 percent;

(*3*) Level of sole-source DoD contracts is high;

(*4*) Significant volume of proposal activity is anticipated;

(*5*) Production or development of a major weapon system or program is anticipated; and

(*6*) Contractor cost control/reduction initiatives appear inadequate.

(B) The head of the contracting activity may request an overhead should-cost review for a business unit that does not meet the criteria in paragraph (c)(2)(A) of this subsection.

(C) Overhead should-cost reviews are labor intensive. These reviews generally involve participation by the contracting, contract administration, and contract audit elements. The extent of availability of military department, contract administration, and contract audit resources to support DCMA-led teams should be considered when determining whether a review will be conducted. Overhead should-cost reviews generally should not be conducted at a contractor business segment more frequently than every 3 years.

PGI 215.407-5 Estimating systems.

PGI 215.407-5-70 Disclosure, maintenance, and review requirements.

(e) *Disposition of findings*.

(2) *Initial determination*.

(ii)(A) Within 30 days of receiving the report, if the contracting officer makes a determination that there is a material weakness, the contracting officer should provide an initial determination of material weaknesses and a copy of the report to the contractor and require the contractor to submit a written response.

(C) *Evaluation of contractor's response*. Within 30 days of receiving the contractor’s response, the contracting officer, in consultation with the auditor or cognizant functional specialist, should evaluate the contractor’s response and make a final determination.

(3) *Final* d *etermination.*

(ii)(A) *Monitoring contractor's corrective action*. The auditor and the contracting officer shall monitor the contractor's progress in correcting material weaknesses and deficiencies. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the weaknesses anddeficiencies. Actions the contracting officer may take include: withdraw or withhold approval of the system; bringing the issue to the attention of higher level management; reducing or suspending progress payments (see FAR 32.503-6); recommending non-award of potential contracts, as applicable; and for material weaknesses, implementing or increasing the withholding in accordance with 252.242-7005, Contractor Business Systems.

(B) *Correction of* material weaknesses.

(*1*) When the contractor notifies the contracting officer that the contractor has corrected the material weaknesses, the contracting officer shall request that the auditor review the correction to determine if the weaknesses anddeficiencies have been resolved.

(*2*) The contracting officer shall determine if the contractor has corrected the weaknesses and deficiencies.

(*3*) If the contracting officer determines the contractor has corrected the weaknesses and deficiencies, send the contracting officer's notification to the auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor, as applicable.

PGI 215.470 Estimated data prices.

(b)(i) The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the

following reasons—

(A) Differences in business practices in competitive situations;

(B) Differences in accounting systems among offerors;

(C) Use of factors or rates on some portions of the data;

(D) Application of common effort to two or more data items; and

(E) Differences in data preparation methods among offerors.

(ii) Data price estimates should not be used for contract pricing purposes without further analysis.