

# DFARS Procedures, Guidance, and Information

## PGI 215—Contracting by Negotiation

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(Added December 1, 2006)

### PGI 215.4—CONTRACT PRICING

#### PGI 215.403 Obtaining cost or pricing data.

##### PGI 215.403-1 Prohibition on obtaining cost or pricing data.

(c)(3)(A) Report Content. The annual report of commercial item exceptions to Truth in Negotiations Act (TINA) requirements shall include the following:

Title: Commercial Item Exceptions to TINA Requirements

- (1) Contract number, including modification number, if applicable.
- (2) Contract line item numbers for excepted item(s).
- (3) Activity.
- (4) Total dollar amount of exception.
- (5) Brief explanation of the basis for the determination that the products or services to be purchased are commercial items.
- (6) Brief discussion on how the price was determined to be fair and reasonable, including an identification of specific steps taken to ensure price reasonableness.

(B) Pricing Actions Reported. The intent of this requirement is to report when a commercial item exception was determined. Therefore, the reporting of the commercial item exceptions are for pricing actions at the point the contracting officer makes a determination that the commercial item exception applies. For example—

Example 1: The contracting officer determined that a commercial item exception applies for an entire indefinite-delivery indefinite-quantity (IDIQ) contract and expected the subsequent orders to exceed \$15 million (based on the estimated maximum amount for the IDIQ or other supportable estimate of future orders). The organization would report this in accordance with DFARS 215.403-1(c)(3) for the period in which the IDIQ contract was awarded, and would include the total dollar amount of subsequent orders under the exception expected at the time of award.

Example 2: The contracting officer awards an IDIQ contract with no commercial item exceptions anticipated. The contracting officer later modifies the contract for an order that will meet commercial item exceptions, and the subsequent order(s) are

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expected to exceed \$15 million. Reporting (in the year the modification was issued) will include this IDIQ contract, the amount of this order, and any other expected future orders that will use the exception.

(i) For the above examples, after the contract is reported as receiving the exception with expected awards over \$15 million, there would be no further report, e.g., when a subsequent order under that contract exceeds \$15 million, because reporting for that contract was already accomplished.

(ii) When explaining price reasonableness in accordance with paragraph (c)(3)(A)(6) of this subsection, if pricing was accomplished when the IDIQ contract was awarded, also explain how price reasonableness was determined. In circumstances where pricing will take place on the order at a future date, explain how pricing techniques at FAR 15.404-1 will be used, including obtaining cost information, if that is the only way to determine price reasonableness.

### (4) *Waivers.*

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

(ii) Waivers for unpriced options. Because it has no price, an unpriced option cannot be subject to cost or pricing data certification requirements. The Government cannot agree in advance to waive certification requirements for an unpriced option, and can only consider a waiver at such time as the contractor 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.
- (2) Contract line item number(s).
- (3) Activity.

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(4) Total dollar amount waived.

(5) Brief discussion of rationale supporting the decision to waive TINA requirements.

(6) Brief discussion on how the price was determined to be fair and reasonable.

### **PGI 215.403-5 Instructions for submission of cost or pricing data or information other than cost or pricing data.**

Require the contractor to submit DD Form 1921 or 1921-1 with its pricing proposal when the solicitation requires contractor compliance with the Contractor Cost Data Reporting System (DoD 5000.4-M-1, Contractor Cost Data Reporting Manual).

### **PGI 215.404 Proposal analysis.**

#### **PGI 215.404-2 Information to support proposal analysis.**

(a) *Field pricing assistance.*

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

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

(B) Cost-type proposals exceeding the cost or pricing data threshold from offerors with significant estimating system deficiencies (see DFARS 215.407-5-70(a)(4) and (c)(2)(i)); or

(C) Cost-type proposals exceeding \$10 million from offerors without significant estimating system deficiencies.

(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.*

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(i) 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.

(ii) 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.

### **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.

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

(B) If 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

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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;

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

(iii) Serves as the principal source document for reporting profit statistics to DoD's management information system.

(2) The military departments are responsible for establishing policies and procedures for feeding the DoD-wide management information system on profit and fee statistics (see PGI 215.404-76).

(3) 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.

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(ii) When the Weighted Guidelines Method is used, completion of the DD Form 1861 requires information 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 information, for example—

(A) Contract administration offices could obtain the information 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 information through a solicitation provision.

### PGI 215.404-76 Reporting profit and fee statistics.

(1) Contracting officers in contracting offices that participate in the management information system for profit and fee statistics must send completed DD Forms 1547 on actions that exceed the cost or pricing data threshold, where the contracting officer used the weighted guidelines method, an alternate structured approach, or the modified weighted guidelines method, to their designated office within 30 days after contract award.

(2) Participating contracting offices and their designated offices are—

<u>Contracting Office</u>	<u>Designated Office</u>
ARMY	
All	*
NAVY	
All	Commander Fleet and Industrial Supply Center, Norfolk Washington Detachment, Code 402 Washington Navy Yard Washington, DC 20374-5000
AIR FORCE	
Air Force Materiel Command (all field offices)	*

\* Use the automated system, Profit Weighted Guidelines and Application at <https://www.wgl.wpafb.af.mil/wgl>, as required by your department.

(3) When the contracting officer delegates negotiation of a contract action that exceeds

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the cost or pricing data threshold to another agency (e.g., to an ACO), that agency must ensure that a copy of the DD Form 1547 is provided to the delegating office for reporting purposes within 30 days after negotiation of the contract action.

(4) Contracting offices outside the United States and its outlying areas are exempt from reporting.

(5) Designated offices send a quarterly (non-cumulative) report of DD Form 1547 data to—

Washington Headquarters Services  
Directorate for Information Operations and Reports (WHS/DIOR)  
1215 Jefferson Davis Highway  
Suite 1204  
Arlington, VA 22202-4302

(6) In preparing and sending the quarterly report, designated offices—

(i) Perform the necessary audits to ensure information accuracy;

(ii) Do not enter classified information;

(iii) Transmit the report using approved electronic means; and

(iv) Send the reports not later than the 30th day after the close of the quarterly reporting periods.

(7) These reporting requirements have been assigned Report Control Symbol DD-AT&L(Q)1751.

#### **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.



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### 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) Must 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; and

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

### 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.dcm.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

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(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) *Review procedures.* Cognizant audit and contract administration activities shall—

(1) Establish and manage regular programs for reviewing selected contractors' estimating systems.

(2) Conduct reviews as a team effort.

(i) The contract auditor will be the team leader.

(ii) The team leader will—

(A) Coordinate with the ACO to ensure that team membership includes qualified contract administration technical specialists.

(B) Advise the ACO and the contractor of significant findings during the conduct of the review and during the exit conference.

(C) Prepare a team report.

(1) The ACO or a representative should—

(i) Coordinate the contract administration activity's review;

(ii) Consolidate findings and recommendations; and

(iii) When appropriate, prepare a comprehensive written report for

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submission to the auditor.

(2) The contract auditor will attach the ACO's report to the team report.

(3) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(4) Conduct a review, every 3 years, of contractors subject to the disclosure requirements. The ACO and the auditor may lengthen or shorten the 3-year period based on their joint risk assessment of the contractor's past experience and current vulnerability.

(f) *Disposition of survey team findings.*

(1) Reporting of survey team findings. The auditor will document the findings and recommendations of the survey team in a report to the ACO. If there are significant estimating deficiencies, the auditor will recommend disapproval of all or portions of the estimating system.

(2) Initial notification to the contractor. The ACO will provide a copy of the team report to the contractor and, unless there are no deficiencies mentioned in the report, will ask the contractor to submit a written response in 30 days, or a reasonable extension.

(i) If the contractor agrees with the report, the contractor has 60 days from the date of initial notification to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(ii) If the contractor disagrees, the contractor should provide rationale in its written response.

(3) Evaluation of contractor's response. The ACO, in consultation with the auditor, will evaluate the contractor's response to determine whether—

(i) The estimating system contains deficiencies that need correction;

(ii) The deficiencies are significant estimating deficiencies that would result in disapproval of all or a portion of the contractor's estimating system; or

(iii) The contractor's proposed corrective actions are adequate to eliminate the deficiency.

(4) Notification of ACO determination. The ACO will notify the contractor and the auditor of the determination and, if appropriate, of the Government's intent to disapprove all or selected portions of the system. The notice shall—

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- (i) List the cost elements covered;
- (ii) Identify any deficiencies requiring correction; and

(iii) Require the contractor to correct the deficiencies within 45 days or submit an action plan showing milestones and actions to eliminate the deficiencies.

(5) Notice of disapproval. If the contractor has neither submitted an acceptable corrective action plan nor corrected significant deficiencies within 45 days, the ACO shall disapprove all or selected portions of the contractor's estimating system. The notice of disapproval must—

- (i) Identify the cost elements covered;
- (ii) List the deficiencies that prompted the disapproval; and

(iii) Be sent to the cognizant auditor, and each contracting and contract administration office having substantial business with the contractor.

(6) Monitoring contractor's corrective action. The auditor and the ACO will monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the ACO shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the ACO can take are: bringing the issue to the attention of higher level management, reducing or suspending progress payments (see FAR 32.503-6), and recommending nonaward of potential contracts.

(7) Withdrawal of estimating system disapproval. The ACO will withdraw the disapproval when the ACO determines that the contractor has corrected the significant system deficiencies. The ACO will notify the contractor, the auditor, and affected contracting and contract administration activities of the withdrawal.

### **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;

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- (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.