Subpart 215.4 - CONTRACT PRICING

Parent topic: Part 215 - CONTRACTING BY NEGOTIATION

215.401 Definitions.

As used in this subpart—

“Market prices” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

“Relevant sales data” means information on sales of the same or similar items that can be used to establish price reasonableness taking into consideration the age, volume, and nature of the transactions (including any related discounts, refunds, rebates, offsets or other adjustments).

215.402 Pricing policy.

(a)(i) Pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239)—

(A) The contracting officer is responsible for determining if the information provided by the offeror is sufficient to determine price reasonableness. This responsibility includes determining whether information on the prices at which the same or similar items have previously been sold is adequate for evaluating the reasonableness of price, and determining the extent of uncertified cost data that should be required in cases in which price information is not adequate;

(B) The contracting officer shall not limit the Government’s ability to obtain information that may be necessary to support a determination of fair and reasonable pricing by agreeing to contract terms that preclude obtaining necessary supporting information; and

(C) When obtaining uncertified cost data, the contracting officer shall require the offeror to provide the information in the form in which it is regularly maintained in the offeror’s business operations.

(ii) Follow the procedures at PGI 215.402 when conducting cost or price analysis, particularly with regard to acquisitions for sole source commercial products or commercial services.

215.403 Obtaining certified cost or pricing data.

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

(b) *Exceptions to certified cost or pricing data requirements.*

(i) Follow the procedures at PGI 215.403-1 (b).

(ii) Submission of certified cost or pricing data shall not be required in the case of a contract, subcontract, or modification of a contract or subcontract to the extent such data relates to an indirect offset.

(c) *Standards for exceptions from certified cost or pricing data requirements*.

(1) *Adequate price competition.*

(A) For acquisitions under dual or multiple source programs—

(*1*) The determination of adequate price competition must be made on a case-by-case basis. Even when adequate price competition exists, in certain cases it may be appropriate to obtain additional data to assist in price analysis; and

(*2*)Adequate price competition normally exists when—

(i) Prices are solicited across a full range of step quantities, normally including a 0-100 percent split, from at least two offerors that are individually capable of producing the full quantity; and

(ii) The reasonableness of all prices awarded is clearly established on the basis of price analysis (see FAR 15.404-1(b)).

(B) If only one offer is received in response to a competitive solicitation, see 215.371-3.

(3) *Commercial products or commercial services.*

(A) Follow the procedures at PGI (c)(3)(A) for pricing commercial products or commercial services, except see 234.7002(e) for pricing commercial subsystems of major weapon systems and components and spare parts of major weapon systems and of subsystems of major weapon systems.

(B) When applying the commercial product or commercial service exception under FAR 15.403-1(b)(3), see 212.102(a)(ii) regarding prior commercial product or commercial service determinations.

(4) *Waivers.*

(A) The head of the contracting activity may, without power of delegation, apply the exceptional circumstances authority when a determination is made that—

(1) The property or services cannot reasonably be obtained under the contract, subcontract, or modification, without the granting of the waiver;

(2) The price can be determined to be fair and reasonable without the submission of certified cost or pricing data; and

(3) There are demonstrated benefits to granting the waiver. Follow the procedures at PGI 215.403-1 (c)(4)(A) for determining when an exceptional case waiver is appropriate, for approval of such waivers, for partial waivers, and for waivers applicable to unpriced supplies or services.

(B) By November 30th of each year, departments and agencies shall provide a report to the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy, (Price, Cost and Finance), of all waivers granted under FAR 15.403-1(b)(4), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of $25 million or more. See PGI 215.403-1(c)(4)(B) for the format and guidance for the report.

(C) DoD has waived the requirement for submission of certified cost or pricing data for the Canadian Commercial Corporation and its subcontractors (but see 215.408 (3) and 225.870-4 (c)).

(D) DoD has waived certified cost or pricing data requirements for nonprofit organizations (including educational institutions) on cost-reimbursement-no-fee contracts. The contracting officer shall require—

(1) Submission of data other than certified cost or pricing data to the extent necessary to determine price reasonableness and cost realism; and

(2) Certified cost or pricing data from subcontractors that are not nonprofit organizations when the subcontractor's proposal exceeds the certified cost or pricing data threshold at FAR 15.403-4(a)(1).

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

Follow the procedures at PGI 215.403-3 .

(a) In accordance with 10 U.S.C. 3705 —

(1) Contracting officers shall not determine the price of a contract or subcontract to be fair and reasonable based solely on historical prices paid by the Government (see PGI 215.403-3 Requiring data other than certified cost or pricing data.(4)); and

(4) In lieu of the factors for consideration listed in FAR 15.403-3(a)(4), a determination by the head of the contracting activity (see PGI 215.403-3 Requiring data other than certified cost or pricing data.(7)) that it is in the best interest of the Government to make the award to an offeror that does not make a good faith effort to comply with a reasonable request to submit data other than certified cost or pricing data shall be based on consideration of pertinent factors, including the following:

(i) The effort to obtain the data.

(ii) Availability of other sources of supply of the item or service.

(iii) The urgency or criticality of the Government's need for the item or service.

(iv) Reasonableness of the price of the contract, subcontract, or modification of the contract or subcontract based on information available to the contracting officer.

(v) Rationale or justification made by the offeror for not providing the requested data.

(vi) Risk to the Government if award is not made.

(c) *Commercial products or commercial services.* For determinations of price reasonableness of major weapon systems acquired as commercial products, see 234.7002(e).

215.403-5 Instructions for submission of certified cost or pricing data and data other than certified cost or pricing data.

(b)(3) For contractors following the contract cost principles in FAR subpart 31.2, Contracts With Commercial Organizations, pursuant to the procedures in FAR 42.1701(b), the administrative contracting officer shall require contractors to comply with the submission items in Table 215.403-1 in order to ensure that their forward pricing rate proposal is submitted in an acceptable form in accordance with FAR 15.403-5(b)(3). The contracting officer should request that the proposal be submitted to the Government at least 90 days prior to the proposed effective date of the rates. To ensure the proposal is complete, the contracting officer shall request that the contractor complete the Contractor Forward Pricing Rate Proposal Adequacy Checklist at Table 215.403-1 , and submit it with the forward pricing rate proposal.

Table 215.403-1 – Contractor Forward Pricing Rate Proposal Adequacy Checklist

Complete the following checklist, providing the location of requested information, or an explanation of why the requested information is not provided, and submit it with the forward pricing rate proposal.

Contractor Forward Pricing Rate Proposal Adequacy Checklist

	SUBMISSION ITEM	PROPOSAL PAGE No. (if applicable)	If not provided, EXPLAIN (may use continuation pages)
GENERAL INSTRUCTIONS			

	SUBMISSION ITEM	PROPOSAL PAGE No. (if applicable)	If not provided, EXPLAIN (may use continuation pages)
GENERAL INSTRUCTIONS			
	Is there a properly completed first page of the proposal as specified by the contracting officer? Initial proposal elements include: a. Name and address of contractor; b. Name and telephone number of point of contact; c. Period covered; d. The page of the proposal that addresses— 1. Whether your organization is subject to cost accounting standards (CAS); 2. Whether your organization has submitted a CAS Disclosure Statement, and whether it has been determined adequate; 3. Whether you have been notified that you are or may be in noncompliance with your Disclosure Statement or CAS (other than a noncompliance that the cognizant Federal agency official had determined to have an immaterial cost impact), and if yes, an explanation; 4. Whether any aspect of this proposal is inconsistent with your disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with established estimating and accounting principles and procedures and FAR part 31, Cost Principles, and, if not, an explanation; e. The following statement: “This forward pricing rate proposal reflects our estimates, as of the date of submission entered in (f) below and conforms with Table 215.403-1 . By submitting this proposal, we grant the Contracting Officer and authorized representative(s) the right to examine those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for each estimate, that will permit an adequate evaluation of the proposed rates and factors.”; f. Date of submission; and g. Name, title, and signature of authorized representative.	Proposal Cover Page	

	SUBMISSION ITEM	PROPOSAL PAGE No. (if applicable)	If not provided, EXPLAIN (may use continuation pages)
GENERAL INSTRUCTIONS			
	Summary of proposed direct and indirect rates and factors, including the proposed pool and base costs for each proposed indirect rate and factor.	Immediately following the proposal cover page	
	Table of Contents or index. a. Does the proposal include a table of contents or index identifying and referencing all supporting data accompanying or identified in the proposal? b. For supporting documentation not provided with the proposal, does the basis of each estimate in the proposal include the location of the documentation and the point of contact (custodian) name, phone number, and email address?		
	Does the proposal disclose known or anticipated changes in business activities or processes that could materially impact the proposed rates (if not previously provided)? For example— a. Management initiatives to reduce costs; b. Changes in management objectives as a result of economic conditions and increased competitiveness; c. Changes in accounting policies, procedures, and practices including (i) reclassification of expenses from direct to indirect or vice versa; (ii) new methods of accumulating and allocating indirect costs and the related impact; and (iii) advance agreements; d. Company reorganizations (including acquisitions or divestitures); e. Shutdown of facilities; or f. Changes in business volume and/or contract mix/type.		
	Do proposed costs based on judgmental factors include an explanation of the estimating processes and methods used, including those used in projecting from known data?		

	SUBMISSION ITEM	PROPOSAL PAGE No. (if applicable)	If not provided, EXPLAIN (may use continuation pages)
GENERAL INSTRUCTIONS			
	Does the proposal show trends and budgetary data? Does the proposal provide an explanation of how the data, as well as any adjustments to the data, were used?		
	The proposal should reconcile to the supporting data referenced. If the proposal does not reconcile to the supporting data referenced, identify applicable page(s) and explain.		
	The proposal should be internally consistent. If the proposal is not internally consistent, identify applicable page(s) and explain.		
Direct Labor			
	Direct Labor Rates Methodology and Basis of Each Estimate. a. Does the proposal include an explanation of the methodology used to develop the direct labor rates and identify the basis of each estimate? b. Does the proposal include or identify the location of the supporting documents for the base-period labor rates (e.g., payroll records)?		
	Does the proposal identify escalation factors for the out-year labor rates, the costs to which escalation is applicable, and the basis of each factor used?		
	Does the proposal identify planned or anticipated changes in the composition of labor rates, labor categories, union agreements, headcounts, or other factors that could significantly impact the direct labor rates?		
Indirect Rates (Fringe, Overhead, G&A, etc.)			

	SUBMISSION ITEM	PROPOSAL PAGE No. (if applicable)	If not provided, EXPLAIN (may use continuation pages)
GENERAL INSTRUCTIONS			
	Indirect Rates Methodology and Basis of Each Estimate. a. Does the proposal identify the basis of each estimate and provide an explanation of the methodology used to develop the indirect rates? b. Does the proposal include or identify the location of the supporting documents for the proposed rates?		
	Does the proposal identify indirect expenses by burden center, by cost element, by year (including any voluntary deletions, if applicable) in a format that is consistent with the accounting system used to accumulate actual expenses?		
	Does the proposal identify any contingencies?		
	Does the proposal identify planned or anticipated changes in the nature, type, or level of indirect costs, including fringe benefits?		
	Does the proposal identify corporate, home office, shared services, or other incoming allocated costs and the source for those costs, including location and point of contact (custodian) name, phone number, and email address?		
	Does the proposal separately identify all intermediate cost pools and provide a reconciliation to show where the costs will be allocated?		
	Does the proposal identify the escalation factors used to escalate indirect costs for the out-years, the costs to which escalation is applicable, and the basis of each factor used?		

	SUBMISSION ITEM	PROPOSAL PAGE No. (if applicable)	If not provided, EXPLAIN (may use continuation pages)
GENERAL INSTRUCTIONS			
	Does the proposal provide details of the development of the allocation base?		
	Does the proposal include or reference the supporting data for the allocation base such as program budgets, negotiation memoranda, proposals, contract values, etc.?		
	Does the proposal identify how the proposed allocation bases reconcile with its long range plans, strategic plan, operating budgets, sales forecasts, program budgets, etc.?		
Cost of Money (COM)			
	Cost of Money. a. Are Cost of Money rates submitted on Form CASB-CMF, with the Treasury Rate used to compute COM identified and a summary of the net book value of assets, identified as distributed and non-distributed? b. Does the proposal identify the support for the Form CASB-CMF, for example, the underlying reports and records supporting the net book value of assets contained in the form?		
OTHER			
	Does the proposal include a comparison of prior forecasted costs to actual results in the same format as the proposal and an explanation/analysis of any differences?		

	SUBMISSION ITEM	PROPOSAL PAGE No. (if applicable)	If not provided, EXPLAIN (may use continuation pages)
GENERAL INSTRUCTIONS			
	If this is a revision to a previous rate proposal or a forward pricing rate agreement, does the new proposal provide a summary of the changes in the circumstances or the facts that the contractor asserts require the change to the rates?		

215.404 Proposal analysis.

215.404-1 Proposal analysis techniques.

(a) *General*.

(i) Follow the procedures at PGI 215.404-1 for proposal analysis.

(ii) For spare parts or support equipment, perform an analysis of—

(A) Those line items where the proposed price exceeds by 25 percent or more the lowest price the Government has paid within the most recent 12-month period based on reasonably available data;

(B) Those line items where a comparison of the item description and the proposed price indicates a potential for overpricing;

(C) Significant high-dollar-value items. If there are no obvious high-dollar-value items, include an analysis of a random sample of items; and

(D) A random sample of the remaining low-dollar value items. Sample size may be determined by subjective judgment, e.g., experience with the offeror and the reliability of its estimating and accounting systems.

(b) *Price analysis for commercial and noncommercial items*.

(i) In the absence of adequate price competition in response to the solicitation, pricing based on market prices is the preferred method to establish a fair and reasonable price (see PGI 215.404-1 (b)(i)).

(ii) If the contracting officer determines that the information obtained through market research is insufficient to determine the reasonableness of price, the contracting officer shall consider

information submitted by the offeror of recent purchase prices paid by the Government and commercial customers for the same or similar commercial products or commercial services under comparable terms and conditions in establishing price reasonableness on a subsequent purchase if the contracting officer is satisfied that the prices previously paid remain a valid reference for comparison. Price reasonableness shall not be based solely on historical prices paid by the Government (see 215.403-3(a)(1)). The contracting officer shall consider the totality of other relevant factors such as the time elapsed since the prior purchase and any differences in the quantities purchased (10 U.S.C. 3703(e)).

(iii) If the contracting officer determines that the offeror cannot provide sufficient information as described in paragraph (b)(ii) of this section to determine the reasonableness of price, the contracting officer should request the offeror to submit information on—

(A) Prices paid for the same or similar items sold under different terms and conditions;

(B) Prices paid for similar levels of work or effort on related products or services;

(C) Prices paid for alternative solutions or approaches; and

(D) Other relevant information that can serve as the basis for determining the reasonableness of price.

(iv) If the contracting officer determines that the pricing information submitted is not sufficient to determine the reasonableness of price, the contracting officer shall request other relevant information, to include cost data. However, no cost data may be required in any case in which there are sufficient non-Government sales of the same item to establish reasonableness of price (section 831 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239)).

(v) When evaluating pricing data, the contracting officer shall consider materially differing terms and conditions, quantities, and market and economic factors (see PGI 215.404-1 Proposal analysis techniques.(b)(v)). For similar items, the contracting officer shall also consider material differences between the similar item and the item being procured (see FAR 15.404-1(b)(2)(ii)(B)). Material differences are those that could reasonably be expected to influence the contracting officer's determination of price reasonableness. The contracting officer shall consider the following factors when evaluating the relevance of the information available:

(A) *Market prices*.

(B) *Age of data*.

(*1*) Whether data is too old to be relevant depends on the industry (e.g., rapidly evolving technologies), product maturity (e.g., stable), economic factors (e.g., new sellers in the marketplace), and various other considerations.

(*2*) A pending sale may be relevant if, in the judgement of the contracting officer, it is probable at the anticipated price, and the sale could reasonably be expected to materially influence the contracting officer’s determination of price reasonableness. The contracting officer may consult with the cognizant administrative contracting officers (ACOs) as they may have information about pending sales.

(C) *Volume and completeness of transaction data*. Data must include a sufficient number of transactions to represent the range of relevant sales to all types of customers. The data must also include key information, such as date, quantity sold, part number, part nomenclature, sales price,

and customer. If the number of transactions is insufficient or the data is incomplete, the contracting officer shall request additional sales data to evaluate price reasonableness. If the contractor cannot provide sufficient sales data, the contracting officer shall request other relevant information.

(D) *Nature of transactions*. The nature of a sales transaction includes the information necessary to understand the transaction, such as terms and conditions, date, quantity sold, sale price, unique requirements, the type of customer (government, distributor, retail end-user, etc.), and related agreements. It also includes warranties, key product technical specifications, maintenance agreements, and preferred customer rewards.

(vi) The contracting officer shall consider catalog prices to be reliable when they are regularly maintained and supported by relevant sales data (including any related discounts, refunds, rebates, offsets, or other adjustments). The contracting officer may request that the offeror support differences between the proposed price(s), catalog price(s), and relevant sales data.

(vii) The contracting officer may consult with the DoD cadre of experts who are available to provide expert advice to the acquisition workforce in assisting with commercial product or commercial service determinations and price reasonableness determinations. The DoD cadre of experts is identified at PGI 215.404-1 (b)(vii).

(viii) When procuring a service or an end product identified by a material identifier that is available as described at 204.7603, the contracting officer shall consider the Supplier Performance Risk System price risk assessments in determining if a proposed price is consistent with historical prices paid for an item or otherwise creates a risk to the Government. See also 215.403-3(a)(1).

(h) *Review and justification of pass-through contracts*. Follow the procedures at PGI 215.404-1 (h)(2) 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).

215.404-2 Data to support proposal analysis.

See PGI 215.404-2 for guidance on obtaining field pricing or audit assistance.

215.404-3 Subcontract pricing considerations.

Follow the procedures at PGI 215.404-3 when reviewing a subcontractor’s proposal.

215.404-4 Profit.

(b) *Policy.*

(1) Contracting officers shall use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when certified cost or pricing data is obtained, except for cost-plus-award-fee contracts (see 215.404-74 , 216.405-2 , and FAR 16.405-2) or contracts with Federally Funded Research and Development Centers (FFRDCs) (see 215.404-75). There are three structured approaches—

(A) The weighted guidelines method;

(B) The modified weighted guidelines method; and

(C) An alternate structured approach.

(c) *Contracting officer responsibilities.*

(1) Also, do not perform a profit analysis when assessing cost realism in competitive acquisitions.

(2) When using a structured approach, the contracting officer—

(A) Shall use the weighted guidelines method (see 215.404-71), except as provided in paragraphs (c)(2)(B) and (c)(2)(C) of this subsection.

(B) Shall use the modified weighted guidelines method (see 215.404-72) on contract actions with nonprofit organizations other than FFRDCs.

(C) May use an alternate structured approach (see 215.404-73) when—

(1) The contract action is—

(i) At or below the certified cost or pricing data threshold (see FAR 15.403-4(a)(1));

(ii) For architect-engineer or construction work;

(iii) Primarily for delivery of material from subcontractors; or

(iv) A termination settlement; or

(2) The weighted guidelines method does not produce a reasonable overall profit objective and the head of the contracting activity approves use of the alternate approach in writing.

(D) Shall use the weighted guidelines method to establish a basic profit rate under a formula-type pricing agreement, and may then use the basic rate on all actions under the agreement, provided that conditions affecting profit do not change.

(E) Shall document the profit analysis in the contract file.

(5) Although specific agreement on the applied weights or values for individual profit factors shall not be attempted, the contracting officer may encourage the contractor to—

(A) Present the details of its proposed profit amounts in the weighted guidelines format or similar structured approach; and

(B) Use the weighted guidelines method in developing profit objectives for negotiated subcontracts.

(6) The contracting officer must also verify that relevant variables have not materially changed (e.g., performance risk, interest rates, progress payment rates, distribution of facilities capital).

(d) *Profit-analysis factors.*

(1) *Common factors.* The common factors are embodied in the DoD structured approaches and need not be further considered by the contracting officer.

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

Follow the procedures at PGI 215.404-70 for use of DD Form 1547 whenever a structured approach to profit analysis is required.

215.404-71 Weighted guidelines method.

215.404-71-1 General

(a) The weighted guidelines method focuses on four profit factors -

(1) Performance risk;

(2) Contract type risk;

(3) Facilities capital employed; and

(4) Cost efficiency.

(b) The contracting officer assigns values to each profit factor; the value multiplied by the base results in the profit objective for that factor. Except for the cost efficiency special factor, each profit factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by DoD. The designated range provides values based on above normal or below normal conditions. In the price negotiation documentation, the contracting officer need not explain assignment of the normal value, but should address conditions that justify assignment of other than the normal value. The cost efficiency special factor has no normal value. The contracting officer shall exercise sound business judgment in selecting a value when this special factor is used (see 215.404-71-5).

215.404-71-2 Performance risk.

(a) *Description.* This profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of two parts:

(1) Technical - the technical uncertainties of performance.

(2) Management/cost control - the degree of management effort necessary -

(i) To ensure that contract requirements are met; and

(ii) To reduce and control costs.

(b) *Determination.* The following extract from the DD Form 1547 is annotated to describe the process.

Item	Contractor risk factors	Assigned weighting	Assigned value	Base (item 20)	Profit objective
21	Technical	(1)	(2)	N/A	N/A
22	Management/Cost Control	(1)	(2)	N/A	N/A
23	Performance Risk (Composite)	N/A	(3)	(4)	(5)

(1) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the two weights equals 100 percent.

(2) Select a value for each element from the list in paragraph (c) of this subsection using the evaluation criteria in paragraphs (d) and (e) of this subsection.

(3) Compute the composite as shown in the following example:

	Assigned weighting (percent)	Assigned value (percent)	Weighted value (percent)
Technical	60	5.0	3.0
Management/Cost Control	40	4.0	1.6
Composite Value	100		4.6

(4) Insert the amount from Block 20 of the DD Form 1547. Block 20 is total contract costs, excluding facilities capital cost of money.

(5) Multiply (3) by (4).

(c) Values: Normal and designated ranges.

	Normal value (percent)	Designated range
Standard	5	3% to 7%
Technology Incentive	9	7% to 11%

(1) *Standard.* The standard designated range should apply to most contracts.

(2) *Technology incentive.* For the technical factor only, contracting officers may use the technology incentive range for acquisitions that include development, production, or application of innovative new technologies. The technology incentive range does not apply to efforts restricted to studies, analyses, or demonstrations that have a technical report as their primary deliverable.

(d) *Evaluation criteria for technical.* (1) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include -

(i) Technology being applied or developed by the contractor;

(ii) Technical complexity;

(iii) Program maturity;

(iv) Performance specifications and tolerances;

(v) Delivery schedule; and

(vi) Extent of a warranty or guarantee.

(2) *Above normal conditions.* (i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are -

(A) Items are being manufactured using specifications with stringent tolerance limits;

(B) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;

(C) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;

(D) The contractor's independent development and investment has reduced the Government's risk or cost;

(E) The contractor has accepted an accelerated delivery schedule to meet DoD requirements; or

(F) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(iii) The following may justify a maximum value -

(A) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(B) A high degree of development or production concurrency.

(3) *Below normal conditions.* (i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low. Indicators are -

(A) Requirements are relatively simple;

(B) Technology is not complex;

(C) Efforts do not require highly skilled personnel;

(D) Efforts are routine;

(E) Programs are mature; or

(F) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal for -

(A) Routine services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government-furnished information; or

(D) Simple operations with Government-furnished property.

(4) *Technology incentive range.* (i) The contracting officer may assign values within the technology incentive range when contract performance includes the introduction of new, significant technological innovation. Use the technology incentive range only for the most innovative contract efforts. Innovation may be in the form of -

(A) Development or application of new technology that fundamentally changes the characteristics of an existing product or system and that results in increased technical performance, improved reliability, or reduced costs; or

(B) New products or systems that contain significant technological advances over the products or systems they are replacing.

(ii) When selecting a value within the technology incentive range, the contracting officer should consider the relative value of the proposed innovation to the acquisition as a whole. When the innovation represents a minor benefit, the contracting officer should consider using values less than the norm. For innovative efforts that will have a major positive impact on the product or program, the contracting officer may use values above the norm.

(e) *Evaluation criteria for management/cost control.* (1) The contracting officer should evaluate -

(i) The contractor's management and internal control systems using contracting office data, information and reviews made by field contract administration offices or other DoD field offices;

(ii) The management involvement expected on the prospective contract action;

(iii) The degree of cost mix as an indication of the types of resources applied and value added by the contractor;

(iv) The contractor's support of Federal socioeconomic programs;

(v) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(vi) The adequacy of the contractor's management approach to controlling cost and schedule; and

(vii) Any other factors that affect the contractor's ability to meet the cost targets (e.g., foreign

currency exchange rates and inflation rates).

(2) *Above normal conditions.* (i) The contracting officer may assign a higher than normal value when there is a high degree of management effort. Indicators of this are -

(A) The contractor's value added is both considerable and reasonably difficult;

(B) The effort involves a high degree of integration or coordination;

(C) The contractor has a good record of past performance;

(D) The contractor has a substantial record of active participation in Federal socioeconomic programs;

(E) The contractor provides fully documented and reliable cost estimates;

(F) The contractor makes appropriate make-or-buy decisions; or

(G) The contractor has a proven record of cost tracking and control.

(ii) The contracting officer may justify a maximum value when the effort -

(A) Requires large scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination (e.g., offsets with foreign vendors); or

(C) Has critically important milestones.

(iii) If the contractor demonstrates efficient management and cost control through the submittal of a timely, qualifying proposal (as defined in217.7401) in furtherance of definitization of an undefinitized contract action, and the proposal demonstrates effective cost control from the time of award to the present, the contracting officer may add 1 percentage point to the value determined for management/cost control up to the maximum of 7 percent.

(3) *Below normal conditions.* (i) The contracting officer may assign a lower than normal value when the management effort is minimal. Indicators of this are -

(A) The program is mature and many end item deliveries have been made;

(B) The contractor adds minimal value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor provides poor quality, untimely proposals;

(E) The contractor fails to provide an adequate analysis of subcontractor costs;

(F) The contractor does not cooperate in the evaluation and negotiation of the proposal;

(G) The contractor's cost estimating system is marginal;

(H) The contractor has made minimal effort to initiate cost reduction programs;

(I) The contractor's cost proposal is inadequate;

(J) The contractor has a record of cost overruns or another indication of unreliable cost estimates and lack of cost control; or

(K) The contractor has a poor record of past performance.

(ii) The following may justify a value significantly below normal -

(A) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

215.404-71-3 Contract type risk and working capital adjustment.

(a) *Description.* The contract type risk factor focuses on the degree of cost risk accepted by the contractor under varying contract types. The working capital adjustment is an adjustment added to the profit objective for contract type risk. It only applies to fixed-price contracts that provide for progress payments. Though it uses a formula approach, it is not intended to be an exact calculation of the cost of working capital. Its purpose is to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies, and the economic environment.

(b) *Determination.* The following extract from the DD 1547 is annotated to explain the process.

Item	Contractor risk factors	Assigned value	Base	Profit objective
24a	Contract Type Risk (based on incurred costs at the time of qualifying proposal submission)	(1)	(2)(i)	(3)
24b	Contract Type Risk (based on Government estimated cost to complete)	(1)	(2)(ii)	(3)
24c	Totals		(3)	(3)

Item	Contractor risk factors	Costs financed	Length factor	Interest rate	Profit objective
25	Working Capital (4)	(5)	(6)	(7)	(8)

(1) Select a value from the list of contract types in paragraph (c) of this section using the evaluation criteria in paragraph (d) of this section. See paragraph (d)(2) of this section.

(2)(i) Insert the amount of costs incurred as of the date the contractor submits a qualifying proposal, such as under an undefinitized contract action, (excluding facilities capital cost of money) into the Block 24a column titled Base.

(ii) Insert the amount of Government estimated cost to complete (excluding facilities capital cost of money) into the Block 24b column titled Base.

(3) Multiply (1) by (2)(i) and (2)(ii), respectively for Blocks 24a and 24b. Add Blocks 24a and 24b and insert the totals in Block 24c.

(4) Only complete this block when the prospective contract is a fixed-price contract containing provisions for progress payments.

(5) Insert the amount computed per paragraph (e) of this subsection.

(6) Insert the appropriate figure from paragraph (f) of this subsection.

(7) Use the interest rate established by the Secretary of the Treasury (see *https://www.fiscal.treasury.gov/fsservices/gov/pmt/promptPayment/rates...*). Do not use any other interest rate.

(8) Multiply (5) by (6) by (7). This is the working capital adjustment. It shall not exceed 4 percent of the contract costs in Block 20.

(c) *Values: Normal and designated ranges.*

Contract type	Notes	Normal value (percent)	Designated range (percent)
Firm-fixed-price, no financing	(1)	5.0	4 to 6.
Firm-fixed-price, with performance-based payments	(6)	4.0	2.5 to 5.5
Firm-fixed-price, with progress payments	(2)	3.0	2 to 4.
Fixed-price incentive, no financing	(1)	3.0	2 to 4.
Fixed-price incentive, with performance-based payments	(6)	2.0	0.5 to 3.5.
Fixed-price with redetermination provision	(3)		
Fixed-price incentive, with progress payments	(2)	1.0	0 to 2.

Contract type	Notes	Normal value (percent)	Designated range (percent)
Cost-plus-incentive-fee	(4)	1.0	0 to 2.
Cost-plus-fixed-fee	(4)	0.5	0 to 1.
Time-and-materials (including overhaul contracts priced on time-and-materials basis)	(5)	0.5	0 to 1.
Labor-hour	(5)	0.5	0 to 1.
Firm-fixed-price, level-of-effort	(5)	0.5	0 to 1.

(1) “No financing” means either that the contract does not provide progress payments or performance-based payments, or that the contract provides them only on a limited basis, such as financing of first articles. Do not compute a working capital adjustment.

(2) When the contract contains provisions for progress payments, compute a working capital adjustment (Block 25).

(3) For the purposes of assigning profit values, treat a fixed-price contract with redetermination provisions as if it were a fixed-price incentive contract with below normal conditions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. They shall not receive the working capital adjustment in Block 25. However, they may receive higher than normal values within the designated range to the extent that portions of cost are fixed.

(6) When the contract contains provisions for performance-based payments, do not compute a working capital adjustment.

(d) *Evaluation criteria* - (1) *General.* The contracting officer should consider elements that affect contract type risk such as -

(i) Length of contract;

(ii) Adequacy of cost data for projections;

(iii) Economic environment;

(iv) Nature and extent of subcontracted activity;

(v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);

(vi) The ceilings and share lines contained in incentive provisions;

(vii) Risks associated with contracts for foreign military sales (FMS) that are not funded by U.S. appropriations; and

(viii) When the contract contains provisions for performance-based payments -

(A) The frequency of payments;

(B) The total amount of payments compared to the maximum allowable amount specified at FAR 32.1004(b)(2); and

(C) The risk of the payment schedule to the contractor.

(2) *Mandatory.* (i) The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract action (also see 217.7404-6(a) and 243.204-70-6). When considering the reduced cost risks associated with allowable incurred costs on an undefinitized contract action, it is appropriate to apply separate contract risk factors for allowable incurred costs and estimated costs to complete when completing the contract risk sections of DD Form 1547, Record of Weighted Guidelines. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs has been incurred prior to definitization, the contracting officer may assign a value as low as zero percent, regardless of contract type. However, if a contractor submits a qualifying proposal to definitize an undefinitized contract action and the contracting officer for such action definitizes the contract after the end of the 180-day period beginning on the date on which the contractor submitted the qualifying proposal as defined in 217.7401, the profit allowed on the contract shall accurately reflect the cost risk of the contractor as such risk existed on the date the contractor submitted the qualifying proposal.

(ii) Contracting officers shall document in the price negotiation memorandum the reason for assigning a specific contract type risk value, to include the extent to which any reduced cost risk during the undefinitized period of performance was considered, in determining the negotiation objective.

(3) *Above normal conditions.* The contracting officer may assign a higher than normal value when there is substantial contract type risk. Indicators of this are -

(i) Efforts where there is minimal cost history;

(ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;

(iii) Incentive provisions (e.g., cost and performance incentives) that place a high degree of risk on the contractor;

(iv) FMS sales (other than those under DoD cooperative logistics support arrangements or those made from U.S. Government inventories or stocks) where the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items; or

(v) An aggressive performance-based payment schedule that increases risk.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Indicators of this are -

(i) Very mature product line with extensive cost history;

(ii) Relative short-term contracts;

(iii) Contractual provisions that substantially reduce the contractor's risk;

(iv) Incentive provisions that place a low degree of risk on the contractor;

(v) Performance-based payments totaling the maximum allowable amount(s) specified at FAR 32.1004(b)(2); or

(vi) A performance-based payment schedule that is routine with minimal risk.

(e) *Costs financed.* (1) Costs financed equal total costs multiplied by the portion (percent) of costs financed by the contractor.

(2) Total costs equal Block 20 (i.e., all allowable costs excluding facilities capital cost of money), reduced as appropriate when -

(i) The contractor has little cash investment (e.g., subcontractor progress payments liquidated late in period of performance);

(ii) Some costs are covered by special financing provisions, such as advance payments; or

(iii) The contract is multiyear and there are special funding arrangements.

(3) The portion that the contractor finances is generally the portion not covered by progress payments, i.e., 100 percent minus the customary progress payment rate (see FAR 32.501). For example, if a contractor receives progress payments at 80 percent, the portion that the contractor finances is 20 percent. On contracts that provide progress payments to small businesses, use the customary progress payment rate for large businesses.

(f) *Contract length factor.* (1) This is the period of time that the contractor has a working capital investment in the contract. It -

(i) Is based on the time necessary for the contractor to complete the substantive portion of the work;

(ii) Is not necessarily the period of time between contract award and final delivery (or final payment), as periods of minimal effort should be excluded;

(iii) Should not include periods of performance contained in option provisions; and

(iv) Should not, for multiyear contracts, include periods of performance beyond that required to complete the initial program year's requirements.

(2) The contracting officer -

(i) Should use the following table to select the contract length factor;

(ii) Should develop a weighted average contract length when the contract has multiple deliveries; and

(iii) May use sampling techniques provided they produce a representative result.

Table

Period to perform substantive portion (in months)	Contract length factor
21 or less	.40
22 to 27	.65
28 to 33	.90
34 to 39	1.15
40 to 45	1.40
46 to 51	1.65
52 to 57	1.90
58 to 63	2.15
64 to 69	2.40
70 to 75	2.65
76 or more	2.90

(3) Example: A prospective contract has a performance period of 40 months with end items being delivered in the 34th, 36th, 38th, and 40th months of the contract. The average period is 37 months and the contract length factor is 1.15.

215.404-71-4 Facilities capital employed.

(a) *Description*. This factor focuses on encouraging and rewarding capital investment in facilities that benefit DoD. It recognizes both the facilities capital that the contractor will employ in contract performance and the contractor's commitment to improving productivity.

(b) *Contract facilities capital estimates*. The contracting officer shall estimate the facilities capital cost of money and capital employed using—

(1) An analysis of the appropriate Forms CASB-CMF and cost of money factors (48 CFR 9904.414 and FAR 31.205-10); and

(2) DD Form 1861, Contract Facilities Capital Cost of Money.

(c) *Use of DD Form 1861*. See PGI 215.404-71 -4(c) for obtaining field pricing support for preparing DD Form 1861.

(1) *Purpose*. The DD Form 1861 provides a means of linking the Form CASB-CMF and DD Form 1547, Record of Weighted Guidelines Application. It—

(i) Enables the contracting officer to differentiate profit objectives for various types of assets (land, buildings, equipment). The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(ii) Is designed to record and compute the contract facilities capital cost of money and capital employed which is carried forward to DD Form 1547.

(2) *Completion instructions*. Complete a DD Form 1861 only after evaluating the contractor's cost proposal, establishing cost of money factors, and establishing a prenegotiation objective on cost. Complete the form as follows:

(i) List overhead pools and direct-charging service centers (if used) in the same structure as they appear on the contractor's cost proposal and Form CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays.

(ii) Extract appropriate contract overhead allocation base data, by year, from the evaluated cost breakdown or prenegotiation cost objective and list against each overhead pool and direct-charging service center.

(iii) Multiply each allocation base by its corresponding cost of money factor to get the facilities capital cost of money estimated to be incurred each year. The sum of these products represents the estimated contract facilities capital cost of money for the year's effort.

(iv) Total contract facilities cost of money is the sum of the yearly amounts.

(v) Since the facilities capital cost of money factors reflect the applicable cost of money rate in Column 1 of Form CASB-CMF, divide the contract cost of money by that same rate to determine the contract facilities capital employed.

(d) *Preaward facilities capital applications*. To establish cost and price objectives, apply the facilities capital cost of money and capital employed as follows:

(1) *Cost of Money.*

(i) *Cost Objective*. Use the imputed facilities capital cost of money, with normal, booked costs, to establish a cost objective or the target cost when structuring an incentive type contract. Do not adjust target costs established at the outset even though actual cost of money rates become available during the period of contract performance.

(ii) *Profit Objective*. When measuring the contractor's effort for the purpose of establishing a prenegotiation profit objective, restrict the cost base to normal, booked costs. Do not include cost of money as part of the cost base.

(2) *Facilities Capital Employed*. Assess and weight the profit objective for risk associated with facilities capital employed in accordance with the profit guidelines at 215.404-71 -4.

(e) *Determination*. The following extract from the DD Form 1547 has been annotated to explain the

process.

Item	Contractor Facilities Capital Employed	Assigned Value	Amount Employed	Profit Objective
26.	Land	N/A	(2)	N/A
27.	Buildings	N/A	(2)	N/A
28.	Equipment	(1)	(2)	(3)

(1) Select a value from the list in paragraph (f) of this subsection using the evaluation criteria in paragraph (g) of this subsection.

(2) Use the allocated facilities capital attributable to land, buildings, and equipment, as derived in DD Form 1861, Contract Facilities Capital Cost of Money.

(i) In addition to the net book value of facilities capital employed, consider facilities capital that is part of a formal investment plan if the contractor submits reasonable evidence that—

(A) Achievable benefits to DoD will result from the investment; and

(B) The benefits of the investment are included in the forward pricing structure.

(ii) If the value of intracompany transfers has been included in Block 20 at cost (i.e., excluding general and administrative (G&A) expenses and profit), add to the contractor's allocated facilities capital, the allocated facilities capital attributable to the buildings and equipment of those corporate divisions supplying the intracompany transfers. Do not make this addition if the value of intracompany transfers has been included in Block 20 at price (i.e., including G&A expenses and profit).

(3) Multiply (1) by (2).

(f) *Values: Normal and designated ranges*.

Asset Type	Normal Value	Designated Range
Land	0%	N/A
Buildings	0%	N/A
Equipment	17.5%	10% to 25%

(g) *Evaluation criteria*.

(1) In evaluating facilities capital employed, the contracting officer—

(i) Should relate the usefulness of the facilities capital to the goods or services being acquired under the prospective contract;

(ii) Should analyze the productivity improvements and other anticipated industrial base enhancing benefits resulting from the facilities capital investment, including—

(A) The economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs; and

(B) The contractor's level of investment in defense related facilities as compared with the portion of the contractor's total business that is derived from DoD; and

(iii) Should consider any contractual provisions that reduce the contractor's risk of investment recovery, such as termination protection clauses and capital investment indemnification.

(2) *Above normal conditions*.

(i) The contracting officer may assign a higher than normal value if the facilities capital investment has direct, identifiable, and exceptional benefits. Indicators are—

(A) New investments in state-of-the-art technology that reduce acquisition cost or yield other tangible benefits such as improved product quality or accelerated deliveries; or

(B) Investments in new equipment for research and development applications.

(ii) The contracting officer may assign a value significantly above normal when there are direct and measurable benefits in efficiency and significantly reduced acquisition costs on the effort being priced. Maximum values apply only to those cases where the benefits of the facilities capital investment are substantially above normal.

(3) *Below normal conditions*.

(i) The contracting officer may assign a lower than normal value if the facilities capital investment has little benefit to DoD. Indicators are—

(A) Allocations of capital apply predominantly to commercial product lines;

(B) Investments are for such things as furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums; or

(C) Facilities are old or extensively idle.

(ii) The contracting officer may assign a value significantly below normal when a significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, and labor-intensive capital equipment.

215.404-71-5 Cost efficiency factor.

(a) This special factor provides an incentive for contractors to reduce costs. To the extent that the contractor can demonstrate cost reduction efforts that benefit the pending contract, the contracting

officer may increase the prenegotiation profit objective by an amount not to exceed 4 percent of total objective cost (Block 20 of the DD Form 1547) to recognize these efforts (Block 29).

(b) To determine if using this factor is appropriate, the contracting officer shall consider criteria, such as the following, to evaluate the benefit the contractor's cost reduction efforts will have on the pending contract:

(1) The contractor's participation in Single Process Initiative improvements;

(2) Actual cost reductions achieved on prior contracts;

(3) Reduction or elimination of excess or idle facilities;

(4) The contractor's cost reduction initiatives (e.g., competition advocacy programs, technical insertion programs, obsolete parts control programs, spare parts pricing reform, value engineering, outsourcing of functions such as information technology). Metrics developed by the contractor such as fully loaded labor hours (i.e., cost per labor hour, including all direct and indirect costs) or other productivity measures may provide the basis for assessing the effectiveness of the contractor's cost reduction initiatives over time;

(5) The contractor's adoption of process improvements to reduce costs;

(6) Subcontractor cost reduction efforts;

(7) The contractor's effective incorporation of commercial products or commercial services and commercial processes; or

(8) The contractor's investment in new facilities when such investments contribute to better asset utilization or improved productivity.

(c) When selecting the percentage to use for this special factor, the contracting officer has maximum flexibility in determining the best way to evaluate the benefit the contractor's cost reduction efforts will have on the pending contract. However, the contracting officer shall consider the impact that quantity differences, learning, changes in scope, and economic factors such as inflation and deflation will have on cost reduction.

215.404-72 Modified weighted guidelines method for nonprofit organizations other than FFRDCs.

(a) *Definition*. As used in this subpart, a nonprofit organization is a business entity—

(1) That operates exclusively for charitable, scientific, or educational purposes;

(2) Whose earnings do not benefit any private shareholder or individual;

(3) Whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and

(4) That is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(b) For nonprofit organizations that are entities that have been identified by the Secretary of Defense or a Secretary of a Department as receiving sustaining support on a cost-plus-fixed-fee basis

from a particular DoD department or agency, compute a fee objective for covered actions using the weighted guidelines method in 215.404-71 , with the following modifications:

(1) *Modifications to performance risk (Blocks 21-23 of the DD Form 1547).*

(i) If the contracting officer assigns a value from the standard designated range (see 215.404-71 -2(c)), reduce the fee objective by an amount equal to 1 percent of the costs in Block 20 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(ii) Do not assign a value from the technology incentive designated range.

(2) *Modifications to contract type risk (Block 24 of the DD Form 1547).* Use a designated range of –1 percent to 0 percent instead of the values in 215.404-71 -3. There is no normal value.

(c) For all other nonprofit organizations except FFRDCs, compute a fee objective for covered actions using the weighted guidelines method in 215.404-71 , modified as described in paragraph (b)(1) of this subsection.

215.404-73 Alternate structured approaches.

(a) The contracting officer may use an alternate structured approach under 215.404-4 (c).

(b) The contracting officer may design the structure of the alternate, but it shall include—

(1) Consideration of the three basic components of profit—performance risk, contract type risk (including working capital), and facilities capital employed. However, the contracting officer is not required to complete Blocks 21 through 30 of the DD Form 1547.

(2) Offset for facilities capital cost of money.

(i) The contracting officer shall reduce the overall prenegotiation profit objective by the amount of facilities capital cost of money under Cost Accounting Standard (CAS) 414, Cost of Money as an Element of the Cost of Facilities Capital (48 CFR 9904.414). Cost of money under CAS 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction (48 CFR 9904.417), should not be used to reduce the overall prenegotiation profit objective. The profit amount in the negotiation summary of the DD Form 1547 must be net of the offset.

(ii) This adjustment is needed for the following reason: The values of the profit factors used in the weighted guidelines method were adjusted to recognize the shift in facilities capital cost of money from an element of profit to an element of contract cost (see FAR 31.205-10) and reductions were made directly to the profit factors for performance risk. In order to ensure that this policy is applied to all DoD contracts that allow facilities capital cost of money, similar adjustments shall be made to contracts that use alternate structured approaches.

215.404-74 Fee requirements for cost-plus-award-fee contracts.

In developing a fee objective for cost-plus-award-fee contracts, the contracting officer shall—

(a) Follow the guidance in FAR 16.405-2 and 216.405-2 ;

(b) Not use the weighted guidelines method or alternate structured approach;

(c) Apply the offset policy in 215.404-73 (b)(2) for facilities capital cost of money, i.e., reduce the base fee by the amount of facilities capital cost of money; and

(d) Not complete a DD Form 1547.

215.404-75 Fee requirements for FFRDCs.

For nonprofit organizations that are FFRDCs, the contracting officer—

(a) Should consider whether any fee is appropriate. Considerations shall include the FFRDC's—

(1) Proportion of retained earnings (as established under generally accepted accounting methods) that relates to DoD contracted effort;

(2) Facilities capital acquisition plans;

(3) Working capital funding as assessed on operating cycle cash needs; and

(4) Provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

(b) Shall, when a fee is considered appropriate, establish the fee objective in accordance with FFRDC fee policies in the DoD Instruction 5000.77, DoD Federally Funded Research and Development Center Program.

(c) Shall not use the weighted guidelines method or an alternate structured approach.

215.406 Documentation.

215.406-1 Prenegotiation objectives.

Follow the procedures at PGI 215.406-1 for establishing prenegotiation objectives.

215.406-2 Certificate of current cost or pricing data.

See PGI PGI 215.406-2 Certificate of current cost or pricing data. for additional information and guidance on Certificates of Current Cost or Pricing Data.

215.406-3 Documenting the negotiation.

Follow the procedures at PGI 215.406-3 for documenting the negotiation.

215.407 Special cost or pricing areas.

215.407-1 Defective certified cost or pricing data.

(c)(i) When a contractor voluntarily discloses defective pricing after contract award, the contracting officer shall discuss the disclosure with the Defense Contract Audit Agency (DCAA). This discussion will assist in the contracting officer determining the involvement of DCAA, which could be a limited-scope audit (e.g., limited to the affected cost elements of the defective pricing disclosure), a full-scope audit, or technical assistance as appropriate for the circumstances (e.g., nature or dollar amount of the defective pricing disclosure). At a minimum, the contracting officer shall discuss with DCAA the following:

(A) Completeness of the contractor's voluntary disclosure on the affected contract.

(B) Accuracy of the contractor's cost impact calculation for the affected contract.

(C) Potential impact on existing contracts, task or deliver orders, or other proposals the contractor has submitted to the Government.

(ii) Voluntary disclosure of defective pricing is not a voluntary refund as defined in 242.7100 and does not waive the Government entitlement to the recovery of any overpayment plus interest on the overpayments in accordance with FAR 15.407-1(b)(7).

(iii) Voluntary disclosure of defective pricing does not waive the Government's rights to pursue defective pricing claims on the affected contract or any other Government contract.

215.407-2 Make-or-buy programs.

(a) *General*. See PGI for guidance on factors to consider when deciding whether to request a make-or-buy plan and for factors to consider when evaluating make-or-buy plan submissions.

(e) *Program requirements.*

(1) *Items and work included.* The minimum dollar amount is $1.5 million.

215.407-3 Forward pricing rate agreements.

(b)(i) Use forward pricing rate agreement (FPRA) rates when such rates are available, unless waived on a case-by-case basis by the head of the contracting activity.

(ii) Advise the ACO of each case waived.

(iii) Contact the ACO for questions on FPRAs or recommended rates.

215.407-4 Should-cost review.

(a) *General*. See PGI 215.407-4 for guidance on determining whether to perform a program or

overhead should-cost review.

(b) *Program should-cost review*. Major weapon system should-cost program reviews shall be conducted in a manner that is transparent, objective, and provides for the efficiency of the DoD systems acquisition process (section 837 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91)).

(i) Major weapon system should-cost reviews may include the following features:

(A) A thorough review of each contributing element of the program cost and the justification for each cost.

(B) An analysis of non-value added overhead and unnecessary reporting requirements.

(C) Benchmarking against similar DoD programs, similar commercial programs (where appropriate), and other programs by the same contractor at the same facility.

(D) An analysis of supply chain management to encourage competition and incentive cost performance at lower tiers.

(E) A review of how to restructure the program (Government and contractor) team in a streamlined manner, if necessary.

(F) Identification of opportunities to break out Government-furnished equipment versus prime contractor-furnished materials.

(G) Identification of items or services contracted through third parties that result in unnecessary pass-through costs.

(H) Evaluation of ability to use integrated developmental and operational testing and modeling and simulation to reduce overall costs.

(I) Identification of alternative technology and materials to reduce developmental or lifecycle costs for a program.

(J) Identification and prioritization of cost savings opportunities.

(K) Establishment of measurable targets and ongoing tracking systems.

(ii) The should-cost review shall provide for sufficient analysis while minimizing the impact on program schedule by engaging stakeholders early, relying on information already available before requesting additional data, and establishing a team with the relevant expertise early.

(iii) The should-cost review team shall be comprised of members, including third-party experts if necessary, with the training, skills, and experience in analysis of cost elements, production or sustainment processes, and technologies relevant to the program under review. The review team may include members from the Defense Contract Management Agency, the department or agency’s cost analysis center, and appropriate functional organizations, as necessary.

(iv) The should-cost review team shall establish a process for communicating and collaborating with the contractor throughout the should-cost review, including notification to the contractor regarding which elements of the contractor’s operations will be reviewed and what information will be necessary to perform the review, as soon as practicable, both prior to and during the review.

(v) The should-cost review team report shall ensure, to the maximum extent practicable, review of current, accurate, and complete data, and shall identify cost savings opportunities associated with specific engineering or business changes that can be quantified and tracked.

215.407-5 Estimating systems.

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

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

“Acceptable estimating system” means an estimating system that complies with the system criteria in paragraph (d) of 252.215-7002, Cost Estimating System Requirements, and provides for a system that—

(i) Is maintained, reliable, and consistently applied;

(ii) Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;

(iii) Is consistent with and integrated with the contractor’s related management systems; and

(iv) Is subject to applicable financial control systems.

“Contractor” means a business unit as defined in FAR 2.101.

“Estimating system” means the contractor’s policies, procedures, and practices for budgeting and planning controls and for generating estimates of costs and other data included in proposals submitted to customers in the expectation of receiving contract awards. Estimating system includes the contractor’s—

(i) Organizational structure;

(ii) Established lines of authority, duties, and responsibilities;

(iii) Internal controls and managerial reviews;

(iv) Flow of work, coordination, and communication; and

(v) Budgeting, planning, estimating methods, techniques, accumulation of historical costs, and other analyses used to generate cost estimates.

(b) *Applicability*.

(1) DoD policy is that all contractors have acceptable estimating systems that consistently produce well-supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices.

(2) A large business contractor is subject to estimating system disclosure, maintenance, and review requirements if—

(i) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totaling $50 million or more for which certified cost or pricing were required; or

(ii) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totaling $10 million or more (but less than $50 million) for which certified cost or pricing data were required and the contracting officer, with concurrence or at the request of the ACO, determines it to be in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly Government).

(c) *Policy.*

(1) The contracting officer shall—

(i) Through use of the clause at 252.215-7002 , Cost Estimating System Requirements, apply the disclosure, maintenance, and review requirements to large business contractors meeting the criteria in paragraph (b)(2)(i) of this section;

(ii) Consider whether to apply the disclosure, maintenance, and review requirements to large business contractors under paragraph (b)(2)(ii) of this section; and

(iii) Not apply the disclosure, maintenance, and review requirements to other than large business contractors.

(2) The cognizant contracting officer, in consultation with the auditor, for contractors subject to paragraph (b)(2) of this section, shall—

(i) Determine the acceptability of the disclosure and approve or disapprove the system; and

(ii) Pursue correction of any weaknesses or deficiencies.

(3) The auditor conducts estimating system reviews.

(4) An acceptable system shall provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures.

(5) In evaluating the acceptability of a contractor's estimating system, the contracting officer, in consultation with the auditor, shall determine whether the contractor's estimating system complies with the system criteria for an acceptable estimating system as prescribed in the clause at 252.215-7002 , Cost Estimating System Requirements.

(d) *Disposition of findings—*

(1) *Reporting of findings*. The auditor shall document findings and recommendations in a report to the contracting officer. If the auditor identifies any material weaknesses, the report shall describe the underlying deficiencies in sufficient detail to allow the contracting officer to understand the weaknesses or deficiencies.

(2) *Initial determination*.

(i) The contracting officer shall review all findings and recommendations and, if there are no material weaknesses, shall promptly notify the contractor, in writing, that the contractor’s estimating system is acceptable and approved; or

(ii) If the contracting officer finds that there are one or more https://www.acq.osd.mil/dpap/dars/dfars/html/current/252215.htm#252.215-7002 material

weaknesses due to the contractor's failure to meet one or more of the estimating system criteria in the clause at 252.215-7002, the contracting officer shall—

(A) Promptly make an initial written determination on any material weaknesses and notify the contractor, in writing, providing a description of each material weakness in sufficient detail to allow the contractor to understand the deficiency (see PGI 215.407-5-70(d)(2));

(B) Request the contractor to respond, in writing, to the initial determination within 30 days; and

(C) Promptly evaluate the contractor's responses to the initial determination, in consultation with the auditor or functional specialist, and make a final determination.

(3) *Final determination*.

(i) The contracting officer shall make a final determination and notify the contractor, in writing, that——

(A) The contractor's estimating system is acceptable and approved, and no material weaknesses remain; or

(B) Material weaknesses remain. The notice shall identify any remaining material weaknesses and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(*1*) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the weaknesses;

(*2*) Disapprove the system in accordance with the clause at 252.215-7002; and

(*3*) Withhold payments in accordance with the clause at 252.242-7005 , Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of material weaknesses in PGI 215.407-5-70(d)(3).

(e) *System approval*. The contracting officer shall promptly approve a previously disapproved estimating system and notify the contractor when the contracting officer determines that there are no remaining material weaknesses.

(f) *Contracting officer notifications*. The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold payments, or approve a previously disapproved system and release withheld payments, to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

215.408 Solicitation provisions and contract clauses.

(1) Use the clause at 252.215-7002, Cost Estimating System requirements, in all solicitations and contracts to be awarded on the basis of certified cost or pricing data.

(2) When contracting with the Canadian Commercial Corporation -

(i)(A) Use the provision at 252.215-7003, Requirement for Submission of Data Other Than Certified Cost or Pricing Data - Canadian Commercial Corporation -

(*1*) In lieu of 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, for a sole source acquisition from the Canadian Commercial Corporation that is -

(*i*) Cost-reimbursement, if the contract value is expected to exceed $700,000; or

(*ii*) Fixed-price, if the contract value is expected to exceed $500 million; or

(*2*) In lieu of 252.215-7010, in a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, for a sole source acquisition from the Canadian Commercial Corporation that does not meet the thresholds specified in paragraph (2)(i)(A)(*1*) of this section, if approval is obtained as required at 225.870-4(c)(2)(ii); and

(B) Do not use 252.225-7003 in lieu of 252.215-7010 in competitive acquisitions; and

(ii)(A) Use the clause at 252.215-7004, Requirement for Submission of Data Other Than Certified Cost or Pricing Data - Modifications - Canadian Commercial Corporation -

(*1*) In a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, for a sole source acquisition, from the Canadian Commercial Corporation and resultant contract that is -

(*i*) Cost-reimbursement, if the contract value is expected to exceed $700,000; or

(*ii*) Fixed-price, if the contract value is expected to exceed $500 million;

(*2*) In a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, for a sole source acquisition from the Canadian Commercial Corporation and resultant contract that does not meet the thresholds specified in paragraph (2)(ii)(A)(*1*) of this section, if approval is obtained as required at 225.870-4(c)(2)(ii); or

(*3*)(*i*) In a solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services, for a competitive acquisition that includes FAR 52.215-21, Requirement for Data Other Than Certified Cost or Pricing Data - Modifications, or that meets the thresholds specified in paragraph (2)(ii)(A)(*1*) of this section.

(*ii*) The contracting officer shall then select the appropriate clause to include in the contract (52.215-21 only if award is not to the Canadian Commercial Corporation; or 252.215-7004 if award is to the Canadian Commercial Corporation and necessary approval is obtained in accordance with 225.870-4(c)(2)(ii)); and

(B) The contracting officer may specify a higher threshold in paragraph (b) of the clause 252.215-7004.

(3) Use the provision at 252.215-7008, Only One Offer, in competitive solicitations that exceed the simplified acquisition threshold, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services.

(4) When the solicitation requires the submission of certified cost or pricing data, the contracting officer should include 252.215-7009, Proposal Adequacy Checklist, in the solicitation to facilitate submission of a thorough, accurate, and complete proposal.

(5) When reasonably certain that the submission of certified cost or pricing data or data other than certified cost or pricing data will be required or when using the provision at 252.215-7008 -

(i) Use the basic or alternate of the provision at 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in lieu of the provision at FAR 52.215-20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial products and commercial services.

(A) Use the basic provision when submission of certified cost or pricing data is required to be in the FAR Table 15-2 format, or if it is anticipated, at the time of solicitation, that the submission of certified cost or pricing data may not be required.

(B) Use the alternate I provision to specify a format for certified cost or pricing data other than the format required by FAR Table 15-2;

(ii) Use the provision at 252.215-7011, Requirements for Submission of Proposals to the Administrative Contracting Officer and Contract Auditor, when using the basic or alternate of the provision at 252.215-7010 and copies of the proposal are to be sent to the ACO and contract auditor; and

(iii) Use the provision at 252.215-7012, Requirements for Submission of Proposals via Electronic Media, when using the basic or alternate of the provision at 252.215-7010 and submission via electronic media is required.

(6) Use the provision at 252.215-7013, Supplies and Services Provided by Nontraditional Defense Contractors, in all solicitations.

(7) Use the clause at 252.215-7014, Exception from Certified Cost or Pricing Data Requirements for Foreign Military Sales Indirect Offsets, in solicitations and contracts that contain the provision at 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, when it is reasonably certain that -

(i) The contract is expected to include costs associated with an indirect offset; and

(ii) The submission of certified cost or pricing data or data other than certified cost or pricing data will be required.

(8) Use the clause at 252.215-7015, Program Should-Cost Review, in all solicitations and contracts for the development or production of a major weapon system, as defined in 234.7001.

215.470 Estimated data prices.

(a) DoD requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product, or engineering value.

(b) When data are required to be delivered under a contract, include DD Form 1423, Contract Data

Requirements List, in the solicitation. See PGI 215.470 (b) for guidance on the use of DD Form 1423.

(c) The contracting officer shall ensure that the contract does not include a requirement for data that the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror identifies any such data required by the solicitation. However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.