Subpart 5115.4 - Contract Pricing

Parent topic: Part 5115 - Contracting by Negotiation

5115.403 Obtaining certified cost or pricing data.

5115.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 35).

(c)(4) Waivers. Follow DFARS 215.403-1(c)(4)(A) to determine when an exceptional case waiver of the requirement to submit certified cost or pricing data is appropriate.

Army Contracting officers shall follow the procedures at AFARS PGI 5115.403-1, for tracking and reporting the required information when submitting exceptional case waivers.

(A)(2) Coordinate proposed exceptional case waivers that exceed $100 million in writing with the Deputy Assistant Secretary of the Army (Procurement) (DASA(P)) prior to submission to the head of contracting activity (HCA) for approval. Submit the proposed waiver to the addressee listed at 5101.290(b)(2)(ii)(E).

(5) The head of contracting activity is the approval authority for waivers Section (E) of Defense Pricing and Contracting Class Deviation 2024- O0005 Temporary Authorizations for Covered Contracts Related to Ukraine, Taiwan, and Israel. See AFARS 5153.206-93 Instructions for Congressional Notification Requirement When Utilizing the Authorities Conferred by paragraphs (B) – (G) of DPCAP Class Deviation 2024- O0005—Temporary Authorizations for Covered Contracts Related to Ukraine, Taiwan, and Israel; Workload Forecasting Instructions and AFARS 5153.303-13 for instructions and sample format for reporting covered contracts applicable under this subpart to congressional defense committees.

5115.403-3 Requiring data other than certified cost or pricing data.

(a)(4) The head of contracting activity makes the determination as specified in FAR 15.403-3(a)(4). See Appendix GG for further delegation.

5115.403-3-90 Process and Reporting Requirements Pertaining to Contractor Denials of Contracting officer Requests for Data Other Than Certified Cost or Pricing Data.

In accordance with (DPCAP) memorandum , dated 22 March 2019, subject: Process and Reporting Requirements Pertaining to Contractor Denials of Contracting officer Requests for Data Other Than Certified Cost or Pricing Data, in the event of an exigent situation when the HCA approves award without obtaining requested cost data from exclusive distributors and/or dealers, Army contracting activities shall notify the Office of the DASA(P) at the address listed at AFARS 5101.290(b)(2)(ii)(E).

The Office of the DASA(P) will then notify the Office of the Under Secretary of Defense (Acquisition and Sustainment). Each notification will include the following information:

(a) Contractor name and DUNS number (Exclusive Distributor/Dealer).

(b) Subcontractor name and DUNS number (e.g., OEM/actual manufacturer).

(c) Contract number, modification or order number, if applicable.

(d) Date and amount of the contract action.

(e) Steps taken to attempt price analysis without requiring cost data.

(f) Contractor's rationale for refusing to provide the data.

(g) Actions taken by the contracting activity to obtain the data.

(h) Data used to determine price reasonableness and resulting determination.

(i) Actions planned to avoid this situation in the future.

5115.404 Proposal analysis.

5115.404-1 Proposal analysis techniques.

(a) General.

(i)(A)(iv) The HCA shall make the decision as stated in DFARS PGI 215.404-1(a)(i)(A)(iv) and in accordance with AFARS 5115.403-3-90 Process and Reporting Requirements Pertaining to Contractor Denials of Contracting officer Requests for Data Other Than Certified Cost or Pricing Data.. See Appendix GG for further delegation.

5115.404-4 Profit.

(c) Contracting officer responsibilities.

(2)(C)(2) The HCA approves use of the alternate approach discussed in DFARS 215.404-4(c)(2)(C)(2). See Appendix GG for further delegation.

5115.406 Documentation.

5115.406-1 Prenegotiation objectives.

(1) The Contracting officers will prepare, review, and obtain approval of prenegotiation memoranda in accordance with the activity's business clearance procedures. In accordance with AFARS 5115.406-3, the Contracting officer may consolidate the prenegotiation memorandum and price negotiation memorandum (POM/PNM) for competitive or non-competitive acquisitions. When intending to use a consolidated POM/PNM, the Contracting officer must still comply with FAR 15.406-1 and DFARS PGI 215.406-1 and obtain written approval of the prenegotiation objectives

before negotiation of any pricing action.

(i) *Sole source acquisitions.* For sole source actions, the prenegotiation memoranda document compliance with law, regulations, and policy and become the official record demonstrating the exercise of good business judgment. The prenegotiation memoranda describe the contractor's methodology and how it developed its proposal position to the extent it can be determined from the contractor's proposal and fact-finding efforts, how the price and technical auditors and reviewers developed their recommendations, and what the negotiator did in developing an independent prenegotiation position considering the pricing, audit, and technical analyses and recommendations. An understanding of the development of each of these positions is important when preparing for negotiations. The Defense Acquisition University's Acquisition Community Connection, available via the Internet at https://acc.dau.mil/pricing, contains the DoD Contract Pricing Reference Guides, which discuss in depth the pricing techniques and factors Contracting officers should consider when developing negotiation positions.

(ii) *Competitive negotiated acquisitions.* For competitive negotiated acquisitions using formal source selection procedures, the Contracting officer should ensure the source selection plan, as well as section M of the solicitation is documented and readily available. This should include the evaluation criteria and the basis for award contained in the solicitation, a summary schedule of offerors' prices, and the technical and cost evaluations. Also, the determination and supporting discussion of offerors determined to be within and outside the competitive range and a summary of the technical and cost evaluation notices the Contracting officer intends to discuss with offerors selected to participate in the discussions should documented and readily available to the Contracting officer.

(2) When a significant disagreement as defined in DFARS PGI 215.406-1(b)(i) exists between the Contracting officer and the Defense Contract Audit Agency (DCAA) auditor, and the auditor requests a higher-level review of the contracting officer's decision, the Contracting officer will advise his/her management and provide the name, title, and telephone number of the higher-level review authority to the DCAA auditor. The initial higher-level review authority is the chief of the contracting office or district/center contracting chief in the United States Army Corps of Engineers. If the significant disagreement still exists after discussions with the chief of the contracting office, the matter is elevated to the SCO for resolution. If s/he is unable to resolve the disagreement, the HCA will attempt to resolve the disagreement. The HCA will notify the DASA(P) if DCAA elevates the significant disagreement to the Director, DPCAP. The Contracting officer shall document the disposition of the higher-level review(s) in a memorandum for the contract file.

5115.406-3 Documenting the negotiation.

(a) Contracting officers must document within the price negotiation memorandum the results of the negotiation in sufficient detail to clearly establish all significant aspects of the contract action. When utilizing a consolidated POM/PNM, the Contracting officer must ensure the POM/PNM contains all required content for both documents, in accordance with FAR 15.406 and DFARS PGI 205.406, and is stated in sufficient detail to reconstruct actions and decisions and to support the reasonableness of the final price.

(b) If the final negotiated price is within a range specifically approved as the prenegotiation objective, and if negotiations did not present information that calls into question the reasonableness of the previously-approved price range, the written approval obtained under AFARS 5115.406-1(1) may also serve as the approval for the consolidated POM/PNM. The approved POM/PNM may be used in determining the negotiated price to be fair and reasonable. Notwithstanding this subsection,

the Contracting officer still must obtain all other required pre-award approvals.

For guidance on make-or-buy analysis for Army programs of record see AFARS PGI 5115.407-2.

5115.407-3 Forward pricing rate agreements.

(b)(i) The HCA may waive rates as described in DFARS 215.407-3(b)(i). See Appendix GG for further delegation.

5115.407-4 Should-cost review.

(b) Program should-cost review .

(4) In coordination with the program manager or other customer, the SCO must establish the requirements and format for the program should-cost team report.

(c) Overhead should-cost review.

(2)(B) The HCA may request an overhead should-cost review as described in DFARS PGI 215.407-4(c)(2)(B). See Appendix GG for further delegation.