

SUBPART 215.8—PRICE NEGOTIATION

215.804 Cost or pricing data and information other than cost or pricing data.

215.804-1 Prohibition on obtaining cost or pricing data.

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

(1) *Adequate price competition.*

(A) An example of a price “based on” adequate price competition is exercise of a priced option in a contract where adequate price competition existed, if the contracting officer has determined that the option price is reasonable in accordance with FAR 17.207(d);

(B) Dual or multiple source programs.

(1) In dual or multiple source programs, the determination of adequate price competition must be made on a case-by-case basis. Contracting officers must exercise deliberation and thorough review in making the determination. Even when adequate price competition exists, in certain cases it may be appropriate to obtain additional information to assist in price analysis.

(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)).

(4) *Exceptional cases.*

(A) The DoD has exempted the Canadian Commercial Corporation and its subcontractors from submission and certification of cost or pricing data on all acquisitions.

(B) The DoD has waived certain cost or pricing data requirements for nonprofit organizations (including educational institutions) on cost-reimbursement-no-fee contracts. The contracting officer shall require^{3/4}

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

(2) Cost or pricing data from subcontractors that are not nonprofit organizations.

215.804-6 Procedural requirements.

(b)(1)(A) When the solicitation requires contractor compliance with the Contractor Cost Data Reporting (CCDR) System (Army - AMCP 715-8, Navy - NAV PUB P-5241, and Air Force - AFMCP 800-15), require the contractor to submit DD Forms 1921 or 1921-1 with its SF 1411.

(B) Contracting offices may develop contract pricing proposal supporting schedules for use by offerors in providing supporting data for the SF 1411. Schedules should only ask for data that are necessary and reasonable based on industry, company, or commodity practices.

215.804-7 Defective cost or pricing data.

(b)(2) Unless there is clear evidence to the contrary, the contracting officer may presume the defective data were relied on and resulted in a contract price increase equal to the amount of the defect plus related overhead and profit or fee. The contracting officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the nondefective data had been known.

215.804-8 Contract clauses.

If the solicitation or contract includes one of the clauses at FAR 52.215-11, FAR 52.215-12, or FAR 52.215-13, also use the clause at 252.215-7000, Pricing Adjustments.

215.805 Proposal analysis.

215.805-5 Field pricing support.

(a)(1)(A) Contracting officers shall request field pricing reports for—

(1) Fixed-price proposals exceeding the cost or pricing data threshold at FAR 15.403-4(a)(1);

(2) Cost-type proposals exceeding the cost or pricing data threshold at FAR 15.403-4(a)(1) from offerors with significant estimating system deficiencies (see 215.811-70(a)(3) and (c)(2)(i)); or

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

(B) Contracting officers may, with adequate written justification, waive the requirement for these reports.

(2)(A) The contract administration office price/cost analyst supports the administrative contracting officer in preparing a complete and accurate field pricing report for the contracting officer. The analyst—

(1) In concert with the auditor and in consideration of the auditor's workload, establishes a deadline for the auditor's input, subject to adjustments when considered necessary;

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- (2) Identifies areas for special consideration;
 - (3) Arranges for exchanges of technical and audit information; and
 - (4) Must be fully responsive to a request for technical information from the auditor.
- (B) The pricing report—
 - (1) Details the price/cost analyst's comprehensive review and evaluation of the proposal;
 - (2) Includes information specifically requested by the contracting officer; and
 - (3) Summarizes what was analyzed, how it was analyzed, and the conclusions reached.
- (c)(i) In requesting field pricing support—
 - (A) Mark all requests “FIELD PRICING REQUEST” in bold letters on the mailing envelope;
 - (B) On urgent requests, provide facsimile numbers to facilitate return of the completed report; and
 - (C) Send an advance copy to the audit activity.
- (ii) When the contracting officer knows in advance that field pricing support will be required, the contracting officer may request field pricing support before the offeror submits a proposal.
 - (A) Give the administrative contracting officer (ACO) and auditor a copy of the solicitation;
 - (B) Tell them when to expect the proposal; and
 - (C) Tell the offeror to provide the ACO and auditor copies of the proposal.
- (iii) Where audit reports are received on contracting actions that are subsequently cancelled or unsuccessful, notify the cognizant auditor in writing.
- (iv) For spare parts or support equipment, identify all 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. The field pricing report will include, as a minimum—
 - (A) A detailed analysis of each line item identified by the contracting officer in the request;
 - (B) A detailed analysis of those line items where a comparison of the item description and the proposed price indicates a potential for overpricing;

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

(v) For spare parts proposals that have been identified as Spares Acquisition Integrated with Production (SAIP) items (see DoDI 4245.12, Spares Acquisition Integrated with Production (SAIP))—

(A) Include a copy of the data entitled “Contractor's Procurement Schedule for SAIP” (Data Item DI-V-7200), or equivalent, in the request so that the benefits of combining new and in process quantities can be assured (these data are delivered by the contractor on contracts that include SAIP requirements); or

(B) Require the contractor to include these data in its proposal.

(e)(6) The contract administration office price/cost analyst is responsible for providing a complete and accurate field pricing report. This includes quantifying technical findings; however, if the auditor requests a technical analysis, the auditor normally will incorporate the financial effect of the analysis in the audit report.

(7) The contracting officer shall, with the advice of the ACO and auditor, ensure that the contractor initiates necessary corrective action before contract award.

(8) The administrative contracting officer and auditor shall confer with the contractor during the course of the field pricing review to fully understand the basis for each item in the proposal and to remove any doubts as to the validity and accuracy of their conclusions and findings.

(g) The audit activity sends the original to the administrative contracting officer and a copy to the contracting officer.

215.805-70 Cost realism analysis.

(a) In competitive acquisitions, even when adequate price competition exists, to ensure that proposed costs are consistent with the technical proposal, the contracting officer—

(1) Should perform a cost realism analysis when—

(i) A cost-reimbursement contract is anticipated;

(ii) The solicitation contains new requirements that may not be fully understood by competing contractors;

(iii) There are quality concerns; or

(iv) Past experience indicates that contractors proposed costs have resulted in quality or service shortfalls.

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(2) May perform a cost realism analysis on other acquisitions.

(b) The contracting officer should determine what information other than cost or pricing data is necessary for the cost realism analysis during acquisition planning and development of the solicitation. Unless such information is already available from Government sources, the contracting officer will need to ask the offerors for it.

(1) Request only necessary data; and

(2) Do not request submission of cost or pricing data.

215.806 Subcontract pricing considerations.

215.806-1 General.

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—

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

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

(i) Circumstances require prompt negotiation; and

(ii) 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 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.

(a)(1) Contractor and subcontractor proposals may reflect the selection of sources whose proposals offer the greatest value to the Government in terms of performance and other factors. If the selection is based on greatest value rather than lowest price, the analysis supporting subcontractor selection should include a discussion of the factors considered in the selection (see also FAR 15.304 and 215.605(c)). If the contractor's analysis is not adequate, return it for correction of deficiencies.

(d) 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).

215.806-3 Field pricing reports.

(a)(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), these reviews should be fully coordinated with the administrative contracting officer (ACO) having cognizance of the prime contractor before being initiated. The ACO for the prime contractor will initiate the request to the ACO for the subcontractor, with an information copy to the auditor for the subcontractor. The ACO for the subcontractor sends the resulting field pricing report to the prime ACO with an information copy to the prime auditor. Requests for field pricing support on lower tier subcontractors are handled in a like manner.

(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.

215.807 Prenegotiation objectives.

(a)(i) Also consider data resulting from application of work measurement systems in developing prenegotiation objectives.

(ii) Consider field pricing support 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.

215.808 Price negotiation memorandum.

(a)(8) 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 memorandum—

(A) Must document significant deviations from the prenegotiation profit objective;

(B) Should include the DD Form 1547, Record of Weighted Guidelines Application (see Subpart 215.9), if used, with supporting rationale; and

(C) Must document the rationale for not using the weighted guidelines method when its use is required by 215.9.

215.809 Forward pricing rate agreements.

(e)(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.

215.810 Should-cost review.

215.810-2 Program should-cost review.

(b) DoD contracting activities should consider performing a program should-cost review before award of a definitive major systems contract exceeding \$100 million.

215.810-3 Overhead should-cost review.

(a) Contact the DCMC/DLA Overhead Center, Fort Belvoir, VA 22060-6221, at (703) 767-3387, for questions on overhead should-cost analysis.

(b)(i) The Defense Contract Management Command/Defense Logistics Agency (DCMC/DLA), 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 31.001) when all of the following conditions exist:

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

(B) Projected DoD versus total business exceeds 30 percent;

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

(D) Significant volume of proposal activity is anticipated;

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

(F) Contractor cost control/reduction initiatives appear inadequate.

(ii) The head of the contracting activity may request an overhead should-cost review for a business unit which does not meet the criteria in paragraph (b)(i) of this subsection.

(iii) 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 DCMC/DLA-led teams should be considered when determining whether a review will be conducted. Overhead should-cost reviews generally shall not be conducted at a contractor business segment more frequently than every three years.

215.811 Estimating systems.

215.811-70 Disclosure, maintenance, and review requirements.

(a) Definitions.

- (1) “Adequate estimating system” means an estimating system that—
 - (i) Is established, maintained, reliable, and consistently applied; and
 - (ii) Produces verifiable, supportable, and documented cost estimates.
- (2) “Contractor” means a business unit as defined in FAR 31.001.
- (3) “Estimating system” is as defined in the clause at 252.215-7002, Cost Estimating System Requirements.
- (4) “Significant estimating system deficiency” means a shortcoming in the estimating system which is likely to consistently result in proposal estimates for total cost or a major cost element(s) which do not provide an acceptable basis for negotiation of fair and reasonable prices.

(b) Applicability.

- (1) DoD policy is that all contractors have estimating systems that—
 - (i) Are adequate;
 - (ii) Consistently produce well supported proposals that are acceptable as a basis for negotiation of fair and reasonable prices;
 - (iii) Are consistent with and integrated with the contractor's related management systems; and
 - (iv) Are subject to applicable financial control systems.
- (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 totalling \$50 million or more for which cost or pricing data were required; or
 - (ii) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totalling \$10 million or more (but less than \$50 million) for which cost or pricing data were required and the contracting officer, with concurrence or at the request of the administrative contracting officer, 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) *Responsibilities.*

(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 subsection;

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

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

(2) The cognizant administrative contracting officer, for contractors subject to paragraph (b)(2) of this subsection, shall—

(i) Determine the adequacy of the disclosure and system; and

(ii) Pursue correction of any deficiencies.

(3) The cognizant auditor, on behalf of the ACO, serves as team leader in conducting estimating system reviews.

(4) A contractor subject to estimating system disclosure, maintenance, and review requirements shall—

(i) Maintain an adequate system;

(ii) Describe its system to the administrative contracting officer (ACO);

(iii) Provide timely notice of changes in the system; and

(iv) Correct system deficiencies identified by the ACO.

(d) *Characteristics of an adequate estimating system.*

(1) General. An adequate system should 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.

(2) Evaluation. In evaluating the adequacy of a contractor's estimating system, the ACO should consider whether the contractor's estimating system, for example—

(i) Establishes clear responsibility for preparation, review and approval of cost estimates;

(ii) Provides a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates;

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(iii) Assures that relevant personnel have sufficient training, experience and guidance to perform estimating tasks in accordance with the contractor's established procedures;

(iv) Identifies the sources of data and the estimating methods and rationale used in developing cost estimates;

(v) Provides for appropriate supervision throughout the estimating process;

(vi) Provides for consistent application of estimating techniques;

(vii) Provides for detection and timely correction of errors;

(viii) Protects against cost duplication and omissions;

(ix) Provides for the use of historical experience, including historical vendor pricing information, where appropriate;

(x) Requires use of appropriate analytical methods;

(xi) Integrates information available from other management systems, where appropriate;

(xii) Requires management review including verification that the company's estimating policies, procedures and practices comply with this regulation;

(xiii) Provides for internal review of and accountability for the adequacy of the estimating system, including the comparison of projected results to actual results and an analysis of any differences;

(xiv) Provides procedures to update cost estimates in a timely manner throughout the negotiation process; and

(xv) Addresses responsibility for review and analysis of the reasonableness of subcontract prices.

(3) Indicators of potentially significant estimating deficiencies. The following examples indicate conditions that may produce or lead to significant estimating deficiencies—

(i) Failure to ensure that historical experience is available to and utilized by cost estimators, where appropriate;

(ii) Continuing failure to analyze material costs or failure to perform subcontractor cost reviews as required;

(iii) Consistent absence of analytical support for significant proposed cost amounts;

(iv) Excessive reliance on individual personal judgment where historical experience or commonly utilized standards are available;

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(v) Recurring significant defective pricing findings within the same cost element(s);

(vi) Failure to integrate relevant parts of other management systems (e.g., production control or cost accounting) with the estimating system so that the ability to generate reliable cost estimates is impaired; and

(vii) Failure to provide established policies, procedures, and practices to persons responsible for preparing and supporting estimates.

(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 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 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 three years of contractors subject to the disclosure requirements. The ACO and auditor may lengthen or shorten the three-year period based on their joint risk assessment of the contractor's past experience and current vulnerability.

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(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, 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 which need correction;

(ii) The deficiencies are significant estimating deficiencies which 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—

(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 which prompted the disapproval; and

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

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(6) Monitoring contractor's corrective action. The auditor and 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.

(g) *Impact of estimating system deficiencies on specific proposals.*

(1) Field pricing teams will discuss identified estimating system deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(2) The contracting officer responsible for negotiation of a proposal generated by an estimating system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, e.g.—

(i) Allowing the contractor additional time to correct the estimating system deficiency and submit a corrected proposal;

(ii) Considering another type of contract, e.g., an FPIF instead of an FFP;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the system's deficiency;

(iv) Segregating the questionable areas as a cost reimbursable line item;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) The contracting officer who incorporates a reopener clause into the contract is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by an estimating deficiency should—

(i) Clearly identify the amounts and items which are in question at the time of negotiation;

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including cost or pricing data, identifying the cost impact adjustment necessitated by the deficient estimating system;

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(iii) Provide for the contracting officer to unilaterally adjust the contract price if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

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

215.870 Reserved.

215.871 Reserved.

215.872 Reserved.

215.873 Estimated data prices.

(a) The Department of Defense 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, the solicitation will include DD Form 1423, Contract Data Requirements List. 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—

- (1) Differences in business practices in competitive situations;
- (2) Differences in accounting systems among offerors;
- (3) Use of factors or rates on some portions of the data;
- (4) Application of common effort to two or more data items; and
- (5) Differences in data preparation methods among offerors.

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

(d) 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.