

# Part 15 - Contracting by Negotiation

---

[15.000 Scope.](#)

[15.001 Definitions.](#)

[15.002 Types of negotiated acquisition.](#)

[Subpart 15.1 - Presolicitation and Solicitation](#)

[15.100 Scope.](#)

[15.101 Early exchanges with industry.](#)

[15.102 Structuring a request for proposals.](#)

[15.103 Developing a competitive source selection approach.](#)

[15.103-1 Tradeoff approach.](#)

[15.103-2 Lowest price technically acceptable approach.](#)

[15.103-3 Highest technically rated with a fair and reasonable price approach](#)

[15.103-4 Phased acquisition.](#)

[15.104 Establishing competitive evaluation factors and significant subfactors.](#)

[15.105 Other considerations.](#)

[15.105-1 Oral presentations.](#)

[15.105-2 Negotiations disclosure.](#)

[15.105-3 Limitation on tiered evaluations for multiple award contracts.](#)

[15.105-4 Request for cost or pricing data.](#)

[15.105-5 Make-or-buy decision.](#)

[15.105-6 Should-cost review.](#)

[15.105-7 Unit prices.](#)

[15.106 Amending a request for proposal.](#)

[15.107 Submission, modification, revision, and withdrawal of proposals.](#)

[15.108 Receiving proposals.](#)

[15.109 Uniform contract format.](#)

[15.109-1 Part I - The Schedule.](#)

[15.109-2 Part II - Contract Clauses.](#)

[15.109-3 Part III - List of Documents, Exhibits, and Other Attachments.](#)

[15.109-4 Part IV - Representations and Instructions.](#)

[15.110 Solicitation provisions and contract clauses.](#)

#### [Subpart 15.2 - Evaluation and Award](#)

[15.200 Scope.](#)

[15.201 Source selection responsibilities.](#)

[15.202 Evaluating competitive proposals.](#)

[15.203 Competitive award without negotiation.](#)

[15.204 Competitive award with negotiation.](#)

[15.204-1 Establishing a competitive range.](#)

[15.204-2 Competitive negotiations.](#)

[15.205 Source selection decision.](#)

[15.206 Preaward notices and debriefings.](#)

[15.206-1 Preaward notices.](#)

[15.206-2 Preaward debriefing.](#)

[15.207 Award.](#)

[15.207-1 Award to successful offeror.](#)

[15.207-2 Award notice.](#)

#### [Subpart 15.3 - Postaward](#)

[15.300 Scope.](#)

[15.301 Postaward debriefing of offerors.](#)

[15.301-1 Debriefing process.](#)

[15.301-2 Opportunity for follow-up questions.](#)

[15.302 Protests against award.](#)

[15.303 Discovery of mistakes.](#)

[15.304 Defective certified cost or pricing data after award.](#)

[15.305 Estimating systems.](#)

[Subpart 15.4 - Contract Pricing](#)

[15.400 Scope of subpart.](#)

[15.401 Definitions.](#)

[15.402 General.](#)

[15.403 Obtaining cost or pricing data.](#)

[15.403-1 Data other than certified cost or pricing data.](#)

[15.403-2 Prohibitions on obtaining certified cost or pricing data.](#)

[15.403-3 Certified cost or pricing data.](#)

[15.403-4 Certificate of current cost or pricing data.](#)

[15.404 Cost and/or price analysis.](#)

[15.404-1 Price analysis.](#)

[15.404-2 Cost analysis.](#)

[15.404-3 Cost realism analysis.](#)

[15.404-4 Technical cost or price analysis.](#)

[15.404-5 Unit prices.](#)

[15.404-6 Unbalanced pricing.](#)

[15.404-7 Review and justification of pass-through contracts.](#)

[15.404-8 Subcontract pricing considerations.](#)

[15.404-9 Profit.](#)

[15.405 Special cost or pricing areas.](#)

[15.405-1 Inaccurate, incomplete, or noncurrent cost or pricing data.](#)

[15.405-2 Make-or-buy programs.](#)

[15.405-3 Forward pricing rate agreements.](#)

[15.405-4 Should-cost review.](#)

[15.406 Data to support proposal analysis.](#)

[15.407 Price negotiation.](#)

[15.408 Documentation.](#)

[15.408-1 Prenegotiation objectives.](#)

[15.408-2 Documenting the negotiation.](#)

[Subpart 15.5 - Unsolicited Proposals](#)

[15.500 Scope of subpart.](#)

[15.501 Definitions.](#)

[15.502 General.](#)

[15.503 Preparing unsolicited proposals.](#)

[15.503-1 Scope of proposals.](#)

[15.503-2 Content of proposals.](#)

[15.503-3 Restricting use and disclosure of data.](#)

[15.504 Receipt and initial review of unsolicited proposals.](#)

[15.504-1 Initial Review.](#)

[15.504-2 Handling use and disclosure of data restrictions.](#)

[15.505 Evaluation of unsolicited proposals.](#)

[15.506 Criteria for acceptance and negotiation of an unsolicited proposal.](#)

## **15.000 Scope.**

This part addresses policies and procedures used in competitive and noncompetitive negotiated acquisitions. These acquisition procedures provide an opportunity for back-and-forth negotiation between the Government and an offeror(s) upon receipt of a proposal submitted in response to a request for proposals (RFP).

### **15.001 Definitions.**

As used in this part—

*Deficiency* is any part of an offer that does not conform to a material requirement of a RFP. A material requirement is one that affects price, quantity, quality, or delivery, or that the RFP requires to be met at the time of proposal submission.

*Proposal modification* is a change made to a proposal before the RFP closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

*Proposal revision* is a change to material elements of a proposal made after the RFP closing date, at the request of or as allowed by a contracting officer, as the result of negotiations.

*Weakness* means a flaw in the proposal that increases the risk of unsuccessful contract performance. A “significant weakness” in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

### **15.002 Types of negotiated acquisition.**

(a) *Noncompetitive acquisitions.* Noncompetitive, or sole source, acquisition is a process whereby an award is made to a single vendor without soliciting offers from multiple sources. When using this acquisition strategy, agencies should remove unnecessary information and requirements from the request for proposal (RFP), including voluminous proposal preparation instructions and evaluation factors.

(b) *Competitive acquisitions.* Competitive acquisition is a process whereby an award is made after soliciting offers from multiple sources. When using this acquisition strategy, agencies should tailor the complexity of the RFP, evaluation, and source selection decision to the circumstances of the acquisition, while maintaining a process that promotes an impartial and comprehensive evaluation of proposals, leading to selection of the proposal representing the best value to the Government.

## Subpart 15.1 - Presolicitation and Solicitation

### 15.100 Scope.

This subpart addresses policies and procedures for preparing requests for proposals (RFPs) and receiving proposals. RFPs are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to request proposals.

### 15.101 Early exchanges with industry.

(a) *General.* Exchanges of information among all interested parties are encouraged and can occur at any time between the identification of a requirement through the receipt of proposals. These exchanges can improve both the Government's understanding of industry capabilities and the industry's understanding of the Government's needs. Any exchange of information must be consistent with procurement integrity requirements in part 3 and protected in accordance with part 24.

(b) *Draft RFPs.* Agencies are encouraged to release draft RFPs and conduct conferences with industry before issuing competitive RFPs.

(c) *Requests for Information.* Agencies are encouraged to release requests for information (RFI) when the Government does not currently intend to award a contract, but wants to obtain price, delivery, market, or capabilities information for planning purposes.

(1) There is no required format for RFIs.

(2) Responses to RFIs are not offers and cannot be accepted by the Government to form a binding contract.

(3) RFIs must state that—

(i) The Government does not intend to award a contract on the basis of the RFI or otherwise pay for the information requested; and

(ii) Responses will be treated as information only and not as a proposal.

(4) Information received in response to an RFI must be safeguarded adequately from unauthorized disclosure. Contracting officers should mark the information with date and time of receipt and provide the information to designated officials.

(d) *Mission needs and requirements.* General information on an agency's current or anticipated needs and requirements may be disclosed at any time. When information about a

proposed acquisition is disclosed to one or more potential offerors and that information is necessary for the preparation of proposals, the information should be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage.

(e) *Advisory multistep process.*

(1) Agencies may publish a notice that provides a general description of the scope or purpose of the acquisition and invites potential offerors to submit information that allows the Government to advise offerors about their potential to be viable competitors.

(2) When using this process, agencies must—

(i) Evaluate all responses in accordance with the criteria stated in the notice;

(ii) Advise each respondent in writing either that it will be invited to participate in the resultant acquisition or, based on the information submitted, that it is unlikely to be a viable competitor;

(iii) Advise respondents considered not to be viable competitors of the general basis for that opinion; and

(iv) Inform all respondents that, notwithstanding the advice provided by the Government in response to their submissions, they may participate in the resultant acquisition.

## **15.102 Structuring a request for proposals.**

(a) *Method.* RFPs may be issued in writing or orally.

(b) *Format.*

(1) *Requirement.* Contracting officers should prepare RFPs and resulting contracts using the uniform contract format at 15.109.

(i) Streamlined RFPs may be used in non-competitive acquisitions and other acquisitions in which a standard RFP would be unnecessarily lengthy.

(ii) Oral RFPs may be used when processing a written RFP would delay the acquisition of supplies or services to the detriment of the Government and an RFP is not required to be posted under part 5.

(2) *Exceptions.* Agencies do not need to use the uniform contract format for:

(i) Construction and architect-engineer contracts.

(ii) Subsistence contracts.

(iii) Supplies or services contracts requiring special contract formats prescribed elsewhere in this part that are inconsistent with the uniform contract format.

(iv) Streamlined RFPs.

(v) Contracts exempted by the agency head or designee.

(3) *Minimum content when not using the uniform contract format.* When the uniform contract format is not used, contracting officers must ensure—

(i) Competitive RFPs, at a minimum, describe the Government's requirement; any anticipated terms and conditions that will apply to the contract; the information required to be in the offeror's proposal; the factors and significant subfactors that will be used to evaluate the proposal and their relative importance, and one of the statements at 15.104(d).

(ii) Streamlined RFPs must be streamlined to remove unnecessary information and requirements and, at a minimum, contain the following:

(A) RFP number and date;

(B) Name, address, and telephone number of the contracting officer;

(C) Type of contract contemplated;

(D) Quantity, description, and required delivery dates for the item;

(E) Applicable certifications and representations;

(F) Anticipated contract terms and conditions;

(G) Proposal due date and time;

(H) Other relevant information; e.g., incentives, variations in delivery schedule, cost proposal support, and data requirements; and

(I) For competitive streamlined RFPs, instructions to offerors and evaluation factors and significant subfactors in accordance with 15.104.

## **15.103 Developing a competitive source selection approach.**

The goal of source selection is to select the proposal that represents the best value to the Government. To obtain best value, agencies use a range of approaches for evaluating competitive offers, where the importance of cost or price varies relative to other factors such as technical merit and past performance. Agencies can obtain best value in competitive negotiated acquisitions by using any one or a combination of source selection approaches, including but not limited to the approaches mentioned in this section.

### **15.103-1 Tradeoff approach.**

The tradeoff approach to source selection is appropriate when it may be in the Government's best interest to consider award to other than the lowest priced offeror or other than the highest technically rated offeror. This process permits tradeoffs among cost or price and non-cost or non-price factors. The anticipated benefits of a higher priced proposal must merit the additional cost.

### **15.103-2 Lowest price technically acceptable approach.**

(a) *General.* The lowest price technically acceptable (LPTA) approach to source selection is appropriate when it is in the Government's best interest to award to the offeror that submits a technically acceptable proposal with the lowest evaluated price. This approach does not permit tradeoffs.

(b) *Required Information.* When using this approach, the RFP must—

(1) Identify the evaluation factors that establish the minimum requirements for acceptability; and

(2) Specify that the award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the requirements for acceptability.

(c) *Limitations.* Except for DoD, in accordance with section 880 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232, 41 U.S.C. 3701 Note)—

(1) The LPTA source selection approach must only be used when—

(i) The agency can comprehensively and clearly describe the minimum requirements in terms of performance objectives, measures, and standards that will be used to determine the acceptability of offers;

(ii) The agency would realize no, or minimal, value from a proposal that exceeds the minimum technical or performance requirements;

(iii) The agency believes the technical proposals will require no, or minimal, subjective judgment by the source selection authority as to the desirability of one offeror's proposal versus a competing proposal;

(iv) The agency has a high degree of confidence that reviewing the technical proposals of all offerors would not result in the identification of characteristics that could provide value or benefit to the agency;

(v) The agency determined that the lowest price reflects the total cost, including operation and support, of the product(s) or service(s) being acquired; and

(vi) The contracting officer documents the contract file describing the circumstances that justify the use of the LPTA source selection process.

(2) Contracting officers must avoid, to the maximum extent practicable, using the LPTA source selection process in the case of a procurement that is predominantly for the acquisition of—

(i) Information technology services, cybersecurity services, systems engineering and technical assistance services, advanced electronic testing, audit or audit readiness services, health care services and records, telecommunications devices and services, or other knowledge-based professional services;

(ii) Personal protective equipment; or

(iii) Knowledge-based training or logistics services in contingency operations or other operations outside the United States.

### **15.103-3 Highest technically rated with a fair and reasonable price approach**

(a) *General.*

(1) The highest technically rated with a fair and reasonable price approach to source selection is appropriate when the Government determines in advance that it would not be advantageous to consider tradeoffs between cost or price and non-cost or non-price factors; rather, the acquisition warrants paying any fair and reasonable price for the highest quality performance.

(2) In this approach, all proposals are evaluated based on the non-price factors outlined in the solicitation and the source selection authority determines the highest technically rated proposal. The price of the highest technically rated proposal is evaluated to determine if it is fair and reasonable in accordance with subpart 15.4.

(3) If the highest technically rated proposal's price is fair and reasonable, the proposal is selected for award. If the price is not fair and reasonable, the source selection authority must determine the next highest technically rated proposal and evaluate whether the price is fair and reasonable in accordance with subpart 15.4. This process continues until a contract is awarded to the highest technically rated responsible offeror with a fair and reasonable price.

(b) *Required information.* When using this approach, the RFP must advise offerors that the Government will not consider tradeoffs between cost or price and non-cost or non-price factors, and that the highest technically rated proposal will be selected for award if it offers a fair and reasonable price.

#### **15.103-4 Phased acquisition.**

(a) Phased acquisitions break down complex or high-risk acquisitions into distinct parts for contract award. Instead of a single and comprehensive proposal and evaluation process, phased acquisitions are structured to make separate awards at distinct phases of the acquisition. This approach can reduce source selection timeframes and promote flexibility by permitting adjustments to the requirement between phases.

(b) When using a phased approach, the RFP must—

(1) Establish the phases for the acquisition; and

(2) Describe the process that will be used to evaluate proposals and any criteria offerors must meet to progress to the next phase in the RFP.

#### **15.104 Establishing competitive evaluation factors and significant subfactors.**

(a) *General.* A competitive award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition. Evaluation factors and significant subfactors must represent the key areas of importance and emphasis to be considered in the source selection decision; and support meaningful differentiation between competing proposals. All factors and

significant subfactors that will affect contract award and their relative importance must be stated clearly in the RFP (10 U.S.C. 3206(b)(1) and 41 U.S.C. 3306(b)(1)).

(b) *Required factors.* The evaluation factors and significant subfactors that apply to an acquisition and their relative importance are within the broad discretion of agency acquisition officials, subject to the following requirements:

(1) *Price or cost.*

(i) Price or cost to the Government must be evaluated in every competitive source selection (10 U.S.C. 3206(c)(1)(B) and 41 U.S.C. 3306(c)(1)(B)). Proposed price reductions under an offeror's other contracts cannot be used as an evaluation factor.

(ii) In accordance with 10 U.S.C. 3206(c), for DoD, NASA, and the Coast Guard—

(A) Contracting officers may choose not to include price or cost as an evaluation factor for award when an RFP—

(1) Has an estimated value above the simplified acquisition threshold;

(2) Will result in multiple-award contracts that are for the same or similar services; and

(3) States that the Government intends to make an award to each and all qualifying offerors.

(B) If the contracting officer chooses not to include price or cost as an evaluation factor for the contract award, in accordance with paragraph (b)(1)(ii)(A) of this section, the contracting officer must consider price or cost as one of the factors in the selection decision for each order placed under the contract.

(C) The exception in paragraph (B)(1)(ii)(A) of this section must not apply to RFPs for multiple-award contracts that provide for sole source orders pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(2) *Quality.* The quality of the product or service must be evaluated in every competitive source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with RFP requirements, technical

excellence, management capability, personnel qualifications, and prior experience ((10 U.S.C. 3206(c)(1)(A) and 41 U.S.C. 3306(c)(1)(A)).

(3) *Past performance.*

(i) Past performance must be evaluated in every competitive source selection, unless the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition. This evaluation is separate from the responsibility determination required under part 9.

(ii) The RFP must—

(A) Describe the general approach for evaluating past performance information, including evaluating offerors with no relevant performance history;

(B) Provide offerors an opportunity to: identify past or current contracts (including Federal, State, and local government, private sector, and other contracts) for efforts similar to the Government requirement, and provide information on problems encountered on the identified contracts and the offeror corrective actions; and

(iii) The RFP may describe the agency's approach to considering the currency and relevance, source, and context of the information to be requested.

(c) *Situational factors.* For competitive RFPs that are not set aside for small business concerns, involving consolidation or bundling, that offer a significant opportunity for subcontracting, the contracting officer must include—

(1) A factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans (15 U.S.C. 637(d)(4)(G)(ii)); and

(2) A factor to evaluate the proposed small business subcontracting participation in the subcontracting plan (15 U.S.C. 637(d)(4)(G)(i)).

(d) *Factor importance.* In addition to stating the relative importance of each evaluation factor, and unless the exception at paragraph (b)(1)(ii) of this section applies, the RFP must also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

(1) Significantly more important than cost or price;

(2) Approximately equal to cost or price; or

(3) Significantly less important than cost or price (10 U.S.C. 3206(c)(1)(C) and 41 U.S.C. 3306(c)(1)(C)).

## **15.105 Other considerations.**

### **15.105-1 Oral presentations.**

(a) Oral presentations may be used as a substitute for requesting portions of a written proposal information from offerors. Information on an offeror's capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks can be suitable for oral presentations.

(b) Oral presentations may occur at any time during the source selection process. When requesting oral presentations, the RFP must provide offerors with the necessary information to prepare and provide the presentation.

### **15.105-2 Negotiations disclosure.**

Competitive RFPs must advise offerors whether the Government intends to evaluate proposals and award a contract with or without conducting negotiations with offerors whose proposals have been determined to be within the competitive range. FAR provision 52.215-1, Instructions to Offerors-Competitive Acquisition, and its Alternate I, contain this disclosure.

### **15.105-3 Limitation on tiered evaluations for multiple award contracts.**

When soliciting for a multiple award contract, agencies must not create a tiered or cascading evaluation of small business offers, as described in 13 CFR 125.2, unless the agency has statutory authority to do so.

### **15.105-4 Request for cost or pricing data.**

(a) *Required information.* In accordance with 15.402(a), contracting officers must state in the RFP—

(1) Whether certified cost or pricing data are required;

(2) That, in lieu of submitting certified cost or pricing data, the offeror may submit a request for exception from the requirement to submit certified cost or pricing data;

(3) Any requirement for data other than certified cost or pricing data; and

(4) The requirement for necessary preaward or postaward access to offeror's records.

(b) *Format for submission of data.*

(1) *Certified cost or pricing data.* Contracting officers may require submission of certified cost or pricing data in the format indicated in Table 15-1 at 15.408-2, specify an alternative format, or permit submission in the contractor's format, unless the data are required to be submitted on one of the termination forms specified in part 49.

(i) Offerors must describe any forward pricing rate agreements (FRPA) or other advanced agreements in each specific pricing proposal to which the rates apply and identify the latest cost or pricing data already submitted in accordance with the FPRA.

(ii) Data supporting FRPAs, other advanced agreements, or final indirect cost proposals must be submitted in a form acceptable to the contracting officer.

(2) *Data other than certified cost or pricing data.* Data may be submitted in the offeror's own format unless the contracting officer decides that use of a specific format is essential for evaluating and determining that the price is fair and reasonable and the format has been described in the RFP.

### **15.105-5 Make-or-buy decision.**

(a) *General.* The Government may choose to review and agree on the offeror's make-or-buy program when necessary to ensure negotiation of reasonable contract prices, satisfactory performance, or implementation of socioeconomic policies.

(b) *Acquisitions requiring make-or-buy programs.*

(1) Contracting officers may require offerors to submit make-or-buy program plans for acquisitions requiring certified cost or pricing data whose estimated value is \$20 million or more, except when the proposed contract is for research or development and, if prototypes or hardware are involved, no significant follow-on production is anticipated.

(2) Contracting officers may only require offerors to submit make-or-buy programs for acquisitions whose estimated value is under \$20 million if the contracting officer—

(i) Determines that the information is necessary; and

(ii) Documents the reasons in the contract file.

(c) *RFP requirements.* When offerors must submit proposed make-or-buy programs, the RFP must include—

(1) A statement that the program and required supporting information must accompany the offer; and

(2) A description of factors to be used in evaluating the proposed program.

(d) *Required information from offerors.*

(1) The information required from an offeror about a make-or-buy program must—

(i) Be confined to those major items or work efforts that normally would require company management review of the make-or-buy decision because they are complex, costly, needed in large quantities, or require additional equipment or real property to produce;

(ii) Not include raw materials, products, commercial services, and off-the-shelf items, unless their potential impact on contract cost or schedule is critical; and,

(iii) Not include items or work efforts estimated to cost less than 1 percent of the total estimated contract price or any minimum dollar amount set by the agency.

(2) To support a make-or-buy program, the following information must be provided by an offeror in its proposal:

(i) A description of each major item or work effort.

(ii) Categorization of each major item or work effort as “must make,” “must buy, or “can either make or buy.”

(iii) For each item or work effort categorized as “can either make or buy,” a proposal either to “make” or to “buy.”

(iv) Reasons for categorizing items and work efforts as “must make” or “must buy,” and proposing to “make” or to “buy” those categorized as “can either make or buy.” The reasons must include the consideration given to the evaluation factors described in the RFP and must be in sufficient detail to permit the contracting officer to evaluate the categorization or proposal.

(v) Designation of the plant or division proposed to make each item or perform each work effort, and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(vi) Identification of proposed subcontractors, if known, and their location and size status.

(vii) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(viii) Any other information the contracting officer requires in order to evaluate the program.

### **15.105-6 Should-cost review.**

When a program should-cost review is planned in accordance with 15.405-4, the contracting officer should state this fact in the acquisition plan and in the RFP.

### **15.105-7 Unit prices.**

To facilitate the analysis at 15.404-5, contracting officers must require offerers to identify in their proposals those items of supply that they will not manufacture or to which they will not contribute significant value when adequate price competition is not anticipated. This requirement does not apply to acquisitions for commercial products or commercial services.

### **15.106 Amending a request for proposal.**

(a) *General.* When the Government changes its requirements or terms and conditions, the contracting officer must amend the RFP.

(1) Amendments issued before the established time and date for receipt of proposals must be issued to all parties receiving the RFP.

(2) Amendments issued after the established time and date for receipt of proposals must be issued to all offerors that have not been eliminated from the competition.

(b) *Content.* At a minimum, each amendment must include—

(1) The name and address of issuing activity;

(2) The RFP number and date;

- (3) The amendment number and date;
- (4) The number of pages in the amendment;
- (5) A description of the change being made;
- (6) The contracting officer's name and contact information; and
- (7) The revised RFP closing date, if applicable.

(c) *Forms.* Prescribed forms are not required to amend RFPs described in this part. Agencies may use Standard Form (SF) 30, *Amendment of Solicitation/Modification of Contract*, and Optional Form (OF) 309, *Amendment of Solicitation*.

(d) *Oral notices.* Oral notices may be used when time is of the essence. Contracting officers should document the contract file and formalize the notice with a written amendment.

(e) *Requirement changes.*

(1) Contracting officers must amend the RFP if the Government is interested in a proposal that involves a departure from the stated requirements. The amendment should not reveal the alternate solution proposed or any other information that is entitled to protection.

(2) Contracting officers must cancel the RFP and issue a new one, regardless of the stage of the acquisition if an amendment—

(i) Is proposed after offers have been received, and

(ii) In the judgment of the contracting officer, based on market research or otherwise, has a requirement change that is so substantial it exceeds what prospective offerors reasonably could have anticipated as a change to the RFP, and additional sources likely would have submitted offers had the change been in the RFP.

## **15.107 Submission, modification, revision, and withdrawal of proposals.**

(a) *Submission.* Offerors are responsible for submitting proposals, and any revisions or modifications, so as to reach the Government office designated in the RFP by the time specified in the RFP.

(1) *Method.* Offerors may use any transmission method authorized in the RFP.

(2) *Time.* If no time is specified in the RFP, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

(b) *Late submission.*

(1) *General.* Any proposal, modification, or revision, that is received at the designated Government office after the exact time specified for receipt of proposals is “late” and will not be considered, unless it is received before award is made, the contracting officer determines that accepting the late proposal would not unduly delay the acquisition, and—

(i) If it was transmitted through an electronic commerce method authorized by the RFP, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals;

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of proposals and was under the Government's control prior to the time set for receipt of proposals; or

(iii) It was the only proposal received.

(2) *Exception.* A late modification of an otherwise successful proposal, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted by the contracting officer.

(3) *Proof of receipt.* Acceptable evidence to establish the time of receipt at the Government installation includes electronic timestamps, the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) *Notification.* Contracting officers must promptly notify any offeror if its proposal, modification, or revision was received late, and inform the offeror whether its proposal will be considered, unless contract award is imminent and the award notice at 15.207-2 will suffice.

(5) *Documentation.*

(i) When available, the file for each late proposal, modification, revision, or withdrawal received must include the date and hour of receipt; a statement

regarding whether the proposal was considered for award, with supporting rationale; and the envelope, wrapper, or other evidence of date of receipt.

(ii) Late proposals and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(c) *Interruption.* If proposals cannot be received at the Government office designated for receipt of proposals by the exact time specified in the RFP because an emergency or unanticipated event interrupts normal Government processes, and urgent Government requirements preclude amendment of the RFP closing date, the time specified for RFP will be deemed to be extended to the same time of day specified in the RFP on the first work day on which normal Government processes resume.

(d) *Withdrawal.* Proposals may be withdrawn by written notice at any time before award. A copy of withdrawn proposals should be retained in the contract file.

(1) Extra copies of the withdrawn proposals may be destroyed or returned to the offeror at the offeror's request. Extremely bulky proposals must only be returned at the offeror's request and expense.

(2) Oral proposals in response to oral RFPs may be withdrawn orally. Contracting officers must document the contract file when oral withdrawals are made.

## **15.108 Receiving proposals.**

(a) *Marking.* When there is no electronic record, contracting officers must mark proposals with the date and time of receipt and provide them to the designated officials.

(b) *Handling.* Proposals should be safeguarded from unauthorized disclosure throughout the source selection process in accordance with part 3.

(c) *Unreadable proposals.* If any portion of a proposal submitted electronically is unreadable, contracting officers must immediately notify the offeror and permit the offeror to resubmit the unreadable portion of the proposal. Contracting officers must establish the method and time for resubmission after consultation with the offeror and document the file. For the purpose of determining timeliness under 15.107, the resubmission is considered as if it were received at the date and time of the original unreadable submission, provided the offeror complies with the time and format requirements established by the contracting officer for resubmission.

## **15.109 Uniform contract format.**

RFPs using the uniform contract format should include Parts I, II, III, and IV. Upon award, contracting officers should not physically include Part IV in the resulting contract, but should retain it in the contract file. The representations and certifications in Part IV are incorporated by reference in the contract through FAR clauses 52.204-19, Incorporation by Reference of Representations and Certifications, and 52.212-4, Contract Terms and Conditions-Commercial Products and Commercial Services.

### **15.109-1 Part I - The Schedule.**

(a) *Section A, Solicitation/contract form.*

(1) Prescribed forms are not required to prepare RFPs described in this part. Agencies may use Optional Form (OF) 308, *Solicitation and Offer-Negotiated Acquisition*, or Standard Form (SF) 33, *Solicitation, Offer and of Award*, to prepare RFPs.

(2) When other than OF 308 or SF 33 is used, include the following information on the first page of the RFP:

(i) Name, address, and location of issuing activity, including room and building where proposals or information must be submitted.

(ii) RFP number.

(iii) Date of issuance.

(iv) Closing date and time.

(v) Number of RFP pages.

(vi) Requisition or other purchase authority.

(vii) Brief description of item or service.

(viii) Requirement for the offeror to provide its name and complete address, including street, city, county, state, and zip code, and email address, if appropriate.

(ix) Offer expiration date.

(b) *Section B, Supplies or services and prices/costs.* Include a brief description of the supplies or services, including any incidental deliverables.

(c) *Section C, Description/specifications/requirements.* Include any description or specifications needed in addition to Section B.

(d) *Section D, Packaging and marking.* Include packaging, packing, preservation, and marking requirements, if any.

(e) *Section E, Inspection and acceptance.* Include inspection, acceptance, quality assurance, and reliability requirements.

(f) *Section F, Deliveries or performance.* Include the requirements for time, place, and method of delivery or performance.

(g) *Section G, Contract administration data.* Include any required accounting and appropriation data and any required contract administration information or instructions not included in other sections of the uniform contract format. Include a statement that the offeror should include the payment address in the proposal, if it is different from that shown for the offeror.

(h) *Section H, Special contract requirements.* Include a clear statement of any special contract requirements that are not included in Section I or in other sections of the uniform contract format.

## **15.109-2 Part II - Contract Clauses.**

*Section I, Contract clauses.* Include the clauses required by law or by this part and any additional clauses expected to be included in any resulting contract, if these clauses are not required in any other section of the uniform contract format. An index may be inserted if this section's format is particularly complex.

## **15.109-3 Part III - List of Documents, Exhibits, and Other Attachments.**

*Section J, List of attachments.* Include a list of the title, date, and number of pages for each attached document, exhibit, and other attachment. Cross references to material in other sections may be inserted, as appropriate.

## **15.109-4 Part IV - Representations and Instructions.**

(a) *Section K, Representations, certifications, and other statements of offerors.* Include RFP provisions that require representations, certifications, or the submission of other information by offerors.

(b) *Section L, Instructions, conditions, and notices to offerors or respondents.* Include solicitation provisions and other information and instructions not required elsewhere to guide offerors in preparing proposals.

(1) Include the method(s) offerors may use to submit a proposal.

(2) Offerors may be instructed to submit proposals or information in a specific format or severable parts to facilitate evaluation. Agencies may also require the proposal to be further organized into sections (e.g., administrative, management, technical, past performance, and certified cost and pricing data or data other than certified cost and pricing data).

(c) *Section M, Evaluation factors for award.* Identify all significant factors and any significant subfactors that will be considered in awarding the contract, their relative importance, and one of the phrases in 15.104(d), as required.

## **15.110 Solicitation provisions and contract clauses.**

(a) Insert the provision at 52.215-1, *Instructions to Offerors—Competitive Acquisition*, in all competitive RFPs where the Government intends to award a contract without negotiations.

(1) If the Government intends to make award after negotiating with offerors within the competitive range, use the provision with its *Alternate I*.

(2) If the Government would be willing to accept alternate proposals, alter the clause to add a paragraph (c)(9) substantially the same as *Alternate II*.

(b) (1) Insert the clause at 52.215-2, *Audit and Records-Negotiation* (10 U.S.C. 3841, 41 U.S.C. 4706, and Audit Requirements in the OMB Uniform Guidance at 2 CFR part 200, subpart F), in RFPs and contracts except those for—

(i) Acquisitions not exceeding the simplified acquisition threshold;

(ii) The acquisition of utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge; or

(iii) The acquisition of commercial products or commercial services exempted under 15.403-2.

(2) [Reserved]

(3) For cost-reimbursement contracts with State and local Governments, educational institutions, and other nonprofit organizations, use the clause with its *Alternate II*.

(4) When the head of the agency has waived the examination of records by the Comptroller General in accordance with part 25, use the clause with its *Alternate III*.

(c) [Reserved]

(d) [Reserved]

(e) [Reserved]

(f) Insert the provision at 52.215-6, *Place of Performance*, in RFPs, unless the place of performance is specified by the Government.

(g) [Reserved]

(h) Insert the clause at 52.215-8, *Order of Precedence—Uniform Contract Format*, in RFPs and contracts using the format at 15.108.

(i) Insert the clause at 52.215-9, *Changes or Additions to Make-or-Buy Program*, in RFPs and contracts when it is contemplated that a make-or-buy program will be incorporated in the contract. If a less economical “make” or “buy” categorization is selected for one or more items of significant value, the contracting officer must use the clause with—

(1) Its *Alternate I*, if a fixed-price incentive contract is contemplated; or

(2) Its *Alternate II*, if a cost-plus-incentive-fee contract is contemplated.

(j) Insert the clause at 52.215-10, *Price Reduction for Defective Certified Cost or Pricing Data*, in RFPs and contracts when it is contemplated that certified cost or pricing data will be required from the contractor or any subcontractor.

(k) Insert the clause at 52.215-11, *Price Reduction for Defective Certified Cost or Pricing Data—Modifications*, in RFPs and contracts when it is contemplated that certified cost or pricing data will be required from the contractor or any subcontractor for the pricing of contract modifications, and the clause prescribed in paragraph (j) of this section has not been included.

(l) Contracting officers must —

(1) Insert the clause at 52.215-12, *Subcontractor Certified Cost or Pricing Data*, in RFPs and contracts when the clause prescribed in paragraph (j) of this section is included;  
or

(2) Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, modify the contract without requiring consideration, to replace clause 52.215-12, *Subcontractor Certified Cost or Pricing Data*, with its *Alternate I*.

(m) Contracting officers must—

(1) Insert the clause at 52.215-13, *Subcontractor Certified Cost or Pricing Data—Modifications*, in RFPs and contracts when the clause prescribed in paragraph (k) of this section is included; or

(2) Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, modify the contract without requiring consideration, to replace clause 52.215-13, *Subcontractor Certified Cost or Pricing Data—Modifications*, with its *Alternate I*.

(n) (1) Insert the clause at 52.215-14, *Integrity of Unit Prices*, in RFPs and contracts except for—

- (i) Acquisitions at or below the simplified acquisition threshold;
- (ii) Construction or architect-engineer services under part 36;
- (iii) Utility services under part 41;
- (iv) Service contracts where supplies are not required;
- (v) Acquisitions of commercial products and commercial services; and
- (vi) Contracts for petroleum products.

(2) Use the clause with its *Alternate I* when contracting without adequate price competition or when prescribed by agency regulations.

(o) Insert the clause at 52.215-15, *Pension Adjustments and Asset Reversions*, in RFPs and contracts for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to part 31.

(p) Insert the provision at 52.215-16, *Facilities Capital Cost of Money*, in RFPs expected to result in contracts that are subject to the cost principles for contracts with commercial organizations.

(q) Insert the clause at 52.215-17, *Waiver of Facilities Capital Cost of Money*, in the resulting contract if the prospective contractor does not propose facilities capital cost of money in its offer.

(r) Insert the clause at 52.215-18, *Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions*, in RFPs and contracts for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to part 31.

(s) Insert the clause at 52.215-19, *Notification of Ownership Changes*, in RFPs and contracts for which it is contemplated that certified cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to subpart 31.2.

(t) Considering the hierarchy at 15.403-1(a), insert the provision at 52.215-20, *Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data*, in RFPs if it is reasonably certain that certified cost or pricing data or data other than certified cost or pricing data will be required. This provision also provides instructions to offerors on how to request an exception from the requirement to submit certified cost or pricing data.

(1) Use the provision with its *Alternate I* to specify a format for certified cost or pricing data other than the format required by Table 15-1 at 15.408-2;

(2) Use the provision with its *Alternate II* if copies of the proposal are to be sent to the ACO and contract auditor;

(3) Use the provision with its *Alternate III* if submission via electronic media is required; and

(4) Replace the basic provision with its *Alternate IV* if certified cost or pricing data are not expected to be required because an exception may apply, but data other than certified cost or pricing data will be required as described in 15.403-1.

(u) Considering the hierarchy at 15.403-1(a), insert the clause at 52.215-21, *Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications*, in RFPs and contracts if it is reasonably certain that certified cost or pricing data or data other than certified cost or pricing data will be required for modifications. This clause also provides instructions to contractors on how to request an exception from the requirement to submit certified cost or pricing data.

(1) Use the clause with its *Alternate I* to specify a format for certified cost or pricing data other than the format required by Table 15-1 at 15.408-2;

(2) Use the clause with its *Alternate II* if copies of the proposal are to be sent to the ACO and contract auditor;

(3) Use the clause with its *Alternate III* if submission via electronic media is required; and

(4) Replace the basic clause with its *Alternate IV* if certified cost or pricing data are not expected to be required because an exception may apply, but data other than certified cost or pricing data will be required as described in 15.403-1.

(v) (1) Insert the provision at 52.215-22, *Limitations on Pass-Through Charges—Identification of Subcontract Effort*, in RFPs containing the clause at 52.215-23.

(2) (i) Except as provided in paragraph (v)(2)(ii) of this section, insert the clause 52.215-23, *Limitations on Pass-Through Charges*, in RFPs and contracts including task or delivery orders as follows:

(A) For civilian agencies, insert the clause when—

(1) The total estimated contract or order value exceeds the simplified acquisition threshold as defined in part 2; and

(2) The contemplated contract type is expected to be a cost-reimbursement type contract as defined in part 16; or

(B) For DoD, insert the clause when—

(1) The total estimated contract or order value exceeds the threshold for obtaining cost or pricing data in 15.403-3(a); and

(2) The contemplated contract type is expected to be any contract type except—

(i) A firm-fixed-price contract awarded on the basis of adequate price competition;

(ii) A fixed-price contract with economic price adjustment awarded on the basis of adequate price competition;

(iii) A firm-fixed-price contract for the acquisition of a commercial product or commercial service;

(iv) A fixed-price contract with economic price adjustment, for the acquisition of a commercial product or commercial service; or

(v) A fixed-price incentive contract awarded on the basis of adequate price competition.

(ii) The clause may be used when the total estimated contract or order value is below the thresholds identified in 15.110(v)(2)(i) and for any contract type, when the contracting officer determines that inclusion of the clause is appropriate.

(iii) Use the clause 52.215-23 with its *Alternate I* when the contracting officer determines that the prospective contractor has demonstrated that its functions provide added value to the contracting effort and there are no excessive pass-through charges.

## **Subpart 15.2 - Evaluation and Award**

### **15.200 Scope.**

This subpart addresses policies and procedures for evaluating and negotiating competitive proposals and awarding contracts.

### **15.201 Source selection responsibilities.**

(a) Agency heads are responsible for source selection. A contracting officer is designated as the source selection authority (SSA), unless the agency head appoints another individual for a particular acquisition or group of acquisitions.

(b) The SSA must—

(1) Establish an evaluation team tailored for the acquisition that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of proposals;

(2) Approve the source selection approach or acquisition plan, if applicable, before issuance of the request for proposal (RFP);

(3) Ensure consistency among the RFP requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the RFP ((10 U.S.C. 3303(c) and 41 U.S.C. 3703(c));

(5) Consider the recommendations of advisory boards or panels, when applicable;  
and

(6) Select the offeror or offerors whose proposal is the best value to the Government (10 U.S.C. 3303(c) and 41 U.S.C. 3703(c)). The SSA may reject all proposals received in response to a RFP, if doing so is in the best interest of the Government.

(c) Contracting officers must—

(1) After release of a RFP, serve as the focal point for inquiries from actual or prospective offerors;

(2) After receipt of proposals, control communications with offerors;

(3) When negotiating noncompetitive proposals, evaluate the proposal and document the reasonableness of the offered prices in accordance with subpart 15.4; and

(4) Award the contract(s).

(d) *Limitations.* Government personnel involved in the acquisition must not engage in conduct that—

(1) Favors one offeror over another;

(2) Reveals an offeror's technical solution, including—

(i) Unique technology;

(ii) Innovative and unique uses of commercial products or commercial services; or

(iii) Any information that would compromise an offeror's intellectual property to another offeror;

(3) Reveals an offeror's price without that offeror's permission.

(4) Reveals the names of individuals providing information about an offeror's past performance; or

(5) Knowingly furnishes source selection information in violation of 3.104 and 41 U.S.C. 2102 and 2107.

## 15.202 Evaluating competitive proposals.

### (a) *General.*

(1) Proposal evaluation is an assessment of the proposal and an offeror's ability to perform the prospective contract successfully. Agencies must evaluate each competitive proposal based solely on the factors and subfactors in the RFP.

### (2) *Clarifications.*

(i) Clarifications are exchanges between the Government and offerors where offerors are given the opportunity to resolve minor or clerical errors or clarify certain aspects of their proposal. Clarifications can be used to enhance the Government's understanding of a proposal, allow reasonable interpretation of a proposal, or facilitate the Government's evaluation process.

(ii) Clarifications include, but are not limited to, addressing: ambiguities of the proposal; other concerns such as perceived deficiencies, weaknesses, errors, omissions, or mistakes; the relevance of an offeror's past performance information; and adverse past performance information to which the offeror has not previously had an opportunity to respond.

(iii) Clarifications do not permit offerors to revise their proposal and cannot be used to cure proposal deficiencies or material omissions or materially alter the technical or cost elements of the proposal. However, contracting officers may request additional information or documentation provided the cost/price or other material elements of the proposal are unchanged.

(iv) Clarifications may occur, at the contracting officer's discretion, at any time after receipt of proposals through contract award. Contracting officers are not required to conduct clarifications with an offeror. If the contracting officer conducts clarifications with one or more offerors, it is not required to conduct clarifications with any other offeror.

(3) *Oral Presentations.* Contracting officers must maintain a record of oral presentations to document what the Government relied upon in making the source selection decision. The method and level of detail of the record (e.g., videotaping, audio tape recording, written record, Government notes, copies of offeror briefing slides or presentation notes) is at the discretion of the SSA. When an oral presentation includes information that the parties intend to include in the contract as material terms or

conditions, the information must be put in writing and incorporated in the proposal and any resultant contract. Incorporation by reference of oral statements is not permitted.

*(b) Technical evaluation.*

(1) When using the lowest price technically acceptable (LPTA) approach, proposals are evaluated for technical acceptability only.

(2) When using the tradeoff approach, the evaluation must include-

(i) An assessment of each offeror's ability to accomplish the technical requirements; and

(ii) An evaluation of the relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation.

(3) If teleworking is not prohibited, agencies must not unfavorably evaluate an offer that includes telework unless the contracting officer executes a written determination in accordance with part 7.

*(c) Past performance evaluation.*

(1) *No past performance information.* An offeror without a record of relevant past performance or for whom information on past performance is not available may not be evaluated favorably or unfavorably on past performance.

(2) *LPTA source selection process.* If past performance is evaluated when using the LPTA source selection process, contracting officers must only determine if the performance is technically acceptable and not perform a comparative assessment of the information.

(3) *Considerations.* Evaluations should consider the following:

(i) The information provided by the offeror, as well as information obtained from any other sources.

(ii) The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance. The SSA determines the relevance of similar past performance information.

(iii) Any information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical

aspects of the requirement when such information is relevant to the instant acquisition.

(iv) The past performance of the joint venture, when evaluating an offer from a joint venture. If the joint venture does not demonstrate past performance for award, the past performance of each party to the joint venture must be considered.

(4) *Small business.* When using the LPTA source selection approach and a small business would have been in contention for award, but their past performance is determined to be unacceptable, the matter must be referred to the SBA for a Certificate of Competency determination.

(d) *Cost or price evaluation.* Agencies must purchase supplies and services from responsible sources at fair and reasonable prices. Contracting officers are responsible for evaluating and documenting the reasonableness of the awarded price in accordance with subpart 15.4.

### **15.203 Competitive award without negotiation.**

Contracting officers may make competitive awards without negotiations if the RFP states that the Government intends to evaluate proposals and make award without negotiation. If the RFP includes such a notice and the Government determines it is necessary to negotiate, the rationale for doing so must be documented in the contract file (10 U.S.C. 3303(a)(2) and 41 U.S.C. 3703(a)(2)).

### **15.204 Competitive award with negotiation.**

#### **15.204-1 Establishing a competitive range.**

(a) *Competitive range.* A competitive range is the group of evaluated proposals that the contracting officer determines are best suited for further negotiation. Contracting officers must establish a competitive range if negotiations will occur after evaluating competitive proposals.

(b) *Narrowing the competitive range for efficiency.* When establishing the competitive range, contracting officers may determine that the number of most highly rated proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. The contracting officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly evaluated proposals (10 U.S.C. 3303 and 41 U.S.C. 3703).

(c) *Notice.* Written notice must be provided to unsuccessful offerors in accordance with 15.206-1(a).

## **15.204-2 Competitive negotiations.**

(a) *General.* The scope and extent of negotiations are a matter of contracting officer judgment.

(b) *Requirement.*

(1) Contracting officers must—

(i) Negotiate with each responsible offeror within the competitive range; and

(ii) Tailor the negotiation to the offeror's proposal, but at a minimum, indicate to, or negotiate with, each offeror any deficiencies or significant weaknesses in the proposal.

(2) Contracting officers may further negotiate with an offeror, if necessary. Having further negotiations with a particular offeror does not obligate contracting officers to have further negotiations with any other offerors.

(3) Contracting officers may also negotiate other aspects of the offeror's proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. Contracting officers are not required to negotiate every area where the proposal could be improved.

(4) When an RFP stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, contracting officers may negotiate with offerors for increased performance beyond any mandatory minimums, and suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the proposed price decreased.

(c) *Elimination from the competitive range.* A proposal must be eliminated from consideration for award when the contracting officer determines that a proposal should no longer be included in the competitive range. Written notice of this decision must be provided to unsuccessful offerors in accordance with 15.206-1(a).

(1) When a proposal is eliminated, no further revisions to the proposal can be accepted or considered.

(2) Contracting officers may eliminate a proposal from the competitive range at any time upon concluding that the offeror is unlikely to receive an award. Contracting officers are not required to have an additional negotiation with an offeror prior to taking such action.

(d) *Proposal revision.*

(1) When negotiations with an offeror are finished, and that offeror has not been eliminated from the competitive range, contracting officers must provide the offeror with—

(i) An opportunity to submit a proposal revision; and

(ii) A notice requiring the proposal revision in writing and stating that the Government intends to make award without obtaining further revisions.

(2) Each offeror with a proposal still within the competitive range must be given an equal amount of time within which to submit their proposal revision.

### **15.205 Source selection decision.**

The source selection decision must represent the SSA's independent judgement and be based on a comparative assessment of proposals against all source selection criteria in the RFP. The source selection decision must be documented and include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. The documentation does not need to quantify the tradeoffs that led to the decision.

### **15.206 Preaward notices and debriefings.**

(a) *Definition.* Day, as used in this section, has the meaning set forth at part 33.

(b) *Applicability.* Sections 15.206 through 15.206-2 apply to competitive proposals, except for those using the other competitive procedures described in subpart 6.1 for architect-engineer contracts and basic and applied research. The procedures for award notification, with reasonable modification, should be followed for contracts awarded using those other competitive procedures.

#### **15.206-1 Preaward notices.**

(a) *Notice of exclusion from competitive range.* Contracting officers must notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice must state the basis for the determination and that proposal revisions will not be considered. These offerors may request a debriefing in accordance with 15.206-2 and 15.301.

(b) *Notice of small business set-aside award.*

(1) When using a set-aside for small business, HUBZone, the Service-Disabled Veteran-Owned Small Business Program, or the Women-Owned Small Business Program, contracting officers must notify each offeror, in writing, prior to award and upon completion of negotiations and determinations of responsibility—

(i) Of the name and address of the apparently successful offeror; and

(ii) That the Government will not consider subsequent revisions of the offeror's proposal.

(2) This notice is in addition to any notice of exclusion from competitive range.

(3) This notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program.

### **15.206-2 Preaward debriefing.**

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award (10 U.S.C. 3305 and 41 U.S.C. 3705). The contracting officer should chair any debriefing held. Individuals who conducted evaluations must provide support.

(a) *Request timeframe.*

(1) Offerors may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice of exclusion from the competition.

(2) At the offeror's request, this debriefing may be delayed until after award. If the debriefing is delayed until after award, it must include all information normally provided in a postaward debriefing. Debriefings delayed pursuant to this paragraph could affect the timeliness of any protest filed subsequent to the debriefing.

(3) If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

(b) *Method.* Debriefings may be done by any method acceptable to the contracting officer.

(c) *Content.*

(1) At a minimum, preaward debriefings must include—

(i) The agency's evaluation of significant elements in the offeror's proposal;

(ii) A summary of the rationale for eliminating the offeror from the competition; and

(iii) Reasonable responses to relevant questions about whether source selection procedures contained in the RFP, applicable regulations, and other applicable authorities were followed by the agency.

(2) A summary of the debriefing must be included in the contract file.

(d) *Nondisclosure.* Preaward debriefings must not disclose—

(1) The number of offerors;

(2) The identity of other offerors;

(3) The content of other offerors proposals;

(4) The ranking of other offerors;

(5) The evaluation of other offerors; or

(6) Any of the information prohibited in 15.301-1(d).

(e) *Delay until after award.* Contracting officers must make every effort to debrief the unsuccessful offeror as soon as practicable, but may refuse the request for a debriefing if, for compelling reasons, it is not in the best interests of the Government to conduct a debriefing at that time.

(1) The rationale for delaying the debriefing must be documented in the contract file.

(2) If the contracting officer delays the debriefing, it must be provided no later than the time postaward debriefings are provided under 15.301-1. In that event, the contracting officer must include the information at 15.301-1(c) in the debriefing.

## **15.207 Award.**

### **15.207-1 Award to successful offeror.**

(a) *General.* Contracting officers must award a contract to the successful offeror by furnishing the executed contract or other notice of the award to that offeror.

(b) *Award document.*

(1) Contracting officers may use OF 307, *Contract Award*; SF 26, *Award/Contract*; or SF 33, *Solicitation, Offer and Award*, to award negotiated contracts in which the signature of both parties on a single document is appropriate. Do not use Block 18 of SF 26.

(2) When not using the OF 307, SF26, or SF 33 to award the contract:

(i) The first page of the award document must include—

(A) The Government's acceptance statement from Block 15 of the OF 307, exclusive of the Item 3 reference language; and

(B) The contracting officer's name, signature, and date.

(ii) If the award document includes information that is different than the signed proposal, as amended by the offeror's written correspondence, the first page of the award document must include—

(A) The contractor's agreement statement from Block 14 of the OF 307; and

(B) The signature of the contractor's authorized representative.

## **15.207-2 Award notice.**

(a) *Definition.* *Day*, as used in this subsection, has the meaning set forth at part 33.

(b) *Requirement.* Within 3 days after the date of contract award, contracting officers must provide written notification to each offeror whose proposal was in the competitive range but was not selected for award (10 U.S.C. 3304 and 41 U.S.C. 3704) or had not previously received a notice in accordance with 15.206-1(a). The notice must include—

(1) The number of offerors solicited;

(2) The number of proposals received;

(3) The name and address of each offeror receiving an award;

(4) The items, quantities, and any stated unit prices of each award.

(i) If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice.

(ii) The items, quantities, and any stated unit prices of each award must be made publicly available, upon request; and

(5) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (b)(4) of this section readily reveals the reason. An offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information must not be disclosed to any other offeror.

(c) *Requests for information.* Upon request, contracting officers must provide the information in paragraph (b) of this section to unsuccessful offerors that received a preaward notice of exclusion from the competitive range.

## **Subpart 15.3 - Postaward**

### **15.300 Scope.**

This subpart addresses postaward actions and considerations for negotiated contracts. The procedures for postaward debriefings, protests, and mistakes do not apply to contracts awarded using the other competitive procedures described in subpart 6.1 for architect-engineer contracts and basic and applied research. The procedures for postaward debriefings, protests, and mistakes, with reasonable modification, should be followed for contracts awarded using those other competitive procedures.

### **15.301 Postaward debriefing of offerors.**

*Definition—*

*Day*, as used in this section, has the meaning set forth at part 33.

#### **15.301-1 Debriefing process.**

The awardee and offerors that received the award notice at 15.207-2 may request a postaward debriefing after receiving a notice of contract award. Contracting officers must chair any debriefing held and individuals who conducted evaluations must provide support.

(a) *Request timeframe.*

(1) Offerors may request a postaward debriefing by submitting a written request for the debriefing to the contracting officer within 3 days after receipt of the award notice in accordance with 15.207-2. Such offerors must be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be debriefed within this time period.

(3) Untimely debriefing requests may be accommodated.

(4) An offeror that was notified of its exclusion from the competitive range is not entitled to a postaward debriefing if the offeror failed to submit a timely preaward debriefing request, however such a request may be accommodated.

(5) The deadlines for filing protests are not extended when the Government accommodates an untimely debriefing request or an offeror's request to delay a preaward debriefing until after award. Preaward debriefings delayed pursuant to 15.206-2(a)(2) could affect the timeliness of any protest filed subsequent to the debriefing.

(b) *Method.* Debriefings may be done by any method acceptable to the contracting officer.

(c) *Content.*

(1) At a minimum, the debriefing information must include—

(i) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(ii) The overall evaluated cost or price and technical rating of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;

(iv) A summary of the rationale for award;

(v) For acquisitions of commercial products, the make and model of the product to be delivered by the successful offeror;

(vi) Reasonable responses to relevant questions about whether source selection procedures contained in the request for proposals (RFP), applicable regulations, and other applicable authorities were followed by the agency;

(vii) For DoD contracts in excess of \$10 million but not in excess of \$100 million with a small business or nontraditional defense contractor (10 U.S.C. 3014), an option for the contractor to request disclosure of the agency's written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

(viii) For award of a DoD contract in excess of \$100 million, disclosure of the agency's written source selection decision document, redacted to protect the information of other offerors for the contract award, in accordance with paragraph (d) of this subsection.

(2) An official summary of the debriefing must be included in the contract file.

(d) *Nondisclosure*. The debriefing must not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing must not reveal any information prohibited from disclosure by part 24 or exempt from release under the Freedom of Information Act (5 U.S.C. 552) including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

### **15.301-2 Opportunity for follow-up questions.**

If time permits, contracting officers may provide successful and unsuccessful offerors an opportunity to submit follow up questions after the postaward debriefing.

### **15.302 Protests against award.**

(a) Protests against award in negotiated acquisitions must be handled in accordance with part 33. Use of agency protest procedures that incorporate the alternative dispute resolution provisions of Executive Order 12979 is encouraged for both preaward and postaward protests.

(b) If a protest causes the agency, within 1 year of contract award, to—

(1) Issue a new RFP on the protested contract award, contracting officers must provide the information in paragraph (c) of this section to all prospective offerors for the new RFP; or

(2) Issue a new request for revised proposals on the protested contract award, the contracting officer must provide the information in paragraph (c) of this section to offerors that were in the competitive range and are requested to submit revised proposals.

(c) The following information will be provided to appropriate parties:

(1) Information provided to unsuccessful offerors in any debriefings conducted on the original award regarding the successful offeror's proposal; and

(2) Other nonproprietary information that would have been provided to the original offerors.

### **15.303 Discovery of mistakes.**

Mistakes in a contractor's proposal that are disclosed after award must be processed substantially in accordance with the procedures for mistakes in bids in part 14.

### **15.304 Defective certified cost or pricing data after award.**

(a) (1) If, after award, certified cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price or an earlier date agreed upon by the parties given on the contractor's or subcontractor's Certificate of Current Cost or Pricing Data, the Government is entitled to a price adjustment, including profit or fee, of any significant amount by which the price was increased because of the defective data.

(i) This entitlement is ensured by including in the contract one of the clauses prescribed in 15.110(j) and (k), and is set forth in the clauses at 52.215-10, *Price Reduction for Defective Certified Cost or Pricing Data*, and 52.215-11, *Price Reduction for Defective Certified Cost or Pricing Data—Modifications*.

(ii) The clauses give the Government the right to a price adjustment for defects in certified cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor.

(2) In arriving at a price adjustment, contracting officers must consider the time by which the certified cost or pricing data became reasonably available to the contractor, and the extent to which the Government relied upon the defective data.

(3) The clauses referred to in paragraph (a)(1)(i) of this subsection recognize that the Government's right to a price adjustment is not affected by any of the following circumstances:

(i) The contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position;

(ii) The contracting officer should have known that the certified cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

(iv) Certified cost or pricing data were required; however, the contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data relating to the contract.

(4) Subject to paragraphs (a)(5) and (6) of this subsection, contracting officers must allow an offset for any understated certified cost or pricing data submitted in support of price negotiations, up to the amount of the Government's claim for overstated pricing data arising out of the same pricing action (e.g., the initial pricing of the same contract or the pricing of the same change order).

(5) An offset must be allowed only in an amount supported by the facts and if the contractor—

(i) Certifies to the contracting officer that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset in the amount requested; and

(ii) Proves that the certified cost or pricing data were available before the “as of” date specified on the Certificate of Current Cost or Pricing Data but were not submitted. Such offsets need not be in the same cost groupings (e.g., material, direct labor, or indirect costs).

(6) An offset must not be allowed if—

(i) The understated data were known by the contractor to be understated before the “as of” date specified on the Certificate of Current Cost or Pricing Data; or

(ii) The Government proves that the facts demonstrate that the price would not have increased in the amount to be offset even if the available data had been submitted before the “as of” date specified on the Certificate of Current Cost or Pricing Data.

(7) (i) In addition to the price adjustment, the Government is entitled to recovery of any overpayment plus interest on the overpayments. The Government is also entitled to penalty amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments do not result from amounts paid for contract financing, as defined in part 32.

(ii) In calculating the interest amount due, contracting officers must—

(A) Determine the defective pricing amounts that have been overpaid to the contractor;

(B) Consider the date of each overpayment (the date of overpayment for this interest calculation must be the date payment was made for the related completed and accepted contract items; or for subcontract defective pricing, the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted subcontract item); and

(C) Apply the underpayment interest rate(s) in effect for each quarter from the time of overpayment to the time of repayment, utilizing rate(s) prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

(iii) In arriving at the amount due for penalties on contracts where the submission of defective certified cost or pricing data was a knowing submission, contracting officers must obtain an amount equal to the amount of overpayment

made. Before taking any contractual actions concerning penalties, the contracting officer must obtain the advice of counsel.

(iv) In the demand letter, contracting officers must separately include—

(A) The repayment amount;

(B) The penalty amount (if any);

(C) The interest amount through a specified date; and

(D) A statement that interest will continue to accrue until repayment is made.

(b) If, after award, the contracting officer learns or suspects that the data furnished were not accurate, complete, and current, or were not adequately verified by the contractor as of the time of negotiation, the contracting officer must request an audit to evaluate the accuracy, completeness, and currency of the data. The Government may evaluate the profit-cost relationships only if the audit reveals that the data certified by the contractor were defective. Contracting officers must not reprice the contract solely because the profit was greater than forecast or because a contingency specified in the submission failed to materialize.

(c) For each advisory audit received based on a postaward review that indicates defective pricing, contracting officers must make a determination as to whether or not the data submitted were defective and relied upon. Before making such a determination, contracting officers should give the contractor an opportunity to support the accuracy, completeness, and currency of the data in question. Contracting officers must prepare a memorandum documenting both the determination and any corrective action taken as a result. Contracting officers must send one copy of this memorandum to the auditor and, if the contract has been assigned for administration, one copy to the administrative contracting officer (ACO). A copy of the memorandum or other notice of the contracting officer's determination must be provided to the contractor. When the contracting officer determines that the contractor submitted defective cost or pricing data, the contracting officer, in accordance with agency procedures, must ensure that information relating to the contracting officer's final determination is reported as part of the contractor's performance information in accordance with part 42. Agencies must ensure updated information that changes a contracting officer's prior final determination is reported into the FAPIIS module of Contractor Performance Assessment Reporting System (CPARS) in the event of a—

(1) Contracting officer's decision in accordance with the Contract Disputes statute;

(2) Board of Contract Appeals decision; or

(3) Court decision.

(d) If both the contractor and subcontractor submitted, and the contractor certified, or should have certified, cost or pricing data, the Government has the right, under the clauses at 52.215-10, *Price Reduction for Defective Certified Cost or Pricing Data*, and 52.215-11, *Price Reduction for Defective Certified Cost or Pricing Data—Modifications*, to reduce the prime contract price if it was significantly increased because a subcontractor submitted defective data. This right applies whether these data supported subcontract cost estimates or supported firm agreements between subcontractor and contractor.

(e) If Government audit discloses defective subcontractor certified cost or pricing data, the information necessary to support a reduction in prime contract and subcontract prices may be available only from the Government. To the extent necessary to secure a prime contract price reduction, contracting officers should make this information available to the prime contractor or appropriate subcontractors, upon request. If release of the information would compromise Government security or disclose trade secrets or confidential business information, the contracting officers must release it only under conditions that will protect it from improper disclosure. Information made available under this paragraph must be limited to that used as the basis for the prime contract price reduction. In order to afford an opportunity for corrective action, contracting officers should give the prime contractor reasonable advance notice before determining to reduce the prime contract price.

(1) When a prime contractor includes defective subcontract data in arriving at the price but later awards the subcontract to a lower priced subcontractor (or does not subcontract for the work), any adjustment in the prime contract price due to defective subcontract data is limited to the difference (plus applicable indirect cost and profit markups) between the subcontract price used for pricing the prime contract, and either the actual subcontract price or the actual cost to the contractor, if not subcontracted, provided the data on which the actual subcontract price is based are not themselves defective.

(2) Under cost-reimbursement contracts and under all fixed-price contracts except firm-fixed-price contracts and fixed-price contracts with economic price adjustment, payments to subcontractors that are higher than they would be had there been no defective subcontractor certified cost or pricing data must be the basis for disallowance or nonrecognition of costs under the clauses prescribed in 15.110(j) and (k). The Government has a continuing and direct financial interest in such payments that is unaffected by the initial agreement on prime contract price.

## **15.305 Estimating systems.**

(a) Cognizant audit activities, when appropriate, must establish and manage regular programs for reviewing selected contractors' estimating systems or methods, in order to reduce the scope of reviews to be performed on individual proposals, expedite the negotiation process, and increase the reliability of proposals. The results of estimating system reviews must be documented in survey reports.

(b) Auditors must send a copy of the estimating system survey report and a copy of the official notice of corrective action required to each contracting office and contract administration office having substantial business with that contractor. Significant deficiencies not corrected by the contractor must be considered in subsequent proposal analyses and negotiations.

## **Subpart 15.4 - Contract Pricing**

### **15.400 Scope of subpart.**

This subpart contains cost and price negotiation policies and procedures for pricing negotiated prime contracts (including subcontracts) and contract modifications, including modifications to contracts awarded by sealed bidding.

### **15.401 Definitions.**

As used in this subpart—

*Price* means cost plus any fee or profit applicable to the contract type.

*Subcontract* (except as used in 15.405-2) also includes a transfer of commercial products or commercial services between divisions, subsidiaries, or affiliates of a contractor or a subcontractor (10 U.S.C. 3701(2) and 41 U.S.C. 3501(a)(2)).

### **15.402 General.**

(a) *Requirement for cost or pricing data.* In establishing the reasonableness of the offered prices, contracting officers must—

(1) Obtain certified cost or pricing data when required by 15.403-3, along with data other than certified cost or pricing data as necessary to establish a fair and reasonable price; or

(2) When certified cost or pricing data are not required by 15.403-3, obtain data other than certified cost or pricing data as necessary to establish a fair and reasonable price (10 U.S.C. 3705(a) and 41 U.S.C. 3505(a)).

(b) *Obtaining data.* Contracting officers must obtain the type and quantity of data necessary to establish a fair and reasonable price, but not more data than is needed. Contracting officers must require the submission of additional data sufficient for the contracting officer to support the determination of the fair and reasonable price, if the contracting officer cannot establish a fair and reasonable price from an analysis of the data obtained or submitted to date.

(c) *Independent Price.* Contracting officers must price each contract separately and independently and not—

(1) Consider proposed price reductions under other contracts;

(2) Consider losses or profits realized or anticipated under other contracts; or

(3) Include in a contract price any amount for a specified contingency, to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

## **15.403 Obtaining cost or pricing data.**

### **15.403-1 Data other than certified cost or pricing data.**

(a) *Order of preference.* For acquisitions that do not require certified cost or pricing data, contracting officers must generally use the following order of preference to determine the type of data to require:

(1) No additional data from the offeror, when adequate price competition exists (see 15.403-2);

(2) Data related to prices (e.g., established catalog or market prices, sales to non-governmental and governmental entities), relying first on—

(i) Data available within the Government; then

(ii) Data obtained from sources other than the offeror; and then, if necessary,

(iii) Data obtained from the offeror; then,

(3) Cost data to the extent necessary for the contracting officer to determine a fair and reasonable price.

*(b) Requirement.*

(1) Contracting officers must require submission of data other than certified cost or pricing data to the extent necessary to determine a fair and reasonable price (10 U.S.C. 3705(a) and 41 U.S.C. 3505(a)). At a minimum, the data must include appropriate data on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price. This data is not required when price reasonableness is established through adequate price competition or prices set by law or regulation, unless paragraph (e) of this subsection applies.

(2) Contracting officers may require data other than certified cost or pricing data to determine the cost realism of competing offers or to evaluate competing approaches.

*(c) Data Requests.* When requesting data, contracting officers—

(1) Must use the contractor's format for data submission, but see 15.105-4(b)(2);

(2) Must ensure that data used to support price negotiations are sufficiently current to permit negotiation of a fair and reasonable price; and

(3) Should limit requests for updated data to the data that affect the adequacy of the proposal for negotiations (e.g., changes in price lists).

*(d) Refusals to submit data.* As specified in section 808 of the Strom Thurmond National Defense Authorization Act (NDAA) for Fiscal Year 1999 (Pub. L. 105-261), an offeror who does not comply with a requirement to submit data for a contract or subcontract in accordance with paragraph (a)(1) of this subsection is ineligible for award unless the head of the contracting activity (HCA) determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of the following:

(1) The effort made to obtain the data.

(2) The need for the item or service.

(3) Increased cost or significant harm to the Government if award is not made.

*(e) Data when adequate price competition exists.* If adequate price competition exists, but there are unusual circumstances in which additional data are necessary to determine the reasonableness of price, contracting officers must obtain the additional data from sources other than the offeror, to the maximum extent practicable. In addition, contracting officers should

request data to determine the cost realism of competing offers or to evaluate competing approaches.

(f) *Data for commercial products and commercial services.* When acquiring a commercial product or commercial service, contracting officers must—

(1) Use price analysis to determine whether the price is fair and reasonable;

(2) Require the offeror to submit data other than certified cost or pricing data when the contracting officer is unable to determine a price fair and reasonable after obtaining data from sources other than the offeror. This data may include history of sales to non-governmental and governmental entities, cost data, or any other information the contracting officer requires;

(3) Limit requests for sales data to data for the same or similar items during a relevant time period;

(4) To the maximum extent practicable, request data in the format regularly maintained by the offeror as part of its commercial operations;

(5) Not disclose outside the Government data obtained relating to commercial products or commercial services that is exempt from disclosure under part 24 or the Freedom of Information Act (5 U.S.C. 552(b)); and

(6) For services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, see 15.403-2(c)(3)(ii).

### **15.403-2 Prohibitions on obtaining certified cost or pricing data.**

(a) *At or below the simplified acquisition threshold.* Certified cost or pricing data must not be obtained for acquisitions at or below the simplified acquisition threshold.

(b) *Exceptions to certified cost or pricing data requirements.* Contracting officers must not require certified cost or pricing data to support any contracts, subcontracts, or modifications—

(1) When the contracting officer determines that prices agreed upon are based on adequate price competition (see standards in paragraph (c)(1) of this subsection);

(2) When the contracting officer determines that prices agreed upon are based on prices set by law or regulation (see standards in paragraph (c)(2) of this subsection);

(3) When a commercial product or commercial service is being acquired (see standards in paragraph (c)(3) of this subsection);

(4) When a waiver has been granted (see standards in paragraph (c)(4) of this subsection); or

(5) When modifying a contract or subcontract for commercial products or commercial services (see standards in paragraph (c)(3) of this subsection).

(c) *Standards for exceptions—*

(1) *Adequate price competition.*

(i) A price is based on adequate price competition when—

(A) Two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement;

(B) Award will be made to the offeror whose proposal represents the best value where price is a substantial factor in source selection; and

(C) There is no finding that the price of the otherwise successful offeror is unreasonable. Any finding that the price is unreasonable must be supported by a statement of the facts and approved at a level above the contracting officer.

(ii) For agencies other than DoD, NASA, and the Coast Guard, a price is also based on adequate price competition when

(A) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers in response to the request for proposal's (RFP) expressed requirement, even though only one offer is received from a responsible offeror and if—

(1) Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, e.g., circumstances indicate that—

(i) The offeror believed that at least one other offeror was capable of submitting a meaningful offer; and

(ii) The offeror had no reason to believe that other potential offerors did not intend to submit an offer; and

(2) The determination that the proposed price is based on adequate price competition and is reasonable has been approved at a level above the contracting officer; or

(B) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition.

(2) *Prices set by law or regulation.* Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws, are sufficient to set a price.

(3) *Commercial products and commercial services.*

(i) Any acquisition that the contracting officer determines meets the commercial product or commercial service definition in 2.101, or any modification, as defined in paragraph (3)(i) of the commercial product definition, that does not change a commercial product to other than commercial, is exempt from the requirement for certified cost or pricing data. If the contracting officer determines that a product or service claimed to be commercial is not, and that no other exception or waiver for certified cost or pricing data applies, the contracting officer must require submission of certified cost or pricing data.

(ii) In accordance with section 41 U.S.C. 3501:

(A) When purchasing services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, they may be considered commercial services (thus meeting the purpose of 41 U.S.C. chapter 35 and 10 U.S.C. chapter 271 for truth in negotiations) only if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price of such services.

(B) In order to make this determination, contracting officers may request the offeror to submit prices paid for the same or similar commercial services under comparable terms and conditions by both Government and commercial customers; and

(C) If the contracting officer determines that the information described in paragraph (c)(3)(ii)(B) of this section is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs and overhead rates may be requested.

(iii) The following requirements apply to minor modifications defined in paragraph (3)(ii) of the definition of a commercial product at 2.101 that do not change the commercial product to other than commercial:

(A) For acquisitions funded by any agency other than DoD, NASA, or Coast Guard, such modifications of a commercial product are exempt from the requirement for submission of certified cost or pricing data.

(B) For acquisitions funded by DoD, NASA, or Coast Guard, such modifications of a commercial product are exempt from the requirement for submission of certified cost or pricing data provided the total price of all such modifications under a particular contract action does not exceed the greater of the threshold for obtaining certified cost or pricing data in 15.403-3(a) or 5 percent of the total price of the contract at the time of contract award.

(C) For acquisitions funded by DoD, NASA, or Coast Guard such modifications of a commercial product are not exempt from the requirement for submission of certified cost or pricing data on the basis of the exemption provided for at 15.403-2(c)(3) if the total price of all such modifications under a particular contract action exceeds the greater of the threshold for obtaining certified cost or pricing data in 15.403-3(a) or 5 percent of the total price of the contract at the time of contract award.

(iv) Any acquisition for other than commercial products or services treated as commercial products or commercial services at 12.001(b), except sole source contracts greater than \$25 million, is exempt from the requirements for certified cost or pricing data (41 U.S.C. 1903).

(4) *Waivers.*

(i) In exceptional cases, the HCA may, without power of delegation, waive the requirement for submission of certified cost or pricing data if the price can be determined to be fair and reasonable without submission of certified cost or pricing data. The authorization for the waiver and the supporting rationale must be in writing.

(ii) If the HCA has waived the requirement for submission of certified cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates must be considered as having been required to provide certified cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the certified cost or pricing data threshold requires the submission of certified cost or pricing data unless—

(A) An exception otherwise applies to the subcontract; or

(B) The waiver specifically includes the subcontract and the rationale supporting the waiver for that subcontract.

### **15.403-3 Certified cost or pricing data.**

(a) *Threshold.* Unless an exception at 15.403-2 applies, contracting officers must obtain certified cost or pricing data when an action meets or exceeds the threshold of \$2.5 million (for prime contracts awarded on or after July 1, 2018). The threshold is \$950,000 for prime contracts awarded prior to July 1, 2018, unless otherwise stated in the contract. Contracting officers should consider requesting a waiver when the standards at 15.403-2(c)(4) can be met.

(b) *Actions requiring certified cost or pricing data.* Certified cost or pricing data are required before completing any of the following actions expected to exceed the current threshold or, in the case of existing contracts, the threshold specified in the existing contract:

(1) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(2) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to furnish certified cost or pricing data.

(3) The modification of any sealed bid or negotiated contract (whether or not certified cost or pricing data were initially required) or any subcontract covered by paragraph (b)(2) of this subsection.

(i) Price adjustment amounts must consider both increases and decreases (e.g., a \$500,000 modification resulting from a reduction of \$1,500,000 and an increase of \$1,000,000 is a \$2,500,000 pricing adjustment exceeding the \$2,500,000 threshold). This requirement does not apply when unrelated and separately priced changes for which certified cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(ii) Negotiated final pricing actions (e.g., termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring certified cost or pricing data if—

(A) The total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a) of this subsection; or

(B) The partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a) of this subsection.

(iii) Certified cost or pricing data are not required for modifications—

(A) Solely for overrun funding or interim billing price adjustments; or

(B) To exercise an option at the price established at contract award or initial negotiation.

(c) *Required documentation from offerors.* When certified cost or pricing data are required, contracting officers must require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The certified cost or pricing data and data other than certified cost or pricing data required by the contracting officer to determine that the price is fair and reasonable.

(2) A *Certificate of Current Cost or Pricing Data*, in the format specified in 15.403-4, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

(d) *Inflation adjustments.* When a clause refers to the certified cost or pricing threshold and the threshold is adjusted for inflation pursuant to part 1, the changed threshold applies throughout the remaining term of the contract, unless there is another threshold adjustment.

(e) *Requests for certified data below the threshold.* Unless prohibited because an exception at 15.403-2 applies, the HCA without power of delegation, may authorize the contracting officer to obtain certified cost or pricing data for pricing actions below the pertinent threshold in paragraph (a) of this subsection, provided the action exceeds the simplified acquisition threshold. The HCA must justify the requirement for certified cost or pricing data and provide a written finding that certified cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(f) *Delayed exception.* If certified cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data must not be considered certified cost or pricing data and must not be certified in accordance with 15.403-4.

(g) *Foreign governments.* The requirements of this subsection also apply to contracts entered into by an agency on behalf of a foreign government.

#### **15.403-4 Certificate of current cost or pricing data.**

(a) When certified cost or pricing data are required, contracting officers must require the contractor to execute a Certificate of Current Cost or Pricing Data, using the format in this paragraph, and must include the executed certificate in the contract file.

##### *Certificate of Current Cost or Pricing Data*

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in part 2 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-3) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of \_\_\_\_ \* are accurate, complete, and current as of \_\_\_\_ \*\*. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of execution: \_\_\_\_\_ \*\*\*

\* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

\*\* Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

\*\*\* Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(End of certificate)

(b) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It applies to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the contractor had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the contractor's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

(c) The contracting officer and contractor are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates. Closing or cutoff dates should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the contractor to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs). Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(d) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the contractor's proposal.

## **15.404 Cost and/or price analysis.**

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

(1) Contracting officers are responsible for evaluating the reasonableness of the offered prices. The analytical techniques and procedures described in this section may be used, individually or in combination with others, to ensure that the final price is fair and reasonable. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

(2) Price analysis must be used when certified cost or pricing data are not required. When a fair and reasonable price cannot be determined through price analysis alone, cost analysis may also be used to evaluate data other than certified cost or pricing data to determine cost reasonableness or cost realism.

(3) Cost analysis must be used when certified cost or pricing data are required. However, price analysis must be used to verify that the overall price offered is fair and reasonable.

(4) Cost realism must be used when contemplating the award of a cost-reimbursement contract.

(b) *Advice and assistance.* Contracting officers may request the advice and assistance of other experts to ensure that an appropriate analysis is performed. Recommendations or conclusions regarding the Government's review or analysis of an offeror's or contractor's proposal must not be disclosed to the offeror or contractor without the concurrence of the contracting officer.

(c) *Mistakes and discrepancies in data.* Any discrepancy or mistake of fact (such as duplications, omissions, and errors in computation) contained in the certified cost or pricing data or data other than certified cost or pricing data submitted in support of a proposal must be brought to the contracting officer's attention.

#### **15.404-1 Price analysis.**

(a) *General.* Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

(b) *Techniques.* The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price, including, but not limited to, the following:

(1) Comparison of proposed prices received in response to the RFP.

(2) Comparison of the proposed prices to historical prices paid, whether by the Government or other than the Government, for the same or similar items. This method may be used for commercial products or commercial services including those “of a type” or when requiring minor modifications for commercial products.

(i) The prior price must be a valid basis for comparison. If there has been a significant time lapse between the last acquisition and the present one, if the terms and conditions of the acquisition are significantly different, or if the reasonableness of the prior price is uncertain, then the prior price may not be a valid basis for comparison.

(ii) The prior price must be adjusted to account for materially differing terms and conditions, quantities and market and economic factors. For similar items, the contracting officer must also adjust the prior price to account for material differences between the similar item and the item being procured.

(iii) Expert technical advice should be obtained when analyzing similar items, or commercial products or commercial services that are “of a type”, or requiring minor modifications for commercial products, to ascertain the magnitude of changes required and to assist in pricing the required changes.

(3) Use of parametric estimating methods/application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

(4) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(5) Comparison of proposed prices with independent Government cost estimates.

(6) Comparison of proposed prices with prices obtained through market research for the same or similar items.

(7) Analysis of data other than certified cost or pricing data provided by the offeror.

(c) *Preferred method of analysis.* The techniques at 15.404-1(b)(1) and (2) are the preferred methods for price analysis. However, if the contracting officer determines that information on competitive proposed prices or previous contract prices is not available or is insufficient to determine that the price is fair and reasonable, the contracting officer may use any of the remaining techniques as appropriate to the circumstances applicable to the acquisition. The fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable.

(d) *Value analysis.* Value analysis can give insight into the relative worth of a product and the Government may use it in conjunction with the price analysis techniques listed in paragraph (b) of this section.

#### **15.404-2 Cost analysis.**

(a) *General.* Cost analysis is the review and evaluation of any separate cost elements and profit or fee in an offeror's or contractor's proposal, as needed to determine a fair and reasonable price or to determine cost realism, and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

(b) *Techniques.* The Government may use various cost analysis techniques and procedures to ensure a fair and reasonable price, including, but not limited to, the following:

(1) Verification of cost data or pricing data and evaluation of cost elements, including—

(i) The necessity for, and reasonableness of, proposed costs, including allowances for contingencies;

(ii) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;

(iii) Reasonableness of estimates generated by appropriately calibrated and validated parametric models or cost-estimating relationships; and

(iv) The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors.

(2) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, contracting officers must ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed complex equipment, contracting officers should perform a trend analysis of basic labor and materials, even in periods of relative price stability.

(3) Comparison of costs proposed by the offeror for individual cost elements with—

(i) Actual costs previously incurred by the same offeror;

(ii) Previous cost estimates from the offeror or from other offerors for the same or similar items;

- (iii) Other cost estimates received in response to the Government's request;
- (iv) Independent Government cost estimates by technical personnel; and
- (v) Forecasts of planned expenditures.

(4) Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in part 31 and, when applicable, the requirements and procedures in 48 CFR chapter 99.

(5) Review to determine whether any cost data or pricing data, necessary to make the offeror's proposal suitable for negotiation, have not been either submitted or identified in writing by the offeror. If there are such data, contracting officers must attempt to obtain and use them in the negotiations or make satisfactory allowance for the incomplete data.

(6) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs.

### **15.404-3 Cost realism analysis.**

(a) *General.* Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.

(b) *Probable Cost.* Cost realism analyses must be performed on cost-reimbursement contracts to determine the probable cost of performance for each offeror.

(1) The probable cost may differ from the proposed cost and should reflect the Government's best estimate of the cost of any contract that is most likely to result from the offeror's proposal. The probable cost must be used for purposes of evaluation to determine the best value.

(2) The probable cost is determined by adjusting each offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis.

(c) *Competitive fixed-price-type contracts.* Cost realism analyses may also be used on competitive fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts when new requirements may not be fully understood by competing offerors,

there are quality concerns, or past experience indicates that contractors' proposed costs have resulted in quality or service shortfalls. Results of the analysis may be used in performance risk assessments and responsibility determinations. However, proposals must be evaluated using the criteria in the RFP, and the offered prices must not be adjusted as a result of the analysis.

#### **15.404-4 Technical cost or price analysis.**

(a) *Labor and materials.* At a minimum, the technical analysis must examine the types and quantities of material proposed and the need for the types and quantities of labor hours and the labor mix. Any other data that may be pertinent to an assessment of the offeror's ability to accomplish the technical requirements or to the cost or price analysis of the service or product being proposed should also be included in the analysis.

(b) *Technical assistance.* Contracting officers should request:

(1) Personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management perform a technical analysis of the proposed types and quantities of materials, labor, processes, special tooling, equipment or real property, the reasonableness of scrap and spoilage, and other associated factors set forth in the proposal(s) in order to determine the need for and reasonableness of the proposed resources, assuming reasonable economy and efficiency.

(2) Technical assistance in evaluating pricing related to items that are “similar to” items being purchased, or commercial products or commercial services that are “of a type”, or requiring minor modifications for commercial products, to ascertain the magnitude of changes required and to assist in pricing the required changes.

#### **15.404-5 Unit prices.**

(a) *General.* Except when pricing an item on the basis of adequate price competition or catalog or market price, unit prices must reflect the intrinsic value of an item or service and be in proportion to an item's base cost (e.g., manufacturing or acquisition costs).

(b) *Price distortion.*

(1) Except for the acquisition of commercial products, when offerors identify items of supply that they will not manufacture or to which they will not contribute significant value, the information must be used to determine whether the intrinsic value of an item has

been distorted through application of overhead and whether such items should be considered for breakout.

(2) Any method of distributing costs to line items that distorts the unit prices must not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. (10 U.S.C. 3703(a)(1)(A) and 41 U.S.C. 3503(a)(1)(A)).

### **15.404-6 Unbalanced pricing.**

#### *(a) General.*

(1) Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly over or understated as indicated by the application of cost or price analysis techniques.

(2) The greatest risks associated with unbalanced pricing occur when—

(i) Startup work, mobilization, first articles, or first article testing are separate line items;

(ii) Base quantities and option quantities are separate line items; or

(iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

#### *(b) Policy.*

(1) All offers with separately priced line items or subline items must be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, contracting officers must—

(i) Consider the risks to the Government associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and

(ii) Consider whether award of the contract will result in paying unreasonably high prices for contract performance.

(2) An offer may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the Government.

## **15.404-7 Review and justification of pass-through contracts.**

(a) *Policy.* When an offeror informs the contracting officer, pursuant to clause 52.215-22, *Limitations on Pass-Through Charges-Identification of Subcontractor Effort*, that it intends to award subcontracts for more than 70 percent of the total cost of work to be performed under the contract, task or delivery order, the contracting officer must—

(1) Consider the availability of alternative contract vehicles and the feasibility of contracting directly with a subcontractor or subcontractors that will perform the bulk of the work. If such alternative approaches are selected, any resulting RFP must be issued in accordance with the competition requirements under FAR part 6;

(2) Make a written determination that the contracting approach selected is in the best interest of the Government; and

(3) Document the basis for such determination. (section 802 of the NDAA for FY 2013 (Pub. L. 112.239)).

(b) *Exemption.* Contract actions set aside for small business, 8(a), HUBZone, SDVOSB, and WOSB concerns are exempt from the requirements of this subsection (see section 1615 of the NDAA for FY 2014 (Pub. L. 113-66)).

## **15.404-8 Subcontract pricing considerations.**

(a) *Policy.* Contracting officers are responsible for the determination of a fair and reasonable price for the prime contract, including subcontracting costs. To support this effort, the prime contractor or subcontractor must—

(1) Conduct appropriate cost or price analyses to establish the reasonableness of proposed subcontract prices;

(2) Include the results of these analyses in the price proposal; and

(3) When required by paragraph (b) of this subsection, submit subcontractor certified cost or pricing data to the Government as part of its own certified cost or pricing data.

(b) *Certified cost or pricing data.* Any contractor or subcontractor that is required to submit certified cost or pricing data also must obtain and analyze certified cost or pricing data before awarding any subcontract, purchase order, or modification expected to exceed the certified cost or pricing data threshold, unless an exception in 15.403-2 applies to that action.

(1) The contractor must submit, or cause to be submitted by the subcontractor(s), certified cost or pricing data to the Government for subcontracts that are the lower of either—

(i) \$20 million or more; or

(ii) Both more than the pertinent certified cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price, unless the contracting officer believes such submission is unnecessary.

(2) Contracting officers should require the contractor or subcontractor to submit to the Government (or cause submission of) subcontractor certified cost or pricing data below the thresholds in paragraph (b)(1) of this section and data other than certified cost or pricing data that the contracting officer considers necessary for adequately pricing the prime contract.

(3) Subcontractor certified cost or pricing data must be submitted in the format provided in Table 15-1 of 15.408-2 or the alternate format specified in the RFP.

(4) Subcontractor certified cost or pricing data must be current, accurate, and complete as of the date of price agreement, or, if applicable, an earlier date agreed upon by the parties and specified on the contractor's Certificate of Current Cost or Pricing Data. Contractors must update subcontractor's data, as appropriate, during source selection and negotiations.

(5) If there is more than one prospective subcontractor for any given work, the contractor need only submit to the Government certified cost or pricing data for the prospective subcontractor most likely to receive the award.

(c) *Approved purchasing system.* Contracting officers should consider whether a contractor or subcontractor has an approved purchasing system, has performed cost or price analysis of proposed subcontractor prices, or has negotiated the subcontract prices before negotiation of the prime contract, in determining the reasonableness of the prime contract price. This does not relieve contracting officers from the responsibility to analyze the contractor's submission, including subcontractor's certified cost or pricing data.

### **15.404-9 Profit.**

(a) *General.* This subsection prescribes policies for establishing the profit or fee portion of the Government prenegotiation objective in price negotiations based on cost analysis.

(b) *Policy.* Structured approaches (see paragraph (d) of this subsection) for determining profit or fee prenegotiation objectives provide a discipline for ensuring that all relevant factors are considered.

(1) Subject to the authorities in part 1, agencies making noncompetitive contract awards over \$100,000 totaling \$50 million or more a year—

(i) Must use a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis (Agencies may use another agency's structured approach); and

(ii) May prescribe specific exemptions for situations in which mandatory use of a structured approach would be clearly inappropriate.

(2) When the price negotiation is based on cost analysis, contracting officers in agencies that have a structured approach must use it to analyze profit. When not using a structured approach, contracting officers must comply with paragraph (d)(1) of this subsection in developing profit or fee prenegotiation objectives.

(3) When the price negotiation is not based on cost analysis, contracting officers are not required to analyze profit.

(c) *Contracting officer responsibilities.* Contracting officers –

(1) Must use the Government prenegotiation cost objective amounts as the basis for calculating the profit or fee prenegotiation objective.

(2) Must not require any prospective contractor to submit breakouts or supporting rationale for its profit or fee objective but may consider it, if it is submitted voluntarily.

(3) Before applying profit or fee factors, must exclude-

(i) From the pre-negotiation cost objective amounts, the purchase cost of contractor-acquired property that is categorized as equipment, as defined in FAR 45, and where such equipment is to be charged directly to the contract; and

(ii) Facilities capital cost of money included in the cost objective amounts. If the prospective contractor fails to identify or propose facilities capital cost of money in a proposal for a contract that will be subject to the cost principles for contracts with commercial organizations, facilities capital cost of money will not be an allowable cost in any resulting contract.

(4) Must not negotiate a price or fee that exceeds the following statutory limitations, imposed by 10 U.S.C. 3322(b) and 41 U.S.C. 3905:

(i) For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee must not exceed 15 percent of the contract's estimated cost, excluding fee.

(ii) For architect-engineer services for public works or utilities, the contract price or the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications must not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.

(iii) For other cost-plus-fixed-fee contracts, the fee must not exceed 10 percent of the contract's estimated cost, excluding fee.

(iv) The contracting officer's signature on the price negotiation memorandum or other documentation supporting determination of fair and reasonable price documents the contracting officer's determination that the statutory price or fee limitations have not been exceeded.

(5) May use the basic contract's profit or fee rate as the prenegotiation objective for a change or modification, if that change or modification calls for essentially the same type and mix of work as the basic contract and is of relatively small dollar value compared to the total contract value, contracting officers.

(d) *Profit-analysis factors* —

(1) *Common factors*. Unless it is clearly inappropriate or not applicable, each factor outlined in paragraphs (d)(1)(i) through (vi) of this subsection must be considered by agencies in developing their structured approaches and by contracting officers in analyzing profit, whether or not using a structured approach.

(i) *Contractor effort*. This factor measures the complexity of the work and the resources required of the prospective contractor for contract performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. The subfactors in paragraphs (d)(1)(i)(A) through (D) of this subsection must be considered in determining contractor effort, but they may be

modified in specific situations to accommodate differences in the categories used by prospective contractors for listing costs—

(A) *Material acquisition*. This subfactor measures the managerial and technical effort needed to obtain the required purchased parts and material, subcontracted items, and special tooling. Considerations include the complexity of the items required, the number of purchase orders and subcontracts to be awarded and administered, whether established sources are available or new or second sources must be developed, and whether material will be obtained through routine purchase orders or through complex subcontracts requiring detailed specifications. Profit consideration should correspond to the managerial and technical effort involved.

(B) *Conversion direct labor*. This subfactor measures the contribution of direct engineering, manufacturing, and other labor to converting the raw materials, data, and subcontracted items into the contract items. Considerations include the diversity of engineering, scientific, and manufacturing labor skills required and the amount and quality of supervision and coordination needed to perform the contract task.

(C) *Conversion-related indirect costs*. This subfactor measures how much the indirect costs contribute to contract performance. The labor elements in the allocable indirect costs should be given the profit consideration they would receive if treated as direct labor. The other elements of indirect costs should be evaluated to determine whether they merit only limited profit consideration because of their routine nature, or are elements that contribute significantly to the proposed contract.

(D) *General management*. This subfactor measures the prospective contractor's other indirect costs and general and administrative (G&A) expense, their composition, and how much they contribute to contract performance. Considerations include how labor in the overhead pools would be treated if it were direct labor, whether elements within the pools are routine expenses or instead are elements that contribute significantly to the proposed contract, and whether the elements require routine as opposed to unusual managerial effort and attention.

(ii) *Contract cost risk.*

(A) This factor measures the degree of cost responsibility and associated risk that the prospective contractor will assume as a result of the contract type contemplated and considering the reliability of the cost estimate in relation to the complexity and duration of the contract task. Determination of contract type should be closely related to the risks involved in timely, cost-effective, and efficient performance. This factor should compensate contractors proportionately for assuming greater cost risks.

(B) The contractor assumes the greatest cost risk in a closely priced firm-fixed-price contract under which it agrees to perform a complex undertaking on time and at a predetermined price. Some firm-fixed-price contracts may entail substantially less cost risk than others because, for example, the contract task is less complex or many of the contractor's costs are known at the time of price agreement, in which case the risk factor should be reduced accordingly. The contractor assumes the least cost risk in a cost-plus-fixed-fee level-of-effort contract, under which it is reimbursed those costs determined to be allocable and allowable, plus the fixed fee.

(C) In evaluating assumption of cost risk, contracting officers must, except in unusual circumstances, treat time-and-materials, labor-hour, and firm-fixed-price, level-of-effort term contracts as cost-plus-fixed-fee contracts.

(iii) *Federal socioeconomic programs.* This factor measures the degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, WOSB concerns, veteran-owned, HUBZone, SDVOSB concerns, sheltered workshops for workers with disabilities, and energy conservation. Greater profit opportunity should be provided contractors that have displayed unusual initiative in these programs.

(iv) *Capital investments.* This factor takes into account the contribution of contractor investments to efficient and economical contract performance.

(v) *Cost-control and other past accomplishments.* This factor allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration should be given to measures taken by the prospective contractor that result in productivity improvements, and other cost-reduction accomplishments that will benefit the Government in follow-on contracts.

(vi) *Independent development.* Under this factor, the contractor may be provided additional profit opportunities in recognition of independent development efforts relevant to the contract end item without Government assistance. The contracting officer should consider whether the development cost was recovered directly or indirectly from Government sources.

(2) *Additional factors.* In order to foster achievement of program objectives, each agency may include additional factors in its structured approach or take them into account in the profit analysis of individual contract actions.

## **15.405 Special cost or pricing areas.**

### **15.405-1 Inaccurate, incomplete, or noncurrent cost or pricing data.**

(a) If, before agreement on price, the contracting officer learns that any certified cost or pricing data submitted are inaccurate, incomplete, or noncurrent, the contracting officer must immediately bring the matter to the attention of the prospective contractor, whether the defective data increase or decrease the contract price.

(b) The contracting officer must consider any new data submitted to correct the deficiency, or consider the inaccuracy, incompleteness, or noncurrency of the data when negotiating the contract price. The price negotiation memorandum must reflect the adjustments made to the data or the corrected data used to negotiate the contract price.

### **15.405-2 Make-or-buy programs.**

(a) *Evaluation, negotiation, and agreement.* Contracting officers must evaluate and negotiate proposed make-or-buy programs as soon as practicable after their receipt and before contract award.

(1) When the program is to be incorporated in the contract and the design status of the product being acquired does not permit accurate precontract identification of major

items or work efforts, contracting officers must notify the prospective contractor in writing that these items or efforts, when identifiable, must be added under the clause at 52.215-9, *Changes or Additions to Make-or-Buy Program*.

(2) Contracting officers normally must not agree to proposed “make items” when the products or services are not regularly manufactured or provided by the contractor and are available—quality, quantity, delivery, and other essential factors considered—from another firm at equal or lower prices, or when they are regularly manufactured or provided by the contractor, but are available—quality, quantity, delivery, and other essential factors considered—from another firm at lower prices. Contracting officers may agree to these as “make items” if an overall lower Governmentwide cost would result or it is otherwise in the best interest of the Government. If this situation occurs in any fixed-price incentive or cost-plus-incentive-fee contract, contracting officers must specify these items in the contract and state that they are subject to paragraph (d) of the clause at 52.215-9, *Changes or Additions to Make-or-Buy Program*. If the contractor proposes to reverse the categorization of such items during contract performance, the contract price must be subject to equitable reduction.

(b) *Incorporating make-or-buy programs in contracts*. Contracting officers may incorporate the make-or-buy program in negotiated contracts for—

(1) Major systems or their subsystems or components, regardless of contract type;

or

(2) Other supplies and services if—

(i) The contract is a cost-reimbursable contract, or a cost-sharing contract in which the contractor's share of the cost is less than 25 percent; and

(ii) The contracting officer determines that technical or cost risks justify Government review and approval of changes or additions to the make-or-buy program.

### **15.405-3 Forward pricing rate agreements.**

(a) All data submitted in connection with the Forward Rate Pricing Agreement (FPRA), updated as necessary, form a part of the total data that the offeror certifies to be accurate, complete, and current at the time of agreement on price for an initial contract or for a contract modification.

(b) Contracting officers will use FPRA rates as bases for pricing all contracts, modifications, and other contractual actions to be performed during the period covered by the agreement. Conditions that may affect the agreement's validity must be reported promptly to the administrative contracting officer (ACO). If the ACO determines that a changed condition invalidates the agreement, the ACO must notify all interested parties of the extent of its effect and status of efforts to establish a revised FPRA.

(c) Contracting officers must not require certification at the time of agreement for data supplied in support of FPRA's or other advance agreements. When a forward pricing rate agreement or other advance agreement is used to price a contract action that requires a certificate, the certificate supporting that contract action must cover the data supplied to support the FPRA or other advance agreement, and all other data supporting the action.

#### **15.405-4 Should-cost review.**

*(a) General.*

(1) Should-cost reviews are a specialized form of cost analysis. Should-cost reviews differ from traditional evaluation methods because they do not assume that a contractor's historical costs reflect efficient and economical operation. Instead, these reviews evaluate the economy and efficiency of the contractor's existing work force, methods, materials, equipment, real property, operating systems, and management. These reviews are accomplished by a multi-functional team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost reviews is to promote both short and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance of Government contracts. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic objectives for negotiation.

(2) There are two types of should-cost reviews: program should-cost review and overhead should-cost review. These should-cost reviews may be performed together or independently. The scope of a should-cost review can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale tailored review examining specific portions of a contractor's operation.

*(b) Program should-cost review.*

(1) A program should-cost review is used to evaluate significant elements of direct costs, such as material and labor, and associated indirect costs, usually associated with the production of major systems. When a program should-cost review is conducted relative to a contractor proposal, a separate audit report on the proposal is required.

(2) A program should-cost review should be considered, particularly in the case of a major system acquisition, when—

(i) Some initial production has already taken place;

(ii) The contract will be awarded on a sole source basis;

(iii) There are future year production requirements for substantial quantities of like items;

(iv) The items being acquired have a history of increasing costs;

(v) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;

(vi) Sufficient time is available to plan and adequately conduct the should-cost review; and

(vii) Personnel with the required skills are available or can be assigned for the duration of the should-cost review.

(3) Contracting officers should decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. The expertise of on-site Government personnel should be used, when appropriate. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, pricing and accounting, management and organization, and subcontract and vendor management are normally reviewed in a should-cost review.

(4) In acquisitions for which a program should-cost review is conducted, a separate program should-cost review team report, prepared in accordance with agency procedures, is required. Contracting officers must consider the findings and recommendations contained in the program should-cost review team report when negotiating the contract price. After completing the negotiation, contracting officers must provide the ACO a report of any identified uneconomical or inefficient practices, together with a report of correction

or disposition agreements reached with the contractor. Contracting officers must establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

*(c) Overhead should-cost review.*

(1) An overhead should-cost review is used to evaluate indirect costs, such as fringe benefits, shipping and receiving, real property, and equipment, depreciation, plant maintenance and security, taxes, and general and administrative activities. It is normally used to evaluate and negotiate an FPRA with the contractor. When an overhead should-cost review is conducted, a separate audit report is required.

(2) The following factors should be considered when selecting contractor sites for overhead should-cost reviews:

(i) Dollar amount of Government business.

(ii) Level of Government participation.

(iii) Level of noncompetitive Government contracts.

(iv) Volume of proposal activity.

(v) Major system or program.

(vi) Corporate reorganizations, mergers, acquisitions, or takeovers.

(vii) Other conditions (e.g., changes in accounting systems, management, or business activity).

(3) The objective of the overhead should-cost review is to evaluate significant indirect cost elements in-depth, and identify and recommend corrective actions regarding inefficient and uneconomical practices. If it is conducted in conjunction with a program should-cost review, a separate overhead should-cost review report is not required. However, the findings and recommendations of the overhead should-cost team, or any separate overhead should-cost review report, shall be provided to the ACO. The ACO should use this information to form the basis for the Government position in negotiating an FPRA with the contractor. The ACO shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

## **15.406 Data to support proposal analysis.**

*(a) Field pricing assistance.*

(1) Contracting officers should request field pricing assistance when the information available at the buying activity is inadequate to determine a fair and reasonable price. The request must reflect the minimum essential supplementary information needed to conduct a technical or cost or pricing analysis.

(2) Contracting officers must tailor the type of information and level of detail requested in accordance with the specialized resources available at the buying activity and the magnitude and complexity of the required analysis. Field pricing assistance is generally available to provide—

(i) Technical, audit, and special reports associated with the cost elements of a proposal, including subcontracts;

(ii) Information on related pricing practices and history;

(iii) Information to help contracting officers determine commerciality and a fair and reasonable price, including—

(A) Verifying sales history to source documents;

(B) Identifying special terms and conditions;

(C) Identifying customarily granted or offered discounts for the item;

(D) Verifying the item to an existing catalog or price list;

(E) Verifying historical data for a product or service previously not determined commercial that the offeror is now trying to qualify as a commercial product or commercial service; and

(F) Identifying general market conditions affecting determinations of commerciality and a fair and reasonable price.

(iv) Information relative to the business, technical, production, or other capabilities and practices of an offeror.

*(b) Reporting field pricing information.*

(1) Field pricing review results, including supporting rationale, may be reported directly to the contracting officer orally, in writing, or by any other method acceptable to the contracting officer.

(i) Contracting officers and field pricing experts are encouraged to use telephonic and/or electronic means to request and send pricing information.

(ii) When it is necessary to have written technical and audit reports, contracting officers must request that the audit agency concurrently forward the audit report to the requesting contracting officer and the ACO. The completed field pricing assistance results may reference audit information, but need not reconcile the audit recommendations and technical recommendations. A copy of the information submitted to the contracting officer by field pricing personnel must be provided to the audit agency.

(2) Audit and field pricing information, whether written or reported telephonically or electronically, must be made a part of the official contract file.

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

(1) Contracting officers should contact the cognizant audit office directly to request assistance, particularly when an audit is the only field pricing support required. The audit office must send the audit report, or otherwise transmit the audit recommendations, directly to the contracting officer.

(i) The auditor must not reveal the audit conclusions or recommendations to the offeror/contractor without obtaining the concurrence of the contracting officer. However, the auditor may discuss statements of facts with the contractor.

(ii) Contracting officers must be notified immediately of any information disclosed to the auditor after submission of a report that may significantly affect the audit findings and, if necessary, a supplemental audit report must be issued.

(2) Contracting officers must not request a separate preaward audit of indirect costs unless the information already available from an existing audit, completed within the preceding 12 months, is considered inadequate for determining the reasonableness of the proposed indirect costs (41 U.S.C. 4706 and 10 U.S.C. 3841).

(3) The auditor is responsible for the scope and depth of the audit. Copies of updated information that will significantly affect the audit must be provided to the auditor by the contracting officer.

(4) General access to the offeror's books and financial records is limited to the auditor. This limitation does not preclude the contracting officer or the ACO, or their representatives, from requesting that the offeror provide or make available any data or records necessary to analyze the offeror's proposal.

*(d) Deficient proposals.*

(1) The ACO or the auditor, as appropriate, must notify the contracting officer immediately if the data provided for review is so deficient as to preclude review or audit, or if the contractor or offeror has denied access to any records considered essential to conduct a satisfactory review or audit. Oral notifications must be confirmed promptly in writing, including a description of deficient or denied data or records.

(2) The contracting officer must immediately take appropriate action to obtain the required data. Should the offeror/contractor again refuse to provide adequate data, or provide access to necessary data, the contracting officer must withhold the award or price adjustment and refer the contract action to a higher authority, providing details of the attempts made to resolve the matter and a statement of the practicability of obtaining the supplies or services from another source.

### **15.407 Price negotiation.**

(a) The purpose of performing cost or price analysis is to develop a negotiation position that permits the contracting officer and the offeror an opportunity to reach agreement on a fair and reasonable price. A fair and reasonable price does not require that agreement be reached on every element of cost, nor is it mandatory that the agreed price be within the contracting officer's initial negotiation position. Contracting officers are responsible for exercising the requisite judgment needed to reach a negotiated settlement with the offeror and is solely responsible for the final price agreement. However, when significant audit or other specialist recommendations are not adopted, contracting officers should provide rationale that supports the negotiation result in the price negotiation documentation.

(b) The contracting officer's primary concern is the overall price the Government will actually pay. The contracting officer's objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Government.

(c) The Government's cost objective and proposed pricing arrangement directly affect the profit or fee objective. Because profit or fee is only one of several interrelated variables, contracting officers must not agree on profit or fee without concurrent agreement on cost and type of contract.

(d) If, however, the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and the contracting officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success,

the contracting officer must refer the contract action to a level above the contracting officer and document the contract file.

## **15.408 Documentation.**

### **15.408-1 Prenegotiation objectives.**

(a) The prenegotiation objectives establish the Government's initial negotiation position and are based on the results of the contracting officer's analysis of the offeror's proposal.

(b) Contracting officers must establish prenegotiation objectives before negotiating a pricing action. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action. When cost analysis is required, contracting officers must document the pertinent issues to be negotiated, the cost objectives, and a profit or fee objective.

### **15.408-2 Documenting the negotiation.**

(a) Contracting officers must document in the contract file the principal elements of the negotiated agreement. The documentation (e.g., price negotiation memorandum) must include the following:

(1) The purpose of the negotiation.

(2) A description of the acquisition, including appropriate identifying numbers (e.g., RFP No.).

(3) The name, position, and organization of each person representing the contractor and the Government in the negotiation.

(4) The current status of any contractor systems (e.g., purchasing, estimating, accounting, and compensation) to the extent they affected and were considered in the negotiation.

(5) If certified cost or pricing data were not required in the case of any price negotiation exceeding the certified cost or pricing data threshold, the exception used and the basis for it.

(6) If certified cost or pricing data were required, the extent to which the contracting officer—

(i) Relied on the certified cost or pricing data submitted and used them in negotiating the price;

(ii) Recognized as inaccurate, incomplete, or noncurrent any certified cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated; or

(iii) Determined that an exception applied after the data were submitted and, therefore, considered not to be certified cost or pricing data.

(7) A summary of the contractor's proposal, any field pricing assistance recommendations, including the reasons for any pertinent variances from them, the Government's negotiation objective, and the negotiated position.

(i) When the determination of a fair and reasonable price is based on cost analysis, the summary must address each major cost element.

(ii) When determination of a fair and reasonable price is based on price analysis, the summary must include the source and type of data used to support the determination.

(8) The most significant facts or considerations controlling the establishment of the prenegotiation objectives and the negotiated agreement including an explanation of any significant differences between the two positions.

(9) To the extent such direction has a significant effect on the action, a discussion and quantification of the impact of direction given by Congress, other agencies, and higher-level officials (*i.e.*, officials who would not normally exercise authority during the award and review process for the instant contract action).

(10) The basis for the profit or fee prenegotiation objective and the profit or fee negotiated.

(11) Documentation of fair and reasonable pricing.

(b) Whenever field pricing assistance has been obtained, the contracting officer must forward a copy of the negotiation documentation to the office(s) providing assistance. When appropriate, information on how advisory field support can be made more effective should be provided separately.

## **Table 15-1—Instructions for Submitting Cost/Price Proposals When Certified Cost or Pricing Data Are Required**

This document provides instructions for preparing a contract pricing proposal when certified cost or pricing data are required.

*Note 1:* There is a clear distinction between submitting certified cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of certified cost or pricing data is met when all accurate certified cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the Contracting Officer or an authorized representative. As later data come into your possession, it should be submitted promptly to the Contracting Officer in a manner that clearly shows how the data relate to the offeror's price proposal. The requirement for submission of certified cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.

*Note 2:* By submitting your proposal, you grant the Contracting Officer or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of factual data (regardless of form or whether the data are specifically referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

### **I. General Instructions**

A. You must provide the following information on the first page of your pricing proposal:

- (1) RFP, contract, and/or modification number;
- (2) Name and address of offeror;
- (3) Name, telephone number, and email address of the point of contact;
- (4) Name of contract administration office (if available);
- (5) Type of contract action (that is, new contract, change order, price revision/redetermination, letter contract, unpriced order, or other);
- (6) Proposed cost; profit or fee; and total;
- (7) Whether you will require the use of Government property in the performance of the contract, and, if so, what property;

(8) Whether your organization is subject to cost accounting standards; whether your organization has submitted a CASB Disclosure Statement, and if it has been determined adequate; 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 has determined to have an immaterial cost impact), and, if yes, an explanation; 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 your established estimating and accounting principles and procedures and FAR part 31, *Cost Principles*, and, if not, an explanation;

(9) The following statement: This proposal reflects our estimates and/or actual costs as of this date and conforms with the instructions in the RFP and FAR 15.408-2, Table 15-1. By submitting this proposal, we grant the Contracting Officer and authorized representative(s) the right to examine, at any time before award, 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 pricing, that will permit an adequate evaluation of the proposed price.

(10) Date of submission; and

(11) Name, title, and signature of authorized representative.

B. In submitting your proposal, you must include an index, appropriately referenced, of all the certified cost or pricing data and information accompanying or identified in the proposal. In addition, you must annotate any future additions and/or revisions, up to the date of agreement on price, or an earlier date agreed upon by the parties, on a supplemental index.

C. As part of the specific information required, you must submit, with your proposal—

(1) Certified cost or pricing data (as defined at FAR 2.101). You must clearly identify on your cover sheet that certified cost or pricing data are included as part of the proposal.

(2) Information reasonably required to explain your estimating process, including—

(i) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and

(ii) The nature and amount of any contingencies included in the proposed price.

D. You must show the relationship between line item prices and the total contract price. You must attach cost-element breakdowns for each proposed line item, using the appropriate format prescribed in the “Formats for Submission of Line Item Summaries” section of this table. You must furnish supporting breakdowns for each cost element, consistent with your cost accounting system.

E. When more than one line item is proposed, you must also provide summary total amounts covering all line items for each element of cost.

F. Whenever you have incurred costs for work performed before submission of a proposal, you must identify those costs in your cost/price proposal.

G. If you have reached an agreement with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature.

H. As soon as practicable after final agreement on price or an earlier date agreed to by the parties, but before the award resulting from the proposal, you must, under the conditions stated in FAR 15.403-4, submit a Certificate of Current Cost or Pricing Data.

## **II. Cost Elements**

Depending on your system, you must provide breakdowns for the following basic cost elements, as applicable:

A. *Materials and services.* Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor proposals. Conduct cost analyses for all subcontracts when certified cost or pricing data are submitted by the subcontractor. Include these analyses as part of your own certified cost or pricing data submissions for subcontracts expected to exceed the appropriate threshold in FAR 15.403-3(a). Submit the subcontractor certified cost or pricing data and data other than certified cost or pricing data as part of your own certified cost or pricing data as required in paragraph IIA(2) of this table. These requirements also apply to all subcontractors if required to submit certified cost or pricing data.

(1) *Adequate Price Competition.* Provide data showing the degree of competition and the basis for establishing the source and reasonableness of price for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding, or

expected to exceed, the appropriate threshold set forth at FAR 15.403-3(a) priced on the basis of adequate price competition. For interorganizational transfers priced at other than the cost of comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the pricing method (see FAR 31).

(2) *All Other*. Obtain certified cost or pricing data from prospective sources for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding the threshold set forth in FAR 15.403-3(a) and not otherwise exempt, in accordance with FAR 15.403-2. Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of your cost analysis and a copy of certified cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is the lower of either \$20 million or more, or both more than the pertinent certified cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price. Also submit any information reasonably required to explain your estimating process (including the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price). The Contracting Officer may require you to submit cost or pricing data in support of proposals in lower amounts. Subcontractor certified cost or pricing data must be accurate, complete and current as of the date of final price agreement, or an earlier date agreed upon by the parties, given on the prime contractor's Certificate of Current Cost or Pricing Data. The prime contractor is responsible for updating a prospective subcontractor's data. For standard commercial products fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the certified cost or pricing data and submit the results of your analysis of the prospective source's proposal. When submission of a prospective source's certified cost or pricing data is required as described in this paragraph, it must be included as part of your own certified cost or pricing data. You must also submit any data other than certified cost or pricing data obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.

B. *Direct Labor*. Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.

C. *Indirect Costs*. Indicate how you have computed and applied your indirect costs, including cost breakdowns. Show trends and budgetary data to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.

D. *Other Costs*. List all other costs not otherwise included in the categories described above (e.g., special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework, and Federal excise tax on finished articles) and provide bases for pricing.

E. *Royalties*. If royalties exceed \$1,500, you must provide the following information on a separate page for each separate royalty or license fee:

- (1) Name and address of licensor.
- (2) Date of license agreement.
- (3) Patent numbers.
- (4) Patent application serial numbers, or other basis on which the royalty is payable.
- (5) Brief description (including any part or model numbers of each contract item or component on which the royalty is payable).
- (6) Percentage or dollar rate of royalty per unit.
- (7) Unit price of contract item.
- (8) Number of units.
- (9) Total dollar amount of royalties.
- (10) If specifically requested by the Contracting Officer, a copy of the current license agreement and identification of applicable claims of specific patents (see part 27 and 31).

F. *Facilities Capital Cost of Money*. When you elect to claim facilities capital cost of money as an allowable cost, you must submit Form CASB CMF and show the calculation of the proposed amount (see 31.205-10 and 48 CFR 9904.414).

### **III. Formats for Submission of Line Item Summaries**

A. New Contracts (Including Letter Contracts)

<b>Cost elements</b>	<b>Proposed contract estimate—total cost</b>	<b>Proposed contract estimate—unit cost</b>	<b>Reference</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>

**Column and Instruction**

(1) Enter appropriate cost elements.

(2) Enter those necessary and reasonable costs that, in your judgment, will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (e.g., under a letter contract), describe them on an attached supporting page. When preproduction or startup costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them.

(3) Optional, unless required by the Contracting Officer.

(4) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

**B. Change Orders, Modifications, and Claims**

<b>Cost elements</b>	<b>Estimated cost of all work deleted</b>	<b>Cost of deleted work already performed</b>	<b>Net cost to be deleted</b>	<b>Cost of work added</b>	<b>Net cost of change</b>	<b>Reference</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>	<b>(5)</b>	<b>(6)</b>	<b>(7)</b>

**Column and Instruction**

(1) Enter appropriate cost elements.

(2) Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed.

(3) Include the incurred cost of deleted work already performed, using actuals incurred if possible, or, if actuals are not available, estimates from your accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if you desire to retain these items or any portion of them, indicate the amount offered for them.

(4) Enter the net cost to be deleted, which is the estimated cost of all deleted work less the cost of deleted work already performed. Column (2) minus Column (3) equals Column (4).

(5) Enter your estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them. When any of the costs in this column have already been incurred, describe them on an attached supporting schedule.

(6) Enter the net cost of change, which is the cost of work added, less the net cost to be deleted. Column (5) minus Column (4) equals Column (6). When this result is negative, place the amount in parentheses.

(7) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

C. Price Revision/Redetermination

Cutoff date	Number of units completed	Number of units to be completed	Contract amount	Redetermination proposal amount	Difference	Cost elements	Incurred cost—preproduction	Incurred cost—completed units	Incurred cost—work in process	Total incurred cost
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

(Use as applicable)

## Column and Instruction

(1) Enter the cutoff date required by the contract, if applicable.

(2) Enter the number of units completed during the period for which experienced costs of production are being submitted.

(3) Enter the number of units remaining to be completed under the contract.

(4) Enter the cumulative contract amount.

(5) Enter your redetermination proposal amount.

(6) Enter the difference between the contract amount and the redetermination proposal amount. When this result is negative, place the amount in parentheses. Column (4) minus Column (5) equals Column (6).

(7) Enter appropriate cost elements. When residual inventory exists, the final costs established under fixed-price-incentive and fixed-price-redeterminable arrangements should be net of the fair market value of such inventory. In support of subcontract costs, submit a listing of all subcontracts subject to repricing action, annotated as to their status.

(8) Enter all costs incurred under the contract before starting production and other nonrecurring costs (usually referred to as startup costs) from your books and records as of the cutoff date. These include such costs as preproduction engineering, special plant rearrangement, training program, and any identifiable nonrecurring costs such as initial rework, spoilage, pilot runs, etc. In the event the amounts are not segregated in or otherwise available from your records, enter in this column your best estimates. Explain the basis for each estimate and how the costs are charged on your accounting records (e.g., included in production costs as direct engineering labor, charged to manufacturing overhead). Also show how the costs would be allocated to the units at their various stages of contract completion.

(9) Enter in Column (9) the production costs from your books and records (exclusive of preproduction costs reported in Column (8)) of the units completed as of the cutoff date.

(10) Enter in Column (10) the costs of work in process as determined from your records or inventories at the cutoff date. When the amounts for work in process are not available in your records but reliable estimates for them can be made, enter the estimated amounts in Column (10) and enter in Column (9) the differences between the total incurred

costs (exclusive of preproduction costs) as of the cutoff date and these estimates. Explain the basis for the estimates, including identification of any provision for experienced or anticipated allowances, such as shrinkage, rework, design changes, etc. Furnish experienced unit or lot costs (or labor hours) from inception of contract to the cutoff date, improvement curves, and any other available production cost history pertaining to the item(s) to which your proposal relates.

(11) Enter total incurred costs (Total of Columns (8), (9), and (10)).

(12) Enter those necessary and reasonable costs that in your judgment will properly be incurred in completing the remaining work to be performed under the contract with respect to the item(s) to which your proposal relates.

(13) Enter total estimated cost (Total of Columns (11) and (12)).

(14) Identify the attachment in which the information supporting the specific cost element may be found. (Attach separate pages as necessary.)

## **Subpart 15.5 - Unsolicited Proposals**

### **15.500 Scope of subpart.**

This subpart contains policies and procedures for the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals.

### **15.501 Definitions.**

As used in this subpart—

*Advertising material* means material designed to acquaint the Government with a prospective contractor's present products, services, or potential capabilities, or designed to stimulate the Government's interest in buying such products or services.

*Commercial product or commercial service offer* means an offer of a commercial product or commercial service that the vendor wishes to see introduced in the Government's supply system as an alternate or a replacement for an existing supply item. This term does not include innovative or unique configurations or uses of commercial products or commercial services that are being offered for further development and that may be submitted as an unsolicited proposal.

*Contribution* means a concept, suggestion, or idea presented to the Government for its use with no indication that the source intends to devote any further effort to it on the Government's behalf.

## **15.502 General.**

(a) *Purpose.* Unsolicited proposals allow unique and innovative ideas or approaches developed outside the Government to be made available to Government agencies for use in accomplishing their missions.

(b) *Intent.* Unsolicited proposals are offered with the intent that the Government will award a contract to the offeror for research and development or other efforts supporting the Government mission. Only the cognizant contracting officer has the authority to bind the Government regarding unsolicited proposals.

(c) *Early exchanges.* Preliminary contact with technical and other appropriate agency personnel before preparing a detailed unsolicited proposal or submitting proprietary information to the Government may save considerable time and effort for both parties.

(d) *Information for potential offerors.* Agencies must make the following information available to potential offerors of unsolicited proposals:

(1) Definition and content of an unsolicited proposal acceptable for formal evaluation.

(2) Requirements concerning responsible prospective contractors and organizational conflicts of interest.

(3) Guidance on preferred methods for submitting ideas/concepts to the Government, such as any agency: upcoming requests for proposals (RFP); Broad Agency Announcements (BAA); Small Business Innovative Research programs (SBIR); Small Business Technology Transfer (STTR) programs; program research and development announcements; or grant programs.

(4) Agency points of contact for information regarding advertising, contributions, and other types of transactions similar to unsolicited proposals.

(5) Information sources on agency objectives and areas of potential interest.

(6) Procedures for submission and evaluation of unsolicited proposals.

(7) Instructions for identifying and marking proprietary information so that it is protected and restrictive legends conform to this subpart.

*(e) Prohibitions.*

(1) Government personnel should not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a RFP or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. This prohibition does not preclude using any data, concept, or idea in the proposal that also is available from another source without restriction.

(2) Government personnel should not disclose restrictively marked information included in an unsolicited proposal. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. 1905.

## **15.503 Preparing unsolicited proposals.**

### **15.503-1 Scope of proposals.**

(a) Unsolicited proposals may be submitted for new and innovative ideas that do not already fall under topic areas publicized under BAA, SBIR topics, STTR topics, program research and development announcements, or any other Government-initiated RFP or program.

(b) A valid unsolicited proposal must—

(1) Be innovative and unique;

(2) Be independently originated and developed by the offeror;

(3) Be prepared without Government supervision, endorsement, direction, or direct Government involvement;

(4) Include sufficient detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities;

(5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods; and

(6) Not address a previously published agency requirement.

(c) Advertising material, commercial product or commercial service offers, contributions, or routine correspondence on technical issues, are not unsolicited proposals.

(d) Unsolicited proposals in response to a publicized general statement of agency needs are considered to be independently originated.

### **15.503-2 Content of proposals.**

Unsolicited proposals must contain the following information to permit consideration in an objective and timely manner:

(a) Basic information including—

(1) Offeror's name and address and type of organization; e.g., profit, nonprofit, educational, small business;

(2) Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;

(3) Identification of proprietary data to be used only for evaluation purposes;

(4) Names of other Federal, State, or local agencies or parties receiving the proposal or funding the proposed effort;

(5) Date of submission; and

(6) Signature of a person authorized to represent and contractually obligate the offeror.

(b) Technical information including—

(1) Concise title and short abstract of the proposed effort;

(2) A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of the agency's mission;

(3) Names and biographical information on the offeror's key personnel who would be involved, including alternates; and

(4) Type of support needed from the agency; e.g., Government property or personnel resources.

(c) Supporting information including—

(1) Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;

(2) Period of time for which the proposal is valid (a 6-month minimum is suggested);

(3) Type of contract preferred;

(4) Proposed duration of effort;

(5) Brief description of the organization, previous experience, relevant past performance, and facilities to be used;

(6) Other statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts; and

(7) The names and telephone numbers of agency technical or other agency points of contact already contacted regarding the proposal.

### **15.503-3 Restricting use and disclosure of data.**

(a) Unsolicited proposals may include data that the offeror does not want disclosed to the public for any purpose or used by the Government except for evaluation purposes. If the offeror wishes to restrict the use and disclosure of data, the title page must be marked the following legend:

#### *Use and Disclosure of Data*

This proposal includes data that must not be disclosed outside the Government and must not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this proposal. However, if a contract is awarded to this offeror as a result of, or in connection with, the submission of these data, the Government must have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in these data if they are obtained from another source without restriction. The data subject to this restriction are contained in Sheets [*insert numbers or other identification of sheets*].

(1) The offeror must also mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(2) An offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the Government

## **15.504 Receipt and initial review of unsolicited proposals.**

(a) Agencies must establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals. The procedures must include controls on the reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions; and identify agency points of contact to coordinate the receipt and handling of unsolicited proposals.

(b) Agencies may decline evaluation or consideration of unsolicited proposals submitted concurrently to more than one agency, or distributed in bulk.

### **15.504-1 Initial Review.**

(a) Before beginning a comprehensive evaluation, the agency contact point must determine if the proposal—

(1) Is a valid unsolicited proposal, as described at 15.503-1(b);

(2) Is suitable for submission in response to an existing agency requirement;

(3) Is related to the agency mission;

(4) Contains sufficient technical information and cost-related or price-related information for evaluation;

(5) Has overall scientific, technical, or socioeconomic merit;

(6) Has been approved by a responsible official or other representative authorized to obligate the offeror contractually; and

(7) Complies with the marking requirements of this subpart.

(b) If the proposal meets these requirements, the contact point must promptly acknowledge receipt and process the proposal.

(c) If a proposal is rejected because the proposal does not meet these requirements, the agency contact point must promptly inform the offeror in writing of the reasons for rejection and the proposed disposition of the unsolicited proposal.

### **15.504-2 Handling use and disclosure of data restrictions.**

(a) *Alternate legend.* When an unsolicited proposal meeting the requirements at 15.504-1(a) is marked with a legend different from that at 15.503-3, the agency point of contact must—

(1) Return the proposal to the offeror and notify them that the proposal cannot be considered because it is impracticable for the Government to comply with the legend and that the agency will consider the proposal if it is resubmitted with the proper legend; and

(2) Unless the offeror clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal, mark the unsolicited proposal as follows:

*Unsolicited Proposal—Use of Data Limited*

All Government personnel must exercise extreme care to ensure that the information in this proposal is not disclosed to an individual who has not been authorized access to such data in accordance with FAR part 3, and is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the proposal, without the written permission of the offeror. If a contract is awarded on the basis of this proposal, the terms of the contract must control disclosure and use. This notice does not limit the Government's right to use information contained in the proposal if it is obtainable from another source without restriction. This is a Government notice, and must not by itself be construed to impose any liability upon the Government or Government personnel for disclosure or use of data contained in this proposal.

(3) Not use this notice to justify withholding of a record, or to improperly deny the public access to a record, where an obligation is imposed by the Freedom of Information Act (5 U.S.C. 552).

(b) *Evaluation by personnel outside of the agency or the Government.*

(1) When an agency receives an unsolicited proposal from other than an educational or nonprofit organization or institution, and an evaluation by Government personnel outside the agency or non-Government personnel is necessary, written permission must be obtained from the offeror before releasing the proposal for evaluation. The agency point of contact should—

(i) Attach a cover sheet marked with the legend in paragraph (a)(2) of this section;

(ii) Change the beginning of the legend to read “All Government and non-Government personnel \* \* \*”; and

(iii) Require any non-Government evaluator to agree in writing that data in the proposal will not be disclosed to persons outside the Government.

(2) When an agency receives an unsolicited proposal without a restrictive legend from an educational or nonprofit organization or institution, and evaluation outside of the Government is necessary, the agency point of contact should follow paragraphs (b)(1)(i) through (iii) of this section.

(3) When an agency receives an unsolicited proposal with a restrictive legend from an educational or nonprofit organization or institution, and evaluation by non-Government personnel is necessary, the agency point of contact must—

(i) Follow paragraphs (b)(1)(i) through (iii) of this section; and

(ii) Obtain written permission from the offeror before releasing the proposal for evaluation.

## **15.505 Evaluation of unsolicited proposals.**

(a) Agencies must evaluate unsolicited proposals for energy savings performance contracts in accordance with the procedures in 10 CFR 436.33(b).

(b) The agency point of contact must coordinate the evaluation of proposals and attach the legend at 15.504-2(a)(2) to each copy of the proposal distributed for evaluation.

(c) When evaluating unsolicited proposals, evaluators should consider, at a minimum, the following factors:

(1) Unique, innovative and meritorious methods, approaches, or concepts demonstrated by the proposal;

(2) Overall scientific, technical, or socioeconomic merits of the proposal;

(3) Potential contribution of the effort to the agency's specific mission;

(4) Offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposal objectives;

(5) Qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical to achieving the proposal objectives; and

(6) Realism of the proposed cost.

(d) Evaluators must notify the agency point of contact of their recommendations when the evaluation is complete.

(e) A favorable evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition. The agency point of contact should return an unsolicited proposal to the offeror, citing reasons, when its substance—

(1) Is available to the Government without restriction from another source;

(2) Closely resembles a pending competitive acquisition requirement;

(3) Does not relate to the activity's mission; or

(4) Does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal.

### **15.506 Criteria for acceptance and negotiation of an unsolicited proposal.**

Contracting officers may begin negotiations on a sole source basis only when—

(a) An unsolicited proposal receives a favorable comprehensive evaluation;

(b) A justification and approval is obtained in accordance with part 6;

(c) The agency technical office sponsoring the contract furnishes the necessary funds; and

(d) The requirements for synopsisizing a proposed contract action are met.

# Part 52 - Solicitation Provisions and Contract Clauses

---

[52.215 \[Reserved\]](#)

[52.215-1 Instructions to Offerors-Competitive Acquisition.](#)

[52.215-2 Audit and Records-Negotiation.](#)

[52.215-3 \[Reserved\]](#)

[52.215-4 \[Reserved\]](#)

[52.215-5 \[Reserved\]](#)

[52.215-6 Place of Performance.](#)

[52.215-7 \[Reserved\]](#)

[52.215-8 Order of Precedence-Uniform Contract Format.](#)

[52.215-9 Changes or Additions to Make-or-Buy Program.](#)

[52.215-10 Price Reduction for Defective Certified Cost or Pricing Data.](#)

[52.215-11 Price Reduction for Defective Certified Cost or Pricing Data-Modifications.](#)

[52.215-12 Subcontractor Certified Cost or Pricing Data.](#)

[52.215-13 Subcontractor Certified Cost or Pricing Data-Modifications.](#)

[52.215-14 Integrity of Unit Prices.](#)

[52.215-15 Pension Adjustments and Asset Reversions.](#)

[52.215-16 Facilities Capital Cost of Money.](#)

[52.215-17 Waiver of Facilities Capital Cost of Money.](#)

[52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits \(PRB\) Other Than Pensions.](#)

[52.215-19 Notification of Ownership Changes.](#)

[52.215-20 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.](#)

[52.215-21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data-Modifications.](#)

[52.215-22 Limitations on Pass-Through Charges-Identification of Subcontract Effort.](#)

[52.215-23 Limitations on Pass-Through Charges.](#)

## **52.215 [Reserved]**

### **52.215-1 Instructions to Offerors-Competitive Acquisition.**

As prescribed in 15.110(a), insert the following provision:

INSTRUCTIONS TO OFFERORS-COMPETITIVE ACQUISITION (DEVIATION JAN 2026)

(a) *Definitions.* As used in this provision-

*In writing, writing, or written* means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

*Proposal modification* is a change made to a proposal before the request for proposal closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

*Proposal revision* is a change to material elements of a proposal made after the request for proposal closing date, at the request of or as allowed by a Contracting Officer, as the result of negotiations.

*Time*, if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) *Amendments to requests for proposals.* If this request for proposal (RFP) is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this RFP by the date and time specified in the amendment(s).

(c) Submission, modification, revision, and withdrawal of proposals.

(1) (i) Proposals and modifications to proposals shall be—

(A) Submitted using the method and the format specified in the RFP;

(B) Addressed to the office specified in the RFP; and

(C) Showing the time and date specified for receipt, the RFP number, and the name and address of the offeror.

(ii) Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i)(B) and (C) of this provision.

(2) The first page of the proposal must show—

(i) The RFP number;

(ii) The name, address, and telephone number of the offeror (and electronic address if available);

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the RFP and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone number (and electronic addresses if available) of persons authorized to negotiate on the offeror's behalf with the Government in connection with this RFP; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) (i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the RFP by the time specified in the RFP. If no time is specified in the RFP, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii) (A) Any proposal, modification, or revision received at the Government office designated in the RFP after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and-

(1) If it was transmitted through an electronic commerce method authorized by the RFP, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt

of proposals by the exact time specified in the RFP, and urgent Government requirements preclude amendment of the RFP, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the RFP on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral RFPs may be withdrawn orally. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the RFP, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this RFP in English, unless otherwise permitted by the RFP, and in U.S. dollars, unless the provision at FAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the RFP.

(6) Offerors may submit modifications to their proposals at any time before the RFP closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) *Offer expiration date.* Proposals in response to this RFP will be valid for the number of days specified on the RFP cover sheet (unless a different period is proposed by the offeror).

(e) *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall-

(1) Mark the title page with the following legend:

Mark the title page with the following legend: This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of, or in connection with, the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) Contract award.

(1) The Government intends to award a contract or contracts resulting from this RFP to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and subfactors in the RFP.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without negotiations with offerors (except clarifications as described in FAR 15.202(b)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct negotiations if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly evaluated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(8) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(9) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(10) If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

(i) The agency's evaluation of the significant weaknesses or deficiencies in the debriefed offeror's offer.

(ii) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(iv) A summary of the rationale for award.

(v) For acquisitions of commercial products, the make and model of the product to be delivered by the successful offeror.

(vi) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the RFP, applicable regulations, and other applicable authorities were followed by the agency.

(vii) For DoD contracts in excess of \$10 million but not in excess of \$100 million with a small business or nontraditional defense contractor (10 U.S.C. 3014), an option for the contractor to request disclosure of the agency's written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

(viii) For award of a DoD contract in excess of \$100 million, disclosure of the agency's written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

(End of provision)

*Alternate I* (DEVIATION JAN 2026). As prescribed in 15.110(a)(1), substitute the following paragraph (f)(4) for paragraph (f)(4) of the provision:

(f) (4) The Government intends to evaluate proposals and award a contract after conducting negotiations with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

*Alternate II* (DEVIATION JAN 2026). As prescribed in 15.110(a)(2), add a paragraph (c)(9) substantially the same as the following to the basic clause:

(c) (9) Offerors may submit proposals that depart from stated requirements. Such proposals shall clearly identify why the acceptance of the proposal would be advantageous to the Government. Any deviations from the terms and conditions of the RFP, as well as the comparative advantage to the Government, shall be clearly identified and explicitly defined. The Government reserves the right to amend the RFP to allow all offerors an opportunity to submit revised proposals based on the revised requirements.

## **52.215-2 Audit and Records-Negotiation.**

As prescribed in 15.209(b), insert the following clause:

AUDIT AND RECORDS-NEGOTIATION (DEVIATION JAN 2026)

(a) As used in this clause, *records* includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Certified cost or pricing data.* If the Contractor has been required to submit certified cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to-

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

(d) *Comptroller General.-*

(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder and to interview any current employee regarding such transactions.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating-

(1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) *Availability*. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified for contractor record retention in Part 4 of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) (1) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, and—

(i) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(ii) For which certified cost or pricing data are required; or

(iii) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

(2) The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

*Alternate I* [Reserved]

*Alternate II* (AUG 2016). As prescribed in 15.110(b)(3), add the following paragraph (h) to the clause:

(h) The provisions of the OMB Uniform Guidance at 2 CFR part 200, subpart F apply to this contract.

*Alternate III* (JUN 1999). As prescribed in 15.110(b)(3), delete paragraph (d) of the clause and redesignate the remaining paragraphs accordingly, and substitute the following paragraph (e) for the redesignated paragraph (e) of the clause:

(e) *Availability*. The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), and (d) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified for contractor record retention in Part 4 of the Federal Acquisition

Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

**52.215-3 [Reserved]**

**52.215-4 [Reserved]**

**52.215-5 [Reserved]**

**52.215-6 Place of Performance.**

As prescribed in 15.110(f), insert the following provision:

PLACE OF PERFORMANCE (DEVIATION JAN 2026)

(a) The offeror or respondent, in the performance of any contract resulting from this request for proposals,  intends,  does not intend [*check applicable block*] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks "intends" in paragraph (a) of this provision, it shall insert in the following spaces the required information:

Place of Performance (Street Address,  
City, State, County, ZIP Code)

Name and Address of Owner and Operator of the Plant  
or Facility if Other than Offeror or Respondent

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(End of provision)

**52.215-7 [Reserved]**

**52.215-8 Order of Precedence-Uniform Contract Format.**

As prescribed in 15.110(h), insert the following clause:

ORDER OF PRECEDENCE-UNIFORM CONTRACT FORMAT (DEVIATION JAN 2026)

Any inconsistency in this request for proposal or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications).
- (b) Representations and other instructions.
- (c) Contract clauses.
- (d) Other documents, exhibits, and attachments.
- (e) The specifications.

(End of clause)

### **52.215-9 Changes or Additions to Make-or-Buy Program.**

As prescribed in 15.110(l), insert the following clause:

#### CHANGES OR ADDITIONS TO MAKE-OR-BUY PROGRAM (DEVIATION JAN 2026)

(a) The Contractor shall perform in accordance with the make-or-buy program incorporated in this contract. If the Contractor proposes to change the program, the Contractor shall, reasonably in advance of the proposed change, (1) notify the Contracting Officer in writing, and (2) submit justification in sufficient detail to permit evaluation. Changes in the place of performance of any "make" items in the program are subject to this requirement.

(b) For items deferred at the time of negotiation of this contract for later addition to the program, the Contractor shall, at the earliest possible time-

- (1) Notify the Contracting Officer of each proposed addition; and
- (2) Provide justification in sufficient detail to permit evaluation.

(c) Modification of the make-or-buy program to incorporate proposed changes or additions shall be effective upon the Contractor's receipt of the Contracting Officer's written approval.

(End of clause)

*Alternate I* (DEVIATION JAN 2026). As prescribed in 15.110(i)(1) add the following paragraph (d) to the clause:

(d) If the Contractor desires to reverse the categorization of "make" or "buy" for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support its proposal with certified cost or pricing data in accordance with FAR 15.408-2, Table 15-1, when required by FAR 15.403-3, and data other than certified cost or pricing data, to permit evaluation; and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract price in accordance with paragraph (k) of the Incentive Price Revision-Firm Target clause or paragraph (m) of the Incentive Price Revision-Successive Targets clause of this contract.

*Alternate II* (DEVIATION Nov 2025). As prescribed in 15.408(a)(2), add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of “make” or “buy” for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support its proposal with certified cost or pricing data in accordance with FAR 15.408-2, Table 15-1, when required by FAR 15.403-3, and data other than certified cost or pricing data, to permit evaluation;

(2) Support its proposal with cost or pricing data to permit evaluation; and

(3) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract's total estimated cost and fee in accordance with paragraph (e) of the Incentive Fee clause of this contract.

## **52.215-10 Price Reduction for Defective Certified Cost or Pricing Data.**

As prescribed in 15.110(j), insert the following clause:

### **PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA (AUG 2011)**

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

(1) The Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall

be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(c) (1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if-

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if

the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid-

(1) Interest compounded daily, as required by [26 U.S.C.6622](#), on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under [26 U.S.C. 6621\(a\)\(2\)](#); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

## **52.215-11 Price Reduction for Defective Certified Cost or Pricing Data-Modifications.**

As prescribed in 15.110(k), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE CERTIFIED COST OR PRICING DATA-MODIFICATIONS (DEVIATION JAN 2026)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403-3(a) on the date of execution of the modification, except that this clause does not apply to any modification if an exception under FAR 15.403-2 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor certified cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall

be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(d) (1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if-

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if-

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if

the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Interest compounded daily, as required by [26 U.S.C. 6622](#), on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under [26 U.S.C. 6621\(a\)\(2\)](#); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

## **52.215-12 Subcontractor Certified Cost or Pricing Data.**

As prescribed in 15.110(l)(1), insert the following clause:

### **SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (DEVIATION JAN 2026)**

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403-3(a), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403-3(a), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408-2, Table 15-1 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-2 applies. If the threshold for submission of certified cost or pricing data specified in FAR 15.403-3(a) is adjusted for inflation as set forth in FAR part 1, then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.403-4 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that, when entered into, exceeds the threshold for submission of certified cost or pricing data in FAR 15.403-3(a), the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, *Subcontractor Certified Cost or Pricing Data—Modifications*.

(End of clause)

*Alternate I* (DEVIATION JAN 2026). As prescribed in 15.110(l)(2), substitute the following paragraph (a) in place of paragraph (a) of the clause:

(a) Unless an exception under FAR 15.403-2 applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408-2, Table 15-1 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price) before awarding any subcontract expected to exceed \$2 million under any prime contract awarded before July 1, 2018.

### **52.215-13 Subcontractor Certified Cost or Pricing Data-Modifications.**

As prescribed in 15.110(m)(1), insert the following clause:

SUBCONTRACTOR CERTIFIED COST OR PRICING DATA-MODIFICATIONS (DEVIATION JAN 2026)

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in Federal Acquisition Regulation (FAR) 15.403-3(a) on the date of execution of the modification; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403-3(a), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data in FAR 15.403-3(a), the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408-2, Table 15-1 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-2 applies. If the threshold for submission of certified cost or pricing data specified in FAR 15.403-3(a) is adjusted

for inflation as set forth in FAR part 1, then the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.403-4 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of certified cost or pricing data in FAR 15.403-3(a) on the date of agreement on price or the date of award, whichever is later.

(End of clause)

*Alternate I* (DEVIATION JAN 2026). As prescribed in 15.110(m)(2), substitute the following paragraphs (a), (b), and (d) for paragraphs (a), (b), and (d) of the clause:

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-3(a); and

(2) Be limited to such modifications.

(b) Unless an exception under FAR 15.403-2 applies, the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408-2, Table 15-1 (to include any information reasonably required to explain the subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price) before modifying a subcontract under a prime contract awarded before July 1, 2018 if the modification involves a pricing adjustment expected to exceed \$2.5 million.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds \$2.5 million.

## **52.215-14 Integrity of Unit Prices.**

As prescribed in 15.110(n)(1), insert the following clause:

INTEGRITY OF UNIT PRICES (NOV 2021)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is

not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of certified cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

(c) The Contractor shall insert the substance of this clause, less paragraph (b) of this clause, in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold, as defined in Federal Acquisition Regulation (FAR) 2.101 on the date of subcontract award; construction or architect-engineer services under FAR part 36; utility services under FAR part 41; services where supplies are not required; commercial products and commercial services; and petroleum products.

(End of clause)

*Alternate I* (Oct 1997). As prescribed in 15.110(n)(1), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

## **52.215-15 Pension Adjustments and Asset Reversions.**

As prescribed in 15.110(o), insert the following clause:

### **PENSION ADJUSTMENTS AND ASSET REVERSIONS (DEVIATION JAN 2026)**

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be-

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) ; and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) , except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) subpart 31.2 or for which certified cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option,

make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which certified cost or pricing data were submitted or that are subject to FAR subpart 31.2.

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.110(o).

(End of clause)

### **52.215-16 Facilities Capital Cost of Money.**

As prescribed in 15.110(p), insert the following provision:

FACILITIES CAPITAL COST OF MONEY (JUNE 2003)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in FAR 31.205-10(b) are met. One of the allowability criteria requires the prospective Contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

(End of provision)

### **52.215-17 Waiver of Facilities Capital Cost of Money.**

As prescribed in 15.110(q), insert the following clause:

WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

(End of clause)

### **52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.**

As prescribed in 15.110(r), insert the following clause:

REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (DEVIATION JAN 2026)

(a) The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce the benefits of a PRB plan.

(b) If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by 31.205-6(o)(5) of the Federal Acquisition Regulation (FAR). When determining or agreeing on the method for recovery of the Government's equitable share, the contracting parties should consider the following methods: cost reduction, amortizing the credit over a number of years (with appropriate interest), cash refund, or some other agreed upon method. Should the parties be unable to agree on the method for recovery of the Government's equitable share, through good faith negotiations, the Contracting Officer shall designate the method of recovery.

(c) The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR 15.110(r).

(End of clause)

## **52.215-19 Notification of Ownership Changes.**

As prescribed in 15.110(s), insert the following clause:

### **NOTIFICATION OF OWNERSHIP CHANGES (DEVIATION JAN 2026)**

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall-

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.110(s).

(End of clause)

## **52.215-20 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.**

As prescribed in 15.110(t), insert the following provision:

### **REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA (DEVIATION JAN 2026)**

(a) Exceptions from certified cost or pricing data.

(1) In lieu of submitting certified cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial product and commercial service exception.* For a commercial product and commercial service exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include-

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for certified cost or pricing data.* If the offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The offeror shall prepare and submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15-1 of FAR 15.408-2, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15-1 are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Contractor agree to a different format and change this clause to use Alternate I.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.403-4.

(End of Provision)

*Alternate I* (DEVIATION JAN 2026). As prescribed in 15.110(t)(1), substitute the following paragraph (b)(1) for paragraph (b)(1) of the provision:

(b) (1) The offeror shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in the following format: *[Insert description of the data and format that are required, and include access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.408-2, Table 15-1, Note 2. The description may be inserted at the time of issuing the request for proposals, or the Contracting Officer may specify that the offeror's format will be acceptable, or the description may be inserted as the result of negotiations.]*

*Alternate II* (OCT 1997). As prescribed in 15.110(t)(2), add the following paragraph (c) to the basic provision:

(c) When the proposal is submitted, also submit one copy each to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

*Alternate III* (OCT 1997). As prescribed in 15.110(t)(3), add the following paragraph (c) to the basic provision (if Alternate II is also used, redesignate the following paragraph as paragraph (d)).

(c) Submit the cost portion of the proposal via the following electronic media: \_\_\_\_\_ *[Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.]*

*Alternate IV* (DEVIATION JAN 2026). As prescribed in 15.110(t)(4), replace the text of the basic provision with the following:

(a) Submission of certified cost or pricing data is not required.

(b) Provide data described below: *[Insert description of the data and the format that are required, including the access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.4.]*

## **52.215-21 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data-Modifications.**

As prescribed in 15.110(u), insert the following clause:

REQUIREMENTS FOR CERTIFIED COST OR PRICING DATA AND DATA OTHER THAN CERTIFIED COST OR PRICING DATA-MODIFICATIONS (DEVIATION JAN 2026)

(a) Exceptions from certified cost or pricing data.

(1) In lieu of submitting certified cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth in Federal Acquisition Regulation (FAR) 15.403-3(a) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in paragraphs (a)(1)(i) and (ii) of this clause. If the threshold for submission of certified cost or pricing data specified in FAR 15.403-3(a) is adjusted for inflation as set forth in FAR part 1, the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Information on modifications of contracts or subcontracts for commercial products or commercial services.*

(A) If—

(1) The original contract or subcontract was granted an exception from certified cost or pricing data requirements because

the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial product or commercial service; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial product or commercial service, to a contract or subcontract for the acquisition of other than a commercial product or commercial service.

(B) For a commercial product and commercial service exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include-

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for certified cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Contractor shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments in accordance with the instructions contained in Table 15-1 of FAR 15.408-2, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15-1 are incorporated as a mandatory format to be used in this contract, unless the Contracting Officer and the Contractor agree to a different format and change this clause to use Alternate I.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.403-4.

(End of clause)

*Alternate I* (DEVIATION JAN 2026). As prescribed in 15.110(u)(1), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.

(b) (1) The Contractor shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments prepared in the following format: *[Insert description of the data and format that are required and include access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.408-2, Table 15-1, Note 2. The description may be inserted at the time of issuing the request for proposals, or the Contracting Officer may specify that the offeror's format will be acceptable, or the description may be inserted as the result of negotiations.]*

*Alternate II* (OCT 1997). As prescribed in 15.110(u)(2), add the following paragraph (c) to the basic clause:

(c) When the proposal is submitted, also submit one copy each to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

*Alternate III* (OCT 1997). As prescribed in 15.110(u)(3), add the following paragraph (c) to the basic clause (if Alternate II is also used, redesignate the following paragraph as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: \_\_\_\_\_ *[Insert media format]*

*Alternate IV* (DEVIATION JAN 2026). As prescribed in 15.110(u)(4), replace the text of the basic clause with the following:

(a) Submission of certified cost or pricing data is not required.

(b) Provide data described below: *[Insert description of the data and the format that are required, including the access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.4.]*

## **52.215-22 Limitations on Pass-Through Charges-Identification of Subcontract Effort.**

As prescribed in 15.110(v)(1), use the following provision:

LIMITATIONS ON PASS-THROUGH CHARGES-IDENTIFICATION OF SUBCONTRACT EFFORT (DEVIATION JAN 2026)

(a) *Definitions.* Added value, excessive pass-through charge, subcontract, and subcontractor, as used in this provision, are defined in the clause of this request for proposals entitled "Limitations on Pass-Through Charges" (FAR 52.215-23).

(b) *General.* The offeror's proposal shall exclude excessive pass-through charges.

(c) Performance of work by the Contractor or a subcontractor.

(1) The offeror shall identify in its proposal the total cost of the work to be performed by the offeror, and the total cost of the work to be performed by each subcontractor, under the contract, task order, or delivery order.

(2) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed under the contract, task order, or delivery order, the offeror shall identify in its proposal-

(i) The amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s); and

(ii) A description of the added value provided by the offeror as related to the work to be performed by the subcontractor(s).

(3) If any subcontractor proposed under the contract, task order, or delivery order intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract, the offeror shall identify in its proposal-

(i) The amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s); and

(ii) A description of the added value provided by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

(End of provision)

## **52.215-23 Limitations on Pass-Through Charges.**

As prescribed in 15.110(v)(2), use the following clause:

LIMITATIONS ON PASS-THROUGH CHARGES (DEVIATION JAN 2026)

(a) *Definitions*. As used in this clause-

*Added value* means that the Contractor performs subcontract management functions that the Contracting Officer determines are a benefit to the Government (e.g., processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirements, coordinating deliveries, performing quality assurance functions).

*Excessive pass-through charge*, with respect to a Contractor or subcontractor that adds no or negligible value to a contract or subcontract, means a charge to the Government by the Contractor or subcontractor that is for indirect costs or profit/fee on work performed by a subcontractor (other than charges for the costs of managing subcontracts and any applicable indirect costs and associated profit/fee based on such costs).

*No or negligible value* means the Contractor or subcontractor cannot demonstrate to the Contracting Officer that its effort added value to the contract or subcontract in accomplishing the work performed under the contract (including task or delivery orders).

*Subcontract* means any contract, as defined in Federal Acquisition Regulation (FAR)2.101, entered into by a subcontractor to furnish supplies or services for performance of the contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

*Subcontractor*, as defined in FAR part 44, means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

(b) *General*. The Government will not pay excessive pass-through charges. The Contracting Officer shall determine if excessive pass-through charges exist.

(c) *Reporting*. Required reporting of performance of work by the Contractor or a subcontractor. The Contractor shall notify the Contracting Officer in writing if-

(1) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(2) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Recovery of excessive pass-through charges*. If the Contracting Officer determines that excessive pass-through charges exist;

(1) For other than fixed-price contracts, the excessive pass-through charges are unallowable in accordance with the provisions in FAR 31; and

(2) For applicable DoD fixed-price contracts, as identified in 15.110(v)(2)(i)(B), the Government shall be entitled to a price reduction for the amount of excessive pass-through charges included in the contract price.

(e) *Access to records.*

(1) The Contracting Officer, or authorized representative, shall have the right to examine and audit all the Contractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the Contractor proposed, billed, or claimed excessive pass-through charges.

(2) For those subcontracts to which paragraph (f) of this clause applies, the Contracting Officer, or authorized representative, shall have the right to examine and audit all the subcontractor's records (as defined at FAR 52.215-2(a)) necessary to determine whether the subcontractor proposed, billed, or claimed excessive pass-through charges.

(f) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (f), in all cost-reimbursement subcontracts under this contract that exceed the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, except if the contract is with DoD, then insert in all cost-reimbursement subcontracts and fixed-price subcontracts, except those identified in FAR 15.110(v)(2)(i)(B)(2), that exceed the threshold for obtaining cost or pricing data in FAR 15.403-3(a) on the date of subcontract award.

(End of clause)

*Alternate I* (OCT 2009). As prescribed in 15.110(v)(2)(iii), substitute the following paragraph (b) for paragraph (b) of the clause:

(b) *General.* The Government will not pay excessive pass-through charges. The Contracting Officer has determined that there will be no excessive pass-through charges, provided the Contractor performs the disclosed value-added functions.