

of the basis of the determination and that a revision of the proposal will not be considered. Upon written request and as soon as possible after award, the contracting officer shall debrief unsuccessful offerors (see 15.1004).

(h) Late technical proposals are governed by 15.412.

(i) If it is necessary to discontinue two-step sealed bidding, the contracting officer shall include a statement of the facts and circumstances in the contract file. Each offeror shall be notified in writing. When step one results in no acceptable technical proposal or only one acceptable technical proposal, the acquisition may be continued by negotiation.

[48 FR 42171, Sept. 19, 1983, as amended at 50 FR 1739, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 2649, Jan. 17, 1986; 56 FR 41733, Aug. 22, 1991; 60 FR 42654, Aug. 16, 1995]

#### **14.503-2 Step two.**

(a) Sealed bidding procedures shall be followed except that invitations for bids shall—

(1) Be issued only to those offerors submitting acceptable technical proposals in step one;

(2) Include the provision prescribed in 14.201-6(t);

(3) Prominently state that the bidder shall comply with the specifications and the bidder's technical proposal; and

(4) Not be synopsisized in the Commerce Business Daily as an acquisition opportunity nor publicly posted (see 5.101(a)).

(b) The names of firms that submitted acceptable proposals in step one will be listed in the Commerce Business Daily for the benefit of prospective subcontractors (see 5.207(a)(2)).

[48 FR 42171, Sept. 19, 1983, as amended at 50 FR 1739, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 56 FR 15149, Apr. 15, 1991]

## **PART 15—CONTRACTING BY NEGOTIATION**

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AUTHORITY: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42187, Sept. 19, 1983, unless otherwise noted.

**15.000 Scope of part.**

This part prescribes policies and procedures governing contracting for supplies and services by negotiation.

**Subpart 15.1—General Requirements for Negotiation****15.100 Scope of subpart.**

This subpart covers general requirements regarding negotiated contracts. Detailed and specific requirements appear throughout this regulation.

**15.101 Definition.**

*Negotiation* means contracting through the use of either competitive or other-than-competitive proposals and discussions. Any contract awarded

without using sealed bidding procedures is a negotiated contract (see 14.101).

[50 FR 1739, Jan. 11, 1985, and 50 FR 52429, Dec. 23, 1985]

#### **15.102 General.**

Negotiation is a procedure that includes the receipt of proposals from offerors, permits bargaining, and usually affords an opportunity to revise their offers before award of a contract. Bargaining—in the sense of discussion, persuasion, alteration of initial assumptions and positions, and give-and-take—may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1739, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

#### **15.103 Converting from sealed bidding to negotiation procedures.**

When the agency head has determined, in accordance with 14.404-1(e)(1), that an invitation for bids is to be cancelled and that use of negotiation is appropriate to complete the acquisition, the contracting officer may negotiate and make award without issuing a new solicitation subject to the following conditions—

(a) Prior notice of intention to negotiate and a reasonable opportunity to negotiate have been given by the contracting officer to each responsible bidder that submitted a bid in response to the invitation for bids;

(b) The negotiated price is the lowest negotiated price offered by any responsible bidder; and

(c) The negotiated price is lower than the lowest rejected bid price of a responsible bidder that submitted a bid in response to the invitation for bids. However, this paragraph (c) does not apply if the invitation was canceled and all bids were rejected for the reason stated in 14.404-1(c)(8).

[50 FR 1739, Jan. 11, 1985, as amended at 55 FR 52790, Dec. 21, 1990]

#### **15.104—15.105 [Reserved]**

#### **15.106 Contract clauses.**

##### **15.106-1 Audit and Records—Negotiation clause.**

(a) This subsection implements 10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A-133.

(b) The contracting officer shall, if contracting by negotiation, insert the clause at 52.215-2, Audit and Records—Negotiation, in solicitations and contracts except those (1) not exceeding the simplified acquisition threshold; or (2) for commercial items exempted under 15.804-1; or (3) for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge.

(c) In facilities contracts, the contracting officer shall use the clause with its Alternate I. In cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II. If the examination of records by the Comptroller General is waived in accordance with 25.901, the contracting officer shall use the clause with its Alternate III.

[60 FR 42650, Aug. 16, 1995; 60 FR 54045, Oct. 19, 1995, as amended at 61 FR 39190, July 26, 1996]

##### **15.106-2 Audit—Commercial items.**

(a) This subsection implements 10 U.S.C. 2306a(d)(2) and (3) and 41 U.S.C. 254b(d)(2) and (3).

(b) The contracting officer shall, when contracting by negotiation, insert clause 52.215-43, Audit—Commercial Items, in solicitations and contracts when submission of cost or pricing data is expected to be excepted under 15.804-1(a)(2) (i.e., a commercial item where price is otherwise fair and reasonable). The clause shall also be included in solicitations and contracts when cost or pricing data are required, for incorporation into subcontracts that may be excepted under 15.804-1(a)(2).

[60 FR 48211, Sept. 18, 1995]

**Subparts 15.2—15.3 [Reserved]****Subpart 15.4—Solicitation and Receipt of Proposals and Quotations****15.400 Scope of subpart.**

This subpart prescribes policies and procedures for (a) preparing and issuing requests for proposals (RFP's) and requests for quotations (RFQ's) and (b) receiving proposals and quotations.

**15.401 Applicability.**

This subpart applies to solicitations issued when contracting by negotiation, except—

- (a) Acquisitions made under simplified acquisition procedures; and
- (b) Two-step sealed bidding (see subpart 14.5).

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1739, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 60 FR 34756, July 3, 1995; 61 FR 39197, July 26, 1996]

**15.402 General.**

(a) Requests for proposals (RFP's) or requests for quotations (RFQ's) are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals or quotations from them. Except as permitted by paragraph (f) below, contracting officers shall issue written solicitations. Solicitations shall contain the information necessary to enable prospective contractors to prepare proposals or quotations properly. Solicitation provisions and contract clauses may be incorporated into solicitations and contracts by reference, when authorized by subpart 52.1.

(b) Contracting officers shall furnish identical information concerning a proposed acquisition to all prospective contractors. Government personnel shall not provide the advantage of advance knowledge concerning a future solicitation to any prospective contractor (but see 5.404, 15.404, and 15.405).

(c) Except for solicitations for information or planning purposes (see subparagraph (e)(1) below and 15.405), contracting officers shall solicit proposals or quotations only when there is a definite intention to award a contract.

Subpart 7.3 provides additional instructions for solicitations involving cost comparisons between Government and contractor performance.

(d) A proposal received in response to an RFP is an offer that can be accepted by the Government to create a binding contract, either following negotiations or, when authorized by 15.610, without discussion. Contracting officers should normally issue RFP's when they consider it reasonable to expect prospective contractors to respond with offers, even though they anticipate negotiations after receipt of offers. An RFP shall not be used for a solicitation for information or planning purposes. Solicitations involving cost comparisons between Government and contractor performance (see 7.302(b)) are not for information or planning purposes.

(e) A quotation received in response to an RFQ is not an offer and cannot be accepted by the Government to create a binding contract. It is informational in character. An RFQ may be used when the Government does not intend to award a contract on the basis of the solicitation but wishes to obtain price, delivery, or other market information for planning purposes (see 15.405).

(f) Oral solicitations are authorized for perishable subsistence. An oral solicitation may also be used when processing a written solicitation would delay the acquisition of supplies or services to the detriment of the Government. Use of an oral solicitation does not relieve the contracting officer from complying with other requirements of this regulation. In addition to other applicable documentation requirements (see subpart 4.1), documentation of oral solicitations shall include—

- (1) A justification for use of an oral solicitation;
- (2) Item description, quantity, and delivery schedule;
- (3) Sources solicited, including the date, time, name of individual contacted, and prices quoted; and
- (4) The solicitation number provided to the prospective contractors.

(g) Unless prohibited by agency regulations, letter RFP's may be used for acquisitions conducted under 6.302, Circumstances permitting other than full

and open competition. When this technique is used, contracting officers must still comply with other portions of this regulation, such as subparts 5.2, Synopses of Proposed Contract Actions, and 15.8, Price Negotiation. Letter RFP's should be as clear and concise as possible; exclude any unnecessary verbiage or notices; and, as a minimum, contain the following:

- (1) RFP number and date.
  - (2) Name and address of contracting office.
  - (3) Type of contract contemplated.
  - (4) Quantity, description, and required delivery for the item.
  - (5) Applicable certifications and representations.
  - (6) Contract terms and conditions (reference to prior contract or updates should be provided, as applicable).
  - (7) Offer due date.
  - (8) Other relevant information; e.g., incentives, variations in delivery schedule, any peculiar or different requirements, cost proposal support, and different data requirements.
- (h) If, after considering any responses to a proper notice of proposed sole source contract action (see 5.207(d)(3)), the contracting officer determines that more than one source can meet the Government's needs, the contracting officer shall solicit offers using competitive procedures. The contracting officer shall proceed in accordance with 5.203 for publicizing and response times.
- (i) Unless prohibited or otherwise restricted by agency procedures, contracting officers may authorize facsimile proposals (see 15.407(j)). In determining whether or not to authorize facsimile proposals, the contracting officer shall consider such factors as—
- (1) Anticipated proposal size and volume;
  - (2) Urgency of the requirement;
  - (3) Frequency of price changes;
  - (4) Availability, reliability, speed, and capacity of the receiving facsimile equipment; and
  - (5) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile proposals, and ensuring their timely delivery to the proposal opening location.

(j) If facsimile proposals are authorized, contracting officers may, after the date set for receipt of proposal, request offeror(s) to provide the complete original signed proposal.

(k) In accordance with subpart 4.5, contracting officers may authorize use of electronic commerce for submission of offers. If electronic offers are authorized, the solicitation shall specify the electronic commerce method(s) that offerors may use.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1739, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 53 FR 17857, May 18, 1988; 54 FR 48984, Nov. 28, 1989; 55 FR 25527, June 21, 1990; 60 FR 34738, July 3, 1995]

#### 15.403 Solicitation mailing lists.

Contracting offices shall establish, maintain, and use lists of potential sources in accordance with 14.205.

#### 15.404 Presolicitation notices and conferences.

(a) *General.* Presolicitation notices and conferences may be used as preliminary steps in negotiated acquisitions in order to—

- (1) Develop or identify interested sources;
- (2) Request preliminary information based on a general description of the supplies or services involved;
- (3) Explain complicated specifications and requirements to interested sources; and
- (4) Aid prospective contractors in later submitting proposals without undue expenditure of effort, time, and money.

(b) *Presolicitation notices.* (1) When presolicitation notices are used, the contracting officer shall prepare and issue the notice to potential sources and shall synopsize the notice in accordance with subpart 5.2.

- (2) Each presolicitation notice shall—
  - (i) Define as explicitly as possible the information to be furnished in the response;
  - (ii) Indicate whether it is contemplated that the presolicitation notice will be followed by a conference and a formal solicitation; and
  - (iii) Request an expression of interest in the contemplated acquisition by a specified date.

(3) In complex acquisitions, the presolicitation notice may also request information pertaining to management, engineering, and production capabilities. Detailed drawings, specifications, or plans will not normally be included with a presolicitation notice.

(4) The contracting officer shall furnish copies of the solicitation to (i) all those responding affirmatively to the presolicitation notice and (ii) other prospective contractors upon their request (but see subpart 9.4, Debarment, Suspension, and Ineligibility).

(c) *Presolicitation conferences.* (1) The presolicitation conference may be used only when approved at a level higher than the contracting officer. It shall not be used as a method for prequalification of offerors.

(2) The contracting officer shall—

(i) Advise all organizations responding to the presolicitation notice of the details of any pending presolicitation conference;

(ii) Conduct the conference and arrange for technical and legal personnel to attend, as appropriate; and

(iii) Furnish copies of the solicitation to all organizations attending the conference, unless they decline to participate in the acquisition.

#### **15.405 Solicitations for information or planning purposes.**

##### **15.405-1 General.**

When information necessary for planning purposes cannot be obtained from potential sources by more economical and less formal means, the contracting officer may determine in writing that a solicitation for information or planning purposes is justified. If this determination is approved, in accordance with agency procedures, at a level higher than that of the contracting officer, the contracting officer shall then issue the solicitation.

##### **15.405-2 Solicitation provision.**

The contracting officer shall insert on the face of each solicitation (other than those excluded by 15.401) issued for information or planning purposes the provision at 52.215-3, Solicitation for Information or Planning Purposes.

#### **15.406 Preparing requests for proposals (RFP's) and requests for quotations (RFQ's).**

##### **15.406-1 Uniform contract format.**

(a) Contracting officers shall prepare solicitations and resulting contracts using the uniform contract format outlined in Table 15-1. The format facilitates preparation of the solicitation and contract, as well as reference to and use of those documents by offerors and contractors. The uniform contract format is optional for acquisitions outside the United States, its possessions, its territories, and Puerto Rico. It does not apply to the following:

- (1) Basic agreements (see 16.702).
- (2) Construction and architect-engineer contracts (see part 36).
- (3) Shipbuilding (including design, construction, and conversion), ship overhauls, and ship repairs.
- (4) Subsistence.
- (5) Contracts requiring special contract forms prescribed elsewhere in this regulation that are inconsistent with the uniform contract format.
- (6) Letter Request for Proposals (see 15.402).
- (7) Contracts exempted by the agency head or a designee.
- (8) Contracts utilizing the simplified contract format (see 15.416).

(b) Solicitations to which the uniform contract format applies shall include Parts I, II, III, and IV (see 15.406-2 through 15.406-5). Upon award, contracting officers shall not physically include Part IV in the resulting contract, but shall retain in their contract file Section K, Representations, certifications, and other statements of offerors, as completed by the contractor. Award by acceptance of a proposal on the award portion of SF 33, SF 26, or SF 1447 incorporates Section K by reference in the resultant contract. Contracts requiring a bilateral document shall incorporate Section K by reference in the signed contract.

TABLE 15-1  
Uniform Contract Format

Section	Title
Part I—The Schedule	
A	Solicitation/contract form
B	Supplies or services and prices/costs
C	Description/specifications/ work statement

TABLE 15-1—Continued  
Uniform Contract Format

Section	Title
D	Packaging and marking
E	Inspection and acceptance
F	Deliveries or performance
G	Contract administration data
H	Special contract requirements
Part II—Contract Clauses	
I	Contract clauses
Part III—List of Documents, Exhibits, and Other Attachments	
J	List of attachments
Part IV—Representations and Instructions	
K	Representations, certifications, and other statements of offerors or quoters
L	Instructions, conditions, and notices to offerors or quoters
M	Evaluation factors for award

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1739, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 53 FR 17857, May 18, 1988; 54 FR 48984, Nov. 28, 1989]

#### 15.406-2 Part I—The Schedule.

The contracting officer shall prepare the contract Schedule as follows:

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

(1) Prepare RFP's on Standard Form 33, Solicitation, Offer and Award (53.301-33) or Standard Form 1447, Solicitation/Contract (53.301-1447), unless otherwise permitted by this regulation. The first page of the SF 33 or SF 1447 is the first page of the solicitation. The first page of the SF 33 includes section A of the uniform contract format. When the SF 1447 is used as the solicitation document, ensure the information in subdivisions (a)(3)(i) and (a)(3)(iv) of this subsection are inserted in block 9 of the SF 1447.

(2) Prepare RFQ's on Standard Form 18, Request for Quotations (53.301-18). Agencies may overprint the SF 18 to provide for Section A of the uniform contract format.

(3) When other than SF 33, SF 18, or SF 1447 is used, include the following on the first page of the solicitation:

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

(ii) Solicitation number.

(iii) Date of issuance.

(iv) Closing date and time.

(v) Number of pages.

(vi) Requisition or other purchase authority.

(vii) Brief description of item or service.

(viii) Requirement for the offeror or quoter to provide its name and complete address, including street, city, county, State, and Zip Code.

(ix) A statement that offerors or quoters should include in the offer or quotation the address to which payment should be mailed, if that address is different from that shown for the offeror or quoter.

(b) *Section B, Supplies or services and prices/costs.* Include on the second page of the solicitation brief descriptions of the supplies or services; e.g., item number, national stock number/part number if applicable, nouns, and quantities. (This includes incidental deliverables such as manuals and reports.) The second page may be supplemented as necessary by Optional Form 336, Continuation Sheet (53.302-336).

(c) *Section C, Description/specifications/work statement.* Include any description or specifications needed in addition to Section B (see part 11).

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

(e) *Section E, Inspection and acceptance.* Include inspection, acceptance, quality assurance, and reliability requirements (see part 46, Quality Assurance).

(f) *Section F, Deliveries or performance.* Specify the requirements for time, place, and method of delivery or performance (subpart 11.4, Delivery or Performance Schedules, and 47.301-1).

(g) *Section G, Contract administration data.* Include any required accounting and appropriation data and any required contract administration information or instructions other than those on the solicitation form.

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

[48 FR 42187, Sept. 19, 1983, as amended at 51 FR 27119, July 29, 1986; 53 FR 17857, May 18, 1988; 54 FR 29281, July 11, 1989; 54 FR 48985, Nov. 28, 1989; 55 FR 38516, Sept. 18, 1990; 60 FR 48248, Sept. 18, 1995]

**15.406-3 Part II—Contract clauses.**

(a) *Section I, Contract clauses.* The contracting officer shall include in this section the clauses required by law or by this regulation 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.

(b) When contracting by negotiation, the contracting officer shall insert the clause at 52.215-33, Order of Precedence, in solicitations and contracts to which the uniform contract format applies.

(c) Any alteration pertaining to the contract shall be included in this section as part of the clause at 52.252-4, Alterations in Contract. See part 52, Solicitation Provisions and Contract Clauses.

[51 FR 2649, Jan. 17, 1986, as amended at 53 FR 17858, May 18, 1988]

**15.406-4 Part III—List of documents, exhibits, and other attachments.**

*Section J, List of attachments.* The contracting officer shall list the title, date, and number of pages for each attached document, exhibit, and other attachment.

**15.406-5 Part IV—Representations and instructions.**

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations, certifications, and other statements of offerors or quoters.* Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by offerors or quoters.

(b) *Section L, Instructions, conditions, and notices to offerors or quoters.* Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide offerors or quoters in preparing proposals or quotations. Any alteration pertaining to the solicitation shall be included in this section as part of the provision at 52.252-3, Alterations in Solicitation. Prospective offerors or quoters may be instructed to submit technical proposals in severable parts to meet agency requirements. The severable parts should provide for separa-

tion of cost or pricing data, past performance data and, when needed, technical data. The instructions may specify further organization of proposal or quotation parts, such as (1) administrative, (2) management, (3) technical, (4) past performance, and (5) cost or pricing data (see 15.804-6 and 15.804-8).

(c) *Section M, Evaluation factors for award.* Identify all significant factors, including cost or price, cost or price-related factors, and non-cost or non-price-related factors, and any significant subfactors that will be considered in awarding the contract (see 15.605(d) and (e) and the multiple award provision at 52.215-34) and state the relative importance the Government places on those evaluation factors and subfactors.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1740, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 19715, May 30, 1986; 53 FR 17858, May 18, 1988; 56 FR 41733, Aug. 22, 1991; 60 FR 16718, Mar. 31, 1995; 60 FR 42655, Aug. 16, 1995; 60 FR 48211, Sept. 18, 1995]

**15.407 Solicitation provisions.**

(a) *Solicitations*, as used in this section, means requests for proposals (RFP's) and requests for quotations (RFQ's) other than those excluded by 15.401 and those for information or planning purposes. See 15.405-2 for the solicitation provision used with solicitations for information or planning purposes.

(b) The contracting officer may, upon the approval of the chief of the contracting office, insert the provision at 52.215-4, Notice of Possible Standardization, in solicitations for supplies that subsequently might be standardized. See 14.201-6(n) regarding use of the provision in invitations for bids.

(c) The contracting officer shall insert in solicitations the provisions at—

- (1) 52.215-5, Solicitation Definitions;
- (2) 52.215-6, Type of Business Organization;
- (3) 52.215-7, Unnecessarily Elaborate Proposals or Quotations;
- (4) 52.215-8, Amendments to Solicitations;
- (5) 52.215-9, Submission of Offers;
- (6) 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals, for solicitations issued in the United States and Canada for submission of

offers to a contracting office in the United States or Canada;

(7) 52.215-11, Authorized Negotiators; and

(8) 52.215-12, Restriction on Disclosure and Use of Data; and

(9) 52.215-36, Late Submissions, Modifications, and Withdrawals of Proposals (Overseas), for solicitations under which offers are to be submitted to a contracting office outside the United States or Canada.

(d) The contracting officer shall—

(1) Insert in RFP's for other than construction the provision at 52.215-13, Preparation of Offers;

(2) Insert in RFP's the provision at 52.215-14, Explanation to Prospective Offerors;

(3) Insert in RFP's the provision at 52.215-15, Failure to Submit Offer, except when using electronic data interchange methods not requiring solicitation mailing lists; and

(4) Insert in RFP's the provision at 52.215-16, Contract Award.

(i) If the RFP is for construction, the contracting officer shall use the provision with its Alternate I. If awards are to be made without discussions, also use Alternate II.

(ii) If the contracting officer intends to evaluate offers and make award without discussions, use the basic provision with its Alternate II.

(e)(1) The contracting officer shall insert the provision at 52.215-17, Telegraphic Proposals, in solicitations that authorize telegraphic proposals or quotations.

(2) The contracting officer shall insert the basic provision with its Alternate 1 in solicitations that are for perishable subsistence and when the contracting officer considers that offerors will be unwilling to provide acceptance periods long enough to allow written confirmation.

(f) The contracting officer shall insert the provision at 52.215-19, Period for Acceptance of Offer, in RFP's that are not issued on SF 33 or SF 1447 except those (1) for construction work or (2) in which the Government specifies a minimum acceptance period.

(g) The contracting officer shall insert the provision at 52.215-20, Place of Performance, in solicitations except

those in which the place of performance is specified by the Government.

(h) The contracting officer shall insert the provision at 52.215-34, Evaluation of Offers for Multiple Awards, in requests for proposals if the contracting officer determines that multiple awards might be made if doing so is economically advantageous to the Government.

(i) The contracting officer shall insert the provision at 52.215-35, Annual Representations and Certifications—Negotiation, in requests for proposals if annual representations and certifications are utilized (see 14.213).

(j) The contracting officer shall insert the provision at 52.215-18, Facsimile Proposals, in solicitations if facsimile proposals are authorized (see 15.402(i)).

(k) The contracting officer shall insert in RFP's for construction the provision at 52.215-38, Preparation of Offers—Construction.

(l) The provision at 52.214-34, Submission of Offers in the English Language, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

(m) The provision at 52.214-35, Submission of Offers in U.S. Currency, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1740, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 2650, Jan. 17, 1986; 51 FR 19715, May 30, 1986; 53 FR 43390, Oct. 26, 1988; 54 FR 5054, Jan. 31, 1989; 54 FR 48985, Nov. 28, 1989; 55 FR 52790, Dec. 21, 1990; 56 FR 15149, Apr. 15, 1991; 56 FR 41733, Aug. 22, 1991; 58 FR 31141, May 28, 1993; 59 FR 545, Jan. 5, 1994; 60 FR 34738, July 3, 1995; 60 FR 42655, Aug. 16, 1995]

#### 15.408 Issuing solicitations.

(a) The contracting officer shall issue unclassified solicitations to potential sources in conformance with the policy and procedures in parts 5 and 6.

(b) Solicitations involving classified information shall be handled as prescribed by agency regulations.

(c) If the contracting office is located in the United States and the security classification permits, any solicitation or related correspondence sent to a foreign address shall be sent by international air mail. Similarly, if the security classification permits, contracting offices located outside the United States shall use international air mail in appropriate circumstances.

(d) A master solicitation may be used for negotiated acquisitions, subject to the criteria and procedures in 14.203-3.

(e) To provide for ready identification and proper handling of proposals, Optional Form 17, Offer Label, may be furnished with each request for proposals. The form may be obtained from the General Services Administration (see 53.107).

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1740, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 54 FR 29281, July 11, 1989; 59 FR 67033, Dec. 28, 1994]

#### **15.409 Pre-proposal conferences.**

(a) A pre-proposal conference may be held to brief prospective offerors after a solicitation has been issued but before offers are submitted. Generally, the Government uses these conferences in complex negotiated acquisitions to explain or clarify complicated specifications and requirements.

(b) The contracting officer shall decide if a pre-proposal conference is required and make the necessary arrangements, including the following:

(1) If notice was not in the solicitation, give all prospective offerors who received the solicitation adequate notice of the time, place, nature, and scope of the conference.

(2) If time allows, request prospective offerors to submit written questions in advance. Prepared answers can then be delivered during the conference.

(3) Arrange for technical and legal personnel to attend the conference, if appropriate.

(c) The contracting officer or a designated representative shall conduct the pre-proposal conference, furnish all prospective offerors identical information concerning the proposed acquisition, make a complete record of the

conference, and promptly furnish a copy of that record to all prospective offerors. Conferees shall be advised that—

(1) Remarks and explanations at the conference shall not qualify the terms of the solicitation; and

(2) Terms of the solicitation and specifications remain unchanged unless the solicitation is amended in writing.

#### **15.410 Amendment of solicitations before closing date.**

(a) After issuance of a solicitation, but before the date set for receipt of proposals, it may be necessary to (1) make changes to the solicitation, including, but not limited to, significant changes in quantity, specifications, or delivery schedules, (2) correct defects or ambiguities, or (3) change the closing date for receipt of proposals. Standard Form 30, Amendment of Solicitation/Modification of Contract (53.301-30), shall be used for amending a request for proposals (RFP).

(b) The contracting officer shall determine if the closing date needs to be changed when amending a solicitation. If the time available before closing is insufficient, prospective offerors or quoters shall be notified by electronic data interchange, telegram, or telephone of an extension of the closing date. Telephonic and telegraphic notices shall be confirmed in the written amendment to the solicitation. The contracting officer shall not award a contract unless any amendments made to an RFP have been issued in sufficient time to be considered by prospective offerors.

(c) Any information given to a prospective offeror or quoter shall be furnished promptly to all other prospective offerors or quoters as a solicitation amendment if (1) the information is necessary in submitting proposals or quotations or (2) the lack of such information would be prejudicial to a prospective offeror or quoter.

[48 FR 42187, Sept. 19, 1983, as amended at 60 FR 34738, July 3, 1995]

#### **15.411 Receipt of proposals and quotations.**

(a) The procedures for receipt and handling of proposals and quotations should be similar to those prescribed in

14.401. Proposals and quotations shall be marked with the date and time of receipt.

(b) After receipt, proposals and quotations shall be safeguarded from unauthorized disclosure. Classified proposals and quotations shall be handled in accordance with agency regulations. Also see OMB Circular No. A-76, the supplemental Handbook, and subpart 7.3, Contractor Versus Government Performance, for safeguarding cost-comparison information.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1740, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 61 FR 31619, June 20, 1996]

**15.412 Late proposals, modifications, and withdrawals of proposals.**

(a) *Modification*, as used in this section, means a modification of a proposal, including a final modification in response to the contracting officer's request for *best and final* offers. The term does not include normal revisions of offers made during the conduct of negotiations by offerors selected for discussion.

(b) Offerors are responsible for submitting offers, and any modifications to them, so as to reach the Government office designated in the solicitation on time. 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 solicitation, and urgent Government requirements preclude amendment of the solicitation closing date as usually prescribed by 15.410, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

(c) Proposals, and modifications to them, that are received in the designated Government office after the exact time specified are *late* and shall be considered only if (1) they are received before award is made, and (2) the circumstances, including acceptable evidence of date of mailing or receipt

at the Government installation, meet the specific requirements of the provision at 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals.

(d) When a late proposal or modification is received and it is clear from available information that it cannot be considered for award, the contracting officer shall promptly notify the offeror that it was received late and will not be considered. The notice need not be given when the proposed contract is to be awarded within a few days and the notice prescribed in 15.1002(c)(1) would suffice.

(e) When a late proposal or modification is transmitted to a contracting officer in the United States or Canada by registered or certified mail or by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee and is received before award, the offeror shall be promptly notified substantially in accordance with the notice in 14.304-2, appropriately modified to relate to proposals.

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

(g) The following shall, if available, be included in the contracting office files for each late proposal, quotation, or modification:

(1) The date of mailing, filing, or delivery.

(2) The date and hour of receipt.

(3) Whether or not considered for award.

(4) The envelope, wrapper, or other evidence of date of submission.

(h) Upon withdrawal of an electronically transmitted proposal, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 23606, June 4, 1985; 54 FR 48985, Nov. 28, 1989; 60 FR 34738, July 3, 1995; 60 FR 42655, Aug. 16, 1995; 61 FR 31619, June 20, 1996]

**15.413 Disclosure and use of information before award.**

See 3.104 for statutory and regulatory requirements related to the disclosure

15.413-1

of proprietary and source selection information.

[55 FR 36795, Sept. 6, 1990]

**15.413-1 Alternate I.**

(a) After receipt of proposals, none of the information contained in them or concerning the number or identity of offerors shall be made available to the public or to anyone in the Government except as otherwise authorized in accordance with 3.104 (for procedures regarding requests for information from Members of Congress, see 5.403).

(b) During the preaward or preacceptance period of a negotiated acquisition, only the contracting officer, the contracting officer's superiors having contractual authority, and others specifically authorized shall transmit technical or other information and conduct discussions with prospective contractors. Information shall not be furnished to a prospective contractor if, alone or together with other information, it may afford the prospective contractor an advantage over others (see 15.610, Written and oral discussion). However, general information that is not prejudicial to others may be furnished upon request.

(c) Prospective contractors and subcontractors may place restrictions on the disclosure and use of data in proposals and quotations (see 3.104 and the provision at 52.215-12, Restriction on Disclosure and Use of Data). Contracting officers shall not exclude proposals from consideration merely because they restrict disclosure and use of data, nor shall they be prejudiced by that restriction. The portions of the proposal that are so restricted (except for information that is also obtained from another source without restriction) shall be used only for evaluation and shall not be disclosed outside the Government without permission of the prospective contractor (but see subpart 24.2, Freedom of Information Act).

[48 FR 42187, Sept. 19, 1983, as amended at 55 FR 36795, Sept. 6, 1990]

**15.413-2 Alternate II.**

Agency regulations may provide that the following alternate procedures may be used instead of those specified in 15.413-1.

48 CFR Ch. 1 (10-1-96 Edition)

(a) Proposals furnished to the Government are to be used for evaluation purposes only. Disclosure outside the Government for evaluation is permitted only to the extent authorized by, and in accordance with the procedures in, 15.413-2(f).

(b) While the Government's limited use of proposals does not require that the proposal bear a restrictive notice, proposers should, if they desire to maximize protection of their trade secrets or confidential or privileged commercial and financial information contained in them, apply the restrictive notice prescribed in the provision at 52.215-12, Restriction on Disclosure and Use of Data, to such information (also see 15.407(c)(8)). In any event, information contained in proposals will be protected to the extent permitted by law, but the Government assumes no liability for the use or disclosure of information (data) not made subject to such notice in accordance with the provision at 52.215-12.

(c) If proposals are received with more restrictive conditions than those in the provision at 52.215-12, the contracting officer or coordinating officer shall inquire whether the submitter is willing to accept the conditions of the provision of 52.215-12. If the submitter does not, the contracting officer or coordinating officer shall, after consultation with counsel, either return the proposal or accept it as marked. Contracting officers shall not exclude from consideration any proposals merely because they contain an authorized or agreed-to notice, nor shall they be prejudiced by such notice.

(d) Release of proposal information (data) before decision as to the award of a contract, or the transfer of valuable and sensitive information between competing offerors during the competitive phase of the acquisition process, would seriously disrupt the Government's decision-making process and undermine the integrity of the competitive acquisition process, thus adversely affecting the Government's ability to solicit competitive proposals and award a contract which would best meet the Government's needs and serve the public interest. Therefore, to the extent permitted by law, none of the

information (data) contained in proposals (except as authorized in agency regulations) is to be disclosed outside the Government before the Government's decision as to the award of a contract. In the event an outside evaluation is to be obtained, it shall be only to the extent authorized by, and in accordance with the procedures of, 15.413-2(f).

(e) In order to assure that solicited proposals (whether bearing a restrictive notice or not) are properly handled, agency implementing regulations may require the following Government notice to be placed on the cover sheet upon their receipt. (This notice is required for all unsolicited proposals, see 15.508.) This is a Government notice for internal handling purposes and does not affect any obligations or rights the Government may have with regard to the use or disclosure of any information (data) contained in the proposal or quotation.

GOVERNMENT NOTICE FOR HANDLING  
PROPOSALS

This proposal shall be used and disclosed for evaluation purposes only, and a copy of this Government notice shall be applied to any reproduction or abstract thereof. Any authorized restrictive notices which the submitter places on this proposal shall also be strictly complied with. Disclosure of this proposal outside the Government for evaluation purposes shall be made only to the extent authorized by, and in accordance with, the procedures in (cite agency regulations implementing 15.413-2(f)).

If agency implementing regulations do not authorize release of proposals outside the Government for evaluation purposes, the last sentence of the foregoing Government notice is to be deleted.

(f) If authorized in agency implementing regulations, agencies may release proposals outside the Government for evaluation, consistent with the following:

(1) Decisions to release proposals outside the Government for evaluation purposes shall be made by the agency head or designee;

(2) Written agreement must be obtained from the evaluator that the information (data) contained in the pro-

posal will be used only for evaluation purposes and will not be further disclosed;

(3) Any authorized restrictive legends placed on the proposal by the prospective contractor or subcontractor or by the Government shall be applied to any reproduction or abstracted information made by the evaluator;

(4) Upon completing the evaluation, all copies of the proposal, as well as any abstracts thereof, shall be returned to the Government office which initially furnished them for evaluation; and

(5) All determinations to release the proposal outside the Government take into consideration requirements for avoiding organizational conflicts of interest and the competitive relationship, if any, between the prospective contractor or subcontractor and the prospective outside evaluator.

(6) Prior to release of a proposal, the contracting officer obtains from the evaluator the certificate(s) required by 3.104-12.

(g) The submitter of any proposal shall be provided notice adequate to afford an opportunity to take appropriate action before release of any information (data) contained therein pursuant to a request under the Freedom of Information Act (5 U.S.C. 552); and, time permitting, the submitter should be consulted to obtain assistance in determining the eligibility of the information (data) in question as an exemption under the Act. (See also subpart 24.2, Freedom of Information Act.)

[48 FR 42187, Sept. 19, 1983, as amended at 55 FR 36795, Sept. 6, 1990]

**15.414 Forms.**

(a) Standard Form 33 (SF 33), Solicitation, Offer and Award (see 53.301-33), shall be used in connection with the solicitation and award of negotiated contracts. Award may be made using the Award portion of SF 33, except as provided in paragraph (b) of this section.

(b) Standard Form 26 (SF 26), Award/Contract (see 53.301-26), shall be used when entering into negotiated contracts when the prospective contractor has amended its offer, unless—

(1) The contract is for the construction, alteration, or repair of buildings, bridges, roads, or other real property;

(2) The acquisition is one for which the FAR prescribes special contract forms; or

(3) Use of a purchase order is appropriate.

(c) Standard Form 1447 (SF 1447), Solicitation/Contract (see 53.301-1447), shall be used in connection with negotiated acquisitions that use the simplified contract format and may be used in lieu of the SF 26 or SF 33 for other acquisitions. Award is generally made using the award portion of the SF 1447 (see 53.215-1).

[54 FR 48985, Nov. 28, 1989]

**15.415 Economic purchase quantities (supplies).**

Contracting officers shall comply with the economic purchase quantity planning requirements for supplies in subpart 7.2. See 7.203 for instructions regarding use of the provision at 52.207-4, Economic Purchase Quantity—Supplies, and 7.204 for guidance on handling responses to that provision.

[50 FR 35479, Aug. 30, 1985]

**15.416 Simplified contract format.**

For firm-fixed-price or fixed-price with economic price adjustment acquisitions of supplies and services, the contracting officer may use the simplified contract format in lieu of the uniform contract format (see 14.201-1).

[54 FR 48985, Nov. 28, 1989]

**Subpart 15.5—Unsolicited Proposals**

**15.500 Scope of subpart.**

This subpart prescribes policies and procedures for submission, receipt, evaluation, and acceptance of unsolicited proposals. It does not govern the competitive selection of basic research proposals (see 6.102(d)(2)).

[50 FR 52433, Dec. 23, 1985]

**15.501 Definitions.**

*Advertising material*, as used in this subpart, means material designed to acquaint the Government with a prospective contractor's present products or potential capabilities, or to determine the Government's interest in buying these products.

*Commercial item offer* means an offer of a commercial item the vendor wishes to see introduced in the Government's supply system as an alternate or replacement for an existing supply item.

*Contribution*, as used in this subpart, 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.

*Coordinating office*, as used in this subpart, means a point of contact established within the agency to coordinate the receipt, evaluation, and disposition of unsolicited proposals.

*Technical correspondence*, as used in this subpart, means written requests for information regarding Government interest in research areas, submissions of research descriptions, preproposal explorations, and other written technical inquiries.

*Unsolicited proposal* means a written proposal that is submitted to an agency on the initiative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request (other than an agency request constituting a publicized general statement of needs).

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1740, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 60 FR 48248, Sept. 18, 1995]

**15.502 Policy.**

Agencies may accept unsolicited proposals in accordance with 15.507. To award a contract based on an unsolicited proposal without providing for full and open competition requires that appropriate authority exists in subpart 6.3. In this connection, 6.302-1(a)(2)(i) provides special authority for unsolicited research proposals.

[50 FR 52433, Dec. 23, 1985]

**15.503 General.**

(a) Unsolicited proposals are a valuable means for Government agencies to obtain innovative or unique methods or approaches to accomplishing their missions from sources outside the Government.

(b) Advertising material, commercial item offers, contributions, or technical

correspondence as defined in 15.501 are not unsolicited proposals.

(c) 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;
  - (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; and
  - (5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.
- (d) Unsolicited proposals in response to a publicized general statement of agency needs are considered to be independently originated.

(e) Agencies that receive unique and innovative unsolicited proposals not related to their missions may identify for the offeror other agencies whose missions bear a reasonable relationship to the proposal's subject matter.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1740, Jan. 11, 1985; 51 FR 52433, Dec. 23, 1985; 60 FR 48248, Sept. 18, 1995]

#### 15.504 Advance guidance.

(a) Agencies shall encourage potential offerors to make preliminary contacts with appropriate agency personnel before expending extensive effort on a detailed unsolicited proposal or submitting proprietary data to the Government. These preliminary contacts should include—

- (1) Inquiries as to the general need for the type of effort contemplated; and
- (2) Contacts with agency technical personnel for the limited purpose of obtaining an understanding of the agency mission and responsibilities relative to the type of effort contemplated.

(b) Agencies shall make available to potential offerors of unsolicited proposals at least the following free written information:

- (1) Definition (see 15.501), and content (see 15.505), of an unsolicited proposal acceptable for formal evaluation.
- (2) Requirements concerning responsible prospective contractors (see subpart 9.1), and organizational conflicts of interest (see subpart 9.5).

(3) Role of technical correspondence before proposal preparation.

(4) Agency contact points for information regarding advertising, contributions, solicitation mailing lists, and other types of transactions frequently mistaken for unsolicited proposals.

(5) Procedures for submission and evaluation of unsolicited proposals.

(6) Information sources on agency objectives and areas of potential interest.

(7) Instructions for identifying and marking proprietary information so that restrictive legends conform to 15.509.

(c) Agency personnel shall conduct personal contacts without making any agency commitments concerning the acceptance of unsolicited proposals.

#### 15.505 Content of unsolicited proposals.

Unsolicited proposals should 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, non-profit, educational, small business;
  - (2) Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;
  - (3) Identity of proprietary data to be used only for evaluation purposes;
  - (4) Names of other Federal, State, 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 abstract (approximately 200 words) 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., facilities, equipment, materials, 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 six month minimum is suggested);

(3) Type of contract preferred;

(4) Proposed duration of effort;

(5) Brief description of the organization, previous experience in the field, and facilities to be used; and

(6) Required statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts.

#### **15.506 Agency procedures.**

(a) Agencies shall establish procedures, including assurance of accountability, for controlling the receipt, evaluation, and timely disposition of proposals consistent with the requirements of this subpart. The procedures shall include controls on the reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions.

(b) Agencies shall establish contact points (see 15.504) to coordinate the receipt and handling of unsolicited proposals. Contact points outside agency contracting offices shall coordinate with qualified contracting personnel.

[48 FR 42187, Sept. 19, 1983, as amended at 55 FR 38516, Sept. 18, 1990]

#### **15.506-1 Receipt and initial review.**

(a) Before initiating a comprehensive evaluation, the agency contact point shall determine if the unsolicited proposal—

(1) Contains sufficient technical and cost information;

(2) Has been approved by a responsible official or other representative authorized to contractually obligate the offeror; and

(3) Complies with the marking requirements of 15.509.

(b) If the proposal meets these requirements, the contact point shall

promptly acknowledge and process the proposal. If it does not, the contact point shall provide the offeror an opportunity to submit the required data.

(c) Agencies are not required to perform comprehensive evaluations of unsolicited proposals not related to their missions. If such proposals are received, the agency contact point shall promptly reply to the offeror, state how the agency interprets the proposal, and why it is not being evaluated.

#### **15.506-2 Evaluation.**

(a) Comprehensive evaluations shall be coordinated by the agency contact point, who shall attach or imprint on each unsolicited proposal circulated for evaluation the legend required by 15.509(d). When performing a comprehensive evaluation of an unsolicited proposal, evaluators shall consider the following factors, in addition to any others appropriate for the particular proposal:

(1) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(2) Overall scientific, technical, or socio-economic merits of the proposal.

(3) Potential contribution of the effort to the agency's specific mission.

(4) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(5) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(b) The evaluators shall notify the coordinating office of their conclusions and recommendations when the evaluation is completed.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1740, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

#### **15.507 Contracting methods.**

(a) A favorable comprehensive evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition. Agency contact

points shall 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; or

(3) Does not demonstrate an innovative and unique method, approach, or concept.

(b) The contracting officer may commence negotiation only when—

(1) The unsolicited proposal has received a favorable comprehensive evaluation;

(2) The unsolicited proposal is not of the character described in 15.507(a);

(3) The agency technical office sponsoring the contract supports its recommendation with facts and circumstances that preclude competition, including consideration of the evaluation factors in 15.506-2(a), furnishes the necessary funds, and provides the certification required by 6.303-2(b);

(4) The contracting officer has complied with the synopsis requirements of subpart 5.2; and

(5) The contracting officer has executed any justification and obtained any approval or determination and findings that is required by subpart 6.3. (For unsolicited research proposals, see 6.302-1(a)(2)(i). A valid unsolicited proposal for other than research may be accepted only if otherwise permissible under other provisions of subpart 6.3.)

(c) If the unsolicited proposal is acceptable for award without competition, the agency and offeror shall use the proposal as the basis for negotiation.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1740, Jan. 11, 1985; 50 FR 52433, Dec. 23, 1985]

#### 15.508 Prohibitions.

(a) Government personnel shall not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea available to the Government from other sources without restriction.

(b) Government personnel shall not disclose restrictively marked information (see 15.509 and 3.104) 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.

[48 FR 42187, Sept. 19, 1983, as amended at 55 FR 36795, Sept. 6, 1990]

#### 15.509 Limited use of data.

(a) An unsolicited proposal may include data that the offeror does not want disclosed for any purpose other than evaluation. If the offeror wishes to restrict the proposal, the title page must be marked with the following legend:

##### USE AND DISCLOSURE OF DATA

The data in this proposal 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 the proposal; *provided*, that if a contract is awarded to this offeror as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in the data if it is obtainable from another source without restriction. The data subject to this restriction are contained in Sheets \_\_\_\_\_.

(b) The offeror shall also mark each restricted sheet with the following legend:

Use or disclosure of proposal data is subject to the restriction on the title page of this Proposal.

(c) The coordinating office shall return to the offeror any unsolicited proposal marked with a legend different from that provided in 15.509(a). The return letter will state 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.

(d) The coordinating office shall place a cover sheet on the proposal or clearly mark it as follows, unless the offeror clearly states in writing that no

restrictions are imposed on the disclosure or use of the data contained in the proposal:

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 3.104, 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 shall 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 shall 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.

(e) The above notice is used solely as a manner of handling unsolicited proposals that will be compatible with this subpart. However, the use of this notice shall not be used to justify the withholding of a record nor to improperly deny the public access to a record where an obligation is imposed on an agency by the Freedom of Information Act, 5 U.S.C. 552, as amended. A prospective offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the Government (see 15.509(a)).

(f) When an agency receives an unsolicited proposal without any restrictive legend from an educational or nonprofit organization or institution, and an evaluation outside the Government is necessary, the coordinating office shall—

(1) Attach a cover sheet clearly marked with the legend in 15.509(d);

(2) Change the beginning of this legend to read "*All Government and non-Government personnel...*";

(3) Delete the words "*is not disclosed outside the Government and*"; and

(4) Require any non-Government evaluator to give a written agreement stating that data in the proposal will not be disclosed to others outside the Government, and to complete the certification required by 3.104-9.

(g) If the proposal is received with the restrictive legend (15.509(a)), the modified cover sheet shall also be used and permission shall be obtained from the offeror before release of the proposal for outside evaluation.

(h) When an agency receives an unsolicited proposal with or without a restrictive legend from other than an educational or nonprofit organization or institution, and evaluation by Government personnel outside the agency or by experts outside of the Government is necessary, written permission must be obtained from the offeror before release of the proposal for evaluation. The coordinating office shall—

(1) Clearly mark the cover sheet with the legend in 15.509(d) or as modified in 15.509(f);

(2) Obtain a written agreement from any non-Government evaluator stating that data in the proposal will not be disclosed to persons outside the Government; and

(3) Obtain the certifications required by 3.104-9 and a listing of all persons authorized access to proprietary information by the activity performing the evaluation.

[48 FR 42187, Sept. 19, 1983, as amended at 55 FR 36795, Sept. 6, 1990]

## Subpart 15.6—Source Selection

### 15.600 Scope of subpart.

This subpart prescribes policies and procedures for selection of a source or sources in competitive negotiated acquisitions. Formal source selection procedures, involving boards, councils, or other groups for proposal evaluation, are in 15.612. Alternative procedures that limit discussions with offerors during the competition are discussed in 15.613.

### 15.601 Definitions.

*Clarification*, as used in this subpart, means communication with an offeror for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes in the proposal. It is achieved by explanation or substantiation, either in response to Government inquiry or as initiated by the offeror. Unlike discussion (see definition below), clarification does not

give the offeror an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistakes results in a revision.

*Deficiency*, as used in this subpart, means any part of a proposal that fails to satisfy the Government's requirements.

*Discussion*, as used in this subpart, means any oral or written communication between the Government and an offeror (other than communications conducted for the purpose of minor clarification), whether or not initiated by the Government, that (a) involves information essential for determining the acceptability of a proposal, or (b) provides the offeror an opportunity to revise or modify its proposal.

*Source reduction*, as used in this subpart, means any practice which (a) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment prior to recycling, treatment, or disposal; and (b) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

*Source selection authority* means the Government official in charge of selecting the source. This title is most often used when the selection process is formal and the official is someone other than the contracting officer.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1740, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 60 FR 28496, May 31, 1995]

#### **15.602 Applicability.**

(a) This subpart applies to negotiated contracting when source selection is based on—

(1) Cost or price competition between proposals that meet the Government's minimum requirements stated in the solicitation; or

(2) Competition involving an evaluation and comparison of cost or price and other factors.

(b) This subpart does not apply to acquisitions using simplified acquisition procedures.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1740, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 60 FR 34756, July 3, 1995; 61 FR 39197, July 26, 1996]

#### **15.603 Purpose.**

Source selection procedures are designed to—

- (a) Maximize competition;
- (b) Minimize the complexity of the solicitation, evaluation, and the selection decision;
- (c) Ensure impartial and comprehensive evaluation of offerors' proposals; and
- (d) Ensure selection of the source whose proposal has the highest degree of realism and whose performance is expected to best meet stated Government requirements.

#### **15.604 Responsibilities.**

(a) Agency heads or their designees are responsible for source selection.

(b) The cognizant technical official is responsible for the technical and past performance requirements related to the source selection process.

(c) The contracting officer is responsible for contractual actions related to the source selection process, including—

(1) Issuing solicitations to which this subpart applies in accordance with subpart 15.4 and this subpart;

(2) Conducting or coordinating cost or price analyses as prescribed in subpart 15.8;

(3) Conducting or controlling all negotiations concerning cost or price, technical requirements, past performance, and other terms and conditions; and

(4) Selecting the source for contract award, unless another official is designated as the source selection authority.

[48 FR 42187, Sept. 19, 1983, as amended at 60 FR 16718, March 31, 1995]

#### **15.605 Evaluation factors and subfactors.**

(a) The factors and subfactors that will be considered in evaluating proposals shall be tailored to each acquisition and shall include only those factors that will have an impact on the source selection decision.

(b)(1) The evaluation factors and subfactors that apply to an acquisition and the relative importance of those factors and subfactors are within the

broad discretion of agency acquisition officials except that—

(i) Price or cost to the Government shall be included as an evaluation factor in every source selection.

(ii) Past performance shall be evaluated in all competitively negotiated acquisitions expected to exceed \$100,000 not later than January 1, 1999, unless the contracting officer documents in the contract file the reasons why past performance should not be evaluated. Agencies may develop their own phase-in schedule for past performance evaluations which meets or exceeds the following milestones: All solicitations with an estimated value in excess of (A) \$1,000,000 issued on or after July 1, 1995; (B) \$500,000 issued on or after July 1, 1997; and (C) \$100,000 issued on or after January 1, 1999. Past performance may be evaluated in competitively negotiated acquisitions estimated at \$100,000 or less at the discretion of the contracting officer.

(iii) Quality shall be addressed in every source selection through inclusion in one or more of the non-cost evaluation factors or subfactors, such as past performance, technical excellence, management capability, personnel qualifications, prior experience, and schedule compliance.

(iv) Environmental objectives, such as promoting waste reduction, source reduction, energy efficiency, and maximum practicable recovered material content (see part 23), shall also be considered in every source selection, when appropriate.

(2) Any other relevant factors or subfactors, such as cost realism, may also be included.

(c) In awarding a cost-reimbursement contract, the cost proposal should not be controlling, since advance estimates of cost may not be valid indicators of final actual costs. There is no requirement that cost-reimbursement contracts be awarded on the basis of lowest proposed cost, lowest proposed fee, or the lowest total proposed cost plus fee. The award of cost-reimbursement contracts primarily on the basis of estimated costs may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns. The primary consideration should be which offeror can per-

form the contract in a manner most advantageous to the Government, as determined by evaluation of proposals according to the established evaluation criteria.

(d)(1) The solicitation should be structured to provide for the selection of the source whose proposal offers the greatest value to the Government in terms of performance, risk management, cost or price, and other factors. At a minimum, the solicitation shall clearly state the significant evaluation factors, such as cost or price, cost or price-related factors, past performance and other non-cost or non-price-related factors, and any significant subfactors, that will be considered in making the source selection, and their relative importance (see 15.406-5(c)). The solicitation shall inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors. Further, the solicitation shall state whether all evaluation factors other than cost or price, when combined, are—

(i) Significantly more important than cost or price;

(ii) Approximately equal to cost or price; or

(iii) Significantly less important than cost or price.

(2) The solicitation may elaborate on the relative importance of factors and subfactors at the discretion of the contracting officer. Agencies may elect to assign numerical weights to evaluation factors and employ those weights when evaluating proposals. Numerical weights need not be disclosed in solicitations; however, nothing precludes an agency from disclosing the weights on a case-by-case basis. The solicitation may state that award will be made to the offeror that meets the solicitation's minimum criteria for acceptable award at the lowest cost or price.

(e) In addition to other factors, offers will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (see 15.407(h)). The contracting officer shall assume for the purpose of making multiple awards that \$500 would be the administrative cost to the Government for issuing and administering each contract

awarded under a solicitation. Individual awards shall be for the items or combination of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1740, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 19715, May 30, 1986; 52 FR 21886, June 9, 1987; 52 FR 28225, July 28, 1987; 53 FR 27462, July 20, 1988; 55 FR 38516, Sept. 18, 1990; 56 FR 41733, Aug. 22, 1991; 60 FR 16719, Mar. 31, 1995; 60 FR 28496, May 31, 1995; 60 FR 42655, Aug. 16, 1995]

#### **15.606 Changes in Government requirements.**

(a) When, either before or after receipt of proposals, the Government changes, relaxes, increases, or otherwise modifies its requirements, the contracting officer shall issue a written amendment to the solicitation. When time is of the essence, oral advice of changes may be given if the changes involved are not complex and all firms to be notified (see paragraph (b) below) are notified as near to the same time as possible. The contracting officer shall make a record of the oral advice and promptly confirm that advice in writing (see 15.410).

(b) In deciding which firms to notify of a change, the contracting officer shall consider the stage in the acquisition cycle at which the change occurs and the magnitude of the change, as follows:

(1) If proposals are not yet due, the amendment shall be sent to all firms that have received a solicitation.

(2) If the time for receipt of proposals has passed but proposals have not yet been evaluated, the amendment should normally be sent only to the responding offerors.

(3) If the competitive range (see 15.609(a)) has been established, only those offerors within the competitive range shall be sent the amendment.

(4) If a change is so substantial that it warrants complete revision of a solicitation, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition. The new solicitation shall be issued to all firms originally solicited and to any firms added to the original list.

(c) If the proposal considered to be most advantageous to the Government (as determined according to the established evaluation criteria) involves a departure from the stated requirements, the contracting officer shall provide all offerors an opportunity to submit new or amended proposals on the basis of the revised requirements; *provided*, that this can be done without revealing to the other offerors the solution proposed in the original departure or any other information that is entitled to protection (see 15.407(c)(8) and 15.610(d)).

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1740, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

#### **15.607 Disclosure of mistakes before award.**

(a) Contracting officers shall examine all proposals for minor informalities or irregularities and apparent clerical mistakes (see 14.405 and 14.407). Communication with offerors to resolve these matters is clarification, not discussion within the meaning of 15.610. However, if the resulting communication prejudices the interest of other offerors, the contracting officer shall not make award without discussions with all offerors within the competitive range.

(b) Except as indicated in paragraph (c) below, mistakes not covered in paragraph (a) above are usually resolved during discussion (see 15.610).

(c) When award without discussion is contemplated, the contracting officer shall comply with the following procedure:

(1) If a mistake in a proposal is suspected, the contracting officer shall advise the offeror (pointing out the suspected mistake or otherwise identifying the area of the proposal where the suspected mistake is) and request verification. If the offeror verifies its proposal, award may be made.

(2) If an offeror alleges a mistake in its proposal, the contracting officer shall advise the offeror that it may withdraw the proposal or seek correction in accordance with subparagraph (3) below.

(3) If an offeror requests permission to correct a mistake in its proposal, the agency head (or a designee not

below the level of chief of the contracting office) may make a written determination permitting the correction; *provided*, that (i) both the existence of the mistake and the proposal actually intended are established by clear and convincing evidence from the solicitation and the proposal and (ii) legal review is obtained before making the determination.

(4) If the determination under subparagraph (3) above cannot be made, and the contracting officer still contemplates award without discussion, the offeror shall be given a final opportunity to withdraw or to verify its proposal.

(5) Verification, withdrawal, or correction under subparagraphs (c)(1) through (4) above is not considered discussion within the meaning of 15.610. If, however, correction of a mistake requires reference to documents, worksheets, or other data outside the solicitation and proposal in order to establish the existence of the mistake, the proposal intended, or both, the mistake may be corrected only through discussions under 15.610.

(d) If a proposal received at the Government facility in electronic format is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document, the contracting officer immediately shall notify the offeror and provide the opportunity for the offeror to submit clear and convincing evidence—

(1) Of the content of the proposal as originally submitted; and

(2) That the unreadable condition of the proposal was caused by Government software or hardware error, malfunction, or other Government mishandling.

[48 FR 42187, Sept. 19, 1983, as amended at 60 FR 34738, 34739, July 3, 1995]

#### **15.608 Proposal evaluation.**

(a) Proposal evaluation is an assessment of both the proposal and the offeror's ability to successfully accomplish the prospective contract. An agency shall evaluate competitive proposals solely on the factors specified in the solicitation.

(1) *Cost or price evaluation.* The contracting officer shall use cost or price

analysis (see subpart 15.8) to evaluate the cost estimate or price, not only to determine whether it is reasonable, but also to determine the offeror's understanding of the work and ability to perform the contract. The contracting officer shall document the cost or price evaluation.

(2) *Past performance evaluation.* (i) Past performance information is an indicator of an offeror's ability to perform the contract. The comparative assessment of past performance information is separate from the responsibility determination required under 48 CFR 9.103. The number and severity of an offeror's problems, the effectiveness of corrective actions taken, the offeror's overall work record, and the age and relevance of past performance information should be considered at the time it is used.

(ii) Where past performance is to be evaluated, the solicitation shall afford offerors the opportunity to identify Federal, state and local government, and private contracts performed by the offerors that were similar in nature to the contract being evaluated, so that the Government may verify the offerors' past performance on these contracts. In addition, at the discretion of the contracting officer, the offerors may provide information on problems encountered on the identified contracts and the offerors' corrective actions. Past performance information may also be obtained from other sources known to the Government. The source and type of past performance information to be included in the evaluation is within the broad discretion of agency acquisition officials and should be tailored to the circumstances of each acquisition. Evaluations of contractor performance prepared in accordance with 48 CFR part 42, subpart 42.15 are one source of performance information which may be used.

(iii) Firms lacking relevant past performance history shall receive a neutral evaluation for past performance.

(3) *Technical evaluation.* If any technical evaluation is necessary beyond ensuring that the proposal meets the minimum requirements in the solicitation, the cognizant technical official, in documenting the technical evaluation, shall include—

(i) The basis for evaluation;  
 (ii) An analysis of the technically acceptable and unacceptable proposals, including an assessment of each offeror's ability to accomplish the technical requirements;

(iii) A summary, matrix, or quantitative ranking of each technical proposal in relation to the best rating possible; and

(iv) A summary of findings.

(b) All proposals received in response to a solicitation may be rejected if the agency head determines in writing that—

(1) All otherwise acceptable proposals received are at unreasonably prices;

(2) The proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see subpart 3.3 for reports to be made to the Department of Justice);

(3) A cost comparison as prescribed in OMB Circular A-76 and subpart 7.3 shows that performance by the Government is more economical; or

(4) For other reasons, cancellation is clearly in the Government's interest.

(5) A violation or possible violation of section 27 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), has occurred (see 3.104).

(c) The requirements of 14.408-3, Prompt payment discounts, are applicable to negotiated acquisitions.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1740, Jan. 11, 1985; 50 FR 26903, June 28, 1985; 50 FR 52429, Dec. 23, 1985; 55 FR 36795, Sept. 6, 1990; 60 FR 16719, Mar. 31, 1995; 60 FR 34739, July 3, 1995]

#### **15.609 Competitive range.**

(a) The contracting officer shall determine which proposals are in the competitive range for the purpose of conducting written or oral discussion (see 15.610(b)). The competitive range shall be determined on the basis of cost or price and other factors that were stated in the solicitation and shall include all proposals that have a reasonable chance of being selected for award. When there is doubt as to whether a proposal is in the competitive range, the proposal should be included.

(b) If the contracting officer, after complying with 15.610(b), determines that a proposal no longer has a reasonable chance of being selected for con-

tract award, it may no longer be considered for selection.

(c) The contracting officer shall notify in writing an unsuccessful offeror at the earliest practicable time that its proposal is no longer eligible for award (see 15.1002(b)).

(d) If the contracting officer initially solicits unpriced technical proposals, they shall be evaluated to determine which are acceptable to the Government or could, after discussion, be made acceptable. After necessary discussion of these technical proposals is completed, the contracting officer shall (1) solicit price proposals for all the acceptable technical proposals which offer the greatest value to the Government in terms of performance and other factors and (2) make award to the low responsible offeror, either without or following discussion, as appropriate. Except in acquisition of architect-engineer services (see subpart 36.6), a competitive range determination must include cost or price proposals.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 60 FR 42655, Aug. 16, 1995]

#### **15.610 Written or oral discussion.**

(a) The requirement in paragraph (b) of this section for written or oral discussion need not be applied in acquisitions—

(1) In which prices are fixed by law or regulation;

(2) Of the set-aside portion of a partial set-aside; or

(3) In which the solicitation notified all offerors that the Government intends to evaluate proposals and make award without discussion, unless the contracting officer determines that discussions (other than communications conducted for the purpose of minor clarification) are considered necessary (see 15.407(d)(4)). Once the Government states its intent to award without discussion, the rationale for reversal of this decision shall be documented in the contract file.

(b) Except as provided in paragraph (a) of this section, the contracting officer shall conduct written or oral discussions with all responsible offerors who submit proposals within the competitive range. The content and extent

of the discussions is a matter of the contracting officer's judgment, based on the particular facts of each acquisition (but see paragraphs (c) and (d) of this section).

(c) The contracting officer shall—

- (1) Control all discussions;
- (2) Advise the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the Government's requirements;
- (3) Attempt to resolve any uncertainties concerning the technical proposal and other terms and conditions of the proposal;
- (4) Resolve any suspected mistakes by calling them to the offeror's attention as specifically as possible without disclosing information concerning other offerors' proposals or the evaluation process (see 15.607 and part 24);
- (5) Provide the offeror a reasonable opportunity to submit any cost or price, technical, or other revisions to its proposal that may result from the discussions; and
- (6) Provide the offeror an opportunity to discuss past performance information obtained from references on which the offeror had not had a previous opportunity to comment. Names of individuals providing reference information about an offeror's past performance shall not be disclosed.

(d) The contracting officer and other Government personnel involved shall not engage in technical leveling (i.e., helping an offeror to bring its proposal up to the level of other proposals through successive rounds of discussion, such as by pointing out weaknesses resulting from the offeror's lack of diligence, competence, or inventiveness in preparing the proposal).

(e) The following conduct may constitute prohibited conduct under section 27 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), and subpart 3.104 to which civil and criminal penalties and administrative remedies apply.

- (1) Technical transfusion (i.e., Government disclosure of technical information pertaining to a proposal that results in improvement of a competing proposal); or
- (2) Auction techniques, such as—

(i) Indicating to an offeror a cost or price that it must meet to obtain further consideration;

(ii) Advising an offeror of its price standing relative to another offeror (however, it is permissible to inform an offeror that its cost or price is considered by the Government to be too high or unrealistic); and

(iii) Otherwise furnishing information about other offerors' prices.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 55 FR 36795, Sept. 6, 1990; 56 FR 41733, Aug. 22, 1991; 60 FR 16719, Mar. 31, 1995; 60 FR 42655, Aug. 16, 1995]

#### 15.611 Best and final offers.

(a) Upon completion of discussions, the contracting officer shall issue to all offerors still within the competitive range a request for best and final offers. Oral requests for best and final offers shall be confirmed in writing.

(b) The request shall include—

- (1) Notice that discussions are concluded;
- (2) Notice that this is the opportunity to submit a best and final offer;
- (3) A common cutoff date and time that allows a reasonable opportunity for submission of written best and final offers; and
- (4) Notice that if any modification is submitted, it must be received by the date and time specified and is subject to the Late Submissions, Modifications, and Withdrawals of Proposals provision of the solicitation (see 15.412).

(c) After receipt of best and final offers, the contracting officer should not reopen discussions unless it is clearly in the Government's interest to do so (e.g., it is clear that information available at that time is inadequate to reasonably justify contractor selection and award based on the best and final offers received). If discussions are reopened, the contracting officer shall issue an additional request for best and final offers to all offerors still within the competitive range.

(d) Following evaluation of the best and final offers, the contracting officer (or other designated source selection authority) shall select that source

whose best and final offer is most advantageous to the Government, considering price and the other factors included in the solicitation (but see 15.608(b)).

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 19715, May 30, 1986; 55 FR 38516, Sept. 18, 1990]

#### 15.612 Formal source selection.

(a) *General.* A source selection process is considered *formal* when a specific evaluation group structure is established to evaluate proposals and select the source for contract award. This approach is generally used in high-dollar-value acquisitions and may be used in other acquisitions as prescribed in agency regulations. The source selection organization typically consists of an evaluation board, advisory council, and designated source selection authority at a management level above that of the contracting officer.

(b) *Responsibilities.* When using formal source selection, the agency head or a designee shall ensure that—

(1) The official to be responsible for the source selection is formally designated as the source selection authority;

(2) The source selection authority formally establishes an evaluation group structure appropriate to the requirements of the particular solicitation; and

(3) Before conducting any presolicitation conferences (see 15.404) or issuing the solicitation, the source selection authority approves a source selection plan.

(c) *Source Selection Plan.* As a minimum, the plan shall include—

(1) A description of the organization structure;

(2) Proposed presolicitation activities;

(3) A summary of the acquisition strategy;

(4) A statement of the proposed evaluation factors and any significant sub-factors and their relative importance;

(5) A description of the evaluation process, methodology, and techniques to be used; and

(6) A schedule of significant milestones.

(d) *Source Selection Decision.* The source selection authority shall use the factors established in the solicitation (see 15.605) to make the source selection decision.

(1) The source selection authority shall consider any rankings and ratings, and, if requested, any recommendations prepared by evaluation and advisory groups.

(2) The supporting documentation prepared for the selection decision shall show the relative differences among proposals and their strengths, weaknesses, and risks in terms of the evaluation factors. The supporting documentation shall include the basis and reasons for the decision.

(e) *Safeguarding information.* Consistent with part 24 and subpart 3.104, agencies shall exercise particular care to protect source selection information.

(1) During the source selection process, disclosure of proprietary or source selection information shall be governed by 3.104-5 and applicable agency regulations. After the source selection, releasing authority shall be as prescribed in agency procedures. In all cases, agency procedures should prescribe the releasing authority.

(2) Government personnel shall not contact or visit a contractor regarding a proposal under source selection evaluation, without the prior approval of the source selection authority (see 3.104 for additional restrictions).

(f) *Postaward notices and debriefings.* See 15.1002(c) and 15.1004.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 55 FR 36795, Sept. 6, 1990; 56 FR 41733, Aug. 22, 1991; 60 FR 42655, Aug. 16, 1995]

#### 15.613 Alternative source selection procedures.

(a) The National Aeronautics and Space Administration (NASA) and the Department of Defense (DoD) have developed, and use in appropriate situations, source selection procedures that limit discussions with offerors during the competition, and that differ from other procedures prescribed in subpart 15.6. The procedures are the NASA Source Evaluation Board procedures and the DoD *Four-Step* Source Selection Procedures. Detailed coverage of

these procedures is in the respective agency acquisition regulations.

(b) Other agencies may use either the NASA or DoD procedure as a model in developing their own procedures, including applicability criteria, consistent with mission needs.

### Subpart 15.7—Make-or-Buy Programs

#### 15.700 Scope of subpart.

This subpart prescribes policies and procedures for obtaining, evaluating, negotiating, and agreeing to prime contractors' proposed make-or-buy programs and for incorporating make-or-buy programs into contracts. Consent to subcontracts and review of contractors' purchasing systems are separate actions covered in part 44, Subcontracting Policies and Procedures.

#### 15.701 Definitions.

*Buy item* means an item or work effort to be produced or performed by a subcontractor.

*Make item* means an item or work effort to be produced or performed by the prime contractor or its affiliates, subsidiaries, or divisions.

*Make-or-buy program* means that part of a contractor's written plan for a contract identifying (a) those major items to be produced or work efforts to be performed in the prime contractor's facilities and (b) those to be subcontracted.

#### 15.702 General.

The prime contractor is responsible for managing contract performance, including planning, placing, and administering subcontracts as necessary to ensure the lowest overall cost and technical risk to the Government. Although the Government does not expect to participate in every management decision, it may reserve the right to review and agree on the contractor's make-or-buy program when necessary to ensure (a) negotiation of reasonable contract prices, (b) satisfactory performance, or (c) implementation of socioeconomic policies.

#### 15.703 Acquisitions requiring make-or-buy programs.

(a) Contracting officers shall require prospective contractors to submit make-or-buy programs for all negotiated acquisitions whose estimated value is \$5 million or more, except when the proposed contract—

(1) Is for research or development and—if prototypes or hardware are involved—no significant follow-on production under the same contract is anticipated;

(2) Qualifies for an exception from the requirement to submit cost or pricing data under 15.804-1; or

(3) Involves only work that the contracting officer determines is not complex.

(b) Contracting officers may require prospective contractors to submit make-or-buy programs for negotiated acquisitions whose estimated value is under \$5 million only if the contracting officer (1) determines that the information is necessary and (2) documents the reasons in the contract file.

[48 FR 42187, Sept. 19, 1983, as amended at 54 FR 34753, Aug. 21, 1989; 60 FR 48211, Sept. 18, 1995]

#### 15.704 Items and work included.

The information required from a prospective contractor in a make-or-buy program shall be confined to those major items or work efforts that would normally require company management review of the make-or-buy decision because they are complex, costly, needed in large quantities, or require additional facilities to produce. Raw materials, commercial items (see 2.101), and off-the-shelf items (see 46.101) shall not be included, unless their potential impact on contract cost or schedule is critical. As a rule, make-or-buy programs should not include items or work efforts estimated to cost less than (a) 1 percent of the total estimated contract price or (b) any minimum dollar amount set by the agency, whichever is less.

[48 FR 42187, Sept. 19, 1983, as amended at 51 FR 27119, July 29, 1986; 52 FR 9038, Mar. 20, 1987; 60 FR 48248, Sept. 18, 1995]

**15.705 Solicitation requirements.**

When prospective contractors are required to submit proposed make-or-buy programs (see 15.703), the solicitation shall include—

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

(b) A description of factors to be used in evaluating the proposed program, such as capability, capacity, availability of small, small disadvantaged and women-owned small business concerns for subcontracting, establishment of new facilities in or near labor surplus areas, delivery or performance schedules, control of technical and schedule interfaces, proprietary processes, technical superiority or exclusiveness, and technical risks involved; and

(c) A requirement that the offeror's program include or be supported by the following information:

(1) A description of each major item or work effort (see 15.704).

(2) Categorization of each major item or work effort as *must make*, *must buy*, or *can either make or buy*.

(3) For each item or work effort categorized as *can either make or buy*, a proposal either to *make* or to *buy*.

(4) Reasons for (i) categorizing items and work efforts as *must make* or *must buy* and (ii) 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 solicitation and be in sufficient detail to permit the contracting officer to evaluate the categorization or proposal.

(5) 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.

(6) Identification of proposed subcontractors, if known, and their location and size status (see also subpart 19.7 for subcontracting plan requirements).

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

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

[48 FR 42187, Sept. 19, 1983, as amended at 60 FR 48260, Sept. 18, 1995]

**15.706 Evaluation, negotiation, and agreement.**

(a) Contracting officers shall evaluate and negotiate proposed make-or-buy programs as soon as practicable after their receipt and before contract award. When the program is to be incorporated in the contract (see 15.707) and the design status of the product being acquired does not permit accurate precontract identification of major items or work efforts, the contracting officer shall notify the prospective contractor in writing that these items or efforts, when identifiable, shall be added under the clause at 52.215-21, Changes or Additions to Make-or-Buy Program.

(b) In preparing to evaluate and negotiate prospective contractors' make-or-buy programs, the contracting officer shall request the recommendations of appropriate personnel, including technical and program management personnel, and the activity small business specialist. The proposed program shall also be made available to the Small Business Administration representative, if any, for review and recommendation. The contracting officer shall request these recommendations early enough to consider them fully before (1) agreeing to a make-or-buy program or (2) consenting to a change in a make-or-buy program already incorporated in a contract.

(c) The contractor has the basic responsibility for make-or-buy decisions. Therefore, its recommendations should be accepted unless they are inconsistent with Government interests or policy.

(d) Contracting officers shall give primary consideration to the effect of the proposed make-or-buy program on price, quality, delivery, and performance, including technical or financial risk involved. The evaluation of *must make* and *must buy* items should normally be confined to ensuring that they are properly categorized. The effect of the following factors on the

Government's interests shall also be considered:

(1) Whether the contractor has justified performing work in plant that differs significantly from its normal operations.

(2) Whether the contractor's recommended program requires Government investment in new or other facilities in order for the contractor to perform the work in plant. (This additional cost to the Government would not be reflected in the contract price.)

(3) The impact of the contractor's projected plant work loading on indirect costs.

(4) The contractor's consideration of the competence, ability, experience, and capacity available in other firms, especially small business, small disadvantaged business, or women-owned small business concerns.

(5) The projected location of any required additional facilities in or near labor surplus areas.

(6) The contractor's make-or-buy history regarding the type of item concerned.

(7) The scope and type of proposed subcontracts including the type and level of technical effort involved.

(8) Other factors such as future requirements, engineering, tooling, starting load costs, market conditions, technical superiority, and the availability of personnel and materials.

(e) Contracting officers shall not normally agree to proposed *make items* when the products or services are (1) 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 (2) regularly manufactured or provided by the contractor, but available—quality, quantity, delivery, and other essential factors considered—from another firm at lower prices. However, the contracting officer may agree to these as *make items* if their categorization as *buy items* would increase the Government's over-

all cost for the contract or acquisition program.

[48 FR 42187, Sept. 19, 1983, as amended at 55 FR 52790, Dec. 21, 1990; 60 FR 48260, Sept. 18, 1995]

**15.707 Incorporating make-or-buy programs in contracts.**

(a) After agreement is reached, the contracting officer may incorporate the make-or-buy program in negotiated contracts for—

(1) Major systems (see part 34) 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.

(b) It may be necessary to incorporate some items of significant value in the make-or-buy program as *make* or, alternatively, as *buy* even though the opposite categorization would result in greater economy for the Government. If this situation occurs in any fixed-price incentive or cost-plus-incentive-fee contract, the contracting officer shall specify these items in the contract and state that they are subject to paragraph (d) of the clause at 52.215-21, Changes or Additions to Make-or-Buy Program (see 15.708 below). If the contractor proposes to reverse the categorization of such items during contract performance, the contract price shall be subject to equitable reduction.

**15.708 Contract clause.**

The contracting officer shall insert the clause at 52.215-21, Changes or Additions to Make-or-Buy Program, in solicitations 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 shall use the clause with (a) its Alternate I, if a fixed-price incentive contract is contemplated, or

(b) its Alternate II, if a cost-plus-incentive-fee contract is contemplated.

### Subpart 15.8—Price Negotiation

#### 15.800 Scope of subpart.

This subpart prescribes the cost and price negotiation policies and procedures applicable to initial and revised pricing of (a) negotiated prime contracts (including subcontract pricing under them when required) and (b) contract modifications (including modifications to contracts awarded by sealed bidding).

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

#### 15.801 Definitions.

*Commercial item* is defined in 2.101.

*Cost analysis* means the review and evaluation of the separate cost elements and proposed profit of (a) an offeror's or contractor's cost or pricing data or information other than cost or pricing data and (b) the judgmental factors applied in projecting from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

*Cost or pricing data* means all facts that, as of the date of price agreement or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with 15.804-4. Cost or pricing data are factual, not judgmental, and are therefore verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as—

(a) Vendor quotations;

- (b) Nonrecurring costs;
- (c) Information on changes in production methods and in production or purchasing volume;
- (d) Data supporting projections of business prospects and objectives and related operations costs;
- (e) Unit-cost trends such as those associated with labor efficiency;
- (f) Make-or-buy decisions;
- (g) Estimated resources to attain business goals; and
- (h) Information on management decisions that could have a significant bearing on costs.

*Cost realism* means the costs in an offeror's proposal are (a) realistic for the work to be performed; (b) reflect a clear understanding of the requirements; and (c) are consistent with the various elements of the offeror's technical proposal.

*Field pricing support* means a review and evaluation of the contractor's or subcontractor's proposal by any or all field pricing support personnel (see 15.805-5(a)(2)).

*Forward pricing rate agreement* means a written agreement negotiated between a contractor and the Government to make certain rates available during a specified period for use in pricing contracts or modifications. Such rates represent reasonable projections of specific costs that are not easily estimated for, identified with, or generated by a specific contract, contract end item, or task. These projections may include rates for labor, indirect costs, material obsolescence and usage, spare parts provisioning, and material handling.

*Forward pricing rate recommendation* means a rate set unilaterally by the administrative contracting officer for use by the Government in negotiations or other contract actions when forward pricing rate agreement negotiations have not been completed or when the contractor will not agree to a forward pricing rate agreement.

*Information other than cost or pricing data* means any type of information that is not required to be certified, in accordance with 15.804-4, that is necessary to determine price reasonableness or cost realism. For example, such information may include pricing, sales, or cost information, and includes cost

or pricing data for which certification is determined inapplicable after submission.

*Price*, as used in this subpart, means cost plus any fee or profit applicable to the contract type.

*Price analysis* means the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

*Subcontract*, as used in this subpart, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

*Technical analysis*, as used in this subpart, means the examination and evaluation by personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management of proposed quantities and kinds of materials, labor, processes, special tooling, facilities, and associated factors set forth in a proposal in order to determine and report on the need for and reasonableness of the proposed resources assuming reasonable economy and efficiency.

[48 FR 42187, Sept. 1983, as amended at 51 FR 36971, Oct. 16, 1986; 53 FR 10829, Apr. 1, 1988; 55 FR 52790, Dec. 21, 1990; 60 FR 48212, Sept. 18, 1995]

#### 15.802 Policy.

Contracting officers shall—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer shall not obtain more information than is necessary. To the extent that the Truth in Negotiations Act, as implemented in 15.804-2 and 15.804-5(b) permits, the contracting officer shall generally use the following order of preference in determining the type of information required:

(1) No further information from the offeror if the price is based on adequate price competition, except as provided by 15.804-5(a)(3).

(2) Information other than cost or pricing data:

(i) Information related to prices (e.g., established catalog or market prices), relying first on information available within the Government; second, on information obtained from sources other

than the offeror; and, if necessary, on information obtained from the offeror.

(ii) Cost information, which does not meet the definition of cost or pricing data at 15.801.

(3) *Cost or pricing data*. The contracting officer should use every means available to ascertain a fair and reasonable price prior to requesting cost or pricing data. Contracting officers shall not unnecessarily require the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead-time, and wastes both contractor and Government resources.

(b) Price each contract separately and independently and not—

(1) Use proposed price reductions under other contracts as an evaluation factor, or

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

(c) Not 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.

[60 FR 48212, Sept. 18, 1995]

#### 15.803 General.

(a) Since information from sources other than an offeror's or contractor's records may significantly affect the Government's negotiating position, Government personnel shall not disclose to an offeror or contractor any conclusions, recommendations, or portions of administrative contracting officer or auditor reports regarding the offeror's or contractor's proposal without the concurrence of the contracting officer responsible for negotiation. This prohibition does not preclude disclosing discrepancies or mistakes of fact (such as duplications, omissions, and errors in computation) contained in the cost or pricing data or information other than cost or pricing data supporting the proposal.

(b) Before issuing a solicitation, the contracting officer shall (when it is feasible to do so) develop an estimate of the proper price level or value of the supplies or services to be purchased. Estimates can range from simple budgetary estimates to complex estimates

based on inspection of the product itself and review of such items as drawings, specifications, and prior data.

(c) Price negotiation is intended to permit the contracting officer and the offeror to agree on a fair and reasonable price. Price negotiation does not require that agreement be reached on every element of cost. Reasonable compromises may be necessary, and it may not be possible to negotiate a price that is in accord with all the contributing specialists' opinions or with the contracting officer's prenegotiation objective. The contracting officer is responsible for exercising the requisite judgment and is solely responsible for the final pricing decision. The recommendations and counsel of contributing specialists, including auditors, are advisory only. However, the contracting officer should include comments in the price negotiation memorandum when significant audit or other specialist recommendations are not adopted.

(d) The contracting officer's primary concern is the price the Government actually pays; the contractor's eventual cost and profit or fee should be a secondary concern. 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. Therefore the contracting officer should not become preoccupied with any single element and should balance the contract type, cost, and profit or fee negotiated to achieve a total result and price fair and reasonable to both the Government and the contractor. 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 shall then refer the contract action to higher authority. Disposition of the ac-

tion by higher authority should be documented.

[48 FR 42187, Sept. 19, 1983, as amended at 60 FR 48212, Sept. 18, 1995]

**15.804 Cost or pricing data and information other than cost or pricing data.**

**15.804-1 Prohibition on obtaining cost or pricing data.**

(a) *Exceptions to cost or pricing data requirements.* The contracting officer shall not, pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, require submission of cost or pricing data (but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)—

(1) If the contracting officer determines that prices agreed upon are based on—

(i) Adequate price competition (see exception standards at paragraph (b)(1) of this subsection);

(ii) Established catalog or market prices of commercial items sold in substantial quantities to the general public (see exception standards at paragraph (b)(2) of this section); or

(iii) Prices set by law or regulation (see exception standards at paragraph (b)(3) of this subsection).

(2) For acquisition of a commercial item, if the contracting officer does not have sufficient information to support an exception under paragraph (a)(1) of this section, but the contracting officer can determine the price is fair and reasonable (see exception standards at paragraph (b)(4) of this section and pricing requirements at 15.804-5(b));

(3) For exceptional cases where a waiver has been granted (see exception standards at paragraph (b)(5) of this section); or

(4) For modifications to contracts or subcontracts for commercial items, if the basic contract or subcontract was awarded without the submission of cost or pricing data because the action was granted an exception from cost or pricing data requirements under paragraph (a)(1) of this section and the modification does not change the contract or subcontract to a contract or subcontract for the acquisition of other than a commercial item (see exception

standards at paragraph (b)(6) of this subsection).

(b) *Standards for exceptions from cost or pricing data requirements*—(1) *Adequate price competition*. A price is based on adequate price competition if—

(i) Two or more responsible offerors, competing independently, submit priced offers responsive to the Government's expressed requirement and if—

(A) Award will be made to a responsible offeror whose proposal offers either—

(1) The greatest value (see 15.605(c)) to the Government and price is a substantial factor in source selection; or

(2) The lowest evaluated price; and

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

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

(A) 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—

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

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

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

(iii) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items purchased in comparable quantities, under comparable terms and conditions under contracts that resulted from adequate price competition.

(2) *Established catalog or market prices*—(i) *Established catalog price*. Established catalog prices are prices (including discount prices) recorded in a catalog, price list, schedule, or other verifiable and established record that (A) are regularly maintained by the manufacturer or vendor; and (B) are published or otherwise available for customer inspection.

(ii) *Established market price*. An established market price is a price that is established in the course of ordinary and usual trade between buyers and sellers free to bargain and that can be substantiated by data from sources independent of the offeror.

(iii) *Based on*. A price may also be based on an established catalog or market price if the item or class of items being purchased is not itself a catalog or market priced commercial item but is sufficiently similar to the catalog or market priced commercial item to ensure that any difference in prices can be identified and justified without resorting to cost analysis.

(iv) *Sold in substantial quantities*. An item is sold in substantial quantities if there are sales of more than a nominal quantity based on the norm of the industry segment. In determining what constitutes a substantial quantity, the contracting officer should consider such things as the size of the market; and how recently the item was introduced into the market. Models, samples, prototypes, and experimental units are not substantial quantities. For services to be sold in substantial quantities, they must also be customarily provided by the offeror, using personnel regularly employed and equipment (if any is necessary) regularly maintained principally to provide the services.

(A) The method used to establish sales may be sales order, contract, shipment, invoice, actual recorded sales, or other records, so long as the method used is consistent, provides an accurate indication of sales activity, and is verifiable. If the item would not otherwise qualify for an exception, sales of the item by affiliates may be considered. In addition, sales of essentially the same commercial item by other manufacturers or vendors may be considered in determining whether

sales are substantial, provided that the price of those sales is also considered. Data to support sales quantities may also come from other manufacturers, industry associations or marketing groups, annual financial reports, etc.

(B) An exception may apply for an item based on the market price of the item regardless of the quantity of sales of the item previously made by the offeror or the types of customers for these sales, provided that sales of the same or similar items by other sellers meet the exception criteria.

(v) *General public.* The general public ordinarily consists of buyers other than the U.S. Government or its instrumentalities, e.g., U.S. Government corporations. Sales to the general public do not include sales to affiliates of the offerors or purchases by the U.S. Government on behalf of foreign governments, such as for Foreign Military Sales. If the contracting officer can determine without requiring information from the offeror that sales are for Government end use, these sales need not be considered sales to the general public.

(3) *Prices set by law or regulation.* Proouncements 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.

(4) *Commercial items.* For acquisition of a commercial item, if the contracting officer does not have sufficient information to support an exception under 15.804-1(a)(1) or (a)(4), the contracting officer shall grant an exception for a contract, subcontract, or modification of a contract or subcontract if the contracting officer obtains the pricing information described in 15.804-5(b). Cost or pricing data may be obtained for such a commercial item only if the contracting officer makes a written determination that the pricing information is inadequate for performing a price analysis and determining price reasonableness.

(5) *Exceptional cases.* The head of the contracting activity may, without power of delegation, waive the requirement for submission of cost or pricing data. The authorization for the waiver and the reasons for granting it shall be in writing. A waiver may be considered if another exception does not apply but

the price can be determined to be fair and reasonable without submission of cost or pricing data. For example, if cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated information, a waiver may be granted. If the head of the contracting activity has waived the requirement for submission of cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to make available cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the cost or pricing data threshold requires the submission of cost or pricing data unless an exception otherwise applies to the subcontract.

(6) *Modifications.* This exception only applies when the original contract or subcontract was exempt from cost or pricing data based on adequate price competition, catalog or market price, or price set by law or regulation (15.804-1(a)(1)). For modifications of contracts or subcontracts for commercial items, the exception at 15.804-1(a)(4) applies if the modification does not change the item from a commercial item to a noncommercial item. However, if the modification to a contract or a subcontract changes the nature of the work under the contract or subcontract either by a change to the commercial item or by the addition of other noncommercial work, the contracting officer is not prohibited from obtaining cost or pricing data for the added work.

(c) *Special circumstances when purchasing commercial items.* (1) It is not necessary to obtain information supporting an exception for each line item. Sampling techniques may be used.

(2) If the U.S. Government has acted favorably on an exception request for the same or similar items, the contracting officer may consider the prior submissions as support for the current exception request. Relief from the submission of new information does not relieve the contracting officer from the requirement to determine reasonableness of price on the current acquisition.

(3) When acquiring by separate contract an item included on an active Federal Supply Service or Information Technology Service Multiple Award Schedule contract, the contracting officer should grant an exception and not require documentation if the offeror has provided proof that an exception has been granted for the schedule item. Price analysis shall be performed in accordance with 15.805-2 to determine reasonableness of price.

(4) The contracting officer and offeror may make special arrangements for the submission of exception requests for repetitive acquisitions. These arrangements can take any form as long as they set forth an effective period and the exception criteria at 15.804-1 are satisfied. Such arrangements may be extended to other Government offices with their concurrence.

(d) *Requesting an exception.* In order to qualify for an exception, other than an exception for adequate price competition, from the requirements to submit cost or pricing data, the offeror must submit a written request. The solicitation provision at 52.215-41 or other methods may be used. It is the responsibility of the contracting officer to determine, based on the information submitted, and any other information available to the contracting officer, which exception, if any, applies.

[60 FR 48212, Sept. 18, 1995]

**15.804-2 Requiring cost or pricing data.**

(a) (1) Pursuant to 10 U.S.C. 2306a and 41 U.S.C. 254b, cost or pricing data shall be obtained only if the contracting officer concludes that none of the exceptions in 15.804-1 applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then a waiver under the exception at 15.804-1(b)(5) should be considered. The threshold for obtaining cost or pricing data is \$500,000. This amount will be subject to adjustment, effective October 1, 1995, and every five years thereafter. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to exceed the threshold in effect on the date of agreement on price, or the date of award, whichever is later; or, in the

case of existing contracts, the threshold specified in the contract:

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

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor have been required to furnish cost or pricing data (but see exceptional cases at 15.804-1(b)(5)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts shall consider both increases and decreases. (For example, a \$150,000 modification resulting from a reduction of \$350,000 and an increase of \$200,000 is a pricing adjustment exceeding \$500,000.) This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification.

(2) Unless prohibited because an exception at 15.804-1(a)(1) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for cost or pricing data. The documentation shall include a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(b) When cost or pricing data are required, the contracting officer shall 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 cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.804-4, certifying that to the best of its knowledge and belief, the cost or

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pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, another date agreed upon between the parties that is as close as practicable to the date of agreement on price.

(c) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data as defined in 15.801 and shall not be certified in accordance with 15.804-4.

(d) The requirements of this section also apply to contracts entered into by the head of an agency on behalf of a foreign government.

[60 FR 48214, Sept. 18, 1995]

15.804-3 [Reserved]

15.804-4 Certificate of Current Cost or Pricing Data.

(a) When cost or pricing data are required, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, shown following this paragraph (a), and shall 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 section 15.801 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.804-2) 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, quotation, 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, another 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 does apply 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.

(e) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data and shall not be

certified in accordance with this subsection.

(f) The exercise of an option at the price established in the initial negotiation in which cost or pricing data were used does not require recertification.

(g) Contracting officers shall not require certification at the time of agreement for data supplied in support of forward pricing rate agreements (see 15.809) or other advance agreements. When a forward pricing rate agreement or other advance agreement is used in partial support of a later contractual action that requires a certificate, the price proposal certificate shall cover (1) the data originally supplied to support the forward pricing rate agreement or other advance agreement and (2) all data required to update the price proposal to the time of agreement on contract price.

(h) Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring cost or pricing data if (1) the total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at 15.804-2(a)(1) or (2) the partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at 15.804-2(a)(1) (see 49.105(c)(15)).

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 56 FR 67414, Dec. 30, 1991; 57 FR 60610, Dec. 21, 1992; 60 FR 48214, Sept. 18, 1995]

**15.804-5 Requiring information other than cost or pricing data.**

(a)(1) If cost or pricing data are not required because an exception applies, or an action is at or below the cost or pricing data threshold, the contracting officer shall make a price analysis to determine the reasonableness of the price and any need for further negotiation.

(2) The contracting officer may require submission of information other than cost or pricing data only to the extent necessary to determine reasonableness of the price or cost realism. The contractor's format for submitting such information shall be used unless

the contracting officer determines that use of a specific format is essential. The contracting officer shall ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists. Such data shall not be certified in accordance with 15.804-4.

(3) When an acquisition is based on adequate price competition, generally no additional information is necessary to determine the reasonableness of price. However, if it is determined that additional information is necessary to determine the reasonableness of the price, the contracting officer shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror. In addition, the contracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches.

(4) When cost or pricing data are not required because an action is at or below the cost or pricing data threshold, information requested shall include, as a minimum, appropriate information on the prices and quantities at which the same or similar items have previously been sold, that is adequate for evaluating the reasonableness of the proposed price. Cost information may also be required. For example, cost information might be necessary to support an analysis of material costs.

(b)(1) When acquiring commercial items for which an exception under 15.804-1(a)(2) may apply, the contracting officer shall seek to obtain from the offeror or contractor information on prices at which the same or similar items have been sold in the commercial market, that is adequate for evaluating, through price analysis, the reasonableness of the price of the action.

(2) If such information is not available from the offeror or contractor, the contracting officer shall seek to obtain such information from another source or sources.

(3) Requests for sales data relating to commercial items shall be limited to

data for the same or similar items during a relevant time period.

(4) In requesting information from an offeror under this paragraph (b), the contracting officer shall, to the maximum extent practicable, limit the scope of the request to include only information that is in the form regularly maintained by the offeror in commercial operations.

(5) Any information obtained pursuant to this paragraph (b) that is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)) shall not be disclosed by the Government.

(c) If, after receipt of offers, the contracting officer concludes there is insufficient information available to determine price reasonableness and none of the exceptions applies, then cost or pricing data shall be obtained.

[60 FR 48215, Sept. 18, 1995]

**15.804-6 Instructions for submission of cost or pricing data or information other than cost or pricing data.**

(a) Taking into consideration the hierarchy at 15.802, the contracting officer shall specify in the solicitation (see 15.804-8 (h) and (i))—

(1) Whether cost or pricing data are required;

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

(3) Whether information other than cost or pricing data is required, if cost or pricing data are not necessary;

(4) The format (see paragraph (b) of this subsection) in which the cost or pricing data or information other than cost or pricing data shall be submitted; and

(5) Necessary preaward or postaward access to offeror's records if not provided by the use of a standard form or clause.

(b)(1) Cost or pricing data shall be submitted on a SF 1411 unless required to be submitted on one of the termination forms specified in subpart 49.6. The SF 1411 shall not be used unless cost or pricing data are required to be submitted. Contract pricing proposals submitted on a SF 1411 with supporting attachments shall be prepared in accordance with Table 15-2 or as specified

by the contracting officer. Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a format acceptable to the contracting officer.

(2) If information other than cost or pricing data is required to support price reasonableness or cost realism, the contracting officer may require such information to be submitted using a SF 1448. Requests for information should be tailored so that only necessary data are requested. The information is not considered cost or pricing data and shall not be certified in accordance with 15.804-4. Information submitted on a SF 1448 shall be prepared following the instructions provided in Table 15-3.

**TABLE 15-2 INSTRUCTIONS FOR SUBMISSION OF A CONTRACT PRICING PROPOSAL WHEN COST OR PRICING DATA ARE REQUIRED**

The SF 1411 provides a cover sheet for use by offerors to submit to the Government a pricing proposal of estimated and/or actual costs only when cost or pricing data are required.

1. The pricing proposal shall be segregated by contract line item with sufficient detail to permit cost analysis. Attach cost-element breakdowns, using the applicable formats prescribed in Item 8A, B, or C of this section, for each proposed line item. These breakdowns must conform to the instructions in the solicitation and any specific requirements established by the contracting officer. Furnish supporting breakdowns for each cost element, consistent with the offeror's cost accounting system.

**Materials**—Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract 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.

**Competitive Methods**—For those acquisitions (e.g. subcontracts, purchase orders, material orders, etc.) exceeding the pertinent threshold set forth at 15.804-2(a)(1) priced on a competitive basis, also provide data showing degree of competition, and the basis for establishing the source and reasonableness of price. For interorganizational transfers priced at other than cost of the comparable competitive commercial

work of the division, subsidiary, or affiliate of the contractor, explain the pricing method (see 31.205-26(e)).

**Established Catalog or Market Prices or Prices Set by Law or Regulation or Commercial Item Not Covered By Another Exception**—When an exception from the requirement to submit cost or pricing data is requested, whether the item was produced by others or by the offeror, provide justification for the exception as required by 15.804-1(d).

**Noncompetitive Methods**—For those acquisitions (e.g. subcontracts, purchase orders, material orders, etc.) exceeding the pertinent threshold set forth at 15.804-2(a)(1) priced on a noncompetitive basis, also provide data showing the basis for establishing source and reasonableness of price. For standard commercial items 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 by elements. As required by 15.806-2(a), provide a copy of cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is either: (i) \$1,000,000 or more, or (ii) both more than the pertinent threshold set forth in 15.804-2(a)(1)(iii) and (iv) and more than 10 percent of the prime contractor's proposed price. The contracting officer may require submission of cost or pricing data in support of proposals in lower amounts. Submit the results of the analysis of the prospective source's proposal as required by 15.806. When the submission of a prospective source's cost or pricing data is required as described above, it shall be included as part of the offeror's initial pricing proposal.

**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.

**Indirect Costs**—Indicate how offeror has computed and applied offeror's indirect costs, including cost breakdowns, and showing trends and budgetary data, to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.

**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.

**Royalties**—If more than \$250, provide the following information on a separate page for each separate royalty or license fee: name and address of licensor; date of license agreement; patent numbers, patent application serial numbers, or other basis on which the royalty is payable; brief description (including any part or model numbers of each contract item or component on which the royalty is payable); percentage or dollar rate of royalty per unit; unit price of contract item; number of units; and total dollar amount of royalties. In addition, if specifically requested by the contracting officer, provide a copy of the current license agreement and identification of applicable claims of specific patents. (See FAR 27.204 and 31.205-37).

**Facilities Capital Cost of Money**—When the offeror elects to claim facilities capital cost of money as an allowable cost, the offeror must submit Form CASB-CMF and show the calculation of the proposed amount (see FAR 31.205-10).

2. As part of the specific information required, the offeror must submit with offeror's proposal, and clearly identify as such, cost or pricing data (that is, data that are verifiable and factual and otherwise as defined at FAR 15.801). In addition, submit with offeror's proposal any information reasonably required to explain offeror's estimating process, including—
  - a. The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and
  - b. The nature and amount of any contingencies included in the proposed price.
3. Whenever the offeror has incurred costs for work performed before submission of proposal, those costs must be identified in the offeror's cost/price proposal.
4. There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate 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 information comes into the offeror's possession, it should be promptly submitted to the contracting officer in a manner that clearly shows how the information relates to the offeror's price proposal. The requirement for submission of cost or pricing data continues up to the time of agreement on price, or another date agreed upon between the parties if applicable.

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5. In submitting offeror's proposal, offeror must include an index, appropriately referenced, of all the cost or pricing data and information accompanying or identified in the proposal. In addition, any future additions and/or revisions, up to the date of agreement on price, must be annotated on a supplemental index.
6. By submitting offeror's proposal, the offeror, if selected for negotiation, grants the contracting officer or an authorized representative the right to examine, at any time before award, those books, records, documents, and other types of factual information, regardless of 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.
7. As soon as practicable after final agreement on price, but before the award resulting from the proposal, the offeror shall, under the conditions stated in FAR 15.804-4, submit a Certificate of Current Cost or Pricing Data.
8. Headings for Submission of Line-Item Summaries:
  - A. New Contracts (including Letter contracts).

COST ELEMENTS (1)	PROPOSED CONTRACT ESTIMATE—TOTAL COST (2)	PROPOSED CONTRACT ESTIMATE—UNIT COST (3)	REFERENCE (4)
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Under Column (1)—Enter appropriate cost elements.  
 Under Column (2)—Enter those necessary and reasonable costs that in offeror's 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 or unpriced order), describe them on an attached supporting schedule. 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.  
 Under Column (3)—Optional, unless required by the contracting officer.  
 Under Column (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.

COST ELEMENTS (1)	ESTIMATED COST OF ALL WORK DELETED (2)	COST OF DELETED WORK ALREADY PERFORMED (3)	NET COST TO BE DELETED (4)	COST OF WORK ADDED (5)	NET COST OF CHANGE (6)	REFERENCE (7)
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Under Column (1)—Enter appropriate cost elements.  
 Under Column (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.  
 Under Column (3)—Include the incurred cost of deleted work already performed, actually computed if possible, or estimated in the contractor's 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 offeror desires to retain these items or any portion of them, indicate the amount offered for them.  
 Under Column (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) less Column (3) = Column (4).  
 Under Column (5)—Enter the offeror's 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.  
 Under Column (6)—Enter the net cost of change which is the cost of work added, less the net cost to be deleted. When this result is negative, place the amount in parentheses. Column (4) less Column (5) = Column (6).  
 Under Column (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 (1)	NUMBER OF UNITS COMPLETED (2)	NUMBER OF UNITS TO BE COMPLETED (3)	CONTRACT AMOUNT (4)	REDETERMINATION PROPOSAL AMOUNT (5)	DIFFERENCE (6)
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COST ELEMENTS	INCURRED COST— PREPRODUCTION	INCURRED COST— COM- PLETED UNITS	INCURRED COST— WORK IN PROCESS	TOTAL IN- CURRED COST	ESTIMATED COST TO COMPLETE	ESTIMATED TOTAL COST	REF- ERENCE
(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)

Under Column (1)—Enter the cutoff date required by the contract, if applicable.  
Under Column (2)—Enter the number of units completed during the period for which experienced costs of production are being submitted.

Under Column (3)—Enter the number of units remaining to be completed under the contract.

Under Column (4)—Enter the cumulative contract amount.

Under Column (5)—Enter the offeror's redetermination proposal amount.

Under Column (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) less Column (5) = Column (6).

Under Column (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.

Under Column (8)—Enter all costs incurred under the contract before starting production and other nonrecurring costs (usually referred to as startup costs) from offeror's 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 offeror's records, enter in this column offeror's best estimates. Explain the basis for each estimate and how the costs are charged on offeror's accounting records (e.g., included in production costs as direct engineering labor, charged to manufacturing overhead, etc.). Also show how the costs would be allocated to the units at their various stages of contract completion.

Under Columns (9) and (10)—Enter in Column (9) the production costs from offeror's books and records (exclusive of preproduction costs reported in Column (8)) of the units completed as of the cutoff date. Enter in Column (10) the costs of work in process as determined from offeror's records or inventories at the cutoff date. When the amounts for work in process are not available in contractor's 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 offeror's proposal relates.

Under Column (11)—Enter total incurred costs (Total of Columns (8), (9), and (10)).

Under Column (12)—Enter those necessary and reasonable costs that in contractor's judgment will properly be incurred in completing the remaining work to be performed under the contract with respect to the item(s) to which contractor's proposal relates.

Under Column (13)—Enter total estimated cost (Total of Columns (11) and (12)).

Under Column (14)—Identify the attachment in which the information supporting the specific cost element may be found. Attach separate pages as necessary.

TABLE 15-3 INSTRUCTIONS FOR SUBMISSION OF INFORMATION OTHER THAN COST OR PRICING DATA

SF 1448 is a cover sheet for use by offerors to submit information to the Government when cost or pricing data are not required but the contracting officer has requested information to help establish price reasonableness or cost realism. Such information is not considered cost or pricing data, and shall not be certified in accordance with 15.804-4.

1. The information submitted shall be at the level of detail described in the solicitation or specified by the contracting officer. The offeror's own format is acceptable unless the contracting officer determines that use of a specific format is essential.

A. If adequate price competition is expected, the information may include cost or technical information necessary to determine the cost realism and adequacy of the offeror's proposal, e.g., information adequate to validate that the proposed costs are consistent with the technical proposal, or cost breakdowns to help identify unrealistically priced proposals.

B. If the offer is expected to be at or below the cost or pricing data threshold, and adequate price competition is not expected, the information may consist of data to permit

the contracting officer and authorized representatives to determine price reasonableness, e.g., information to support an analysis of material costs (when sufficient information on labor and overhead rates is already available), or information on prices and quantities at which the offeror has previously sold the same or similar items.

2. Any information submitted must support the price proposed. Include sufficient detail or cross references to clearly establish the relationship of the information provided to the price proposed. Support any information provided by explanations or supporting rationale as needed to permit the contracting officer and authorized representatives to evaluate the documentation.

(c) Closing or cutoff dates should be included as part of the data submitted with the proposal (see 15.804-4(c)).

(d) The requirement for submission of cost or pricing data is met if all cost or pricing data reasonably available to the offeror are either submitted or specifically identified in writing by the time of agreement on price or another time agreed upon by the parties. However, there is a clear distinction between submitting cost or pricing data

and merely making available books, records, and other documents without identification. The latter does not constitute *submission* of cost or pricing data.

(e) If cost or pricing data and information required to explain the estimating process are required and the offeror initially refuses to provide necessary data, or the contracting officer determines that the data provided is so deficient as to preclude adequate analysis and evaluation, the contracting officer shall again attempt to secure the data and/or elicit corrective action. If the offeror still persists in refusing to provide the needed data or to take corrective action, the contracting officer shall withhold the award or price adjustment and refer the contract action to higher authority, including details of the attempts made to resolve the matter and a statement of the practicability of obtaining the supplies or services from another source.

(f) Preproduction and startup costs include costs such as preproduction engineering, special tooling, special plant rearrangement, training programs, and such nonrecurring costs as initial rework, initial spoilage, and pilot runs. When these costs may be a significant cost factor in an acquisition, the contracting officer shall require in the solicitation that the offeror provide (1) an estimate of total preproduction and startup costs, (2) the extent to which these costs are included in the proposed price, and (3) the intent to absorb, or plan for recovery of, any remaining costs. If a successful offeror has indicated an intent to absorb any portion of these costs, the contract shall expressly provide that such portion will not be charged to the Government in any future noncompetitive pricing action.

(g) The requirements for contractors to obtain cost or pricing data from prospective subcontractors, to analyze these data and to submit the results of the analyses are prescribed in 15.806.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 27119, July 29, 1986; 53 FR 17858, May 18, 1988; 54 FR 34753, Aug. 21, 1989; 56 FR 15149, Apr. 15, 1991; 56 FR 67414, Dec. 30, 1991; 59 FR 11387, Mar. 10, 1994; 60 FR 48215, Sept. 18, 1995]

#### **15.804-7 Defective cost or pricing data.**

(a) If, before agreement on price, the contracting officer learns that any cost or pricing data submitted are inaccurate, incomplete, or noncurrent, the contracting officer shall immediately bring the matter to the attention of the prospective contractor, whether the defective data increase or decrease the contract price. The contracting officer shall negotiate, using any new data submitted or making satisfactory allowance for the incorrect data. The price negotiation memorandum shall reflect the revised facts.

(b)(1) If, after award, cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price 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. This entitlement is ensured by including in the contract one of the clauses prescribed in 15.804-8 and set forth at 52.215-22, Price Reduction for Defective Cost or Pricing Data, and 52.215-23, Price Reduction for Defective Cost or Pricing Data—Modifications. The clauses give the Government the right to a price adjustment for defects in cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor.

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

(3) The clauses referred to in paragraph (b)(1) of this section 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 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 such item procured under such contract; or

(iv) The prime contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data relating to the contract.

(4) Subject to paragraphs (b)(5) and (b)(6) of this section, the contracting officer shall allow an offset for any understated 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 (for example, the initial pricing of the same contract or the pricing of the same change order).

(5) An offset shall 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 cost or pricing data were available before the date of agreement on price 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 shall not be allowed if (i) the understated data was known by the contractor to be understated when the Certificate of Current Cost or Pricing Data was signed, 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 date of agreement on price.

(7)(i) In addition to the price adjustment amount, the Government is entitled to interest on any 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 would not result from amounts paid for contract financing as defined in 32.902.

(ii) In calculating the interest amount due, the contracting officer shall—

(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 shall be (1) the date payment was made for the related completed and accepted contract items, or (2) 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 cost or pricing data was a knowing submission, the contracting officer shall obtain an amount equal to the amount of overpayment made. Before taking any contractual actions concerning penalties, the contracting officer shall obtain the advice of counsel.

(iv) In the price reduction modification or demand, the contracting officer shall 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.

(c) 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 shall request an audit to evaluate the accuracy, completeness, and currency of the data. Only if the audit reveals that the data certified by the contractor were defective may the Government evaluate the profit-cost relationships. The contracting officer shall not reprice the contract solely because the profit was greater than forecast or

because some contingency specified in the submission failed to materialize.

(d) For each advisory audit received based on a postaward review which indicates defective pricing, the contracting officer shall make a determination as to whether or not the data submitted were defective and relied upon. Before making such a determination, the contracting officer should give the contractor an opportunity to support the accuracy, completeness, and currency of the data in question. The contracting officer shall prepare a memorandum indicating (1) the contracting officer determination as to whether or not the submitted data were accurate, complete, and current as of the certified date and whether or not the Government relied on the data, and (2) the results of any contractual action taken. The contracting officer shall 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). The contracting officer shall notify the contractor by copy of this memorandum, or otherwise, of the determination.

(e) If (1) both contractor and subcontractor submitted and (2) the contractor certified, or should have certified, cost or pricing data, the Government has the right, under the clauses at 52.215-22, Price Reduction for Defective Cost or Pricing Data, and 52.215-23, Price Reduction for Defective 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.

(f) If Government audit discloses defective subcontractor 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, the contracting officer should make this information available to the prime contractor or appropriate subcontractors upon request. If release of the information would compromise Government secu-

rity or disclose trade secrets or confidential business information, the contracting officer shall release it only under conditions that will protect it from improper disclosure. Information made available under this paragraph shall be limited to that used as the basis for the prime contract price reduction. In order to afford an opportunity for corrective action, the contracting officer 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 (i) the subcontract price used for pricing the prime contract and (ii) 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 (i) firm-fixed-price contracts and (ii) contracts with economic price adjustment, payments to subcontractors that are higher than they would be had there been no defective subcontractor cost or pricing data shall be the basis for disallowance or nonrecognition of costs under the clauses prescribed in 15.804-8. The Government has a continuing and direct financial interest in such payments that is unaffected by the initial agreement on prime contract price.

[48 FR 42187, Sept. 19, 1983, as amended at 53 FR 10829, Apr. 1, 1988; 55 FR 52790, Dec. 21, 1990; 60 FR 48216, Sept. 18, 1995]

#### **15.804-8 Contract clauses and solicitation provisions.**

(a) *Price reduction for defective cost or pricing data.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215-22, Price Reduction for Defective Cost or Pricing Data, in solicitations and contracts when it is contemplated that cost or

pricing data will be required from the contractor or any subcontractor (see 15.804-2).

(b) *Price reduction for defective cost or pricing data—modifications.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215-23, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when (1) it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.804-2) for the pricing of contract modifications, and (2) the clause prescribed in paragraph (a) of this subsection has not been included.

(c) *Subcontractor cost or pricing data.* The contracting officer shall insert the clause at 52.215-24, Subcontractor Cost or Pricing Data, in solicitations and contracts when the clause prescribed in paragraph (a) above is included.

(d) *Subcontractor cost or pricing data—modifications.* The contracting officer shall insert the clause at 52.215-25, Subcontractor Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (b) above is included.

(e) *Termination of defined benefit pension plans.* The contracting officer shall insert the clause at 52.215-27, Termination of Defined Benefit Pension Plans, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to part 31.

(f) *Postretirement benefit funds.* The contracting officer shall insert the clause at 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to part 31.

(g) *Notification of ownership changes.* The contracting officer shall insert the clause at 52.215-40, Notification of Ownership Changes, in solicitations and contracts for which it is contemplated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to subpart 31.2.

(h) *Requirements for cost or pricing data or information other than cost or pricing data.* Considering the hierarchy at 15.802, the contracting officer may insert the provision at 52.215-41, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, in solicitations if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required. This provision also provides instructions to offerors on how to request an exception. Use the provision with Alternate I to specify a format for cost or pricing data other than the format required by Table 15-2 of 15.804-6(b). Use the provision with Alternate II when copies of the proposal are to be sent to the administrative contracting officer and contract auditor. Use the provision with Alternate III when submission via electronic media is required. Replace the basic provision with Alternate IV when a SF 1411 will not be required because an exception may apply, but information other than cost or pricing data is required as described in 15.804-5.

(i) *Requirements for cost or pricing data or information other than cost or pricing data—modifications.* Considering the hierarchy at 15.802, the contracting officer may insert the clause at 52.215-42, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, in solicitations and contracts if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required for modifications. This clause also provides instructions to contractors on how to request an exception. Use the clause with Alternate I to specify a format for cost or pricing data other than the format required by Table 15-2 of 15.804-6(b). Use the clause with Alternate II if copies of the proposal are to be sent to the administrative contracting officer and contract auditor. Use the clause with Alternate III if submission via electronic media is required. Replace the basic clause with Alternate IV if a SF 1411 is not required because an exception may apply, but information other

than cost or pricing data is required as described in 15.804-5.

[48 FR 42187, Sept. 19, 1983, as amended at 53 FR 10830, Apr. 1, 1988; 54 FR 34753, Aug. 21, 1989; 56 FR 29127, June 25, 1991; 59 FR 67035, Dec. 28, 1994; 60 FR 48216, Sept. 18, 1995; 61 FR 2633, Jan. 26, 1996]

### **15.805 Proposal analysis.**

#### **15.805-1 General.**

(a) The contracting officer, exercising sole responsibility for the final pricing decision, shall, as appropriate, coordinate a team of experts and request and evaluate the advice of specialists in such fields as contracting, finance, law, contract audit, packaging, quality control, engineering, traffic management, and contract pricing. The contracting officer should have appropriate specialists attend the negotiations when complex problems involving significant matters will be addressed. The contracting officer may assign responsibility to a negotiator or price analyst for (1) determining the extent of specialists' advice needed and evaluating that advice, (2) coordinating a team of experts, (3) consolidating pricing data and developing a prenegotiation objective (see 15.807), and (4) conducting negotiations.

(b) When cost or pricing data are required, the contracting officer shall make a cost analysis to evaluate the reasonableness of individual cost elements. In addition, the contracting officer should make a price analysis to ensure that the overall price offered is fair and reasonable. When cost or pricing data are not required, the contracting officer shall make a price analysis to ensure that the overall price offered is fair and reasonable.

(c) The contracting officer shall require prospective contractors to perform (1) price analysis for all significant proposed subcontracts and purchase orders and (2) cost analysis when the prospective subcontractor is required to submit cost or pricing data or the contractor is unable to perform an adequate price analysis (see 15.806-1(a)(2)).

(d) The Air Force Institute of Technology (AFIT) and the Federal Acquisition Institute (FAI) jointly prepared a series of five desk references to guide

pricing and negotiation personnel. The five desk references are: Price Analysis, Cost Analysis, Quantitative Techniques for Contract Pricing, Advanced Issues in Contract Pricing, and Federal Contract Negotiation Techniques. The references provide detailed discussion and examples applying pricing policies to pricing problems. They are to be used for instruction and professional guidance. However, they are not directive and should be considered informational only. Copies of the desk references are available on CD-ROM which also contains the FAR, the FTR and various other regulations and training materials. The CD-ROM may be purchased by annual subscription (updated quarterly), or individually (reference "List ID GSAFF," Stock No. 722-009-0000-2). The individual CD-ROMs or subscription to the CD-ROM may be purchased from the Superintendent of Documents, U.S. Government Printing Office, by telephone (202) 512-1800 or facsimile (202) 512-2550, or by mail order from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Free copies of the desk references are available on the World Wide Web, Internet address: <http://www.gsa.gov/staff/v/training.htm>

[48 FR 42187, Sept. 19, 1983, as amended at 56 FR 15150, Apr. 15, 1991; 60 FR 48217, Sept. 18, 1995; 61 FR 31621, June 20, 1996; 61 FR 41469, Aug. 8, 1996]

#### **15.805-2 Price analysis.**

The contracting officer is responsible for selecting and using whatever price analysis techniques will ensure a fair and reasonable price. One or more of the following techniques may be used to perform price analysis:

(a) Comparison of proposed prices received in response to the solicitation.

(b) Comparison of prior proposed prices and contract prices with current proposed prices for the same or similar end items. To provide a suitable basis for comparison, the contracting officer should consider differences in specifications, quantities ordered, time for delivery, Government-furnished materials, experienced trends of improvement in production efficiency, and when prior acquisitions occurred. Any comparison will not be valid unless the reasonableness of the prior price was

established. The comparison may not detect an unreasonable proposed price unless changes in the general level of business in the industry which may impact prices are taken into account.

(c) Application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

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

(e) Comparison of proposed prices with independent Government cost estimates (see 15.803(b)).

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

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 55 FR 52791, Dec. 21, 1990; 60 FR 48217, Sept. 18, 1995]

#### 15.805-3 Cost analysis.

The contracting officer shall, as appropriate, use the techniques and procedures outlined in paragraphs (a) through (f) below to perform cost analysis:

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

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

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

(3) A technical appraisal of the estimated labor, material, tooling, and facilities requirements and of the reasonableness of scrap and spoilage factors; and

(4) The application of audited or negotiated indirect cost rates (see subpart 42.7), labor rates, and cost of money or other factors.

(b) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed, complex equipment, the contracting officer

should make a trend analysis of basic labor and materials even in periods of relative price stability.

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

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

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

(3) Other cost estimates received in response to the Government's request;

(4) Independent Government cost estimates by technical personnel; and

(5) Forecasts or planned expenditures.

(d) 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 (Appendix B, FAR loose-leaf edition).

(e) Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the contracting officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data.

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

[48 FR 42187, Sept. 19, 1983, as amended at 57 FR 39586, August 31, 1992]

#### 15.805-4 Technical analysis.

When cost or pricing data are required, the contracting officer should generally request a technical analysis of proposals, asking that requirements, logistics, or other appropriate qualified personnel review and assess, as a minimum—

(a) The quantities and kinds of material proposed;

(b) The need for the number and kinds of labor hours and the labor mix;

(c) The special tooling and facilities proposed;

(d) The reasonableness of proposed scrap and spoilage factors; and

(e) Any other data that may be pertinent to the cost or price analysis.

**15.805-5 Field pricing support.**

(a)(1) When cost or pricing data are required, contracting officers shall request a field pricing report (which may include an audit review by the cognizant contract audit activity) before negotiating any contract or modification resulting from a proposal in excess of \$500,000, except as otherwise authorized under agency procedures, unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price. The contracting officer should contact the cognizant audit office to determine the existence of audits addressing proposed indirect costs. In accordance with 41 U.S.C. 254d and 10 U.S.C. 2313, the contracting officer shall not request a preaward audit of such indirect costs unless the information available from any existing audit completed within the preceding 12 months is considered inadequate for determining the reasonableness of the proposed indirect costs. Requests for field pricing support should be tailored to ask for minimum essential information needed to ensure a fair and reasonable price. Information of the type described in subdivisions (a)(1)(i) through (a)(1)(vi) of this subsection, which is often available to the contracting officer from the Administrative Contracting Officer or from the cognizant auditor, may be useful in determining the extent of any field pricing support that is needed—

(i) An engineering determination of the level of effort required for research and development or study contracts;

(ii) Audited cost information from contract awards in process or recently negotiated contracts;

(iii) Analyzed data on proposed subcontract items which constitute the major portion of the prime contract price proposal;

(iv) Prices of standard commercial items which constitute the major portion of the prime contract price proposal;

(v) Special forward pricing formulae or rates prescribed in an existing advance agreement of forecasted overhead rates;

(vi) Current labor rates, overhead rates, loading factors, per diem rates, and actual costs and labor hours for

production lots. No single category of information is necessarily sufficient by itself; for example, information on the rates for labor and overhead would normally require data concerning the base elements—labor hours, material costs, etc.—to which the rates apply. When available data are considered for a reasonableness determination, the contracting officer shall document the contract file to reflect the basis of the determination.

(2) Field pricing reports are intended to give the contracting officer a detailed analysis of the proposal, for use in contract negotiations. Field pricing support personnel include, but are not limited to, administrative contracting officers, contract auditors, price analysts, quality assurance personnel, engineers, and small business and legal specialists.

(b) Contracting officers should not request field pricing support for proposed contracts or modifications of an amount less than that specified in subparagraph (a)(1) above. An exception may be made when a reasonable pricing result cannot be established, because of (1) lack of knowledge of the particular contractor, (2) sensitive conditions, or (3) an inability to evaluate the price reasonableness through price analysis or cost analysis of existing data.

(c)(1) When initiating field pricing support, the contracting officer shall do so by sending a request to the cognizant administrative contracting officer (ACO). If an audit is all that is needed, the contracting officer may initiate an audit by sending the request directly to the cognizant audit office. In both cases, the contracting officer shall, in the request, (i) prescribe the extent of the support needed, (ii) state the specific areas for which input is required, (iii) include the information necessary to perform the review (such as the offeror's proposal and the applicable portions of the solicitation, particularly those describing requirements and delivery schedules), and (iv) assign a realistic deadline for receipt of the report.

(2) Assignment of unrealistically short deadlines may reduce the quality of the audit and field pricing reports

and may make it impossible to establish the fairness and reasonableness of the price.

(3) Agency field pricing procedures shall not preclude free and open communication among the contracting officer, ACO, and auditor.

(4) When the contracting officer requires a field pricing review of requests for equitable adjustments, the contracting officer should provide the information listed in 43.204(b)(5).

(d) Only the auditor shall have general access to the offeror's books and financial records. This limitation does not preclude the contracting officer, the ACO, or their representatives from requesting any data from or reviewing offeror records necessary to the discharge of their responsibilities. The duties of auditors and those of other specialists may require both to evaluate the same elements of estimated costs. They shall review the data jointly or concurrently when possible, the auditor rendering services within the audit area of responsibility and the other specialists rendering services within their own areas of responsibility. The ACO or auditor, as appropriate, shall orally notify the contracting officer immediately of data provided that is so deficient as to preclude review and any denial of access to records or to cost or pricing data considered essential to the performance of satisfactory review. The oral notification shall be promptly confirmed in writing to the contracting officer describing the deficient or denied data or records, with copies of the deficient data if requested by the contracting officer, the need for the evidence, and the costs unsupported as a result of the denial. The contracting officer shall review the written notification and shall take immediate action to obtain the data needed. If the offeror persists in refusing to provide the data, and the contracting officer determines that the data is essential for a fair and reasonable price determination, then the contracting officer shall proceed with the action outlined in 15.804-6(e).

(e) The auditor shall begin the audit as soon as possible after receiving the contracting officer's request. The auditor is responsible for the scope and depth of the audit. As a minimum, the

audit report shall include the following:

(1) The findings on specific areas listed in the contracting officer's request.

(2) An explanation of the basis and method used by the offeror in proposal preparation.

(3) An identification of the original proposal and of all subsequent written formal and other identifiable submissions by which cost or pricing data were either submitted or identified.

(4) A description of cost or pricing data coming to the attention of the auditor that were not submitted but that may have a significant effect on the proposed cost or price.

(5) A list of any cost or pricing data submitted that are not accurate, complete and current and of any cost representations that are unsupported. When the result of deficiencies is so great that the auditor cannot perform an audit or considers the proposal unacceptable as a basis for negotiation, the contracting officer shall be orally notified so that prompt corrective action may be taken, as provided by 15.805-5(d). The auditor will immediately confirm the notification in writing, explaining the deficiencies and the cost impact on the proposal.

(6) The originals of all technical analyses received by the auditor and a quantification of the dollar effect of the technical analysis findings.

(7) If the auditor believes that the offeror's estimating methods or accounting system are inadequate to support the proposal or to permit satisfactory administration of the contract contemplated, a statement to that effect.

(8) A statement of the extent to which the auditor has discussed discrepancies or mistakes of fact in the proposal with the offeror.

(f) The auditor shall not discuss auditor conclusions or recommendations on the offeror's estimated or projected costs with the offeror unless specifically requested to do so by the contracting officer.

(g) If field pricing support was not requested, the auditor shall send the completed audit report directly to the contracting officer. If field pricing support was requested, the auditor shall send the completed audit report to the

ACO for forwarding, without change, with the field pricing report. The ACO shall consolidate the field pricing report inputs and send a field pricing report, accompanied by the original copy of the audit report, to the contracting officer by the assigned date. The ACO shall send the auditor a copy of the field pricing report (without the audit report and technical analysis). Audit and field pricing reports shall be made a part of the official contract file.

(h) If any information is disclosed after submission of a proposal that may significantly affect the audit findings, the contracting officer shall require the offeror to provide concurrent copies to the appropriate field pricing office (ACO and audit offices). In that case, the ACO or auditor, as appropriate, will be requested to immediately review the disclosed information and orally report the findings to the contracting officer, followed by a supplemental report when considered necessary.

(i) The requirements for field pricing support reports for subcontracts are prescribed in 15.806.

(j) Field pricing reports, including audit and technical reports, may contain proprietary and/or source selection information (see 3.104-4 (j) and (k)), and the cover page and all pages containing such information should be marked with the appropriate legend and protected accordingly.

(k) For contracts and contract modifications expected to exceed \$100,000, activities submitting field pricing reports, including audit and technical reports, shall furnish with each report a list of all persons, or classes of persons, and, to the maximum extent practicable, the names of the individuals within the class, who have been provided access to the proprietary or source selection information (see 3.104-5(d) at or by the activity.

[48 FR 42187, Sept. 19, 1983, as amended at 51 FR 27119, July 29, 1986; 51 FR 36971, Oct. 16, 1986; 54 FR 20496, May 11, 1989; 54 FR 34753, Aug. 21, 1989; 55 FR 36796, Sept. 6, 1990; 55 FR 52791, Dec. 21, 1990; 56 FR 15150, Apr. 15, 1991; 60 FR 42650, Aug. 16, 1995; 61 FR 2634, Jan. 26, 1996]

### **15.806 Subcontract pricing considerations.**

#### **15.806-1 General.**

(a)(1) The contracting officer is responsible for the determination of price reasonableness for the prime contract. In order to make this determination, it is required that an analysis be conducted of all the relevant facts and data including subcontractor cost or pricing data required to be submitted, results of the prime or higher tier subcontractor's analyses of subcontractor proposals, the field pricing support (if any), and historical pricing data. The fact that a contractor or higher tier subcontractor has an approved purchasing system or performs an analysis of subcontractor cost or pricing data does not in any way relieve the contracting officer or field pricing support team from the responsibility to analyze the prime contractor's submission, including the subcontractor cost or pricing data. However, the prime contractor or higher tier subcontractor is responsible for conducting appropriate price and cost analysis before awarding any subcontract.

(2) Subcontractors must submit to the contractor or higher tier subcontractor, cost or pricing data or requests for exception from the requirement to submit them. The contractor and the higher tier subcontractor shall:

(i) Conduct price analyses and, when the subcontractor is required to submit cost or pricing data, or if the contractor or higher tier subcontractor is unable to perform an adequate price analysis, cost analyses for all subcontracts,

(ii) Include the results of these analyses as part of their own cost or pricing data submission, and

(iii) When required, in accordance with 15.806-2(a), submit the subcontractor cost or pricing data as part of their own cost or pricing data submission.

(b) Unless the subcontract qualifies for an exception under 15.804-1, any contractor required to submit cost or pricing data also shall obtain cost or pricing data before awarding any subcontract or purchase order expected to exceed the cost or pricing data threshold, or issuing any modification involving a price adjustment expected to exceed the cost or pricing data threshold.

(c) The requirements in paragraphs (a) and (b) of this subsection, modified to relate to higher tier subcontractors rather than to the prime contractor, shall apply to lower tier subcontracts for which subcontractor cost or pricing data are required.

(d) If the prime contractor negotiates subcontract prices before negotiating the prime contract, such subcontract prices must nevertheless be reviewed and analyzed by the Government. In no instance should such negotiated subcontract prices be accepted as the sole evidence that these prices are fair and reasonable.

[54 FR 34754, Aug. 21, 1989, as amended at 56 FR 67414, Dec. 30, 1991; 60 FR 48217, Sept. 18, 1995]

**15.806-2 Prospective subcontractor cost or pricing data.**

(a) The contracting officer shall require a contractor that is required to submit cost or pricing data also to submit to the Government (or cause submission of) accurate, complete, and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate that is

(1) \$1,000,000 or more,

(2) Both more than the cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price, or

(3) Considered to be necessary for adequately pricing the prime contract. These subcontract cost or pricing data may be submitted using a Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required).

(b) The contracting officer shall require the prospective contractor to support subcontractor cost estimates below the threshold in 15.806-1(b) with any data or information (including other subcontractor quotations) needed to establish a reasonable price.

(c) If the prospective contractor satisfies the contracting officer that a subcontract will be priced on the basis of one of the exceptions, the contracting officer shall not require submission of cost or pricing data to the Government in that case. If the subcontract estimate is based upon the cost or pricing data of the prospective subcontractor most likely to be awarded the sub-

contract, the contracting officer shall not require submission to the Government of data from more than one proposed subcontractor for that subcontract.

(d) Subcontractor cost or pricing data shall be accurate, complete, and current as of the date of price agreement or, if applicable, another date agreed upon between the parties, given on the contractor's Certificate of Current Cost or Pricing Data. The prospective contractor shall be responsible for updating a prospective subcontractor's data.

(e) In exceptional cases, the contracting officer may, with the approval of the chief of the contracting office, excuse a prospective contractor from submitting subcontractor cost or pricing data and the required related analyses before completion of negotiations of the prime contract. The prime contractor must, however, obtain this cost or pricing data before award of the subcontract in question. Any request from a prospective contractor to be excused from submitting subcontractor data before completion of negotiations of the prime contract must be supported by an explanation as to why the data and analyses cannot be submitted in a timely manner. If excusing the prospective contractor appears to be appropriate, the contracting officer shall provide the chief of the contracting office with the prospective contractor's explanation, the contracting officer's supporting rationale, and a discussion of how the subcontract price will be determined to be fair and reasonable or what steps will be taken to protect the interest of the Government, e.g., include a contract clause that provides for negotiating an adjustment to the prime contract amount after award.

[54 FR 34754, Aug. 21, 1989, as amended at 56 FR 67414, Dec. 30, 1991; 60 FR 48217, Sept. 18, 1995]

**15.806-3 Field pricing reports.**

(a) When obtaining field pricing support on a prime contractor proposal in accordance with 15.805-5, the contracting officer should request audit or field pricing support to analyze and evaluate the proposal of a subcontractor at any tier (notwithstanding availability of data or analyses performed by the

prime contractor) if the contracting officer believes that such support is necessary to ensure reasonableness of the total proposed price. This step may be appropriate when, for example—

(1) There is a business relationship between the contractor and subcontractor not conducive to independence and objectivity;

(2) The contractor is a sole source and the subcontract costs represent a substantial part of the contract cost;

(3) The contractor has been denied access to the subcontractor's records;

(4) The contracting officer determines that, because of factors such as the size of the proposed subcontract price, audit or field pricing support for a subcontract or subcontracts at any tier is critical to a fully detailed analysis of the prime contract proposal;

(5) The contractor or higher tier subcontractor has been cited for having significant estimating system deficiencies in the area of subcontract pricing, especially the failure to perform adequate cost analyses of proposed subcontract costs or to perform subcontract analyses prior to negotiation of the prime contract with the Government; or

(6) A lower tier subcontractor has been cited as having significant estimating system deficiencies.

(b) When the contracting officer requests the cognizant ACO or auditor to review a subcontractor's cost estimates, the request shall include, when available, a copy of any review prepared by the prime contractor or higher tier subcontractor, the subcontractor's proposal, cost or pricing data provided by the subcontractor, and the results of the prime contractor's cost or price analysis.

(c) When the Government performs the subcontract analysis, the Government shall furnish to the prime contractor or higher tier subcontractor, with the consent of the subcontractor reviewed, a summary of the analysis performed in determining any unacceptable costs, by element, included in the subcontract proposal. If the subcontractor withholds consent, the Government shall furnish a range of unacceptable costs for each element in such

a way as to prevent disclosure of subcontractor proprietary data.

[54 FR 34753, Aug. 21, 1989, as amended at 61 FR 2635, Jan 26, 1996]

#### **15.807 Prenegotiation objectives.**

(a) The process of determining prenegotiation objectives helps the contracting officer to judge the overall reasonableness of proposed prices and to negotiate a fair and reasonable price or cost and fee. In setting the prenegotiation objectives, the contracting officer shall analyze the offeror's proposal, taking into account the field pricing report, if any; any audit report and technical analysis whether or not part of a field pricing report; and other pertinent data such as independent Government cost estimates and price histories. This process may include fact-finding sessions with the offeror when the contracting officer deems appropriate.

(b) The contracting officer shall establish prenegotiation objectives before the negotiation of any 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, the analysis shall address (1) the pertinent issues to be negotiated, (2) the cost objectives, and (3) a profit or fee objective.

(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, the contracting officer shall not agree on profit or fee without concurrent agreement on cost and type of contract. Specific agreement on the exact values or weights assigned to individual profit-analysis factors (see 15.905) is not required during negotiations and should not be attempted.

#### **15.808 Price negotiation memorandum.**

(a) At the conclusion of each negotiation of an initial or revised price, the contracting officer shall promptly prepare a memorandum of the principal elements of the price negotiation. The memorandum shall be included in the

contract file and shall contain the following minimum information:

- (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 the contractor's purchasing system when material is a significant cost element and the current status of other contractor systems (e.g., estimating, accounting, and compensation) to the extent that these additional systems affected and were considered in the negotiation.
- (5) If cost or pricing data were required, the extent to which the contracting officer—
  - (i) Relied on the cost or pricing data submitted and used them in negotiating the price; and
  - (ii) Recognized as inaccurate, incomplete, or noncurrent any 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.
- (6) If cost or pricing data were not required in the case of any price negotiation exceeding the cost or pricing data threshold, the exception used and the basis for it.
- (7) A summary of the contractor's proposal, the field pricing report recommendations, and the reasons for any pertinent variances from the field pricing report recommendations. Where the determination of price reasonableness is based on cost analysis, the summary shall address the amount of each major cost element: (i) Proposed by the contractor, (ii) recommended by the field or other pricing assistance report (if any), (iii) contained in the Government's negotiation objective, and (iv) considered negotiated as a part of the price.
- (8) The most significant facts or considerations controlling the establishment of the prenegotiation price objective and the negotiated price including an explanation of any significant differences between the two positions. To the extent such direction is received, the price negotiation memorandum (PNM) shall discuss and quantify 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) if the direction has had a significant effect on the action.

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

(b) Whenever a field pricing report has been submitted, the contracting officer shall forward a copy of the price negotiation memorandum (PNM) to the cognizant audit office and a copy to the cognizant administrative contracting officer. When appropriate, information on how the advisory services of the field pricing support team can be made more effective should be provided separately.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 52 FR 19803, May 27, 1987; 55 FR 52791, Dec. 21, 1990; 56 FR 67414, Dec. 30, 1991; 60 FR 48217, Sept. 18, 1995]

#### **15.809 Forward pricing rates agreements.**

(a) Negotiation of forward pricing rate agreements (FPRA's) may be requested by the contracting officer or the contractor or initiated by the administrative contracting officer (ACO). In determining whether or not to establish such an agreement, the ACO should consider whether the benefits to be derived from the agreement are commensurate with the effort of establishing and monitoring it. Normally, FPRA's should be negotiated only with contractors having a significant volume of Government contract proposals. The cognizant contract administration agency shall determine whether an FPRA will be established.

(b) The ACO shall obtain the contractor's proposal and require that it include cost or pricing data that are accurate, complete, and current as of the date of submission. The ACO shall invite the cognizant contract auditor and contracting offices having a significant interest to participate in developing a Government objective and in the negotiations. Upon completing negotiations, the ACO shall prepare a price negotiation memorandum (PNM) (see

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15.808) and forward copies of the PNM and FPRA to the cognizant auditor and to all contracting offices that are known to be affected by the FPRA. A Certificate of Current Cost or Pricing Data shall not be required at this time (see 15.804-4(g)).

(c) The FPRA shall provide specific terms and conditions covering expiration, application, and data requirements for systematic monitoring to assure the validity of the rates. The agreement shall provide for cancellation at the option of either party and shall require the contractor to submit to the ACO and to the cognizant contract auditor any significant change in cost or pricing data.

(d) Offerors are required (see 15.804-4(g)) to describe any FPRA's in each specific pricing proposal to which the rates apply and identify the latest cost or pricing data already submitted in accordance with the agreement. All data submitted in connection with the agreement, 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.

(e) 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, unless the ACO determines that changed conditions have invalidated part or all of the agreement. Conditions that may affect the agreement's validity shall be promptly reported to the ACO. If the ACO determines that a changed condition has invalidated the agreement, the ACO shall notify all interested parties of the extent of its effect and initiate revision of the agreement.

(f) When the FPRA has been invalidated, the contractor, ACO, and contracting officer shall reflect the changed conditions in proposals, cost analyses, and negotiations, pending revision of the agreement. If an FPRA has not been established or has been invalidated, the ACO will issue a forward pricing rate recommendation (FPRR) to buying activities with documentation to assist negotiators in achieving recommended rates. In the absence of a

FPRA or FPRR, field pricing reports will include support for rates utilized.

[48 FR 42187, Sept. 19, 1983, as amended at 55 FR 52791, Dec. 21, 1990]

### 15.810 Should-cost review.

#### 15.810-1 General.

(a) Should-cost reviews are a specialized form of cost analysis. Should-cost reviews differ from traditional evaluation methods. During traditional reviews, local contract audit and contract administration personnel primarily base their evaluation of forecasted costs on an analysis of historical costs and trends. In contrast, should-cost reviews 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, facilities, 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.

(b) There are two types of should-cost reviews—program should-cost review (see 15.810-2) and overhead should-cost review (see 15.810-3). 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.

[61 FR 2635, Jan. 26, 1996]

#### 15.810-2 Program should-cost review.

(a) Program should-cost review is used to evaluate significant elements of direct costs, such as material and

labor, and associated indirect costs, usually incurred in 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.

(b) A program should-cost review should be considered, particularly in the case of a major system acquisition (see part 34), when—

(1) Some initial production has already taken place;

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

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

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

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

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

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

(c) The contracting officer should decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. 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 sub-contract and vendor management are normally reviewed in a should-cost review.

(d) 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. Field pricing reports are required only to the extent that they contribute to the combined team position. The contracting officer shall consider the findings and recommendations contained in the program should-cost review team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the administrative contracting officer (ACO) a report of any identified uneconomical or inefficient practices,

together with a report of correction or disposition agreements reached with the contractor. The contracting officer shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

(e) When a program should-cost review is planned, the contracting officer should state this fact in the acquisition plan (see subpart 7.1) and in the solicitation.

[61 FR 2636, Jan. 26, 1996]

### 15.810-3 Overhead should-cost review.

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

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

(1) Dollar amount of Government business.

(2) Level of Government participation.

(3) Level of noncompetitive Government contracts.

(4) Volume of proposal activity.

(5) Major system or program.

(6) Mergers, acquisitions, takeovers.

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

(c) The objective of the overhead should-cost review is to evaluate significant indirect cost elements in-depth, identify inefficient and uneconomical practices, and recommend corrective action. 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 a FPRA with the contractor. The ACO shall establish a follow-up plan to monitor the

correction of the uneconomical or inefficient practices.

[61 FR 2636, Jan. 26, 1996]

#### **15.811 Estimating systems.**

(a) The consistent preparation of proposals using an acceptable estimating system benefits both the Government and the contractor by increasing the accuracy and reliability of individual proposals. Cognizant audit activities, when it is appropriate to do so, shall establish and manage regular programs for reviewing selected contractors' estimating systems or methods, in order to (1) reduce the scope of reviews to be performed on individual proposals, (2) expedite the negotiation process, and (3) increase the reliability of proposals. The results of estimating system reviews shall be documented in survey reports.

(b) The auditor shall 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 shall be a consideration in subsequent proposal analyses and negotiations.

(c) In determining the acceptability of a contractor's estimating system, the auditor should consider—

(1) The source of data for estimates and the procedures for ensuring that the data are accurate, complete, and current;

(2) The documentation developed and maintained in support of the estimate;

(3) The assignment of responsibilities for originating, reviewing, and approving estimates;

(4) The procedures followed for developing estimates for direct and indirect cost elements;

(5) The extent of coordination and communication between organizational elements responsible for the estimate; and

(6) Management support, including estimate approval, establishment of controls, and training programs.

#### **15.812 Unit prices.**

##### **15.812-1 General.**

(a) Direct and indirect costs are generally allocated to contracts in accordance with the Cost Accounting Standards of 48 CFR Chapter 99 (when applicable) and the Contract Cost Principles and Procedures of part 31. However, for the purpose of pricing all items of supplies, distribution of those costs within contracts shall be on a basis that ensures the unit prices are in proportion to the item's base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts the 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.

(b) However, the policy in paragraph (a) of this subsection does not apply to any contract or subcontract item of supply for which the price is, or is based on, an established catalog or market price of a commercial item sold in substantial quantities to the general public under 15.804-1(b)(2) or a commercial item exception under 15.804-1(b)(4).

(c) In addition, when contracting by negotiation without full and open competition, contracting officers shall require that offerors identify in their proposals those items of supply which they will not manufacture or to which they will not contribute significant value. The contracting officer shall require similar information when contracting by negotiation with full and open competition if adequate price competition is not expected (see 15.804-1(b)(1)). The information need not be requested in connection with the award of contracts under the General Services Administration's competitive Multiple Award Schedule Program. The information shall not be requested for commercial items sold in substantial quantities to the general public when the prices are, or are based on, established catalog or market prices. Such information shall 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. The contracting officer may require such

information in any other negotiated contracts when appropriate.

[51 FR 27120, July 29, 1986 as amended at; 52 FR 21886, June 9, 1987; 53 FR 27462, July 20, 1988; 56 FR 15150, Apr. 15, 1991; 57 FR 39587, Aug. 31, 1992; 60 FR 48217, Sept. 18, 1995]

**15.812-2 Contract clause.**

(a) The contracting officer shall insert the clause at 52.215-26, Integrity of Unit Prices, in all solicitations and contracts for other than—

(1) Acquisitions at or below the simplified acquisition threshold;

(2) Construction or architect-engineer services under part 36;

(3) Utility services under part 41; or

(4) Service contracts where supplies are not required.

(5) Contracts for petroleum products.

(b) The contracting officer shall insert the clause with its *Alternate I* when contracting without full and open competition or when prescribed by agency regulations.

[51 FR 27120, July 29, 1986, as amended at 52 FR 21887, June 9, 1987; 56 FR 15150, Apr. 15, 1991; 59 FR 67018, Dec. 28, 1994; 60 FR 34756, July 3, 1995]

**15.813 [Reserved]**

**15.814 Unbalanced offers.**

(a) Offers shall also be analyzed to determine whether they are unbalanced with respect to prices or separately priced line items. This is particularly important when evaluating the relationship of the price for first article tests or test items to the price for the production units, and in evaluating the prices for options in relationship to the prices for the basic requirement.

(b) An offer is mathematically unbalanced if it is based on prices which are significantly less than cost for some contract line items and significantly overstated in relation to cost for others. An offer is materially unbalanced if it is mathematically unbalanced, and if—

(1) There is a reasonable doubt that the offer would result in the lowest overall cost to the Government, even though it is the lowest evaluated offer; or

(2) The offer is so grossly unbalanced that its acceptance would be tanta-

mount to allowing an advance payment.

(c) Offers that are materially unbalanced may be rejected.

(d) Depending on the nature of the acquisition, contracting officers shall use either price analysis or cost analysis techniques, or a combination of the two techniques, to determine if offers are materially unbalanced. The following are examples of techniques that can be used to determine if an offer is unbalanced. Although these examples specifically relate to first article testing, they may also be used for other procurements where unbalanced offers may be of concern.

(1) Compare all offers to determine if the offerors have significantly higher prices for the first articles than for the production units. The comparison should consider whether the Government or the contractor will perform the first article test.

(2) For an individual offer, compare the relationship of first article prices to prices for production items. The cost to the offeror for first articles may be estimated (i) By comparing the total price offered, including the first article to an alternate proposal by the same offeror which does not include first article testing (see 9.306(d)); or (ii) if cost data has been submitted, by reviewing certain elements of cost to determine, for instance, whether manufacturing and special tooling, and test equipment costs, are prorated among the first articles and the production units, or are only applied to the first articles. If cost data are not available, it may be necessary for contracting officers to estimate contractor cost.

[55 FR 25529, June 21, 1990]

**Subpart 15.9—Profit**

**15.900 Scope of subpart.**

This subpart—

(a) Prescribes policies for establishing the profit or fee portion of the Government prenegotiation objective;

(b) Applies to price negotiations based on cost analysis;

(c) Prescribes policies for agencies' development and use of a structured approach for determining the profit or fee prenegotiation objective (see 15.905

for the contents of a structured approach); and

(d) Specifies (1) situations requiring contracting officers to analyze profit and (2) considerations for that analysis.

#### **15.901 General.**

(a) Profit or fee prenegotiation objectives do not necessarily represent net income to contractors. Rather, they represent that element of the potential total remuneration that contractors *may* receive for contract performance over and above allowable costs. This potential remuneration element and the Government's estimate of allowable costs to be incurred in contract performance together equal the Government's total prenegotiation objective. Just as actual costs may vary from estimated costs, the contractor's actual realized profit or fee may vary from negotiated profit or fee, because of such factors as efficiency of performance, incurrence of costs the Government does not recognize as allowable, and contract type.

(b) It is in the Government's interest to offer contractors opportunities for financial rewards sufficient to (1) stimulate efficient contract performance, (2) attract the best capabilities of qualified large and small business concerns to Government contracts, and (3) maintain a viable industrial base.

(c) Both the Government and contractors should be concerned with profit as a motivator of efficient and effective contract performance. Negotiations aimed merely at reducing prices by reducing profit, without proper recognition of the function of profit, are not in the Government's interest. Negotiation of extremely low profits, use of historical averages, or automatic application of predetermined percentages to total estimated costs do not provide proper motivation for optimum contract performance. With the exception of statutory ceilings in 15.903(d) on profit and fee, agencies shall not (1) establish administrative ceilings or (2) create administrative procedures that could be represented to contractors as de facto ceilings.

#### **15.902 Policy.**

(a) Structured approaches (see 15.905) for determining profit or fee prenegotiation objectives provide a discipline for ensuring that all relevant factors are considered. Subject to the authorities in 1.301(c), agencies making noncompetitive contract awards over \$100,000 totaling \$50 million or more a year—

(1) Shall use a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis; and

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

(b) Agencies may use another agency's structured approach.

#### **15.903 Contracting officer responsibilities.**

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

(b) When the price negotiation is based on cost analysis, contracting officers in agencies that have a structured approach shall use it to analyze profit. When not using a structured approach, contracting officers shall comply with 15.905-1 in developing profit or fee prenegotiation objectives.

(c) Contracting officers shall use the Government prenegotiation cost objective amounts as the basis for calculating the profit or fee prenegotiation objective. Before the allowability of facilities capital cost of money, this cost was included in profits or fees. Therefore, before applying profit or fee factors, the contracting officer shall exclude any 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 (see subpart 31.2), facilities capital cost of money will not be an allowable cost in any resulting contract (see 15.904).

(d) (1) The contracting officer shall not negotiate a price or fee that exceeds the following statutory limitations, imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b):

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

(ii) For architect-engineering 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 shall 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 shall not exceed 10 percent of the contract's estimated cost, excluding fee.

(2) The limitations in subdivisions (1)(i) and (iii) above shall apply also to the maximum fees on cost-plus-incentive-fee and cost-plus-award-fee contracts. However, a deviation to the maximum-fee limitation for a specific cost-plus-incentive-fee or cost-plus-award-fee contract may be authorized in accordance with subpart 1.4.

(e) The contracting officer shall not require any prospective contractor to submit details of its profit or fee objective but shall consider them if they are submitted voluntarily.

(f) If a change or modification (1) calls for essentially the same type and mix of work as the basic contract and (2) is of relatively small dollar value compared to the total contract value, the contracting officer may use the basic contract's profit or fee rate as the prenegotiation objective for that change or modification.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 23606, June 4, 1985]

**15.904 Solicitation provision and contract clause.**

(a) The contracting officer shall insert the provision at 52.215-30, Facilities Capital Cost of Money, in solicitations expected to result in contracts that are subject to the cost principles for contracts with commercial organizations (see subpart 31.2).

(b) If the prospective contractor does not propose facilities capital cost of

money in its offer, insert the clause at 52.215-31, Waiver of Facilities Capital Cost of Money, in the resulting contract.

[52 FR 35613, Sept. 22, 1987]

**15.905 Profit-analysis factors.**

**15.905-1 Common factors.**

Unless it is clearly inappropriate or not applicable, each factor outlined in paragraphs (a) through (f) following shall be considered by agencies in developing their structured approaches and by contracting officers in analyzing profit whether or not using a structured approach.

(a) *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. Subfactors (1) through (4) following shall 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:

(1) *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 (i) the complexity of the items required, (ii) the number of purchase orders and subcontracts to be awarded and administered, (iii) whether established sources are available or new or second sources must be developed, and (iv) 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.

(2) *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.

(3) *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 (i) merit only limited profit consideration because of their routine nature or (ii) are elements that contribute significantly to the proposed contract.

(4) *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 (i) how labor in the overhead pools would be treated if it were direct labor, (ii) whether elements within the pools are routine expenses or instead are elements that contribute significantly to the proposed contract, and (iii) whether the elements require routine as opposed to unusual managerial effort and attention.

(b) *Contract cost risk.* (1) This factor measures the degree of cost responsibility and associated risk that the prospective contractor will assume (i) as a result of the contract type contemplated and (ii) 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.

(2) 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.

(3) In evaluating assumption of cost risk, contracting officers shall, 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.

(c) *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, women-owned small businesses, handicapped sheltered workshops, and energy conservation. Greater profit opportunity should be provided contractors who have displayed unusual initiative in these programs.

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

(e) *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 (1) measures taken by the prospective contractor that result in productivity improvements and (2) other cost-reduction accomplishments that will benefit the Government in follow-on contracts.

(f) *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.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 23606, June 4, 1985; 60 FR 48260, Sept. 18, 1995]

**15.905-2 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.

**Subpart 15.10—Preward, Award and Postaward Notifications, Protests, and Mistakes****15.1001 General.**

This subpart applies to the use of competitive proposals, as described in 6.102(b), and a combination of competitive procedures, as described in 6.102(c). To the extent practicable, however, the procedures and intent of this subpart, with reasonable modification, should be followed for acquisitions described in 6.102(d): broad agency announcements, small business innovation research contracts, and architect-engineer contracts. However, they do not apply to multiple award schedules, as described in 6.102(d)(3).

[60 FR 42655, Aug. 16, 1995]

**15.1002 Notifications to unsuccessful offerors.**

(a) *General.* Within three days after the date of contract award, the contracting officer shall notify, in writing or electronically, each offeror whose proposal is determined to be unacceptable or whose offer is not selected for award. "Day," for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday.

(b) *Preward notices.* (1) When the proposal evaluation period for a solicitation not using simplified acquisition procedures in part 13 is expected to exceed 30 days, or when a limited number of offerors have been selected as being within the competitive range (see 15.609), the contracting officer, upon determining that a proposal is unacceptable, shall promptly notify the offeror. The notice shall at least state (i) in general terms the basis for the determination and (ii) that a revision of the proposal will not be considered.

(2) In a small business set-aside (see Subpart 19.5), upon completion of nego-

tiations and determinations of responsibility, but prior to award, the contracting officer shall notify each unsuccessful offeror in writing or electronically of the name and location of the apparent successful offeror. The notice shall also state that:

(i) the Government will not consider subsequent revisions of the unsuccessful proposal and;

(ii) no response is required unless a basis exists to challenge the small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay.

(c) *Postaward notices.* (1) After award of contracts resulting from solicitations not using simplified acquisition procedures, the contracting officer shall notify unsuccessful offerors in writing or electronically, unless preaward notice was given under paragraph (b) of this section. The notice shall include—

(i) The number of offerors solicited;

(ii) The number of proposals received;

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

(iv) The items, quantities, and unit prices of each award (if the number of items or other factors makes listing unit prices impracticable, only the total contract price need be furnished); and

(v) In general terms, the reason the offeror's proposal was not accepted, unless the price information in (iv) above readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in 15.1002(c)(1) (i) through (v) to unsuccessful offerors in solicitations using simplified acquisition procedures in part 13.

[48 FR 42187, Sept. 19, 1983, as amended at 50 FR 1741, Jan. 11, 1985; 50 FR 23606, June 4, 1985; 50 FR 52433, Dec. 23, 1985; 56 FR 15150, Apr. 15, 1991; 59 FR 545, Jan. 5, 1994; 60 FR 34756, July 3, 1995. Redesignated and amended at 60 FR 42655, Aug. 16, 1995]

**15.1003 Notification to successful offeror.**

The contracting officer shall award a contract with reasonable promptness to the successful offeror (selected in accordance with 15.611(d)) by transmitting written or electronic notice of the award to that offeror (but see 15.608(b)). When an award is made to an offeror for less than all of the items that may be awarded to that offeror and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period.

[50 FR 1741, Jan. 11, 1985, as amended at 55 FR 3881, Feb. 5, 1990. Redesignated and amended at 60 FR 42655, 42656, Aug. 16, 1995]

**15.1004 Debriefing of offerors.**

(a) When a contract is awarded on the basis of competitive proposals, an offeror, upon its written request received by the agency within three days after the date on which that offeror has received notice of contract award, shall be debriefed and furnished the basis for the selection decision and contract award. When practicable, debriefing requests received more than three days after the offeror receives notice of contract award shall be accommodated. However, accommodating such untimely debriefing requests does not extend the time within which suspension of performance can be required, as this accommodation is not a "required debriefing" as described in FAR Part 33. To the maximum extent practicable, the debriefing should occur within five days after receipt of the written request. "Day," for purposes of the debriefing process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, by electronic means, or any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals actually responsible for the evaluations shall provide support. If the contracting officer is unavailable, another agency representative may be designated by the con-

tracting officer on a case-by-case basis, with the approval of an individual a level above the contracting officer.

(d) At a minimum, the debriefing information shall include—

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

(2) The overall evaluated cost or price and technical rating, if applicable, of the successful offeror and the debriefed offeror;

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

(4) A summary of the rationale for award;

(5) For acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror; and

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

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, debriefing shall not reveal any information exempt from release under the Freedom of Information Act 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.

(f) The contracting officer shall include an official summary of the debriefing in the contract file.

(g) If, within one year of contract award, a protest causes the agency to issue either a new solicitation or a new request for best and final offers on the protested contract award, the agency shall make available to all prospective offerors—

(1) Information provided in any debriefings conducted on the original

## 15.1005

award about the successful offeror's proposal; and

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

[60 FR 42656, Aug. 16, 1995]

### 15.1005 Protests against award.

Protests against award in negotiated acquisitions shall be treated substantially the same as in sealed bidding (see subpart 33.1).

[48 FR 42187, Sept. 19, 1983. Redesignated and amended at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 2650, Jan. 17, 1986. Redesignated at 60 FR 42655, Aug. 16, 1995]

### 15.1006 Discovery of mistakes.

For treatment of mistakes in an offeror's proposal that are discovered before award, see 15.607. Mistakes in a contractor's proposal that are disclosed after award shall be processed in accordance with 14.407-4.

[48 FR 42187, Sept. 19, 1983. Redesignated at 50 FR 1741, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 60 FR 34739, July 3, 1995. Redesignated at 60 FR 42655, Aug. 16, 1995]

## PART 16—TYPES OF CONTRACTS

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