

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (k)(6). However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (k) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government

property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(1) *Disposition of the facilities.* (1) The provisions of this paragraph shall apply to facilities whose use has been terminated by either the Contracting Officer or the Contractor because the property is no longer suitable for intended use, no longer desired, or is withdrawn from use by the Government.

(2) The Contractor shall dispose of the property provided hereunder in accordance with guidance provided by the Contracting Officer.

(3) The Contracting Officer shall give disposition instructions within 60 days of agreement that the property should be returned to the Government.

(4) The Government may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated.

(5) When Government property is returned to the Government, upon termination of the contract relationship between Government and Contractor or when Government furnished property is replaced by Contractor property, the Contracting Officer may direct repair of Government property necessitated by the change from Government to Contractor property such as removal of fixtures. When Contractor property is removed from Government property at the end of contract performance, the Government property will be restored to its condition prior to installation of Contractor property in accordance with Contracting officer direction.

(End of clause)

[54 FR 39539, Sept. 27, 1989]

CHAPTER 52—DEPARTMENT OF THE NAVY ACQUISITION REGULATIONS

(Parts 5200 to 5299)

<i>Part</i>		<i>Page</i>
5215	Contracting by negotiation	208
5242	Contract administration	210
5243	Contract modifications	210
5252	Solicitation provisions and contract clauses	215

PART 5215—CONTRACTING BY NEGOTIATION

Subpart 5215.4—Solicitation and Receipt of Proposals and Quotations

Sec.

5215.402 General.

5215.407 Solicitation provisions.

Subpart 5215.6—Source Selection

5215.605 Evaluation factors.

5215.608 Proposal evaluation.

Subpart 5215.8—Price Negotiation

5215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35.

SOURCE: 53 FR 16280, May 6, 1988, unless otherwise noted.

Subpart 5215.4—Solicitation and Receipt of Proposals and Quotations

5215.402 General.

(a) Competition is the cornerstone of Navy acquisition policy. As such, the preferred and predominant method of pricing in the Navy is through the use of competition, without the need for cost or pricing data and cost analysis. The Navy has found that not only does competition generate more favorable prices, but significant time and effort can be saved by relying on the forces of competition to establish prices, as opposed to the use of detailed cost analysis. This approach is not only consistent with the Competition in Contracting Act (CICA), but it affords the opportunity for significant efficiencies and reduction of procurement leadtime as a result of minimizing the requirement for cost or pricing data and associated audit reports. As competition is increasingly relied upon and the need for cost or pricing data is reduced, there may be a corresponding requirement for performing a cost realism evaluation for many competitive procurements to guard against unrealistically low prices which can lead to quality deficiencies, late deliveries, performance shortfalls, and cost overruns. In performing cost realism evaluation,

only the minimum selected data to perform the cost realism evaluation is to be obtained, as opposed to full cost or pricing data which would be required when it is necessary to perform cost-based negotiations, such as in the case of sole source negotiations.

5215.407 Solicitation provisions.

(S-90) During acquisition planning, an assessment shall be made as to the likelihood that adequate price competition will exist. If it is anticipated that an award will be based on adequate price competition, the solicitation shall include the provision at 5252.215-9000. If the procurement schedule is critical, this provision with its Alternate I shall be used so that there will be a minimum delay in the event that adequate price competition does not materialize and it is necessary to obtain cost or pricing data. Contracting officers must be judicious in the use of the Alternate I provision, as it may cause offerors to incur certain costs in preparing standby cost or pricing data in anticipation that it may be subsequently requested.

Subpart 5215.6—Source Selection

5215.605 Evaluation factors.

(S-90)(1) When a cost realism evaluation will be performed, the source selection evaluation criteria shall include a notice that the proposed costs may be adjusted, for purposes of evaluation, based upon the results of the cost realism evaluation.

(2) Technical criteria may include quality standards that are based on either a minimally acceptable approach or a cost/benefit approach. When the quality desired is that necessary to meet minimum needs, proposals should be evaluated for acceptability and award made to the lowest priced, technically acceptable offer. When the quality desired is the highest affordable or that representing the best value, proposals should be evaluated on a cost/benefit basis that would permit an award based on paying appropriate premiums for measured increments of quality. When a cost/benefit approach is used, cost must carry a weight of not less than 40% unless thoroughly justified.

(3) Cost realism evaluation. (i) Cost realism evaluation involves a summary level review of the cost portion (excluding profit/fee) of the offerors' proposals to determine if the overall costs proposed are realistic for the work to be performed. Cost realism evaluation differs from the detailed cost analysis usually undertaken in a noncompetitive procurement to determine the reasonableness of the various cost elements and profit/fee to arrive at a fair and reasonable price. Data submitted only for cost realism evaluation generally will not be certified.

(ii) The purpose of cost realism evaluation is to:

(A) Verify the offeror's understanding of the requirements;

(B) Assess the degree to which the cost/price proposal reflects the approaches and/or risk assessments made in the technical proposal as well as the risk that the offeror will provide the supplies or services for the offered prices/costs; and

(C) Assess the degree to which the cost included in the cost/price proposal accurately represents the work effort included in the technical proposal.

(iii) Some examples of data and information that may be obtained to perform cost realism evaluation are:

(A) Manloading (quantity and mix of labor hours);

(B) Engineering, labor and overhead rates; and

(C) Make or buy plans.

A price analysis approach where there is adequate price history may also be a suitable and efficient means to evaluate cost realism. The amount of data required will be dependent upon the complexity of the procurement and the data already obtained by the contracting officer (e.g. information on recent Forward Pricing Rate Agreements (FPRAs)).

(iv) Cost realism evaluation generally will be performed as a part of the proposal evaluation process (see 5215.605) for all competitive solicitations where a cost reimbursement contract is contemplated. For competitive solicitations contemplating a fixed price, labor hour, or time and material type contract, a cost realism evaluation would be the exception and not the rule, although its use may be ap-

propriate where the proposal evaluation process will encompass both a cost/price evaluation and a technical evaluation. Also, where the contracting officer suspects a "buy-in" (see FAR 3.501) or a misunderstanding of the requirements as a result of reviewing the initial offers, data and information should be obtained and a cost realism evaluation performed.

(v) When cost realism data are required, the contracting officer shall not request a formal field pricing report but rather, shall request a review of only those specific areas of information necessary to allow the contracting officer to perform a cost realism evaluation. For example, the contracting officer may only need to know the current or FPRA labor and/or overhead rates. In these instances, the request for information from DCAA may be oral or written.

5215.608 Proposal evaluation.

(a) When a cost realism evaluation will be performed in accordance with 5215.605(S-90), the resulting realistic cost estimate shall be used in the evaluation of cost.

Subpart 5215.8—Price Negotiation

5215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) *General.* As explained in 5215.402, cost or pricing data would not normally be obtained because the predominant portion of Navy procurements are awarded on the basis of adequate price competition.

(b)(1)(iii) Adequate price competition may also exist where price is a secondary factor in the evaluation of proposals, as long as price is a substantial factor. Price, as used herein, means cost plus any fee or profit applicable to the contract price. Thus, in competitive acquisitions where adequate price competition is contemplated, the contracting officer shall not require the submission of cost or pricing data whether certified or not, as defined in FAR 15.801, regardless of the type of contract.

(b)(3) Examples of contract awards for which prices may be based on adequate price competition and/or to have

been established by adequate price competition are:

(i) Contracts for items for which there are a limited number of sources and the prices at which award will be made are within a reasonable amount of each other and compare favorably with independent Government estimates and with prior prices paid;

(ii) Any contract, including cost-type contracts, when cost is a significant evaluation factor; and

(iii) Contracts for which there are dual sources.

PART 5242—CONTRACT ADMINISTRATION

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35

Subpart 5242.90—Refunds Requirements (Spares and Support Equipment)

5242.9000 Requests for refunds.

(a) *Policy.* (1) This subpart establishes uniform policy and procedures on requesting refunds for spare parts or items of support equipment. This policy is not intended to diminish the responsibility of Navy contracting personnel to properly price spare parts and items of support equipment. Further, it is not intended to serve as a mechanism for the recovery of excess profits.

(2) In accordance with the guidance set forth in paragraph (c) of this section, contracting activities shall request a refund whenever the contract price of any spare part or item of support equipment significantly exceeds the item's intrinsic value as defined in the clause at 5252.242-9000. Refunds shall be requested only for the difference between the intrinsic value of the item at the time an agreement on price was reached and the contract price. Refunds will not be requested to recoup the amount of cost decreases that occur over time due to productivity gains (beyond economic quantity considerations) or changes in market conditions.

(b) *Examples.* The following are examples of circumstances which may estab-

lish a basis for a refund request or pricing adjustment:

(1) A technical or engineering analysis results in a determination that the intrinsic value is significantly lower than the historical price.

(2) The price paid for an item bought competitively in similar quantity and circumstances (e.g., urgency, delivery terms) is significantly less than the former sole source price.

(3) Prices paid to the manufacturer of an item indicate the amount previously charged by the prime contractor for the item significantly exceeded the intrinsic value of the prime contractor's efforts in providing the item.

(c) *Solicitation provisions.* The contracting officer shall insert the clause at 5252.242-9000 in solicitations, Basic Ordering Agreements, and contracts (as defined in FAR 2.101) which contain or may contain requirements for spare parts or items of support equipment, except those contracts awarded as a result of competitive small purchase procedures and orders under federal supply schedules. If added to existing contracts, the clause will not apply to items or components ordered by the Government prior to the date of incorporation of the clause into the contract. Heads of Contracting Activities (HCAs) are delegated, without power of redelegation, authority to establish monetary thresholds below which refunds will not be requested.

[51 FR 46671, Dec. 24, 1986]

PART 5243—CONTRACT MODIFICATIONS

Subpart 5243.1—General

Sec.

5243.105 Availability of funds.

5243.105-90 Adjustments to prices under shipbuilding contracts.

5243.105-91 Definitions.

5243.105-92 Prohibited actions and procedures.

5243.105-93 Documentation and certification requirements.

5243.105-94 Solicitation provision and contract clause.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2405, DOD Directive 5000.35, and DFARS subparts 201.3 and 243.1.

SOURCE: 56 FR 63672, Dec. 5, 1991, unless otherwise noted.

Subpart 5243.1—General**5243.105 Availability of funds.****5243.105-90 Adjustments to prices under shipbuilding contracts.**

(a) 10 U.S.C. 2405 prohibits the Secretary of a military department from adjusting any price under a shipbuilding contract, entered into after December 7, 1983, for an amount set forth in a claim, request for equitable adjustment, or demand for payment under the contract (or incurred due to the preparation, submission, or adjudication of any such claim, request, or demand) arising out of events occurring more than 18 months before the submission of the claim, request, or demand.

(b) 10 U.S.C. 2405 provides that a claim, request, or demand is submitted only when the contractor has provided to the contracting officer the certification required by section 6(c)(1) of the Contract Disputes Act of 1978, if the matter is over \$50,000, and the supporting data for the claim, request, or demand.

(c) This subpart implements 10 U.S.C. 2405.

5243.105-91 Definitions.

As used in this subpart, the following terms have the meanings set forth below.

Claim means a written demand or written assertion by the contractor seeking, as a matter of right, a price adjustment under the contract. The theory upon which the contractor seeks the price adjustment does not determine whether a particular matter is a claim. The term includes a submission asserting any theory supporting a price adjustment, including but not limited to constructive change, breach of contract or mistake, which, if valid, would result in contractor entitlement to a price adjustment. A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim. A claim does not include a request for equitable adjustment or demand for payment, as defined below.

Demand for payment means a written demand for payment, the granting of which results in a price adjustment

under the contract. A demand for payment does not include a routine request for payment in accordance with the payment terms of the contract.

Events means the Government action(s), Government inaction(s), Government conduct, or occurrence(s) which give rise to the contractor's claim, request for equitable adjustment, or demand for payment. The term events does not require the incurrence of costs and/or performance of additional work resulting from the action(s), inaction(s), conduct or occurrence(s) except where a contractor's commencement of the correction of defective GFI (including Government-furnished drawings and specifications)/GFP constitutes the final occurrence. For the purpose of this subpart, the date of the final Government action, Government inaction, Government conduct or occurrence is the date on which the 18 month period commences. The final Government action, Government inaction, Government conduct or occurrence and the date thereof for specific categories of liability are as follows:

(1) *Formal changes (including changes based on engineering change proposals (ECPs) and non-engineering change proposals (NECPs))*. The final Government action for a formal written change is the contracting officer's authorization or direction to proceed. The date the final Government action occurs is the date of receipt by the contractor of the contracting officer's authorization or direction to proceed. If the contracting officer unilaterally establishes the price of a previously issued maximum-priced modification, the unilateral pricing action is the final Government action. In this latter case, the date the final Government action occurs is the date of receipt by the contractor of the contracting officer's unilateral price determination.

(2) *Defective Government-furnished property*. The final Government action is the direction from the contracting officer regarding correction, replacement or repair of the property or notification that the property is not defective. The date the final Government action occurs is the date of receipt by the contractor of the contracting officer's

direction or notification. If a contractor proceeds to correct a deficiency in Government furnished property without direction from the contracting officer regarding the correction, replacement or repair of the property, the final occurrence is the contractor's commencement of the correction, replacement or repair of the property. (Neither an attempt to perform in accordance with defective Government furnished property nor an attempt to determine whether there is a defect in the property and development of one or more potential solutions to correct such defect constitutes the commencement of correction. Commencement of correction is performance of work which is inconsistent with or not required by the contract other than the identification of the defect and possible solutions.) In this latter case, the date of the final occurrence is the date the contractor commences the correction, replacement or repair of the property.

(3) *Defective Government-furnished specifications.* The final Government action is the contracting officer's direction regarding corrective action or notification that the specifications are not defective. The date the final action occurs is the date of receipt by the contractor of the contracting officer's direction or notification. If a contractor proceeds to correct a deficiency in a specification without direction from the contracting officer regarding the correction, the final occurrence is the contractor's commencement of the correction. (Neither an attempt to perform in accordance with a defective specification nor an attempt to determine whether there is a defect in the specification and development of one or more potential solutions to correct such defect constitutes the commencement of correction. Commencement of correction is performance of work which is inconsistent with or not required by the specification other than the identification of the defect and possible solutions.) In this latter case, the date of the final occurrence is the date the contractor commences the correction.

(4) *Defective Government-furnished drawings.* The final Government action is the contractor's receipt of a revised corrective drawing, if receipt con-

stitutes authorization or direction to proceed, otherwise, it is the contracting officer's direction regarding corrective action or notification that the drawing is not defective. The date the final Government action occurs is the date of receipt by the contractor of the revised drawing, if receipt constitutes authorization or direction to proceed, otherwise it is the date of receipt by the contractor of the contracting officer's direction regarding corrective action or notification that the drawing is not defective. If a contractor proceeds to correct a deficiency in a drawing before receipt of a revised drawing, or without direction regarding corrective action from the contracting officer, the final occurrence is the contractor's commencement of the correction. (Neither an attempt to perform in accordance with a defective drawing nor an attempt to determine whether there is a defect in the drawing and development of one or more potential solutions to correct such defect constitutes the commencement of correction. Commencement of correction is the performance of work which is inconsistent with the drawing or not required by the drawing other than the identification of the defect and possible solutions.) In this latter case, the date of the final occurrence is the date the contractor commences the correction.

(5) *Late Government-furnished property and information (including Government furnished equipment, material, specifications, drawings and other information).* The final Government action is the actual delivery of the Government-furnished property or information to the contractor, unless the contractor has previously received a notification from the contracting officer establishing a revised delivery date for the property or information, in which case such notification is the final Government action. The date the final Government action occurs is the date the property or information is delivered to the contractor or the date of receipt by the contractor of the aforementioned contracting officer's notification of a revised delivery date for the property or information.

(6) *Constructive changes (other than those specifically addressed in other sections of this subpart)*. The final Government action, Government inaction, Government conduct or occurrence is the constructive authorization or direction to perform other than in accordance with the requirements of the contract. The date of the final Government action, Government inaction, Government conduct or occurrence is the date the contractor receives such constructive authorization or direction from an authorized Government representative.

(7) *Breach of contract, impossibility, impracticability, unconscionability, mistake, misrepresentation and superior knowledge*. These theories do not always allow an objective definition of the final Government action, Government inaction, Government conduct or occurrence. For assertions of breach of contract, impossibility, impracticability or unconscionability, the date of the final occurrence is the date on which the contractor knew or should have known of the breach of contract, impossibility, impracticability or unconscionability. For assertions of mistake or misrepresentation, the date of the final occurrence is the date on which the contractor knew or should have known of the mistake or misrepresentation. For assertions of superior knowledge, the date of the final occurrence is the earlier of the date on which the contractor knew or should have known of the superior knowledge or the date on which the contractor knew or should have known of the information that was not disclosed.

Knew or should have known includes the totality of the combined actual and constructive knowledge of all agents or employees (including a subcontractor, its agents and employees, where and to the extent a subcontractor is involved).

Price adjustment means an increase in the fixed price, target price, ceiling price, or final price of a fixed price type contract, or an increase in the fee structure of a cost reimbursement type contract, or monetary damages or other payment resulting from a contractor claim, request for equitable adjustment, or demand for payment. An adjustment to the sharing ratio or to any other pricing formula, procedure

or provision, which has the effect of increasing the fixed price, target price, ceiling price, final price, or fee of the contract, is a price adjustment. A schedule adjustment, whether requested as part of a submission seeking a price adjustment or as the sole relief, or an adjustment for any matter which, pursuant to the terms of the contract is separate from or not included in the fixed price, target price, ceiling price or final price of a fixed price contract or the fee structure of a cost reimbursement contract, is not a price adjustment. The bilateral definitization of a maximum-price modification within the maximum price is not a price adjustment. A routine invoice or other request for payment or reimbursement in accordance with the terms of the contract, even if in dispute, which, if paid, would not result in an increase in the price of the contract is not a price adjustment. For the purpose of this subpart, relief granted pursuant to a request for extraordinary contractual relief under Pub. L. 85-804 does not constitute a price adjustment.

Request for equitable adjustment means a written request for a price adjustment under the contract.

Shipbuilding contract means a contract which provides for the construction of a ship which is of a type that is designated as a ship. (If the Navy is entering into a contract on behalf of another department, agency or activity of the federal Government, and such department, agency or activity involved designates the item being constructed as a ship, the contract is a shipbuilding contract.) A contract which includes items in addition to the construction of a ship is a shipbuilding contract. A contract for the conversion, reactivation, overhaul, or repair of a ship is not a shipbuilding contract. A contract for the acquisition of any type of vessel which type is not designated as a ship is not a shipbuilding contract.

5243.105-92 Prohibited actions and procedures.

(a) This subpart does not preclude:

(1) Bilateral modifications which are fully priced or maximum-priced prior to the contractor being authorized or

directed to proceed by the contracting officer,

(2) Any pricing action which is either fully priced or maximum-priced, based on events which occurred less than 18 months prior to the execution of the bilateral modification incorporating the pricing action, or

(3) The bilateral definitization of a maximum price within the maximum price established through an action identified in paragraph (a) (1) or (2) of this section.

(b) Contracting officers may not adjust any price under a shipbuilding contract entered into after December 7, 1983, for an amount set forth in a claim, request for equitable adjustment, or demand for payment arising out of events occurring more than 18 months before the submission of a claim, request, or demand accompanied by adequate supporting data and, if the matter is over \$50,000, the certification required by section 6(c)(1) of the Contract Disputes Act.

(c) In reviewing a claim, request for equitable adjustment, or demand for payment to determine whether the claim, request or demand, or any part thereof, is subject to the prohibition set forth in paragraph (b) of this section, contracting officers shall consider the theory upon which the contractor relies, the terms of the contract, and all pertinent Government action(s), Government inaction(s), Government conduct and occurrence(s). Claims, requests or demands arising out of different events included in a single claim, request, or demand shall be reviewed based on the events appropriate to each individual claim, request or demand and a determination of the application of the prohibition set forth in paragraph (b) of this section shall be made for each such claim, request or demand.

5243.105-93 Documentation and certification requirements.

(a) For the purpose of this subpart, a claim, request for equitable adjustment, or demand for payment is not submitted until the contractor has furnished to the contracting officer adequate supporting data and, if the matter is over \$50,000, the certification required by section 6(c)(1) of the Contract

Disputes Act. If either the supporting data or the certification, if required, is deficient, the claim, request, or demand shall not be considered to be submitted until any such deficiency is corrected.

(b) *Adequate supporting data.* (1) The contractor has the burden and obligation to provide adequate supporting data to the contracting officer. Supporting data for a claim, request for equitable adjustment, or demand for payment is necessary not only to satisfy the statutory requirement but also to apprise the contracting officer of the underlying facts and the theory upon which the contractor relies in support of its entitlement to a price adjustment. To be considered adequate, a claim, request or demand must be accompanied by supporting data which fulfills these purposes in accordance with the requirements of the Contract Disputes Act. A submission containing the following information will be deemed to have been submitted with adequate supporting data:

(i) A narrative statement of the nature of the event(s), the time when the event(s) occurred (including the factual basis supporting the contractor's designation of the time the event(s) occurred), and the causal relationship between the event(s) and the impact on the cost of performance of the contract, including a description of how the event(s) affected scheduled performance;

(ii) A description of the relevant effort the contractor was required to perform in the absence of the event(s);

(iii) A description of the relevant effort the contractor was actually required or will be required to perform;

(iv) A description of components, equipment, and other property involved;

(v) A cost breakdown of the additional effort by element in accordance with the contractor's normal procedures for pricing of changes;

(vi) A description of all property which will no longer be needed by the contractor;

(vii) A description of any delay caused by the event(s);

(viii) A description of any disruption caused by the event(s).

(2) If any submission does not contain the data listed above, the submission shall be reviewed to determine if the data submitted is adequate to meet the requirements of the Contract Disputes Act. The contractor shall be notified of the nature of any deficiency in the supporting data which results in a determination that the submission is not adequate.

(c) *Certification.* (1) A claim, request for equitable adjustment, or demand for payment in excess of \$50,000 must be certified in accordance with the requirements of section 6(c)(1) of the Contract Disputes Act. (See FAR 33.207.) If any submission does not contain a proper certification, the contractor shall be informed of any deficiency in the certification.

(2) A claim, request for equitable adjustment, or demand for payment certified in accordance with DFARS 233.7000(a) shall be considered to meet the certification requirements set forth in (c)(1) of this section.

(d) Once a claim, request for equitable adjustment, or demand for payment has been properly certified and accompanied by adequate supporting data, the date of proper certification and submission of adequate supporting data shall be operative for purposes of this subpart, even if additional certification(s) or data submission(s) is required of, or provided by, the contractor supplementing the original submission or revising the amount requested or theory of recovery, unless the additional certification or data submission is required or provided because the contractor has submitted a new or essentially new claim, request, or demand based on different events.

5243.105-94 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 5252.243-9000, Notification of Applicability of 10 U.S.C. 2405, in all solicitations for shipbuilding contracts.

(b) The contracting officer shall insert the clause at 5252.243-9001, Requirements for Adequate Supporting Data and Certification of Any Claim, Request for Equitable Adjustment, or Demand for Payment in all shipbuild-

ing solicitations and shipbuilding contracts.

PART 5252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 5252.2—Texts of Provisions and Clauses

5252.215-9000 Submission of cost or pricing data.

5252.242-9000 Refunds.

5252.243-9000 Notification of applicability of 10 U.S.C. 2405.

5252.243-9001 Requirements for adequate supporting data and certification of any claim, request for equitable adjustment, or demand for payment.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2405, DOD Directive 5000.35, and DFARS subparts 201.3 and 243.1.

SOURCE: 53 FR 16282, May 6, 1988, unless otherwise noted.

Subpart 5252.2—Texts of Provisions and Clauses

5252.215-9000 Submission of cost or pricing data.

As prescribed at 5215.407, insert the following provision:

SUBMISSION OF COST OR PRICING DATA (NOV 1987)

(a) It is expected that this contract will be awarded based upon a determination that there is adequate price competition; therefore, the offeror is not required to submit or certify cost or pricing data (SF 1411) with its proposal.

(b) If, after receipt of the proposals, the contracting officer determines that adequate price competition does not exist in accordance with FAR 15.804-3, the offeror shall provide certified cost or pricing data as requested by the contracting officer.

(End of clause)

ALTERNATE I (NOV 1987)

As prescribed at 5215.407, substitute the following paragraph (b):

(b) If, after receipt of the proposals, the contracting officer determines that adequate price competition does not exist, the offeror shall provide certified cost or pricing data as requested by the contracting officer. The

offeror shall provide the requested data within¹ calendar days from the date of the contracting officer's request.

(End of clause)

5252.242-9000 Refunds.

As prescribed in 5242.9000 insert the following clause:

REFUNDS (SPARES AND SUPPORT EQUIPMENT)
(DEC 1986)

(a) In the event that the price of a spare part or item of support equipment delivered under this contract significantly exceeds its intrinsic value, the contractor agrees to refund the difference. Refunds will only be made for the difference between the intrinsic value of the item at the time an agreement on price was reached and the contract price. Refunds will not be made to recoup the amount of cost decreases that occur over time due to productivity gains (beyond economic purchase quantity considerations) or changes in market conditions.

(b) For purposes of this clause, the intrinsic value of an item is defined as follows:

(1) If the item is one which is sold, or is substantially similar or functionally equivalent to one that is sold in substantial quantities to the general public, intrinsic value is the established catalog or market price, plus the value of any unique requirements, including delivery terms, inspection, packaging, or labeling.

(2) If there is no comparable item sold in substantial quantities to the general public, intrinsic value is defined as the price an individual would expect to pay for the item based upon an economic quantity as defined in FAR 52.207-4, plus the value of any unique requirements, including delivery terms, inspection, packaging, or labeling.

(c) At any time up to two years after delivery of a spare part or item of support equipment, the contracting officer may notify the contractor that based on all information available at the time of the notice, the price of the part or item apparently exceeds its intrinsic value.

(d) If notified in accordance with paragraph (c) of this clause, the contractor agrees to enter into good faith negotiations with the Government to determine if, and in what amount, the Government is entitled to a refund.

(e) If agreement pursuant to paragraph (d) of this clause, cannot be reached, and the Navy's return of the new or unused item to the contractor is practical, the Navy, subject to the contractor's agreement, may elect to return the item to the contractor. Upon return of the item to its original point of gov-

¹To be completed by the contracting officer.

ernment acceptance, the contractor shall refund in full the price paid. If no agreement pursuant to paragraph (d) of this clause is reached, and return of the item by the Navy is impractical, the contracting officer may, with the approval of the Head of the Contracting Activity, issue a contracting officer's final decision on the matter, subject to contractor appeal as provided in the Disputes clause.

(f) The contractor will make refunds, as required under this clause, in accordance with instructions from the contracting officer.

(g) The contractor shall not be liable for a refund if the contractor advised the contracting officer in a timely manner that the price it would propose for a spare part or item of support equipment exceeded its intrinsic value, and with such advice, specified the estimated proposed price, the estimated intrinsic value, and known alternative sources or items, if any, that can meet the requirement.

(h) This clause does not apply to any spare parts or items of support equipment whose price is determined through adequate price competition. This clause also does not apply to any spare part or item of support equipment with a unit price in excess of \$100,000; or in excess of \$25,000 if the contractor submitted, and certified the currency, accuracy and completeness of, cost or pricing data applicable to the item.

(End of clause)

5252.243-9000 Notification of applicability of 10 U.S.C. 2405.

As prescribed at 5243.105-94(a), insert the following provision:

NOTIFICATION OF APPLICABILITY OF 10 U.S.C.
2405 (NOV 1991)

The contract which will result from an award made pursuant to this solicitation is a shipbuilding contract, and, therefore, any claim, request for equitable adjustment, or demand for payment submitted by the contractor seeking a price adjustment under this contract is subject to 10 U.S.C. 2405.

(End of clause)

[56 FR 63675, Dec. 5, 1991]

5252.243-9001 Requirements for adequate supporting data and certification of any claim, request for equitable adjustment, or demand for payment.

As prescribed at 5243.105-94(b), insert the following clause in full text:

REQUIREMENTS FOR ADEQUATE SUPPORTING DATA AND CERTIFICATION OF ANY CLAIM, REQUEST FOR EQUITABLE ADJUSTMENT, OR DEMAND FOR PAYMENT (NOV 1991)

(a) This contract is subject to 10 U.S.C. 2405; therefore, no price adjustment will be made under this contract for an amount set forth in a claim, request for equitable adjustment, or demand for payment (or incurred due to the preparation, submission, or adjudication of any such claim, request, or demand) arising out of events occurring more than 18 months before the submission of the claim, request, or demand.

(b) A claim, request for equitable adjustment, or demand for payment is considered to be submitted on the date the contractor's submission is received by the contracting officer accompanied by adequate supporting data for the claim, request or demand, and the certification required by section 6(c)(1) of the Contract Disputes Act, if the claim, request or demand is over \$50,000.

(c) Adequate supporting data includes data which is adequate to apprise the contracting officer of the underlying facts and the theory upon which the contractor relies in support of its entitlement to a price adjustment. Adequate supporting data is that data which fulfills these purposes in accordance with the requirements of the Contract Disputes Act. A submission containing the following information will be deemed to have been submitted with adequate supporting data:

(1) A narrative statement of the nature of the event(s), the time when the event(s) occurred (including the factual basis supporting the contractor's designation of the time the event(s) occurred), and the causal relationship between the event(s) and the impact on the cost of performance of the contract, including a description of how the event(s) affected scheduled performance;

(2) A description of the relevant effort the contractor was required to perform in the absence of the event(s);

(3) A description of the relevant effort the contractor was actually required or will be required to perform;

(4) A description of components, equipment, and other property involved;

(5) A cost breakdown of the additional effort by element in accordance with the contractor's normal procedures for pricing of changes;

(6) A description of all property which will no longer be needed by the contractor;

(7) A description of any delay caused by the event(s);

(8) A description of any disruption caused by the event(s).

(d) Certification of the claim, request for equitable adjustment, or demand for payment is required if the requested price adjustment is over \$50,000. The certification re-

quirements are those set forth in the CDA and implementing regulations.

(e) For the purpose of this clause, the following terms have the meanings set forth below.

(1) *Claim* means a written demand or written assertion by the contractor seeking, as a matter of right, a price adjustment under the contract. The theory upon which the contractor seeks the price adjustment does not determine whether a particular matter is a claim. The term includes a submission asserting any theory supporting a price adjustment, including but not limited to constructive change, breach of contract or mistake, which, if valid, would result in contractor entitlement to a price adjustment. A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim. A claim does not include a request for equitable adjustment or demand for payment, as defined below.

(2) *Demand for payment* means a written demand for payment, the granting of which results in a price adjustment under the contract. A demand for payment does not include a routine request for payment in accordance with the payment terms of the contract.

(3) *Events* means the Government action(s), Government inaction(s), Government conduct, or occurrence(s) which give rise to the contractor's claim, request for equitable adjustment, or demand for payment. The term events does not require the incurrence of costs and/or performance of additional work resulting from the action(s), inaction(s), conduct or occurrence(s) except where a contractor's commencement of the correction of defective GFI/GFP constitutes the final occurrence. For the purpose of this subpart, the date of the final Government action, Government inaction, Government conduct or occurrence is the date on which the 18-month period commences.

(4) *Knew or should have known* includes the totality of the combined actual and constructive knowledge of all agents or employees (including a subcontractor, its agents and employees, where and to the extent a subcontractor is involved).

(5) *Price adjustment* means an increase in the fixed price, target price, ceiling price, or final price of a fixed price type contract, or an increase in the fee structure of a cost reimbursement type contract, or monetary damages or other payment resulting from a contractor claim, request for equitable adjustment, or demand for payment. An adjustment to the sharing ratio or to any other pricing formula, procedure or provision, which has the effect of increasing the fixed price, target price, ceiling price, final price, or fee of the contract, is a price adjustment. A schedule adjustment, whether requested as part of a submission seeking a price adjustment or as the sole relief, or an adjustment

5252.243-9001

for any matter which, pursuant to the terms of the contract is separate from or not included in the fixed price, target price, ceiling price or final price of a fixed price contract or the fee structure of a cost reimbursement contract, is not a price adjustment. The bilateral definitization of a maximum-price modification within the maximum price is not a price adjustment. A routine invoice or other request for payment or reimbursement in accordance with the terms of the contract, even if in dispute, which, if paid,

48 CFR Ch. 52 (10-1-97 Edition)

would not result in an increase in the price of the contract is not a price adjustment. For the purpose of this subpart, relief granted pursuant to a request for extraordinary contractual relief under Pub. L. 85-804 does not constitute a price adjustment.

(6) *Request for equitable adjustment* means a written request for a price adjustment under the contract.

(End of clause)

[56 FR 63675, Dec. 5, 1991]