

(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)

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## **PART 5215—CONTRACTING BY NEGOTIATION**

### **Subpart 5215.4—Solicitation and Receipt of Proposals and Quotations**

Sec.

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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

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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 5231—CONTRACT COST PRINCIPLES AND PROCEDURES

#### Subpart 5231.2—Contracts with Commercial Organizations

Sec.

5231.205 Selected costs.

5231.205–90 Shipbuilding capability preservation agreements.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2501, 10 U.S.C. 7315, DoD Directive 5000.35.

SOURCE: 62 FR 66827, Dec. 22, 1997, unless otherwise noted.

#### Subpart 5231.2—Contracts With Commercial Organizations

##### § 5231.205 Selected costs.

##### § 5231.205–90 Shipbuilding capability preservation agreements.

(a) *Scope and authority.* Where it would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b), the Navy may enter into a shipbuilding capability preservation agreement with a contractor. As authorized by section 1027 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85), such an agreement permits the contractor to claim certain indirect costs attributable to its private sector work as allowable costs on Navy shipbuilding contracts.

(b) *Definition. Incremental indirect cost,* as used in this subsection, means an additional indirect cost that results from performing private sector work described in a shipbuilding capability preservation agreement.

(c) *Purpose and guidelines.* The purpose of a shipbuilding capability preservation agreement is to broaden and

strengthen the shipbuilding industrial base by providing an incentive for a shipbuilder to obtain new private sector work, thereby reducing the Navy's cost of doing business. The Navy will use the following guidelines to evaluate requests for shipbuilding capability preservation agreements:

(1) The Assistant Secretary of the Navy for Research, Development and Acquisition must make a determination that an agreement would facilitate the achievement of the policy objectives set forth in 10 U.S.C. 2501(b). The primary consideration in making this determination is whether an agreement would promote future growth in the amount of private sector work that a shipbuilder is able to obtain.

(2) An agreement generally will be considered only for a shipbuilder with little or no private sector work.

(3) The agreement shall apply to prospective private sector work only, and shall not extend beyond 5 years.

(4) The agreement must project an overall benefit to the Navy, including net savings. This would be achieved by demonstrating that private sector work will absorb costs that otherwise would be absorbed by the Navy.

(d) *Cost-reimbursement rules.* If the Navy enters into a shipbuilding capability preservation agreement with a contractor, the following cost-reimbursement rules apply:

(1) The agreement shall require the contractor to allocate the following costs to private sector work:

(i) The direct costs attributable to the private sector work;

(ii) The incremental indirect costs attributable to the private sector work; and

(iii) The non-incremental indirect costs to the extent that the revenue attributable to the private sector work exceeds the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(2) The agreement shall require that the sum of the costs specified in paragraphs (d)(1)(ii) and (d)(1)(iii) of this subsection not exceed the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(3) The Navy may agree to modify the amount calculated in accordance with paragraph (d)(1) of this subsection if it determines that a modification is appropriate to the particular situation. In so doing, the Navy may agree to the allocation of a smaller or larger portion of the amount calculated in accordance with paragraph (d)(1) of this subsection, to private sector work.

(i) Any smaller amount shall not be less than the sum of the costs specified in paragraphs (d)(1)(i) and (d)(1)(ii) of this subsection.

(ii) Any larger amount shall not exceed the sum of the costs specified in paragraph (d)(1)(i) of this subsection and the amount of indirect costs that would have been allocated to the private sector work in accordance with the contractor's established accounting practices.

(iii) In determining whether such a modification is appropriate, the Navy will consider factors such as the impact of pre-existing firm-fixed-price Navy contracts on the amount of costs that would be reimbursed by the Navy, the impact of pre-existing private sector work on the cost benefit that would be received by the contractor, and the extent to which allocating a smaller or larger portion of costs to private sector work would provide a sufficient incentive for the contractor to obtain additional private sector work.

(e) *Procedure.* A contractor may submit a request for a shipbuilding capability preservation agreement, together with appropriate justification, through the Deputy Assistant Secretary of the Navy for Ships, to the Assistant Secretary of the Navy for Research, Development and Acquisition, who has approval or disapproval authority. The contractor should also provide an informational copy of any such request to the cognizant administrative contracting officer.

## PART 5242—CONTRACT ADMINISTRATION

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

### Subpart 5242.90—Refunds Requirements (Spare 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 establish 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

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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 re delegation, authority to establish monetary thresholds below which refunds will not be requested.

[51 FR 46671, Dec. 24, 1986]

**PART 5243 [RESERVED]**

**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—5252.243-9001 [Reserved]

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 within<sup>1</sup> 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 space 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

<sup>1</sup>To be completed by the contracting officer.

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 government 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 con-

tracting 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—5252.243-9001 [Reserved]**

## **CHAPTER 53—DEPARTMENT OF THE AIR FORCE FEDERAL ACQUISITION REGULATION SUPPLEMENT [RESERVED]**