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**Parent topic:** Federal Acquisition Regulation

## **15.000 Scope of part.**

This part prescribes policies and procedures governing competitive and noncompetitive negotiated *acquisitions*. A contract awarded using other than sealed bidding procedures is a negotiated contract (see 14.101).

### **15.001 Definitions.**

As used in this part-

*Deficiency* is a material failure of a proposal to meet a Government requirement or a combination of significant *weaknesses* in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

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

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

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

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

(a) *Sole source acquisitions*. When *contracting* in a sole source environment, the request for proposals (RFP) *should* be tailored to remove unnecessary information and requirements; *e.g.*, evaluation criteria and voluminous proposal preparation instructions.

(b) *Competitive acquisitions*. When *contracting* in a competitive environment, the procedures of this part are intended to minimize the complexity of the *solicitation*, the evaluation, and the source selection decision, while maintaining a process designed to foster an impartial and comprehensive evaluation of *offerors'* proposals, leading to selection of the proposal representing the *best value* to

the Government (see [2.101](#)).

## **Subpart 15.1 - Source Selection Processes and Techniques**

### **15.100 Scope of subpart.**

This subpart describes some of the *acquisition* processes and techniques that *may* be used to design competitive *acquisition* strategies suitable for the specific circumstances of the *acquisition*.

### **15.101 Best value continuum.**

An agency can obtain *best value* in negotiated *acquisitions* by using any one or a combination of source selection approaches. In different types of *acquisitions*, the relative importance of cost or price *may* vary. For example, in *acquisitions* where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price *may* play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or *past performance* considerations *may* play a dominant role in source selection.

#### **15.101-1 Tradeoff process.**

(a) A tradeoff process is appropriate when it *may* be in the best interest of the Government to consider award to other than the lowest priced *offeror* or other than the highest technically rated *offeror*.

(b) When using a tradeoff process, the following apply:

(1) All evaluation factors and significant subfactors that will affect contract award and their relative importance *shall* be clearly stated in the *solicitation*; and

(2) The *solicitation shall* state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.

(c) This process permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal *shall* merit the additional cost, and the rationale for tradeoffs *must* be documented in the file in accordance with [15.406](#).

#### **15.101-2 Lowest price technically acceptable source selection process.**

(a) The lowest price technically acceptable source selection process is appropriate when *best value* is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.

(b) When using the lowest price technically acceptable process, the following apply:

(1) The evaluation factors and significant subfactors that establish the requirements of acceptability *shall* be set forth in the *solicitation*. *Solicitations shall* specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors. If the *contracting officer* documents the file pursuant to 15.304(c)(3)(iii), *past performance* need not be an evaluation factor in lowest price technically acceptable source selections. If the *contracting officer* elects to consider *past performance* as an evaluation factor, it *shall* be evaluated in accordance with 15.305. However, the comparative assessment in 15.305(a)(2)(i) does not apply. If the *contracting officer* determines that a small business' *past performance* is not acceptable, the matter *shall* be referred to the Small Business Administration for a Certificate of Competency determination, in accordance with the procedures contained in subpart 19.6 and 15 U.S.C. 637(b)(7).

(2) Tradeoffs are not permitted.

(3) Proposals are evaluated for acceptability but not ranked using the non-cost/price factors.

(4) Exchanges *may* occur (see 15.306).

(c) Except for DoD, in accordance with section 880 of the John S. McCain *National Defense Authorization Act for Fiscal Year 2019* (Pub. L. 115-232, 41 U.S.C. 3701 Note), the lowest price technically acceptable source selection process *shall* only be used when—

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

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

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

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

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

(6) The *contracting officer* documents the contract file describing the circumstances that justify the use of the lowest price technically acceptable source selection process.

(d) Except for DoD, in accordance with section 880 of the John S. McCain *National Defense Authorization Act for Fiscal Year 2019* (Pub. L. 115-232, 41 U.S.C. 3701 Note), *contracting officers shall* avoid, to the maximum extent practicable, using the lowest price technically acceptable source selection process in the case of a *procurement* that is predominantly for the *acquisition* of—

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

professional services;

(2) Personal protective equipment; or

(3) Knowledge-based training or logistics services in *contingency operations* or other operations outside the *United States*, including in Afghanistan or Iraq.

### **15.101-3 Tiered evaluation of small business offers.**

An agency *shall* not create a tiered (or "cascading") evaluation of *offers*, as described in [13 CFR 125.2](#), for *multiple-award contracts* unless an agency has statutory authority.

### **15.102 Oral presentations.**

(a) Oral presentations by *offerors* as requested by the Government *may* substitute for, or augment, written information. Use of oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process. Oral presentations *may* occur at any time in the *acquisition* process, and are subject to the same restrictions as written information, regarding timing (see [15.208](#)) and content (see [15.306](#)). Oral presentations provide an opportunity for dialogue among the parties. Pre-recorded videotaped presentations that lack real-time interactive dialogue are not considered oral presentations for the purposes of this section, although they *may* be included in *offeror* submissions, when appropriate.

(b) The *solicitation may* require each *offeror* to submit part of its proposal through oral presentations. However, representations and certifications *shall* be submitted as required in the FAR provisions at [52.204-8\(d\)](#) or [52.212-3\(b\)](#), and a signed *offer* sheet (including any exceptions to the Government's terms and conditions) *shall* be submitted *in writing*.

(c) Information pertaining to areas such as an *offeror's* capability, *past performance*, work plans or approaches, staffing resources, transition plans, or sample tasks (or other types of tests) *may* be suitable for oral presentations. In deciding what information to obtain through an oral presentation, consider the following:

(1) The Government's ability to adequately evaluate the information;

(2) The need to incorporate any information into the resultant contract;

(3) The impact on the efficiency of the *acquisition*; and

(4) The impact (including cost) on small businesses. In considering the costs of oral presentations, *contracting officers should* also consider alternatives to on-site oral presentations (*e.g.*, teleconferencing, video teleconferencing).

(d) When oral presentations are required, the *solicitation shall* provide *offerors* with sufficient information to prepare them. Accordingly, the *solicitation may* describe-

(1) The types of information to be presented orally and the associated evaluation factors that will be used;

(2) The qualifications for personnel that will be required to provide the oral presentation(s);

- (3) The requirements for, and any limitations and/or prohibitions on, the use of written material or other media to supplement the oral presentations;
- (4) The location, date, and time for the oral presentations;
- (5) The restrictions governing the time permitted for each oral presentation; and
- (6) The scope and content of exchanges that *may* occur between the Government's participants and the *offeror's* representatives as part of the oral presentations, including whether or not discussions (see [15.306\(d\)](#)) will be permitted during oral presentations.
- (e) The *contracting officer shall* maintain a record of oral presentations to document what the Government relied upon in making the source selection decision. The method and level of detail of the record (*e.g.*, videotaping, audio tape recording, written record, Government notes, copies of *offeror* briefing slides or presentation notes) *shall* be at the discretion of the source selection authority. A copy of the record placed in the file *may* be provided to the *offeror*.
- (f) When an oral presentation includes information that the parties intend to include in the contract as material terms or conditions, the information *shall* be put *in writing*. Incorporation by reference of oral statements is not permitted.
- (g) If, during an oral presentation, the Government conducts discussions (see [15.306\(d\)](#)), the Government *must* comply with [15.306](#) and [15.307](#).

## **Subpart 15.2 - Solicitation and Receipt of Proposals and Information**

### **15.200 Scope of subpart.**

This subpart prescribes policies and procedures for-

- (a) Exchanging information with industry prior to receipt of proposals;
- (b) Preparing and issuing requests for proposals (RFPs) and requests for information (RFIs); and
- (c) Receiving proposals and information.

### **15.201 Exchanges with industry before receipt of proposals.**

- (a) Exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged. Any exchange of information *must* be consistent with *procurement* integrity requirements (see [3.104](#)). Interested parties include potential *offerors*, end users, Government *acquisition* and supporting personnel, and others involved in the conduct or outcome of the *acquisition*.
- (b) The purpose of exchanging information is to improve the understanding of Government requirements and industry capabilities, thereby allowing potential *offerors* to judge whether or how they can satisfy the Government's requirements, and enhancing the Government's ability to obtain



quality *supplies* and services, including *construction*, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

(c) Agencies are encouraged to promote early exchanges of information about future *acquisitions*. An early exchange of information among industry and the program manager, *contracting officer*, and other participants in the *acquisition* process can identify and resolve concerns regarding the *acquisition* strategy, including proposed contract type, terms and conditions, and *acquisition planning* schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing *past performance* information; the availability of reference documents; and any other industry concerns or questions. Some techniques to promote early exchanges of information are-

(1) Industry or small business conferences;

(2) Public hearings;

(3) *Market research*, as described in [part 10](#);

(4) One-on-one meetings with potential *offerors* (any that are substantially involved with potential contract terms and conditions *should* include the *contracting officer*; also see paragraph (f) of this section regarding restrictions on disclosure of information);

(5) Presolicitation notices;

(6) Draft RFPs;

(7) RFIs;

(8) Presolicitation or preproposal conferences; and

(9) Site visits.

(d) The special notices of *procurement* matters at [5.205\(c\)](#), or electronic notices, *may* be used to publicize the Government's requirement or solicit information from industry.

(e) RFIs *may* be used when the Government does not presently intend to award a contract, but wants to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not *offers* and cannot be accepted by the Government to form a binding contract. There is no required format for RFIs.

(f) General information about agency mission needs and future requirements *may* be disclosed at any time. After release of the *solicitation*, the *contracting officer* *must* be the focal point of any exchange with potential *offerors*. When specific information about a proposed *acquisition* that would be necessary for the preparation of proposals is disclosed to one or more potential *offerors*, that information *must* be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage. Information provided to a potential *offeror* in response to its request *must* not be disclosed if doing so would reveal the potential *offeror's* confidential business strategy, and is protected under [3.104](#) or [subpart 24.2](#). When conducting a presolicitation or preproposal conference, materials distributed at the conference *should* be made available to all potential *offerors*, upon request.

## 15.202 Advisory multi-step process.

(a) The agency *may* publish a presolicitation notice (see [5.204](#)) that provides a general description of the scope or purpose of the *acquisition* and invites potential *offerors* to submit information that allows the Government to advise the *offerors* about their potential to be viable competitors. The presolicitation notice *should* identify the information that *must* be submitted and the criteria that will be used in making the initial evaluation. Information sought *may* be limited to a statement of qualifications and other appropriate information (*e.g.*, proposed technical concept, *past performance*, and limited *pricing* information). At a minimum, the notice *shall* contain sufficient information to permit a potential *offeror* to make an informed decision about whether to participate in the *acquisition*. This process *should* not be used for multi-step *acquisitions* where it would result in *offerors* being required to submit identical information in response to the notice and in response to the initial step of the *acquisition*.

(b) The agency *shall* evaluate all responses in accordance with the criteria stated in the notice, and *shall* advise each respondent *in writing* either that it will be invited to participate in the resultant *acquisition* or, based on the information submitted, that it is unlikely to be a viable competitor. The agency *shall* advise respondents considered not to be viable competitors of the general basis for that opinion. The agency *shall* inform all respondents that, notwithstanding the advice provided by the Government in response to their submissions, they *may* participate in the resultant *acquisition*.

## 15.203 Requests for proposals.

(a) Requests for proposals (RFPs) are used in negotiated *acquisitions* to communicate Government requirements to prospective contractors and to solicit proposals. RFPs for competitive *acquisitions* *shall*, at a minimum, describe the-

(1) Government's requirement;

(2) Anticipated terms and conditions that will apply to the contract. The *solicitation* *may* authorize *offerors* to propose alternative terms and conditions. If the *solicitation* permits *offerors* to submit one or more additional proposals with alternative *line items* (see [52.204-22](#) or [52.212-1\(e\)](#)), the evaluation approach *should* consider the potential impact of the alternative *line items* on other terms and conditions or the requirement (*e.g.*, place of performance or payment and funding requirements) (see [15.206](#));

(3) Information required to be in the *offeror's* proposal; and

(4) Factors and significant subfactors that will be used to evaluate the proposal and their relative importance.

(b) An RFP *may* be issued for OMB Circular A-76 studies. See [subpart 7.3](#) for additional information regarding cost comparisons between Government and contractor performance.

(c) *Electronic commerce* *may* be used to issue RFPs and to receive proposals, modifications, and revisions. In this case, the RFP *shall* specify the *electronic commerce* method(s) that *offerors* *may* use (see [subpart 4.5](#)).

(d) *Contracting officers* *may* issue RFPs and/or authorize receipt of proposals, modifications, or revisions by facsimile.

(1) In deciding whether or not to use facsimiles, the *contracting officer should* consider factors such as-

(i) Anticipated proposal size and volume;

(ii) Urgency of the requirement;

(iii) Availability and suitability of *electronic commerce* methods; and

(iv) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile proposals, and ensuring their timely delivery to the designated proposal delivery location.

(2) If facsimile proposals are authorized, *contracting officers may* request *offeror(s)* to provide the complete, original signed proposal at a later date.

(e) Letter RFPs *may* be used in *sole source acquisitions* and other appropriate circumstances. Use of a letter RFP does not relieve the *contracting officer* from complying with other FAR requirements. Letter RFPs *should* be as complete as possible and, at a minimum, *should* contain the following:

(1) RFP number and date;

(2) Name, address (including electronic address and facsimile address, if appropriate), and telephone number of the *contracting officer*;

(3) Type of contract contemplated;

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

(5) Applicable certifications and representations;

(6) Anticipated contract terms and conditions;

(7) Instructions to *offerors* and evaluation criteria for other than sole source actions;

(8) Proposal due date and time; and

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

(f) Oral RFPs are authorized when processing a written *solicitation* would delay the *acquisition* of *supplies* or services to the detriment of the Government and a notice is not required under 5.202(*e.g.*, perishable items and support of *contingency operations* or other *emergency* situations). Use of an oral RFP does not relieve the *contracting officer* from complying with other FAR requirements.

(1) The contract files supporting oral *solicitations should* include-

(i) A description of the requirement;

(ii) Rationale for use of an oral *solicitation*;

(iii) Sources solicited, including the date, time, name of individuals contacted, and prices offered; and

(iv) The *solicitation* number provided to the prospective *offerors*.

(2) The information furnished to potential *offerors* under oral *solicitations* should include appropriate items from paragraph (e) of this section.

**15.204 Contract format.**

The use of a uniform contract format facilitates preparation of the *solicitation* and contract as well as reference to, and use of, those documents by *offerors*, contractors, and contract administrators. The uniform contract format need not be used for the following:

(a) *Construction* and architect-engineer contracts (see [part 36](#)).

(b) Subsistence contracts.

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

(d) Letter requests for proposals (see [15.203\(e\)](#)).

(e) Contracts exempted by the *agency head* or designee.

**15.204-1 Uniform contract format.**

(a) *Contracting officers* shall prepare *solicitations* and resulting contracts using the uniform contract format outlined in Table 15-1 of this subsection.

(b) *Solicitations* using the uniform contract format shall include Parts I, II, III, and IV (see [15.204-2](#) through [15.204-5](#)). Upon award, *contracting officers* shall not physically include Part IV in the resulting contract, but shall retain it in the contract file. (See [4.1201\(c\)](#).) The representations and certifications are incorporated by reference in the contract by using [52.204-19](#) (see [4.1202\(b\)](#)) or for *acquisitions* of *commercial products* and *commercial services* see [52.212-4\(v\)](#).

Table 15-1 - Uniform Contract Format

<b>Section</b>	<b>Title</b>
Part I-The Schedule	
A	<i>Solicitation/contract form</i>
B	<i>Supplies</i> or services and prices/costs
C	Description/specifications/statement of work
D	Packaging and marking

<b>Section</b>	<b>Title</b>
E	<i>Inspection and acceptance</i>
F	Deliveries or performance
G	Contract administration data
H	Special contract requirements
Part II- <i>Contract Clauses</i>	
I	<i>Contract clauses</i>
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 <i>offerors</i> or respondents
L	Instructions, conditions, and notices to <i>offerors</i> or respondents
M	Evaluation factors for award

**15.204-2 Part I-The Schedule.**

The *contracting officer* shall prepare the contract Schedule as follows:

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

(1) Optional Form (OF) 308, Solicitation and Offer-Negotiated Acquisition, or Standard Form (SF) 33, Solicitation, Offer and Award, may be used to prepare RFPs.

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

(i) Name, address, and location of issuing activity, including room and building where proposals or information *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* to provide its name and complete address, including street, city, county, state, and ZIP code, and electronic address (including facsimile address), if appropriate.

(ix) *Offer* expiration date.

(b) *Section B, Supplies or services and prices/costs.* Include a brief description of the *supplies* or *services*; *e.g.*, item number, national stock number/part number if applicable, nouns, nomenclature, and quantities. (This includes incidental deliverables such as manuals and reports.)

(c) *Section C, Description/specifications/statement of work.* Include any description or specifications needed in addition to Section B (see [part 11](#), Describing Agency Needs).

(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 (see [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. Include a statement that the *offeror should* include the payment address in the proposal, if it is different from that shown for the *offeror*.

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

### **15.204-3 Part II-Contract Clauses.**

*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. An index *may* be inserted if this section's format is particularly complex.

### **15.204-4 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. Cross-references to material in other sections *may* be inserted, as appropriate.

#### **15.204-5 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.* Include in this section those *solicitation* provisions that require representations, certifications, or the submission of other information by *offerors*.

(b) *Section L, Instructions, conditions, and notices to offerors or respondents.* Insert in this section *solicitation* provisions and other information and instructions not required elsewhere to guide *offerors* or respondents in preparing proposals or responses to requests for information. Prospective *offerors* or respondents *may* be instructed to submit proposals or information in a specific format or severable parts to facilitate evaluation. The instructions *may* specify further organization of proposal or response parts, such as-

(1) Administrative;

(2) Management;

(3) Technical;

(4) *Past performance*; and

(5) *Certified cost or pricing data* (see 15.408 Solicitation provisions and contract clauses. of 15.408) or *data other than certified cost or pricing data*.

(c) *Section M, Evaluation factors for award.* Identify all significant factors and any significant subfactors that will be considered in awarding the contract and their relative importance (see 15.304(d)). The *contracting officer shall* insert one of the phrases in 15.304(e).

#### **15.205 Issuing solicitations.**

(a) The *contracting officer shall* issue *solicitations* to potential sources in accordance with the policies and procedures in 5.102, 19.202-4, and part 6.

(b) A *master solicitation*, as described in 14.203-3, *may* also be used for negotiated *acquisitions*.

#### **15.206 Amending the solicitation.**

(a) When, either before or after receipt of proposals, the Government changes its requirements or terms and conditions, the *contracting officer shall* amend the *solicitation*.

(b) Amendments issued before the established time and date for receipt of proposals *shall* be issued to all parties receiving the *solicitation*.

(c) Amendments issued after the established time and date for receipt of proposals *shall* be issued to

all *offerors* that have not been eliminated from the competition.

(d) If a proposal of interest to the Government involves a departure from the stated requirements, the *contracting officer shall* amend the *solicitation*, provided this can be done without revealing to the other *offerors* the *alternate* solution proposed or any other information that is entitled to protection (see [15.207\(b\)](#) and [15.306\(e\)](#)).

(e) If, in the judgment of the *contracting officer*, based on *market research* or otherwise, an amendment proposed for issuance after *offers* have been received is so substantial as to exceed what prospective *offerors* reasonably could have anticipated, so that additional sources likely would have submitted *offers* had the substance of the amendment been known to them, the *contracting officer shall* cancel the original *solicitation* and issue a new one, regardless of the stage of the *acquisition*.

(f) Oral notices *may* be used when time is of the essence. The *contracting officer shall* document the contract file and formalize the notice with an amendment (see [subpart 4.5, Electronic Commerce in Contracting](#)).

(g) At a minimum, the following information *should* be included in each amendment:

(1) Name and address of issuing activity.

(2) *Solicitation* number and date.

(3) Amendment number and date.

(4) Number of pages.

(5) Description of the change being made.

(6) Government point of contact and phone number (and electronic or facsimile address, if appropriate).

(7) Revision to *solicitation* closing date, if applicable.

## **15.207 Handling proposals and information.**

(a) Upon receipt at the location specified in the *solicitation*, proposals and information received in response to a request for information (RFI) *shall* be marked with the date and time of receipt and *shall* be transmitted to the designated officials.

(b) Proposals *shall* be safeguarded from unauthorized disclosure throughout the source selection process. (See [3.104](#) regarding the disclosure of *source selection information* ([41 U.S.C. chapter 21](#), Restrictions on Obtaining and Disclosing Certain Information). Information received in response to an RFI *shall* be safeguarded adequately from unauthorized disclosure.

(c) If any portion of a proposal received by the *contracting officer* electronically or by facsimile is unreadable, the *contracting officer* immediately *shall* notify the *offeror* and permit the *offeror* to resubmit the unreadable portion of the proposal. The method and time for resubmission *shall* be prescribed by the *contracting officer* after consultation with the *offeror*, and documented in the file. The resubmission *shall* be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness under [15.208\(a\)](#), provided the



*offeror* complies with the time and format requirements for resubmission prescribed by the *contracting officer*.

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

(a) *Offerors* are responsible for submitting proposals, and any revisions, and modifications, so as to reach the Government office designated in the *solicitation* by the time specified in the *solicitation*. *Offerors* may use any transmission method authorized by the *solicitation* (i.e., regular mail, *electronic commerce*, or facsimile). 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.

(b)

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

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

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

(iii) It was the only proposal received.

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

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

(d) If an *emergency* or unanticipated event interrupts normal Government processes so that proposals cannot be received at the Government 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, 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.

(e) Proposals *may* be withdrawn by written notice at any time before award. Oral proposals in response to oral *solicitations* *may* be withdrawn orally. The *contracting officer* must document the contract file when oral withdrawals are made. One copy of withdrawn proposals *should* be retained in the contract file (see 4.803(a)(10)). Extra copies of the withdrawn proposals *may* be destroyed or returned to the *offeror* at the *offeror's* request. Where practicable, electronically transmitted proposals that are withdrawn *must* be purged from primary and backup data storage systems after a copy is made for the file. Extremely bulky proposals *must* only be returned at the *offeror's* request and expense.

(f) The *contracting officer must* promptly notify any *offeror* if its proposal, modification, or revision was received late, and *must* inform the *offeror* whether its proposal will be considered, unless contract award is imminent and the notice prescribed in [15.503\(b\)](#) would suffice.

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

(h) If available, the following *must* be included in the *contracting office* files for each late proposal, modification, revision, or withdrawal:

(1) The date and hour of receipt.

(2) A statement regarding whether the proposal was considered for award, with supporting rationale.

(3) The envelope, wrapper, or other evidence of date of receipt.

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

When *contracting* by negotiation-

(a) The *contracting officer shall* insert the provision at [52.215-1](#), Instructions to *Offerors-Competitive Acquisition*, in all competitive *solicitations* where the Government intends to award a contract without discussions.

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

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

(b)

(1) Except as provided in paragraph (b)(2) of this section, the *contracting officer shall* insert the clause at [52.215-2](#), Audit and Records-Negotiation ([10 U.S.C. 3841](#), [41 U.S.C. 4706](#), and Audit Requirements in the OMB Uniform Guidance at 2 CFR part 200, subpart F), in *solicitations* and contracts except those for-

(i) *Acquisitions* not exceeding the *simplified acquisition threshold*;

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

(iii) The *acquisition* of *commercial products* or *commercial services* exempted under [15.403-1](#).

(2)

(i) When using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5)-

(A) The exceptions in paragraphs (b)(1)(i) through (b)(1)(iii) are not applicable; and

(B) Use the clause with its *Alternate I*.

(ii)

(A) In the case of a bilateral *contract modification* that will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the *contracting officer shall* specify applicability of *Alternate I* to that modification.

(B) In the case of a task- or delivery-order contract in which not all orders will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the *contracting officer shall* specify the task or *delivery orders* to which *Alternate I* applies.

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

(4) When the *head of the agency* has waived the examination of records by the Comptroller General in accordance with 25.1001, use the clause with its *Alternate III*.

(c) When issuing a *solicitation* for information or planning purposes, the *contracting officer shall* insert the provision at 52.215-3, Request for Information or *Solicitation* for Planning Purposes, and clearly mark on the face of the *solicitation* that it is for information or planning purposes.

(d) [Reserved]

(e) The *contracting officer shall* insert the provision at 52.215-5, Facsimile Proposals, in *solicitations* if facsimile proposals are authorized (see 15.203(d)).

(f) The *contracting officer shall* insert the provision at 52.215-6, Place of Performance, in *solicitations* unless the place of performance is specified by the Government.

(g) [Reserved]

(h) The *contracting officer shall* insert the clause at 52.215-8, Order of Precedence-Uniform Contract Format, in *solicitations* and contracts using the format at 15.204.

## **15.210 Forms.**

Prescribed forms are not required to prepare *solicitations* described in this part. The following forms may be used at the discretion of the *contracting officer*:

(a) Standard Form 33, *Solicitation, Offer and Award*, and Optional Form 308, *Solicitation and Offer-Negotiated Acquisition*, may be used to issue RFPs and RFIs.

(b) Standard Form 30, *Amendment of Solicitation/ Modification of Contract*, and Optional Form 309, *Amendment of Solicitation*, may be used to amend *solicitations* of negotiated contracts.

(c) Optional Form 17, *Offer Label*, may be furnished with each request for proposal.

## Subpart 15.3 - Source Selection

### 15.300 Scope of subpart.

This subpart prescribes policies and procedures for selection of a source or sources in competitive negotiated *acquisitions*.

### 15.301 [Reserved]

### 15.302 Source selection objective.

The objective of source selection is to select the proposal that represents the *best value*.

### 15.303 Responsibilities.

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

(b) The source selection authority *shall*-

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

(2) Approve the source selection strategy or *acquisition* plan, if applicable, before *solicitation* release;

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

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

(5) Consider the recommendations of advisory boards or panels (if any); and

(6) Select the source or sources whose proposal is the *best value* to the Government (10 U.S.C. 3303(c) and 41 U.S.C. 3703(c)).

(c) The *contracting officer* *shall*-

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

(2) After receipt of proposals, control exchanges with *offerors* in accordance with 15.306; and

(3) Award the contract(s).

## 15.304 Evaluation factors and significant subfactors.

(a) The award decision is based on evaluation factors and significant subfactors that are tailored to the *acquisition*.

(b) Evaluation factors and significant subfactors *must*-

(1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(2) Support meaningful comparison and discrimination between and among competing proposals.

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

(1)

(i) Price or cost to the Government *shall* be evaluated in every source selection (10 U.S.C. 3206(c)(1)(B) and 41 U.S.C.3306(c)(1)(B)(also see part 36 for architect-engineer contracts), subject to the exception listed in paragraph (c)(1)(ii)(A) of this section for use by DoD, NASA, and the Coast Guard.

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

(A) The *contracting officer* may choose not to include price or cost as an evaluation factor for award when a *solicitation*—

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

(2) Will result in *multiple-award contracts* (see subpart 16.5) that are for the same or similar services; and

(3) States that the Government intends to make an award to each and all *qualifying offerors* (see 2.101).

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

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

(2) The quality of the product or service *shall* be addressed in every source selection through consideration of one or more non-cost evaluation factors such as *past performance*, compliance with *solicitation* requirements, technical excellence, management capability, personnel qualifications, and prior experience (10 U.S.C. 3206(c)(1)(A) and 41 U.S.C. 3306(c)(1)(A)); and

(3)

(i) *Past performance*, except as set forth in paragraph (c)(3)(iii) of this section, shall be evaluated in all source selections for negotiated competitive *acquisitions* expected to exceed the *simplified acquisition threshold*.

(ii) For *solicitations* that are not set aside for small business concerns, involving consolidation or *bundling*, that offer a significant opportunity for subcontracting, the *contracting officer* shall include a factor to evaluate *past performance* indicating the extent to which the *offeror* attained applicable goals for small business participation under contracts that required subcontracting plans (15 U.S.C. 637(d)(4)(G)(ii)).

(iii) *Past performance* need not be evaluated if the *contracting officer* documents the reason *past performance* is not an appropriate evaluation factor for the *acquisition*.

(4) For *solicitations*, that are not set aside for small business concerns, involving consolidation or *bundling*, that offer a significant opportunity for subcontracting, the *contracting officer* shall include proposed small business subcontracting participation in the subcontracting plan as an evaluation factor (15 U.S.C. 637(d)(4)(G)(i)).

(5) If telecommuting is not prohibited, agencies shall not unfavorably evaluate an *offer* that includes telecommuting unless the *contracting officer* executes a written determination in accordance with FAR 7.108(b).

(d) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the *solicitation* (10 U.S.C. 3206(b)(1) and 41 U.S.C. 3306(b)(1)) (see 15.204-5(c)). The rating method need not be disclosed in the *solicitation*. The general approach for evaluating *past performance* information shall be described.

(e) Unless the exception at paragraph (c)(1)(ii)(A) of this section applies, the *solicitation* shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

(1) Significantly more important than cost or price;

(2) Approximately equal to cost or price; or

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

### **15.305 Proposal evaluation.**

(a) Proposal evaluation is an assessment of the proposal and the *offeror's* ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the *solicitation*. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, *deficiencies*, significant *weaknesses*, and risks supporting proposal evaluation shall be documented in the contract file.

(1) *Cost or price evaluation*. Normally, competition establishes price reasonableness. Therefore, when *contracting* on a firm-fixed-price or fixed-price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis, and a cost analysis need not be performed. In limited situations, a cost analysis may be appropriate to establish reasonableness of the otherwise successful *offeror's* price (see 15.403-1(c)(1)(i)(C)).

When *contracting* on a cost-reimbursement basis, evaluations *shall* include a *cost realism* analysis to determine what the Government *should* realistically expect to pay for the proposed effort, the *offeror's* understanding of the work, and the *offeror's* ability to perform the contract. *Cost realism* analyses *may* also be used on fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts (see [15.404-1\(d\)\(3\)](#)). (See [37.115](#) for uncompensated *overtime* evaluation.) The *contracting officer shall* document the cost or price evaluation.

(2) *Past performance* evaluation.

(i) *Past performance* information is one indicator of an *offeror's* ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance *shall* be considered. This comparative assessment of *past performance* information is separate from the responsibility determination required under [subpart 9.1](#).

(ii) The *solicitation shall* describe the approach for evaluating *past performance*, including evaluating *offerors* with no relevant performance history, and *shall* provide *offerors* an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. The *solicitation shall* also authorize *offerors* to provide information on problems encountered on the identified contracts and the *offeror's* corrective actions. The Government *shall* consider this information, as well as information obtained from any other sources, when evaluating the *offeror's past performance*. The source selection authority *shall* determine the relevance of similar *past performance* information.

(iii) The evaluation *should* take into account *past performance* information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant *acquisition*.

(iv) In the case of an *offeror* without a record of relevant *past performance* or for whom information on *past performance* is not available, the *offeror may* not be evaluated favorably or unfavorably on *past performance*.

(v) The evaluation *should* include the *past performance* of *offerors* in complying with subcontracting plan goals for small disadvantaged business (SDB) concerns (see [subpart 19.7](#)).

(vi) For *offerors* that are joint ventures, the evaluation *shall* take into account *past performance* of the joint venture. If the joint venture does not demonstrate *past performance* for award, the *contracting officer shall* consider the *past performance* of each party to the joint venture.

(3) *Technical evaluation*. When tradeoffs are performed (see [15.101-1](#)), the source selection records *shall* include-

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

(ii) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

(4) *Cost information*. Cost information *may* be provided to members of the technical evaluation team in accordance with agency procedures.

(5) *Small business subcontracting evaluation*. *Solicitations must* be structured to give *offers* from small business concerns the highest rating for the evaluation factors in [15.304\(c\)\(3\)\(ii\)](#) and (c)(4).

(b) The source selection authority *may* reject all proposals received in response to a *solicitation*, if doing so is in the best interest of the Government.

(c) For restrictions on the use of support contractor personnel in proposal evaluation, see [37.203\(d\)](#).

### **15.306 Exchanges with offerors after receipt of proposals.**

(a) Clarifications and award without discussions.

(1) Clarifications are limited exchanges, between the Government and *offerors*, that *may* occur when award without discussions is contemplated.

(2) If award will be made without conducting discussions, *offerors may* be given the opportunity to clarify certain aspects of proposals (*e.g.*, the relevance of an *offeror's past performance* information and adverse *past performance* information to which the *offeror* has not previously had an opportunity to respond) or to resolve minor or clerical errors.

(3) Award *may* be made without discussions if the *solicitation* states that the Government intends to evaluate proposals and make award without discussions. If the *solicitation* contains such a notice and the Government determines it is necessary to conduct discussions, the rationale for doing so *shall* be documented in the contract file (see the provision at [52.215-1](#)) ([10 U.S.C. 3303\(a\)\(2\)](#)) and [41 U.S.C. 3703\(a\)\(2\)](#)).

(b) *Communications with offerors before establishment of the competitive range.* Communications are exchanges, between the Government and *offerors*, after receipt of proposals, leading to establishment of the competitive range. If a competitive range is to be established, these communications-

(1) *Shall* be limited to the *offerors* described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section and-

(i) *Shall* be held with *offerors* whose *past performance* information is the determining factor preventing them from being placed within the competitive range. Such communications *shall* address adverse *past performance* information to which an *offeror* has not had a prior opportunity to respond; and

(ii) *May* only be held with those *offerors* (other than *offerors* under paragraph (b)(1)(i) of this section) whose exclusion from, or inclusion in, the competitive range is uncertain;

(2) *May* be conducted to enhance Government understanding of proposals; allow reasonable interpretation of the proposal; or facilitate the Government's evaluation process. Such communications *shall* not be used to cure proposal *deficiencies* or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. Such communications *may* be considered in rating proposals for the purpose of establishing the competitive range;

(3) Are for the purpose of addressing issues that *must* be explored to determine whether a proposal *should* be placed in the competitive range. Such communications *shall* not provide an opportunity for the *offeror* to revise its proposal, but *may* address-

(i) Ambiguities in the proposal or other concerns (*e.g.*, perceived *deficiencies*, *weaknesses*, errors, omissions, or mistakes (see [14.407](#))); and



(ii) Information relating to relevant *past performance*; and

(4) *Shall* address adverse *past performance* information to which the *offeror* has not previously had an opportunity to comment.

(c) Competitive range.

(1) Agencies *shall* evaluate all proposals in accordance with [15.305\(a\)](#), and, if discussions are to be conducted, establish the competitive range. Based on the ratings of each proposal against all evaluation criteria, the *contracting officer shall* establish a competitive range comprised of all of the most highly rated proposals, unless the range is further reduced for purposes of efficiency pursuant to paragraph (c)(2) of this section.

(2) After evaluating all proposals in accordance with [15.305\(a\)](#) and paragraph (c)(1) of this section, the *contracting officer may* determine that the number of most highly rated proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. Provided the *solicitation* notifies *offerors* that the competitive range can be limited for purposes of efficiency (see [52.215-1\(f\)\(4\)](#)), the *contracting officer may* limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals ([10 U.S.C. 3303](#) and [41 U.S.C. 3703](#)).

(3) If the *contracting officer*, after complying with paragraph (d)(3) of this section, decides that an *offeror's* proposal *should* no longer be included in the competitive range, the proposal *shall* be eliminated from consideration for award. Written notice of this decision *shall* be provided to unsuccessful *offerors* in accordance with [15.503](#).

(4) *Offerors* excluded or otherwise eliminated from the competitive range *may* request a debriefing (see [15.505](#) and [15.506](#)).

(d) *Exchanges with offerors after establishment of the competitive range.* Negotiations are exchanges, in either a competitive or sole source environment, between the Government and *offerors*, that are undertaken with the intent of allowing the *offeror* to revise its proposal. These negotiations *may* include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and *may* apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are conducted in a competitive *acquisition*, they take place after establishment of the competitive range and are called discussions.

(1) Discussions are tailored to each *offeror's* proposal, and *must* be conducted by the *contracting officer* with each *offeror* within the competitive range.

(2) The primary objective of discussions is to maximize the Government's ability to obtain *best value*, based on the requirement and the evaluation factors set forth in the *solicitation*.

(3) At a minimum, the *contracting officer must*, subject to paragraphs (d)(5) and (e) of this section and [15.307\(a\)](#), indicate to, or discuss with, each *offeror* still being considered for award, *deficiencies*, significant *weaknesses*, and adverse *past performance* information to which the *offeror* has not yet had an opportunity to respond. The *contracting officer* also is encouraged to discuss other aspects of the *offeror's* proposal that could, in the opinion of the *contracting officer*, be altered or explained to enhance materially the proposal's potential for award. However, the *contracting officer* is not required to discuss every area where the proposal could be improved. The scope and extent of discussions are a matter of *contracting officer* judgment.

(4) In discussing other aspects of the proposal, the Government *may*, in situations where the *solicitation* stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, negotiate with *offerors* for increased performance beyond any mandatory minimums, and the Government *may* suggest to *offerors* that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased.

(5) If, after discussions have begun, an *offeror* originally in the competitive range is no longer considered to be among the most highly rated *offerors* being considered for award, that *offeror may* be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the *offeror* has been afforded an opportunity to submit a *proposal revision* (see [15.307\(a\)](#) and [15.503\(a\)\(1\)](#)).

(e) *Limits on exchanges.* Government personnel involved in the *acquisition shall* not engage in conduct that-

(1) Favors one *offeror* over another;

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

(i) Unique technology;

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

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

(3) Reveals an *offeror's* price without that *offeror's* permission. However, the *contracting officer may* inform an *offeror* that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the Government's discretion, to indicate to all *offerors* the cost or price that the Government's price analysis, *market research*, and other reviews have identified as reasonable ([41 U.S.C. 2102](#) and [2107](#)). When using *reverse auction* procedures (see subpart 17.8), it is also permissible to reveal to all *offerors* the offered price(s), without revealing any *offeror's* identity;

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

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

### **15.307 Proposal revisions.**

(a) If an *offeror's* proposal is eliminated or otherwise removed from the competitive range, no further revisions to that *offeror's* proposal *shall* be accepted or considered.

(b) The *contracting officer may* request or allow *proposal revisions* to clarify and document understandings reached during negotiations. At the conclusion of discussions, each *offeror* still in the competitive range *shall* be given an opportunity to submit a final *proposal revision*. The *contracting officer* is required to establish a common cut-off date only for receipt of final *proposal revisions*. Requests for final *proposal revisions shall* advise *offerors* that the final *proposal revisions shall* be *in writing* and that the Government intends to make award without obtaining further

revisions.

### **15.308 Source selection decision.**

The source selection authority's (SSA) decision *shall* be based on a comparative assessment of proposals against all source selection criteria in the *solicitation*. While the SSA *may* use reports and analyses prepared by others, the source selection decision *shall* represent the SSA's independent judgment. The source selection decision *shall* be documented, and the documentation *shall* include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. Although the rationale for the selection decision *must* be documented, that documentation need not quantify the tradeoffs that led to the decision.

## **Subpart 15.4 - Contract Pricing**

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

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

### **15.401 Definitions.**

As used in this subpart-

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

*Subcontract* (except as used in 15.407-2) also includes a transfer of *commercial products* or *commercial services* between divisions, subsidiaries, or *affiliates* of a contractor or a subcontractor (10 U.S.C. 3701(2) and 41 U.S.C. 3501(a)(3)).

### **15.402 Pricing 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-*

(1) *Shall* obtain *certified cost or pricing data* when required by 15.403-4, along with *data other than certified cost or pricing data* as necessary to establish a fair and reasonable *price*; or

(2) When *certified cost or pricing data* are not required by 15.403-4, *shall* obtain *data other than certified cost or pricing data* as necessary to establish a fair and reasonable *price*, generally using the following order of preference in determining the type of data required:

(i) No additional data from the *offeror*, if the *price* is based on adequate *price* competition, except as

provided by 15.403-3(b).

(ii) *Data other than certified cost or pricing data* such as-

(A) Data related to *prices* (e.g., established catalog or market *prices*, sales to non-governmental and governmental entities), relying first on data available within the Government; second, on data obtained from sources other than the *offeror*; and, if necessary, on data obtained from the *offeror*. When obtaining data from the *offeror* is necessary, unless an exception under 15.403-1(b)(1) or (2) applies, such data submitted by the *offeror shall* include, at a minimum, appropriate data on the *prices* at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the *price*.

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

(3) Obtain the type and quantity of data necessary to establish a fair and reasonable *price*, but not more data than is necessary. Requesting unnecessary data can lead to increased proposal preparation costs, generally extend *acquisition* lead time, and consume additional contractor and Government resources. Use techniques such as, but not limited to, *price* analysis, cost analysis, and/or *cost realism* analysis to establish a fair and reasonable *price*. If a fair and reasonable *price* cannot be established by the *contracting officer* from the analyses of the data obtained or submitted to date, the *contracting officer shall* require the submission of additional data sufficient for the *contracting officer* to support the determination of the fair and reasonable *price*.

(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.

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

### **15.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. chapter 271 and 41 U.S.C. CHAPTER 35).**

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

(b) *Exceptions to certified cost or pricing data requirements.* The *contracting officer shall* not require *certified cost or pricing data* to support any action (contracts, *subcontracts*, or modifications) (but *may* require *data other than certified cost or pricing data* as defined in FAR 2.101 to support a determination of a fair and reasonable *price* or *cost realism*)—

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

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

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

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

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

(c) Standards for exceptions from *certified cost or pricing data* requirements—

(1) *Adequate price competition.*

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

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

(B) Award will be made to the *offeror* whose proposal represents the *best value* (see [2.101](#)) where *price* is a substantial factor in source selection; and

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

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

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

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

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

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

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

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

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

(3) *Commercial products and commercial services.*

(i) Any *acquisition* that the *contracting officer* determines meets the *commercial product* or *commercial service* definition in [2.101](#), or any modification, as defined in paragraph (3)(i) of the *commercial product* definition, that does not change a *commercial product* to other than commercial, is exempt from the requirement for *certified cost or pricing data*. If the *contracting officer* determines that a product or service claimed to be commercial is not, and that no other exception or waiver applies (*e.g.*, the *acquisition* is not based on adequate *price* competition; the *acquisition* is not based on *prices* set by law or regulation; and the *acquisition* exceeds the threshold for the submission of *certified cost or pricing data* at [15.403-4\(a\)\(1\)](#)) the *contracting officer* shall require submission of *certified cost or pricing data*.

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

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

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

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

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

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

(B) For *acquisitions* funded by DoD, NASA, or Coast Guard, such modifications of a *commercial product* are exempt from the requirement for submission of *certified cost or pricing data* provided the total *price* of all such modifications under a particular contract action does not exceed the greater of the threshold for obtaining *certified cost or pricing data* in [15.403-4](#) or 5 percent of the total *price* of the contract at the time of contract award.

(C) For *acquisitions* funded by DoD, NASA, or Coast Guard such modifications of a *commercial product* are not exempt from the requirement for submission of *certified cost or pricing data* on the basis of the exemption provided for at [15.403-1\(c\)\(3\)](#) if the total *price* of all such modifications under a particular contract action exceeds the greater of the threshold for obtaining *certified cost or pricing data* in [15.403-4](#) or 5 percent of the total *price* of the contract at the time of contract award.

(iv) Any *acquisition* for other than *commercial products* or services treated as *commercial products* or *commercial services* at [12.102\(f\)\(1\)](#), except sole source contracts greater than \$20 million, is exempt from the requirements for *certified cost or pricing data* ([41 U.S.C. 1903](#)).

(4) *Waivers*. The *head of the contracting activity* (HCA) may, without power of delegation, waive the requirement for submission of *certified cost or pricing data* in exceptional cases. The authorization for the waiver and the supporting rationale shall be in writing. The HCA may consider waiving the requirement if the *price* can be determined to be fair and reasonable without submission of *certified cost or pricing data*. For example, if *certified cost or pricing data* were furnished on previous production buys and the *contracting officer* determines such data are sufficient, when combined with updated data, a waiver may be granted. If the HCA has waived the requirement for submission of *certified cost or pricing data*, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to provide *certified cost or pricing data*. Consequently, award of any lower-tier *subcontract* expected to exceed the *certified cost or pricing data* threshold requires the submission of *certified cost or pricing data* unless-

- (i) An exception otherwise applies to the *subcontract*; or
- (ii) The waiver specifically includes the *subcontract* and the rationale supporting the waiver for that *subcontract*.

#### **15.403-2 Other circumstances where certified cost or pricing data are not required.**

(a) The exercise of an *option* at the *price* established at contract award or initial negotiation does not require submission of *certified cost or pricing data*.

(b) *Certified cost or pricing data* are not required for proposals used solely for overrun funding or interim billing *price* adjustments.

#### **15.403-3 Requiring data other than certified cost or pricing data.**

- (a)
  - (1) In those *acquisitions* that do not require *certified cost or pricing data*, the *contracting officer* shall—
    - (i) Obtain whatever data are available from Government or other secondary sources and use that data in determining a fair and reasonable *price*;
    - (ii) Require submission of *data other than certified cost or pricing data*, as defined in 2.101, from the *offeror* to the extent necessary to determine a fair and reasonable *price* (10 U.S.C. 3705(a) and 41 U.S.C.3505(a)) if the *contracting officer* determines that adequate data from sources other than the *offeror* are not available. This includes requiring data from an *offeror* to support a *cost realism* analysis;
    - (iii) Consider whether cost data are necessary to determine a fair and reasonable *price* when there is not adequate *price* competition;
    - (iv) Require that the data submitted by the *offeror* include, at a minimum, appropriate data on the *prices* at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the *price* unless an exception under 15.403-1(b)(1) or (2) applies; and
    - (v) Consider the guidance in section 3.3, chapter 3, volume I, of the *Contract Pricing Reference*

Guide cited at 15.404-1(a)(7) to determine the data an *offeror shall* be required to submit.

(2) The contractor's format for submitting the data *should* be used (see 15.403-5(b)(2)).

(3) The *contracting officer shall* ensure that data used to support *price* negotiations are sufficiently current to permit negotiation of a fair and reasonable *price*. Requests for updated *offeror* data *should* be limited to data that affect the adequacy of the proposal for negotiations, such as changes in *price* lists.

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

(i) The effort made to obtain the data.

(ii) The need for the item or service.

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

(b) Adequate *price* competition. When adequate *price* competition exists (see 15.403-1(c)(1)), generally no additional data are necessary to determine the reasonableness of *price*. However, if there are unusual circumstances where it is concluded that additional data are necessary to determine the reasonableness of *price*, the *contracting officer shall*, to the maximum extent practicable, obtain the additional data from sources other than the *offeror*. In addition, the *contracting officer should* request data to determine the *cost realism* of competing *offers* or to evaluate competing approaches.

(c) *Commercial products and commercial services*.

(1) At a minimum, the *contracting officer must* use *price* analysis to determine whether the *price* is fair and reasonable whenever the *contracting officer* acquires a *commercial product* or *commercial service* (see 15.404-1(b)). The fact that a *price* is included in a catalog does not, in and of itself, make it fair and reasonable. If the *contracting officer* cannot determine whether an offered *price* is fair and reasonable, even after obtaining additional data from sources other than the *offeror*, then the *contracting officer shall* require the *offeror* to submit *data other than certified cost or pricing data* to support further analysis (see 15.404-1). This data *may* include history of sales to non-governmental and governmental entities, cost data, or any other information the *contracting officer* requires to determine the *price* is fair and reasonable. Unless an exception under 15.403-1(b)(1) or (2) applies, the *contracting officer shall* require that the data submitted by the *offeror* include, at a minimum, appropriate data on the *prices* at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the *price*.

(2) *Limitations relating to commercial products or commercial services* 10 U.S.C. 3705(b) and 41 U.S.C. 3505(b).

(i) The *contracting officer shall* limit requests for sales data relating to *commercial products* or *commercial services* to data for the same or similar items during a relevant time period.

(ii) The *contracting officer shall*, to the maximum extent practicable, limit the scope of the request



for data relating to *commercial products* or *commercial services* to include only data that are in the form regularly maintained by the *offeror* as part of its commercial operations.

(iii) The Government *shall* not disclose outside the Government data obtained relating to *commercial products* or *commercial services* that is exempt from disclosure under 24.202(a) or the Freedom of Information Act (5 U.S.C. 552(b)).

(3) For services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, see 15.403-1(c)(3)(ii).

#### **15.403-4 Requiring certified cost or pricing data (10 U.S.C. chapter 271 and 41 U.S.C. chapter 35).**

(a)

(1) The *contracting officer shall* obtain *certified cost or pricing data* only if the *contracting officer* concludes that none of the exceptions in 15.403-1(b) applies. However, if the *contracting officer* has reason to believe exceptional circumstances exist and has sufficient data available to determine a fair and reasonable *price*, then the *contracting officer should* consider requesting a waiver under the exception at 15.403-1(b)(4). The threshold for obtaining *certified cost or pricing data* is \$750,000 for prime contracts awarded before July 1, 2018, and \$2 million for prime contracts awarded on or after July 1, 2018. When a clause refers to this threshold, and if the threshold is adjusted for inflation pursuant to 1.109(a), then pursuant to 1.109(d) the changed threshold applies throughout the remaining term of the contract, unless there is a subsequent threshold adjustment. Unless an exception applies, *certified cost or pricing data* are required before accomplishing any of the following actions expected to exceed the current threshold 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 were required to furnish *certified cost or pricing data* (but see waivers at 15.403-1(c)(4)).

(iii) The modification of any sealed bid or negotiated contract (whether or not *certified cost or pricing data* were initially required) or any *subcontract* covered by paragraph (a)(1)(ii) of this subsection. *Price* adjustment amounts *must* consider both increases and decreases (e.g., a \$500,000 modification resulting from a reduction of \$1,500,000 and an increase of \$1,000,000 is a \$2,500,000 *pricing* adjustment exceeding the \$2,000,000 threshold). This requirement does not apply when unrelated and separately priced changes for which *certified cost or pricing data* would not otherwise be required are included for administrative convenience in the same modification. Negotiated final *pricing* actions (such as termination settlements and total final *price* agreements for fixed-*price* incentive and redeterminable contracts) are *contract modifications* requiring *certified cost or pricing data* if-

(A) The total final *price* agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection; or

(B) The *partial termination* settlement plus the estimate to complete the *continued portion of the contract* exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see

49.105(c)(15)).

(2) Unless prohibited because an exception at 15.403-1(b) applies, the *head of the contracting activity*, without power of delegation, may authorize the *contracting officer* to obtain *certified cost or pricing data* for *pricing* actions below the pertinent threshold in paragraph (a)(1) of this subsection, provided the action exceeds the *simplified acquisition threshold*. The *head of the contracting activity* shall justify the requirement for *certified cost or pricing data*. The documentation shall include a written finding that *certified cost or pricing data* are necessary to determine whether the *price* is fair and reasonable and the facts supporting that finding.

(3) Upon the request of a contractor that was required to submit *certified cost or pricing data* in connection with a prime contract entered into before July 1, 2018, the *contracting officer* shall modify the contract, without requiring consideration, to reflect a \$2 million threshold for obtaining *certified cost or pricing data* on *subcontracts* entered on and after July 1, 2018. See 15.408.

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

(2) A Certificate of Current *Cost or Pricing Data*, in the format specified in 15.406-2, certifying that to the best of its knowledge and belief, the *cost or pricing data* were accurate, complete, and current as of the date of agreement on *price* or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on *price*.

(c) If *certified cost or pricing data* are requested and submitted by an *offeror*, but an exception is later found to apply, the data *must* not be considered *certified cost or pricing data* as defined in 2.101 and *must* not be certified in accordance with 15.406-2

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

#### **15.403-5 Instructions for submission of certified cost or pricing data and data other than certified cost or pricing data.**

(a) Taking into consideration the policy at 15.402, the *contracting officer* shall specify in the *solicitation* (see 15.408(l) and (m))-

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

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

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

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

(b)

(1) *Format for submission of certified cost or pricing data.* When certification is required, the *contracting officer* may require submission of *certified cost or pricing data* in the format indicated in 15.408 Solicitation provisions and contract clauses of 15.408, specify an alternative format, or permit submission in the contractor's format (See 15.408(1)(1)), unless the data are required to be submitted on one of the termination forms specified in subpart 49.6.

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

(3) *Format for submission of data supporting forward pricing rate agreements.* Data supporting *forward pricing rate agreements* or final indirect cost proposals shall be submitted in a form acceptable to the *contracting officer*.

## **15.404 Proposal analysis.**

### **15.404-1 Proposal analysis techniques.**

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

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

(2) *Price analysis* shall be used when *certified cost or pricing data* are not required (see paragraph (b) of this subsection and 15.404-3).

(3) Cost analysis shall be used to evaluate the reasonableness of individual cost elements when *certified cost or pricing data* are required. *Price analysis* should be used to verify that the overall *price* offered is fair and reasonable.

(4) Cost analysis may also be used to evaluate *data other than certified cost or pricing data* to determine cost reasonableness or *cost realism* when a fair and reasonable *price* cannot be determined through *price analysis* alone.

(5) The *contracting officer* may request the advice and assistance of other experts to ensure that an appropriate analysis is performed.

(6) Recommendations or conclusions regarding the Government's review or analysis of an *offeror's* or contractor's proposal shall not be disclosed to the *offeror* or contractor without the concurrence of the *contracting officer*. Any discrepancy or mistake of fact (such as duplications, omissions, and errors in computation) contained in the *certified cost or pricing data* or *data other than certified cost or pricing data* submitted in support of a proposal shall be brought to the *contracting officer's* attention for appropriate action.

(7) The Air Force Institute of Technology (AFIT) and the Federal Acquisition Institute (FAI) jointly

prepared a five-volume set of Contract *Pricing* Reference Guides to guide *pricing* and negotiation personnel. The five guides are: I *Price Analysis*, II *Quantitative Techniques for Contract Pricing*, III *Cost Analysis*, IV *Advanced Issues in Contract Pricing*, and V *Federal Contract Negotiation Techniques*. These 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. They are available via the internet at [http://www.acq.osd.mil/dpap/cpic/cp/contract\\_pricing\\_reference\\_guides.html](http://www.acq.osd.mil/dpap/cpic/cp/contract_pricing_reference_guides.html).

(b) *Price analysis*.

(1) *Price analysis* is the process of examining and evaluating a proposed *price* without evaluating its separate cost elements and proposed profit. Unless an exception from the requirement to obtain *certified cost or pricing data* applies under 15.403-1(b)(1) or (b)(2), at a minimum, the *contracting officer shall* obtain appropriate data, without certification, on the *prices* at which the same or similar items have previously been sold and determine if the data is adequate for evaluating the reasonableness of the *price*. *Price analysis may* include evaluating *data other than certified cost or pricing data* obtained from the *offeror* or contractor when there is no other means for determining a fair and reasonable *price*. *Contracting officers shall* obtain *data other than certified cost or pricing data* from the *offeror* or contractor for all *acquisitions* (including commercial *acquisitions*), if that is the *contracting officer's* only means to determine the *price* to be fair and reasonable.

(2) The Government *may* use various *price analysis* techniques and procedures to ensure a fair and reasonable *price*. Examples of such techniques include, but are not limited to, the following:

(i) Comparison of proposed *prices* received in response to the *solicitation*. Normally, adequate *price* competition establishes a fair and reasonable *price* (see 15.403-1(c)(1)).

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

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

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

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

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

(iv) Comparison with competitive published *price* lists, published market *prices* of commodities,

similar indexes, and discount or rebate arrangements.

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

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

(vii) Analysis of *data other than certified cost or pricing data* (as defined at [2.101](#)) provided by the *offeror*.

(3) The first two techniques at [15.404-1\(b\)\(2\)](#) are the preferred techniques. However, if the *contracting officer* determines that information on competitive proposed *prices* or previous contract *prices* is not available or is insufficient to determine that the *price* is fair and reasonable, the *contracting officer* may use any of the remaining techniques as appropriate to the circumstances applicable to the *acquisition*.

(4) Value analysis can give insight into the relative worth of a product and the Government may use it in conjunction with the *price* analysis techniques listed in paragraph (b)(2) of this section.

(c) Cost analysis.

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

(2) The Government may use various cost analysis techniques and procedures to ensure a fair and reasonable *price*, given the circumstances of the *acquisition*. Such techniques and procedures include the following:

(i) Verification of cost data or *pricing data* and evaluation of cost elements, including-

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

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

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

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

(ii) 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 perform a trend analysis of basic labor and materials, even in periods of relative *price* stability.

(iii) Comparison of costs proposed by the *offeror* for individual cost elements with-

(A) Actual costs previously incurred by the same *offeror*;

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

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

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

(E) Forecasts of planned expenditures.

(iv) 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, Cost Accounting Standards.

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

(vi) Analysis of the results of any *make-or-buy program* reviews, in evaluating *subcontract* costs (see 15.407-2).

(d) *Cost realism* analysis.

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

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

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

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

(3) *Cost realism* analyses *may* also be used on competitive fixed-*price* incentive contracts or, in exceptional cases, on other competitive fixed-*price*-type contracts when new requirements *may* not be fully understood by competing *offerors*, there are quality concerns, or past experience indicates that contractors' proposed costs have resulted in quality or service shortfalls. Results of the analysis *may* be used in performance risk assessments and responsibility determinations. However, proposals *shall* be evaluated using the criteria in the *solicitation*, and the offered *prices shall* not be adjusted as a result of the analysis.

(e) Technical analysis.

(1) The *contracting officer should* request that personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management perform a technical analysis of the proposed types and quantities of materials, labor, processes, *special tooling*, equipment or real property, the reasonableness of *scrap* and spoilage, and other associated factors set forth in the

proposal(s) in order to determine the need for and reasonableness of the proposed resources, assuming reasonable economy and efficiency.

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

(3) The *contracting officer should* request technical assistance in evaluating *pricing* related to items that are "similar to" items being purchased, or *commercial products* or *commercial services* that are "of a type", or requiring minor modifications for *commercial products*, to ascertain the magnitude of changes required and to assist in *pricing* the required changes.

(f) Unit *prices*.

(1) Except when *pricing* an item on the basis of adequate *price* competition or catalog or market *price*, unit *prices shall* reflect the intrinsic value of an item or service and *shall* be in proportion to an 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.

(2) Except for the *acquisition* of *commercial products*, *contracting officers shall* require that *offerors* identify in their proposals those items of supply that they will not manufacture or to which they will not contribute significant value, unless adequate *price* competition is expected (10 U.S.C. 3703(a)(1)(A) and 41 U.S.C. 3503(a)(1)(A)). 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 should* require such information in all other negotiated contracts when appropriate.

(g) Unbalanced *pricing*.

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

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

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

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

(2) All *offers* with separately priced *line items* or *subline items shall* be analyzed to determine if the *prices* are unbalanced. If cost or *price* analysis techniques indicate that an *offer* is unbalanced, the *contracting officer shall*-

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

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

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

(h) Review and justification of pass-through contracts.

(1) The requirements of this paragraph (h) are applicable to all agencies. The requirements apply by law to the Department of Defense, the Department of State, and the *United States Agency for International Development*, per section 802 of the *National Defense Authorization Act (NDAA)* for Fiscal Year 2013. The requirements apply as a matter of policy to other *Federal agencies*.

(2) Except as provided in paragraph (h)(3) of this section, when an *offeror* for a contract or a task or *delivery order* informs the *contracting officer* pursuant to 52.215-22 that it intends to award *subcontracts* for more than 70 percent of the total cost of work to be performed under the contract, task or *delivery order*, the *contracting officer shall*-

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

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

(iii) Document the basis for such determination.

(3) Contract actions awarded pursuant to subparts 19.5, 19.8, 19.13, 19.14, or 19.15 are exempt from the requirements of this paragraph (h) (see section 1615 of the *National Defense Authorization Act* for Fiscal Year 2014 (Pub. L. 113-66)).

#### **15.404-2 Data to support proposal analysis.**

(a) Field *pricing* assistance.

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

(2) The *contracting officer shall* tailor the type of information and level of detail requested in accordance with the specialized resources available at the buying activity and the magnitude and complexity of the required analysis. Field *pricing* assistance is generally available to provide-

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

(ii) Information on related *pricing* practices and history;



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

(A) Verifying sales history to source documents;

(B) Identifying special terms and conditions;

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

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

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

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

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

(3) When field *pricing* assistance is requested, *contracting officers* are encouraged to team with appropriate field experts throughout the *acquisition* process, including negotiations. Early communication with these experts will assist in determining the extent of assistance required, the specific areas for which assistance is needed, a realistic review schedule, and the information necessary to perform the review.

(4) When requesting field *pricing* assistance on a contractor's request for equitable adjustment, the *contracting officer shall* provide the information listed in 43.204(b)(5).

(5) Field *pricing* information and other reports *may* include proprietary or *source selection information* (see 2.101). This information *must* be appropriately identified and protected accordingly.

(b) Reporting field *pricing* information.

(1) Depending upon the extent and complexity of the field *pricing* review, results, including supporting rationale, *may* be reported directly to the *contracting officer* orally, *in writing*, or by any other method acceptable to the *contracting officer*.

(i) Whenever circumstances permit, the *contracting officer* and field *pricing* experts are encouraged to use telephonic and/or electronic means to request and transmit *pricing* information.

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

(2) Audit and field *pricing* information, whether written or reported telephonically or electronically, *shall* be made a part of the official contract file (see 4.803(a)(19)).

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

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

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

(ii) The *contracting officer* should be notified immediately of any information disclosed to the auditor after submission of a report that *may* significantly affect the audit findings and, if necessary, a supplemental audit report *shall* be issued.

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

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

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

(d) *Deficient proposals*. The ACO or the auditor, as appropriate, *shall* notify the *contracting officer* immediately if the data provided for review is so deficient as to preclude review or audit, or if the contractor or *offeror* has denied access to any records considered essential to conduct a satisfactory review or audit. Oral notifications *shall* be confirmed promptly *in writing*, including a description of deficient or denied data or records. The *contracting officer* immediately *shall* take appropriate action to obtain the required data. *Should* the *offeror/contractor* again refuse to provide adequate data, or provide access to necessary data, the *contracting officer* shall withhold the award or *price* adjustment and refer the contract action to a higher authority, providing details of the attempts made to resolve the matter and a statement of the practicability of obtaining the *supplies* or services from another source.

### **15.404-3 Subcontract pricing considerations.**

(a) The *contracting officer* is responsible for the determination of a fair and reasonable *price* for the prime contract, including subcontracting costs. The *contracting officer* should consider whether a contractor or subcontractor has an approved purchasing system, has performed cost or *price* analysis of proposed subcontractor *prices*, or has negotiated the *subcontract prices* before negotiation of the prime contract, in determining the reasonableness of the prime contract *price*. This does not relieve the *contracting officer* from the responsibility to analyze the contractor's submission, including subcontractor's *certified cost or pricing data*.

(b) The prime contractor or subcontractor *shall*-

(1) Conduct appropriate cost or *price* analyses to establish the reasonableness of proposed

*subcontract prices;*

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

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

(c) Any contractor or subcontractor that is required to submit *certified cost or pricing data* also shall obtain and analyze *certified cost or pricing data* before awarding any *subcontract, purchase order, or modification* expected to exceed the *certified cost or pricing data* threshold, unless an exception in 15.403-1(b) applies to that action.

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

(i) \$15 million or more; or

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

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

(3) Subcontractor *certified cost or pricing data* shall be submitted in the format provided in 15.408 Solicitation provisions and contract clauses, of 15.408 or the *alternate* format specified in the *solicitation*.

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

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

#### **15.404-4 Profit.**

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

(1) 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 the contract type.

(2) It is in the Government's interest to *offer* contractors opportunities for financial rewards sufficient to stimulate efficient contract performance, attract the best capabilities of qualified large and small business concerns to Government contracts, and maintain a viable industrial base.

(3) 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.

(b) Policy.

(1) Structured approaches (see paragraph (d) of this subsection) for determining profit or fee prenegotiation objectives provide a discipline for ensuring that all relevant factors are considered. Subject to the authorities in 1.301(c), agencies making noncompetitive contract awards over \$100,000 totaling \$50 million or more a year-

(i) *Shall* use a structured approach for determining the profit or fee objective in those *acquisitions* that require cost analysis; and

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

(2) Agencies *may* use another agency's structured approach.

(c) *Contracting officer* responsibilities.

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

(2) 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 paragraph (d)(1) of this subsection in developing profit or fee prenegotiation objectives.

(3) *Contracting officers shall* use the Government prenegotiation cost objective amounts as the basis for calculating the profit or fee prenegotiation objective. Before applying profit or fee factors, the *contracting officer shall* exclude from the pre-negotiation cost objective amounts the purchase cost of contractor-acquired property that is categorized as equipment, as defined in FAR 45.101, and where such equipment is to be charged directly to the contract. 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 15.408(i)).

(4)

(i) The *contracting officer shall* not negotiate a *price* or fee that exceeds the following statutory limitations, imposed by 10 U.S.C. 3322(b) and 41 U.S.C. 3905:

(A) 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.

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

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

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

(5) The *contracting officer shall* not require any prospective contractor to submit breakouts or supporting rationale for its profit or fee objective but *may* consider it, if it is submitted voluntarily.

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

(d) Profit-analysis factors-

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

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

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

(B) *Conversion direct labor*. This subfactor measures the contribution of direct engineering, manufacturing, and other labor to converting the raw materials, data, and subcontracted items into the contract items. Considerations include the diversity of engineering, scientific, and manufacturing

labor skills required and the amount and quality of supervision and coordination needed to perform the contract task.

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

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

(ii) Contract cost risk.

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

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

(C) In evaluating assumption of cost risk, *contracting officers 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.

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

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

(v) *Cost-control and other past accomplishments.* This factor allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration *should* be given to measures taken by the

prospective contractor that result in productivity improvements, and other cost-reduction accomplishments that will benefit the Government in follow-on contracts.

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

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

### **15.405 Price negotiation.**

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

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

(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.

(d) If, however, the contractor insists on a *price* or demands a profit or fee that the *contracting officer* considers unreasonable, and the *contracting officer* has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the *contracting officer shall* refer the contract action to a level above the *contracting officer*. Disposition of the action *should* be documented.

### **15.406 Documentation.**

#### **15.406-1 Prenegotiation objectives.**

(a) The prenegotiation objectives establish the Government's initial negotiation position. They assist in the *contracting officer's* determination of fair and reasonable *price*. They *should* be based on the results of the *contracting officer's* analysis of the *offeror's* proposal, taking into consideration all pertinent information including field *pricing* assistance, audit reports and technical analysis, fact-finding results, independent Government cost estimates and *price* histories.

(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 *contracting officer shall* document the pertinent issues to be negotiated, the cost objectives, and a profit or fee objective.

#### **15.406-2 Certificate of Current Cost or Pricing Data.**

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

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

This is to certify that, to the best of my knowledge and belief, the *cost or pricing data* (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification *in writing*, to the *Contracting Officer* or to the *Contracting Officer's* representative in support of \_\_\_\_\_\* are accurate, complete, and current as of \_\_\_\_\_\*\*. This certification includes the *cost or pricing data* supporting any advance agreements and *forward pricing rate agreements* between the *offeror* and the Government that are part of the proposal.

Firm \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

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

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

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

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

(End of certificate)

(b) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It applies to the data upon which the



judgment or estimate was based. This distinction between fact and judgment *should* be clearly understood. If the contractor had information reasonably available at the time of agreement showing that the negotiated *price* was not based on accurate, complete, and current data, the contractor's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

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

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

(e) If *certified cost or pricing data* are requested by the Government and submitted by an *offeror*, but an exception is later found to apply, the data *shall* not be considered *certified cost or pricing data* and *shall* not be certified in accordance with this subsection.

### **15.406-3 Documenting the negotiation.**

(a) The *contracting officer shall* document in the contract file the principal elements of the negotiated agreement. The documentation (*e.g.*, *price negotiation memorandum (PNM)*) *shall* include the following:

(1) The purpose of the negotiation.

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

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

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

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

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

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

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

(iii) Determined that an exception applied after the data were submitted and, therefore, considered

not to be *certified cost or pricing data*.

(7) A summary of the contractor's proposal, any field *pricing* assistance recommendations, including the reasons for any pertinent variances from them, the Government's negotiation objective, and the negotiated position. Where the determination of a fair and reasonable *price* is based on cost analysis, the summary *shall* address each major cost element. When determination of a fair and reasonable *price* is based on *price* analysis, the summary *shall* include the source and type of data used to support the determination.

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

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

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

(11) Documentation of fair and reasonable *pricing*.

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

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

### **15.407-1 Defective certified cost or pricing data.**

(a) If, before agreement on *price*, the *contracting officer* learns that any *certified cost or pricing data* submitted are inaccurate, incomplete, or noncurrent, the *contracting officer 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* consider any new data submitted to correct the *deficiency*, or consider the inaccuracy, incompleteness, or noncurrency of the data when negotiating the contract *price*. The *price* negotiation memorandum *shall* reflect the adjustments made to the data or the corrected data used to negotiate the contract *price*.

(b)

(1) If, after award, *certified cost or pricing data* are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on *price* or an earlier date agreed upon by the parties given on the contractor's or subcontractor's Certificate of Current Cost or Pricing Data, the Government is entitled to a *price* adjustment, including profit or fee, of any significant amount by which the *price* was increased because of the defective data. This entitlement is ensured by including in the contract one of the clauses prescribed in [15.408\(b\)](#) and (c) and is set forth in the clauses at [52.215-10](#), *Price Reduction for Defective Certified Cost or Pricing Data*, and [52.215-11](#), *Price Reduction for Defective Certified Cost or Pricing Data-Modifications*. The clauses give the

Government the right to a *price* adjustment for defects in *certified cost or pricing data* submitted by the contractor, a prospective subcontractor, or an actual subcontractor.

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

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

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

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

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

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

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

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

(6) An offset shall not be allowed if-

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

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

(7)

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

as defined in [32.001](#).

(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 the date payment was made for the related completed and accepted contract items; or for *subcontract* defective *pricing*, the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted *subcontract* item); and

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

(iii) In arriving at the amount due for penalties on contracts where the submission of defective *certified cost or pricing data* was a knowing submission, 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 demand letter, 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. The Government *may* evaluate the profit-cost relationships only if the audit reveals that the data certified by the contractor were defective. The *contracting officer shall* not reprice the contract solely because the profit was greater than forecast or because a contingency specified in the submission failed to materialize.

(d) For each advisory audit received based on a postaward review that 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 documenting both the determination and any corrective action taken as a result. 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). A copy of the memorandum or other notice of the *contracting officer's* determination *shall* be provided to the contractor. When the *contracting officer* determines that the contractor submitted defective *cost or pricing data*, the *contracting officer*, in accordance with agency procedures, *shall* ensure that information relating to the *contracting officer's* final determination is reported in accordance with [42.1503\(h\)](#). Agencies *shall* ensure updated information that changes a *contracting officer's* prior final determination is reported into the FAPIIS module of Contractor Performance Assessment Reporting System (CPARS) in the event

of a—

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

(2) Board of Contract Appeals decision; or

(3) Court decision.

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

(f) If Government audit discloses defective subcontractor *certified cost or pricing data*, the information necessary to support a reduction in prime contract and *subcontract prices* may be available only from the Government. To the extent necessary to secure a prime contract *price* reduction, 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 security 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 the *subcontract price* used for *pricing* the prime contract, and either the actual *subcontract price* or the actual cost to the contractor, if not subcontracted, provided the data on which the actual *subcontract price* is based are not themselves defective.

(2) Under cost-reimbursement contracts and under all fixed-*price* contracts except firm-fixed-*price* contracts and fixed-*price* contracts with economic *price* adjustment, payments to subcontractors that are higher than they would be had there been no defective subcontractor *certified cost or pricing data* *shall* be the basis for disallowance or nonrecognition of costs under the clauses prescribed in 15.408(b) and (c). The Government has a continuing and direct financial interest in such payments that is unaffected by the initial agreement on prime contract *price*.

### **15.407-2 Make-or-buy programs.**

(a) *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. When *make-or-buy programs* are required, the Government *may* reserve the right to review and agree on the contractor's *make-or-buy program* when necessary to ensure negotiation of reasonable contract *prices*, satisfactory performance, or implementation of socioeconomic policies. *Consent to subcontracts* and review of contractors' purchasing systems are

separate actions covered in [part 44](#).

(b) *Definition*. "Make item," as used in this subsection, means an item or work effort to be produced or performed by the prime contractor or its *affiliates*, subsidiaries, or divisions.

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

(1) *Contracting officers may* require prospective contractors to submit *make-or-buy program* plans for negotiated *acquisitions* requiring *certified cost or pricing data* whose estimated value is \$15 million or more, except when the proposed contract is for research or development and, if prototypes or hardware are involved, no significant follow-on production is anticipated.

(2) *Contracting officers may* require prospective contractors to submit *make-or-buy programs* for negotiated *acquisitions* whose estimated value is under \$15 million only if the *contracting officer-*

(i) Determines that the information is necessary; and

(ii) Documents the reasons in the contract file.

(d) *Solicitation requirements*. When prospective contractors are required to submit proposed *make-or-buy programs*, the *solicitation shall* include-

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

(2) A description of factors to be used in evaluating the proposed program, such as capability, capacity, availability of small, small disadvantaged, women-owned, veteran-owned, *HUBZone*, and service-disabled veteran-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.

(e) *Program requirements*. To support a *make-or-buy program*, the following information *shall* be supplied by the contractor in its proposal:

(1) *Items and work included*. The information required from a contractor in a *make-or-buy program shall* be confined to those major items or work efforts that normally would require company management review of the make-or-buy decision because they are complex, costly, needed in large quantities, or require additional equipment or real property to produce. Raw materials, *commercial products*, *commercial services* (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. Normally, *make-or-buy programs should* not include items or work efforts estimated to cost less than 1 percent of the total estimated contract *price* or any minimum dollar amount set by the agency.

(2) The *offeror's* program *should* include or be supported by the following information:

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

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

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

"make" or to "buy."

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

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

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

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

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

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

(1) When the program is to be incorporated in the contract and the design status of the product being acquired does not permit accurate precontract identification of major items or work efforts, the *contracting officer shall* notify the prospective contractor *in writing* that these items or efforts, when identifiable, *shall* be added under the clause at [52.215-9](#), Changes or Additions to *Make-or-Buy Program*.

(2) *Contracting officers* normally *shall* not agree to proposed "make items" when the *products* or services are not regularly manufactured or provided by the contractor and are available-quality, quantity, delivery, and other essential factors considered-from another firm at equal or lower *prices*, or when they are regularly manufactured or provided by the contractor, but are available-quality, quantity, delivery, and other essential factors considered-from another firm at lower *prices*. However, the *contracting officer may* agree to these as "make items" if an overall lower Governmentwide cost would result or it is otherwise in the best interest of the Government. If this situation occurs in any fixed-*price* incentive or cost-plus-incentive-fee contract, the *contracting officer shall* specify these items in the contract and state that they are subject to paragraph (d) of the clause at [52.215-9](#), Changes or Additions to *Make-or-Buy Program* (see [15.408\(a\)](#)). If the contractor proposes to reverse the categorization of such items during contract performance, the contract *price shall* be subject to equitable reduction.

(g) *Incorporating make-or-buy programs in contracts.* 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*.

### **15.407-3 Forward pricing rate agreements.**

(a) When *certified cost or pricing data* are required, *offerors* are required to describe any *forward pricing rate agreements* (FPRAs) in each specific *pricing* proposal to which the rates apply and to identify the latest *cost or pricing data* already submitted in accordance with the FPRA. All data submitted in connection with the FPRA, updated as necessary, form a part of the total data that the *offeror* certifies to be accurate, complete, and current at the time of agreement on *price* for an initial contract or for a *contract modification*. (See the Certificate of Current Cost or Pricing Data at [15.406-2](#).)

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

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

### **15.407-4 Should-cost review.**

(a) General.

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

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

(b) Program *should-cost* review.

(1) A program *should-cost* review is used to evaluate significant elements of *direct costs*, such as material and labor, and associated *indirect costs*, usually associated with the production of *major*



systems. When a program *should*-cost review is conducted relative to a contractor proposal, a separate audit report on the proposal is required.

(2) A program *should*-cost review *should* be considered, particularly in the case of a *major system acquisition* (see [part 34](#)), when-

- (i) Some initial production has already taken place;
- (ii) The contract will be awarded on a sole source basis;
- (iii) There are future year production requirements for substantial quantities of like items;
- (iv) The items being acquired have a history of increasing costs;
- (v) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;
- (vi) Sufficient time is available to plan and adequately conduct the *should*-cost review; and
- (vii) Personnel with the required skills are available or can be assigned for the duration of the *should*-cost review.

(3) 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. The expertise of on-site Government personnel *should* be used, when appropriate. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, *pricing* and accounting, management and organization, and *subcontract* and vendor management are normally reviewed in a *should*-cost review.

(4) In *acquisitions* for which a program *should*-cost review is conducted, a separate program *should*-cost review team report, prepared in accordance with agency procedures, is required. 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 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.

(5) When a program *should*-cost review is planned, the *contracting officer should* state this fact in the *acquisition* plan or *acquisition* plan updates (see [subpart 7.1](#)) and in the *solicitation*.

(c) Overhead *should*-cost review.

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

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

- (i) Dollar amount of Government business.

(ii) Level of Government participation.

(iii) Level of noncompetitive Government contracts.

(iv) Volume of proposal activity.

(v) *Major system* or program.

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

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

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

#### **15.407-5 Estimating systems.**

(a) Using an acceptable estimating system for proposal preparation 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 reduce the scope of reviews to be performed on individual proposals, expedite the negotiation process, and increase the reliability of proposals. The results of estimating system reviews *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.

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

(a) *Changes or Additions to Make-or-Buy Program*. The *contracting officer shall* insert the clause at 52.215-9, *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-

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

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

(b) *Price Reduction for Defective Certified Cost or Pricing Data*. The *contracting officer shall*, when *contracting* by negotiation, insert the clause at 52.215-10, *Price Reduction for Defective Certified Cost or Pricing Data*, in *solicitations* and contracts when it is contemplated that *certified cost or*

*pricing data* will be required from the contractor or any subcontractor (see 15.403-4).

(c) *Price Reduction for Defective Certified Cost or Pricing Data-Modifications*. The *contracting officer shall*, when *contracting* by negotiation, insert the clause at 52.215-11, *Price Reduction for Defective Certified Cost or Pricing Data—Modifications*, in *solicitations* and contracts when it is contemplated that *certified cost or pricing data* will be required from the contractor or any subcontractor (see 15.403-4) for the *pricing of contract modifications*, and the clause prescribed in paragraph (b) of this section has not been included.

(d) *Subcontractor Certified Cost or Pricing Data*. The *contracting officer shall—*

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

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

(e) *Subcontractor Certified Cost or Pricing Data-Modifications*. The *contracting officer shall—*

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

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

(f) *Integrity of Unit Prices*.

(1) The *contracting officer shall* insert the clause at 52.215-14, *Integrity of Unit Prices*, in *solicitations* and contracts except for-

(i) *Acquisitions* at or below the *simplified acquisition threshold*;

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

(iii) *Utility services* under part 41;

(iv) *Service contracts* where *supplies* are not required;

(v) *Acquisitions of commercial products and commercial services*; and

(vi) *Contracts for petroleum products*.

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

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

(h) *Facilities Capital Cost of Money*. The *contracting officer shall* insert the provision at [52.215-16](#), *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](#)).

(i) *Waiver of Facilities Capital Cost of Money*. If the prospective contractor does not propose *facilities capital cost of money* in its offer, the *contracting officer shall* insert the clause at [52.215-17](#), *Waiver of Facilities Capital Cost of Money*, in the resulting contract.

(j) *Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions*. The *contracting officer shall* insert the clause at [52.215-18](#), *Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions*, in *solicitations* and contracts for which it is anticipated that *certified cost or pricing data* will be required or for which any preaward or postaward cost determinations will be subject to part 31.

(k) *Notification of Ownership Changes*. The *contracting officer shall* insert the clause at [52.215-19](#), *Notification of Ownership Changes*, in *solicitations* and contracts for which it is contemplated that *certified cost or pricing data* will be required or for which any preaward or postaward cost determination will be subject to subpart [31.2](#).

(l) *Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data*. Considering the hierarchy at [15.402](#), the *contracting officer shall* insert the provision at [52.215-20](#), *Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data*, in *solicitations* if it is reasonably certain that *certified cost or pricing data* or *data other than certified cost or pricing data* will be required. This provision also provides instructions to *offerors* on how to request an exception from the requirement to submit *certified cost or pricing data*. The *contracting officer shall*-

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

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

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

(4) Replace the basic provision with its *Alternate IV* if *certified cost or pricing data* are not expected to be required because an exception *may* apply, but *data other than certified cost or pricing data* will be required as described in [15.403-3](#).

(m) *Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data-Modifications*. Considering the hierarchy at [15.402](#), the *contracting officer shall* insert the clause at [52.215-21](#), *Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data-Modifications*, in *solicitations* and contracts if it is reasonably certain that *certified cost or pricing data* or *data other than certified cost or pricing data* will be required for modifications. This clause also provides instructions to contractors on how to request an exception from the requirement to submit *certified cost or pricing data*. The *contracting officer shall*-

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

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

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

(4) Replace the basic clause with its *Alternate IV* if *certified cost or pricing data* are not expected to be required because an exception *may* apply, but *data other than certified cost or pricing data* will be required as described in 15.403-3.

(n) Limitations on Pass-Through Charges.

(1) The *contracting officer shall* insert the provision at 52.215-22, Limitations on Pass-Through Charges-Identification of *Subcontract Effort*, in *solicitations* containing the clause at 52.215-23.

(2)

(i) Except as provided in paragraph (n)(2)(ii), the *contracting officer shall* insert the clause 52.215-23, Limitations on Pass-Through Charges, in *solicitations* and contracts including task or *delivery orders* as follows:

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

(1) The total estimated contract or order value exceeds the *simplified acquisition threshold* as defined in section 2.101 and

(2) The contemplated contract type is expected to be a cost-reimbursement type contract as defined in subpart 16.3; or

(B) For DoD, insert the clause when-

(1) The total estimated contract or order value exceeds the threshold for obtaining *cost or pricing data* in 15.403-4; and

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

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

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

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

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

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

(vi) A fixed-price incentive contract for the *acquisition* of a *commercial product* or *commercial service*.

(ii) The clause *may* be used when the total estimated contract or order value is below the thresholds identified in 15.408(n)(2)(i) and for any contract type, when the *contracting officer* determines that inclusion of the clause is appropriate.

(iii) Use the clause 52.215-23 with its *Alternate I* when the *contracting officer* determines that the

prospective contractor has demonstrated that its functions provide added value to the *contracting* effort and there are no excessive pass-through charges.

## Table 15-2—Instructions for Submitting Cost/Price Proposals When *Certified Cost or Pricing Data* Are Required

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

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

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

### I. General Instructions

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

- (1) *Solicitation*, contract, and/or modification number;
- (2) Name and address of *offeror*;
- (3) Name and telephone number of point of contact;
- (4) Name of *contract administration office* (if available);
- (5) Type of contract action (that is, new contract, *change order*, *price* revision/redetermination, letter contract, unpriced order, or other);
- (6) Proposed cost; profit or fee; and total;
- (7) Whether you will require the use of Government property in the performance of the contract, and, if so, what property;
- (8) Whether your organization is subject to cost accounting standards; whether your organization has submitted a CASB Disclosure Statement, and if it has been determined adequate; whether you have been notified that you are or *may* be in noncompliance with your Disclosure Statement or CAS (other than a noncompliance that the *cognizant Federal agency* official has determined to have an immaterial cost impact), and, if yes, an explanation; whether any aspect of this proposal is inconsistent with your disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with your established estimating and accounting principles and procedures and FAR part 31, Cost Principles, and, if not, an explanation;
- (9) The following statement: This proposal reflects our estimates and/or actual costs as of this date and conforms with the instructions in FAR 15.403-5(b)(1) and Table 15-2. By submitting this proposal, we grant the *Contracting Officer* and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for *pricing*, that will permit an adequate evaluation of the proposed *price*.
- (10) Date of submission; and
- (11) Name, title, and *signature* of authorized representative.

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

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

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

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

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

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

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

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

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

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

H. As soon as practicable after final agreement on *price* or an earlier date agreed to by the parties, but before the award resulting from the proposal, you *must*, under the conditions stated in FAR [15.406-2](#), submit a Certificate of Current *Cost or Pricing Data*.

## II. Cost Elements

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

A. *Materials and services*. Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or *line items* being proposed and the basis for *pricing* (vendor quotes, *invoice prices*, etc.). Include raw materials, parts, *components*, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and *price*. Conduct *price* analyses of all subcontractor proposals. Conduct cost analyses for all *subcontracts* when *certified cost or pricing data* are submitted by the subcontractor. Include these analyses as part of your own *certified cost or pricing data* submissions for *subcontracts* expected to exceed the appropriate threshold in FAR [15.403-4](#). Submit the subcontractor *certified cost or pricing data* and *data other than certified cost or pricing data* as part of your own *certified cost or pricing data* as required in paragraph IIA(2) of this table. These requirements also apply to all subcontractors if required to submit *certified cost or pricing data*.

(1) *Adequate Price Competition*. Provide data showing the degree of competition and the basis for establishing the source and reasonableness of *price* for those *acquisitions* (such as *subcontracts*, *purchase orders*, material order, etc.) exceeding, or expected to exceed, the appropriate threshold set forth at FAR [15.403-4](#) priced on the basis of adequate *price* competition. For interorganizational transfers priced at other than the cost of comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the *pricing* method (see FAR [31.205-26\(e\)](#)).

(2) *All Other*. Obtain *certified cost or pricing data* from prospective sources for those *acquisitions* (such as *subcontracts, purchase orders, material order, etc.*) exceeding the threshold set forth in FAR [15.403-4](#) and not otherwise exempt, in accordance with FAR [15.403-1\(b\)](#) ( *i.e.*, adequate *price* competition, *commercial products* or *commercial services, prices* set by law or regulation or waiver). Also provide data showing the basis for establishing source and reasonableness of *price*. In addition, provide a summary of your cost analysis and a copy of *certified cost or pricing data* submitted by the prospective source in support of each *subcontract, or purchase order* that is the lower of either \$15 million or more, or both more than the pertinent *certified cost or pricing data* threshold and more than 10 percent of the prime contractor's proposed *price*. Also submit any information reasonably required to explain your estimating process (including the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the *price*). The *Contracting Officer* may require you to submit *cost or pricing data* in support of proposals in lower amounts. Subcontractor *certified cost or pricing data* must be accurate, complete and current as of the date of final *price* agreement, or an earlier date agreed upon by the parties, given on the prime contractor's Certificate of Current *Cost or Pricing Data*. The prime contractor is responsible for updating a prospective subcontractor's data. For standard *commercial products* fabricated by the *offeror* that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the *certified cost or pricing data* and submit the results of your analysis of the prospective source's proposal. When submission of a prospective source's *certified cost or pricing data* is required as described in this paragraph, it must be included as part of your own *certified cost or pricing data*. You must also submit any *data other than certified cost or pricing data* obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.

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

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

D. *Other Costs*. List all other costs not otherwise included in the categories described above (*e.g.*, *special tooling*, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework, and Federal excise tax on finished articles) and provide bases for *pricing*.

E. *Royalties*. If royalties exceed \$1,500, you must provide the following information on a separate page for each separate royalty or license fee:

- (1) Name and address of licensor.
- (2) Date of license agreement.
- (3) Patent numbers.
- (4) Patent application serial numbers, or other basis on which the royalty is payable.
- (5) Brief description (including any part or model numbers of each contract item or *component* on which the royalty is payable)
- (6) Percentage or dollar rate of royalty per unit.
- (7) Unit *price* of contract item.
- (8) Number of units.
- (9) Total dollar amount of royalties.
- (10) If specifically requested by the *Contracting Officer*, a copy of the current license agreement and identification of applicable *claims* of specific patents (see FAR [27.202](#) and [31.205-37](#)).

F. *Facilities Capital Cost of Money*. When you elect to *claim facilities capital cost of money* as an allowable cost, you must submit FormCASB-CMF and show the calculation of the proposed amount (see FAR [31.205-10](#)).

### III. Formats for Submission of *Line Item* Summaries



A. New Contracts (including letter contracts).

Cost Elements	Proposed Contract Estimate- Total Cost	Proposed Contract Estimate-Unit Cost	Reference
(1)	(2)	(3)	(4)

Column Instruction

- (1) Enter appropriate cost elements.
- (2) Enter those necessary and reasonable costs that, in your judgment, will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (*e.g.*, under a letter contract), describe them on an attached supporting page. When preproduction or startup costs are significant, or when specifically requested to do so by the *Contracting Officer*, provide a full identification and explanation of them.
- (3) Optional, unless required by the *Contracting Officer*.
- (4) Identify the attachment in which the information supporting the specific cost element *may* be found.  
  
(Attach separate pages as necessary.)

B. Change Orders, Modifications, and Claims.

Cost Elements	Estimated Cost of All Work Deleted	Cost of Deleted Work Already Performed	Net Cost To Be Deleted	Cost of Work Added	Net Cost of Change	Reference
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Column Instruction

- (1) Enter appropriate cost elements.
- (2) Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed.
- (3) Include the incurred cost of deleted work already performed, using actuals incurred if possible, or, if actuals are not available, estimates from your accounting records. Attach a detailed inventory of work, materials, parts, *components*, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each *line item*. Also, if you desire to retain these items or any portion of them, indicate the amount offered for them.
- (4) Enter the net cost to be deleted, which is the estimated cost of all deleted work less the cost of deleted work already performed. Column(2) minus Column(3) equals Column(4).

(5) Enter your estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the *Contracting Officer*, provide a full identification and explanation of them. When any of the costs in this column have already been incurred, describe them on an attached supporting schedule.

(6) Enter the net cost of change, which is the cost of work added, less the net cost to be deleted. Column(5) minus Column(4) equals Column(6). When this result is negative, place the amount in parentheses.

(7) Identify the attachment in which the information supporting the specific cost element may be found.

(Attach separate pages as necessary.)

C. Price Revision/Redetermination.

Cutoff Date	Number of Units Completed	Number of Units To Be Completed	Contract Amount	Redetermination Proposal Amount	Difference
(1)	(2)	(3)	(4)	(5)	(6)

Cost Elements	Incurred Cost-Preproduction	Incurred Cost-Completed Units	Incurred Cost-Work in Progress	Total Incurred Cost	Estimated Cost to Complete	Estimated Total Cost	Reference
(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)

(Use as applicable)

Column	Instruction
(1)	Enter the cutoff date required by the contract, if applicable.
(2)	Enter the number of units completed during the period for which experienced costs of production are being submitted.
(3)	Enter the number of units remaining to be completed under the contract.
(4)	Enter the cumulative contract amount.
(5)	Enter your redetermination proposal amount.
(6)	Enter the difference between the contract amount and the redetermination proposal amount. When this result is negative, place the amount in parentheses. Column (4) minus Column (5) equals Column (6).

- (7) Enter appropriate cost elements. When residual inventory exists, the final costs established under *fixed-price-incentive* and *fixed-price-redeterminable* arrangements *should* be net of the fair market value of such inventory. In support of *subcontract* costs, submit a listing of all *subcontracts* subject to repricing action, annotated as to their status.
- (8) Enter all costs incurred under the contract before starting production and other nonrecurring costs (usually referred to as startup costs) from your books and records as of the cutoff date. These include such costs as preproduction engineering, special plant rearrangement, training program, and any identifiable nonrecurring costs such as initial rework, spoilage, pilot runs, etc. In the event the amounts are not segregated in or otherwise available from your records, enter in this column your best estimates. Explain the basis for each estimate and how the costs are charged on your accounting records (*e.g.*, included in production costs as direct engineering labor, charged to manufacturing overhead). Also show how the costs would be allocated to the units at their various stages of contract completion.
- (9) Enter in Column (9) the production costs from your books and records (exclusive of preproduction costs reported in Column (8)) of the units completed as of the cutoff date.
- (10) Enter in Column (10) the costs of work in process as determined from your records or inventories at the cutoff date. When the amounts for work in process are not available in your records but reliable estimates for them can be made, enter the estimated amounts in Column (10) and enter in column (9) the differences between the total incurred costs (exclusive of preproduction costs) as of the cutoff date and these estimates. Explain the basis for the estimates, including identification of any provision for experienced or anticipated allowances, such as shrinkage, rework, design changes, etc. Furnish experienced unit or lot costs (or labor hours) from inception of contract to the cutoff date, improvement curves, and any other available production cost history pertaining to the item(s) to which your proposal relates.
- (11) Enter total incurred costs (Total of Columns (8), (9), and (10)).
- (12) Enter those necessary and reasonable costs that in your judgment will properly be incurred in completing the remaining work to be performed under the contract with respect to the item(s) to which your proposal relates.
- (13) Enter total estimated cost (Total of Columns (11) and (12)).
- (14) Identify the attachment in which the information supporting the specific cost element *may* be found.

(Attach separate pages as necessary.)

## **Subpart 15.5 - Preaward, Award, and Postaward Notifications, Protests, and Mistakes**

### **15.501 Definition.**

*Day*, as used in this subpart, has the meaning set forth at [33.101](#).

### **15.502 Applicability.**

This subpart applies to competitive proposals, as described in [6.102\(b\)](#), and a combination of competitive procedures, as described in [6.102\(c\)](#). The procedures in [15.504](#), [15.506](#), [15.507](#), [15.508](#),

and [15.509](#), with reasonable modification, *should* be followed for *sole source acquisitions* and *acquisitions* described in [6.102\(d\)\(1\)](#) and (2).

### **15.503 Notifications to unsuccessful offerors.**

(a) Preaward notices-

(1) *Preaward notices of exclusion from competitive range.* The *contracting officer shall* notify *offerors* promptly *in writing* when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice *shall* state the basis for the determination and that a *proposal revision* will not be considered.

(2) Preaward notices for small business programs.

(i) In addition to the notice in paragraph (a)(1) of this section, the *contracting officer shall* notify each *offeror in writing* prior to award and upon completion of negotiations and determinations of responsibility-

(A) When using a small business set-aside (see [subpart 19.5](#));

(B) When using the *HUBZone* procedures in [19.1305](#) or [19.1307](#);

(C) When using the service-disabled veteran-owned small business procedures in [19.1405](#); or

(D) When using the Women-Owned Small Business Program procedures in [19.1505](#).

(ii) The notice *shall* state-

(A) The name and address of the apparently successful *offeror*;

(B) That the Government will not consider subsequent revisions of the *offeror's* proposal; and

(C) That no response is required unless a basis exists to challenge the size status or small business status of the apparently successful *offeror* (*e.g.*, small business concern, *small disadvantaged business concern*, *HUBZone* small business concern, service-disabled veteran-owned small business concern, economically disadvantaged *women-owned small business concern*, or *women-owned small business concern* eligible under the Women-Owned Small Business Program).

(iii) The notice is not required when the *contracting officer* determines *in writing* that the urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program (see [19.805-2](#)).

(b) Postaward notices.

(1) Within 3 days after the date of contract award, the *contracting officer shall* provide written notification to each *offeror* whose proposal was in the competitive range but was not selected for award ([10 U.S.C. 3304](#) and [41 U.S.C. 3704](#)) or had not been previously notified under paragraph (a) 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 any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award *shall* be made publicly available, upon request; and

(v) In general terms, the reason(s) the *offeror's* proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section 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 paragraph (b)(1) of this section to unsuccessful *offerors* in *solicitations* using *simplified acquisition procedures* in part 13.

(3) Upon request, the *contracting officer shall* provide the information in paragraph (b)(1) of this section to unsuccessful *offerors* that received a preaward notice of exclusion from the competitive range.

#### **15.504 Award to successful offeror.**

The *contracting officer shall* award a contract to the successful *offeror* by furnishing the executed contract or other notice of the award to that *offeror*.

(a) If the award document includes information that is different than the latest signed proposal, as amended by the *offeror's* written correspondence, both the *offeror* and the *contracting officer shall* sign the contract award.

(b) When an award is made to an *offeror* for less than all of the items that *may* be awarded 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 proposal acceptance period.

(c) If the Optional Form (OF) 307, Contract Award, Standard Form (SF) 26, Award/Contract, or SF 33, *Solicitation, Offer and Award*, is not used to award the contract, the first page of the award document *shall* contain the Government's acceptance statement from Block 15 of that form, exclusive of the Item 3 reference language, and *shall* contain the *contracting officer's* name, *signature*, and date. In addition, if the award document includes information that is different than the signed proposal, as amended by the *offeror's* written correspondence, the first page *shall* include the contractor's agreement statement from Block 14 of the OF 307 and the *signature* of the contractor's authorized representative.

#### **15.505 Preaward debriefing of offerors.**

*Offerors* excluded from the competitive range or otherwise excluded from the competition before

award *may* request a debriefing before award (10 U.S.C. 3305 and 41 U.S.C. 3705).

(a)

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

(2) At the *offeror's* request, this debriefing *may* be delayed until after award. If the debriefing is delayed until after award, it *shall* include all information normally provided in a postaward debriefing (see 15.506(d)). Debriefings delayed pursuant to this paragraph could affect the timeliness of any protest filed subsequent to the debriefing.

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

(b) The *contracting officer shall* make every effort to debrief the unsuccessful *offeror* as soon as practicable, but *may* refuse the request for a debriefing if, for compelling reasons, it is not in the best interests of the Government to conduct a debriefing at that time. The rationale for delaying the debriefing *shall* be documented in the contract file. If the *contracting officer* delays the debriefing, it *shall* be provided no later than the time postaward debriefings are provided under 15.506. In that event, the *contracting officer shall* include the information at 15.506(d) in the debriefing.

(c) Debriefings *may* be done orally, *in writing*, or by any other method acceptable to the *contracting officer*.

(d) The *contracting officer should* normally chair any debriefing session held. Individuals who conducted the evaluations *shall* provide support.

(e) At a minimum, preaward debriefings *shall* include-

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

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

(3) Reasonable responses to relevant questions about whether source selection procedures contained in the *solicitation*, applicable regulations, and other applicable authorities were followed in the process of eliminating the *offeror* from the competition.

(f) Preaward debriefings *shall* not disclose-

(1) The number of *offerors*;

(2) The identity of other *offerors*;

(3) The content of other *offerors'* proposals;

(4) The ranking of other *offerors*;

(5) The evaluation of other *offerors*; or

(6) Any of the information prohibited in 15.506(e).

(g) An official summary of the debriefing *shall* be included in the contract file.

## 15.506 Postaward debriefing of offerors.

(a)

(1) An *offeror*, upon its written request received by the agency within 3 days after the date on which that *offeror* has received notification of contract award in accordance with 15.503(b), *shall* be debriefed and furnished the basis for the selection decision and contract award.

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

(3) An *offeror* that was notified of exclusion from the competition (see 15.505(a)), but failed to submit a timely request, is not entitled to a debriefing.

(4)

(i) Untimely debriefing requests *may* be accommodated.

(ii) Government accommodation of a request for delayed debriefing pursuant to 15.505(a)(2), or any untimely debriefing request, does not automatically extend the deadlines for filing protests. Debriefings delayed pursuant to 15.505(a)(2) could affect the timeliness of any protest filed subsequent to the debriefing.

(b) Debriefings of successful and unsuccessful *offerors* *may* be done orally, *in writing*, or by any other method acceptable to the *contracting officer*.

(c) The *contracting officer* *should* normally chair any debriefing session held. Individuals who conducted the evaluations *shall* provide support.

(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 (including unit prices) and technical rating, if applicable, of the successful *offeror* and the debriefed *offeror*, and *past performance* information on 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 products*, the make and model of the product 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, the debriefing *shall* not reveal any information prohibited from disclosure by 24.202 or exempt from release under the Freedom of Information Act (5 U.S.C. 552) including-

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

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

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

(f) An official summary of the debriefing *shall* be included in the contract file.

### **15.507 Protests against award.**

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

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

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

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

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

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

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

### **15.508 Discovery of mistakes.**

Mistakes in a contractor's proposal that are disclosed after award *shall* be processed substantially in accordance with the procedures for mistakes in bids at 14.407-4.

### **15.509 Forms.**

Optional Form (OF) 307, Contract Award, Standard Form (SF) 26, Award/Contract, or SF 33, *Solicitation, Offer and Award*, may be used to award negotiated contracts in which the *signature* of both parties on a single document is appropriate. Note however, if using the SF 26 for a negotiated *procurement*, block 18 is not to be used. If these forms are not used, the award document *shall*



incorporate the agreement and award language from the OF 307.

## **Subpart 15.6 - Unsolicited Proposals**

### **15.600 Scope of subpart.**

This subpart sets forth policies and procedures concerning the submission, receipt, evaluation, and acceptance or rejection of *unsolicited proposals*.

### **15.601 Definitions.**

As used in this subpart-

*Advertising material* means material designed to acquaint the Government with a prospective contractor's present *products*, services, or potential capabilities, or designed to stimulate the Government's interest in buying such *products* or services.

*Commercial product or commercial service offer* means an *offer* of a *commercial product* or *commercial service* that the vendor wishes to see introduced in the Government's supply system as an *alternate* or a replacement for an existing supply item. This term does not include innovative or unique configurations or uses of *commercial products* or *commercial services* that are being offered for further development and that *may* be submitted as an *unsolicited proposal*.

*Contribution* means a concept, suggestion, or idea presented to the Government for its use with no indication that the source intends to devote any further effort to it on the Government's behalf.

### **15.602 Policy.**

It is the policy of the Government to encourage the submission of new and innovative ideas in response to *Broad Agency Announcements*, Small Business Innovation Research topics, Small Business Technology Transfer Research topics, Program Research and Development Announcements, or any other Government-initiated *solicitation* or program. When the new and innovative ideas do not fall under topic areas publicized under those programs or techniques, the ideas *may* be submitted as *unsolicited proposals*.

### **15.603 General.**

(a) *Unsolicited proposals* allow unique and innovative ideas or approaches that have been developed outside the Government to be made available to Government agencies for use in accomplishment of their missions. *Unsolicited proposals* are offered with the intent that the Government will enter into a contract with the *offeror* for research and development or other efforts supporting the Government mission, and often represent a substantial investment of time and effort by the *offeror*.

(b) *Advertising material*, *commercial product or commercial service offers*, or *contributions*, as defined in 15.601, or routine correspondence on technical issues, 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, endorsement, direction, or direct Government involvement;

(4) Include sufficient detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities;

(5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods; and

(6) Not address a previously published agency requirement.

(d) *Unsolicited proposals* in response to a publicized general statement of agency needs are considered to be independently originated.

(e) Agencies *must* evaluate *unsolicited proposals* for *energy savings performance contracts* in accordance with the procedures in 10 CFR436.33(b).

### **15.604 Agency points of contact.**

(a) Preliminary contact with agency technical or other appropriate personnel before preparing a detailed *unsolicited proposal* or submitting proprietary information to the Government *may* save considerable time and effort for both parties (see [15.201](#)). Agencies *must* make available to potential *offerors* of *unsolicited proposals* at least the following information:

(1) Definition (see [2.101](#)) and content (see [15.605](#)) 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) Guidance on preferred methods for submitting ideas/concepts to the Government, such as any agency: upcoming *solicitations*; *Broad Agency Announcements*; Small Business Innovation Research programs; Small Business Technology Transfer Research programs; Program Research and Development Announcements; or grant programs.

(4) Agency points of contact for information regarding advertising, *contributions*, and other types of transactions similar to *unsolicited proposals*.

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

(6) Procedures for submission and evaluation of *unsolicited proposals*.

(7) Instructions for identifying and marking proprietary information so that it is protected and restrictive legends conform to [15.609](#).

(b) Only the cognizant *contracting officer* has the authority to bind the Government regarding *unsolicited proposals*.

## **15.605 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, nonprofit, educational, small business;

(2) Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;

(3) Identification of proprietary data to be used only for evaluation purposes;

(4) Names of other Federal, State, or local agencies or parties receiving the proposal or funding the proposed effort;

(5) Date of submission; and

(6) *Signature* of a person authorized to represent and contractually obligate the *offeror*.

(b) Technical information including-

(1) Concise title and 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.*, Government property or personnel resources.

(c) Supporting information including-

(1) Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;

(2) Period of time for which the proposal is valid (a 6-month minimum is suggested);

(3) Type of contract preferred;

(4) Proposed duration of effort;

(5) Brief description of the organization, previous experience, relevant *past performance*, and facilities to be used;

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

(7) The names and telephone numbers of agency technical or other agency points of contact already contacted regarding the proposal.

### **15.606 Agency procedures.**

(a) Agencies *shall* establish procedures for controlling the receipt, evaluation, and timely disposition of *unsolicited 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 agency points of contact (see [15.604](#)) to coordinate the receipt and handling of *unsolicited proposals*.

#### **15.606-1 Receipt and initial review.**

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

(1) Is a valid *unsolicited proposal*, meeting the requirements of [15.603\(c\)](#);

(2) Is suitable for submission in response to an existing agency requirement (see [15.602](#));

(3) Is related to the agency mission;

(4) Contains sufficient technical information and cost-related or price-related information for evaluation;

(5) Has overall scientific, technical, or socioeconomic merit;

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

(7) Complies with the marking requirements of [15.609](#).

(b) If the proposal meets these requirements, the contact point *shall* promptly acknowledge receipt and process the proposal.

(c) If a proposal is rejected because the proposal does not meet the requirements of paragraph (a) of this subsection, the agency contact point *shall* promptly inform the *offeror* of the reasons for rejection *in writing* and of the proposed disposition of the *unsolicited proposal*.

#### **15.606-2 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 [15.609\(d\)](#). 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, innovative, and meritorious methods, approaches, or concepts demonstrated by the

proposal;

(2) Overall scientific, technical, or socioeconomic merits of the proposal;

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

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

(5) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical to achieving the proposal objectives; and

(6) The realism of the proposed cost.

(b) The evaluators *shall* notify the agency point of contact of their recommendations when the evaluation is completed.

### **15.607 Criteria for acceptance and negotiation of an unsolicited proposal.**

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

(3) Does not relate to the activity's mission; or

(4) Does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal.

(b) The *contracting officer* may commence negotiations on a sole source basis only when-

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

(2) A justification and approval has been obtained (see [6.302-1\(a\)\(2\)\(i\)](#) for research proposals or other appropriate provisions of [subpart 6.3](#), and [6.303-2\(c\)](#));

(3) The agency technical office sponsoring the contract furnishes the necessary funds; and

(4) The *contracting officer* has complied with the synopsis requirements of [subpart 5.2](#).

### **15.608 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 in the proposal that also is available from another source without restriction.

(b) Government personnel *shall* not disclose restrictively marked information (see [3.104](#) and [15.609](#)) included in an *unsolicited proposal*. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, *may* result in criminal penalties under [18 U.S.C. 1905](#).

### **15.609 Limited use of data.**

(a) An *unsolicited proposal* *may* include data that the *offeror* does not want disclosed to the public for any purpose or used by the Government except for evaluation purposes. If the *offeror* wishes to restrict the data, the title page *must* be marked with the following legend:

#### *Use and Disclosure of Data*

This proposal includes data that *shall* not be disclosed outside the Government and *shall* not be duplicated, used, or disclosed-in whole or in part-for any purpose other than to evaluate this proposal. However, 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 resulting contract. This restriction does not limit the Government's right to use information contained in these data if they are obtained from another source without restriction. The data subject to this restriction are contained in Sheets [*insert numbers or other identification of sheets*].

(b) The *offeror shall* also mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(c) The agency point of contact *shall* return to the *offeror* any *unsolicited proposal* marked with a legend different from that provided in paragraph (a) of this section. 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 agency point of contact *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 FAR [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) Use the notice in paragraph (d) of this section solely as a manner of handling *unsolicited proposals* that will be compatible with this subpart. However, do not use this notice to justify withholding of a record, or to improperly deny the public access to a record, where an obligation is imposed by the Freedom of Information Act ([5 U.S.C. 552](#)). An *offeror should* identify trade secrets,

commercial or financial information, and privileged or confidential information to the Government (see paragraph (a) of this section).

(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 agency point of contact *shall*-

(1) Attach a cover sheet clearly marked with the legend in paragraph (d) of this section;

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

(3) Require any non-Government evaluator to agree *in writing* that data in the proposal will not be disclosed to others outside the Government.

(g) If the proposal is received with the restrictive legend (see paragraph (a) of this section), the modified cover sheet *shall* also be used and permission *shall* be obtained from the *offeror* before release of the proposal for evaluation by non-Government personnel.

(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 agency point of contact *shall*-

(1) Clearly mark the cover sheet with the legend in paragraph (d) or as modified in paragraph (f) of this section; and

(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.