(Revised September 20, 2011)

PGI 215.4—CONTRACT PRICING

PGI 215.402 Pricing policy.

(1) Contracting officers must purchase supplies and services from responsible sources at fair and reasonable prices. The Truth in Negotiations Act (TINA) (10 U.S.C. 2306a and 41 U.S.C. chapter 35) requires offerors to submit cost or pricing data if a procurement exceeds the TINA threshold and none of the exceptions to cost or pricing data requirements apply. Under TINA, the contracting officer obtains accurate, complete, and current data from offerors to establish a fair and reasonable price (see FAR 15.403). TINA also allows for a price adjustment remedy if it is later found that a contractor did not provide accurate, complete, and current data.

(2) When cost or pricing data are not required, and the contracting officer does not have sufficient data or information to determine price reasonableness, FAR 15.402(a)(2) requires the offeror to provide whatever information or data the contracting officer needs in order to determine fair and reasonable prices.

(3) Obtaining sufficient data or information from the offeror is particularly critical in situations where an item is determined to be a commercial item in accordance with FAR 2.101 and the contract is being awarded on a sole source basis. This includes commercial sales information of items sold in similar quantities and, if such information is insufficient, cost data to support the proposed price.

(4) See PGI 215.404-1 for more detailed procedures for obtaining data or information needed to determine fair and reasonable prices.

PGI 215.403 Obtaining cost or pricing data.

PGI 215.403-1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

(b) *Exceptions to cost or pricing data requirements*. Even if an exception to cost or pricing data applies, the contracting officer is still required to determine price reasonableness. In order to make this determination, the contracting officer may require information other than cost or pricing data, including information related to prices and cost information that would otherwise be defined as cost or pricing data if certified.

(c)(3) *Commercial items*.

(A)*(1)* Contracting officers must exercise care when pricing a commercial item, especially in sole source situations. The definition of a commercial item at FAR 2.101

requires the product or service be one—

(i) That is of a type customarily used by the general public or by non-governmental entities for other than governmental purposes; and

(ii) That—

(A) Has been sold, leased, or licensed to the general public;

(B) Has been offered for sale, lease, or license to the general public; or

(C) Has evolved or been modified from such products or services.

(2) Therefore, some form of prior non-government sales data, or the fact that the item was sold, leased, licensed, or offered for sale (either the specific product or service or the product or service from which the item evolved) must be obtained.

(3) The fact that an item has been determined to be a commercial item does not, in and of itself, prohibit the contracting officer from requiring information other than cost or pricing data. This includes information related to prices and cost information that would otherwise be defined as cost or pricing data if certified. Obtaining sufficient data or information from the offeror is particularly critical in situations where an item is determined to be a commercial item in accordance with FAR 2.101 and the contract is being awarded on a sole source basis. See PGI 215.404-1 for more detailed procedures for use when obtaining information and data from the offeror to determine price reasonableness.

(B)*(1)* *Report Content*. The annual report of commercial item exceptions to Truth in Negotiations Act (TINA) requirements shall include the following:

Title: Commercial Item Exceptions to TINA Requirements

(1) Contract number, including modification number, if applicable, and program name.

(2) Contractor name.

(3) Contracting activity.

(4) Total dollar amount of exception.

(5) Brief explanation of the basis for determining that the item(s) are commercial.

(6) Brief description of the specific steps taken to ensure price reasonableness.

(2) *Pricing Actions Reported*. The intent of this requirement is to report when a commercial item exception was determined. Therefore, the reporting of the commercial item exceptions are for pricing actions at the point the contracting officer makes a determination that the commercial item exception applies. For example—

Example 1: The contracting officer determined that a commercial item exception applies for an entire indefinite-delivery indefinite-quantity (IDIQ) contract and expected the subsequent orders to exceed $15 million (based on the estimated maximum amount for the IDIQ or other supportable estimate of future orders). The organization would report this in accordance with DFARS 215.403-1(c)(3) for the period in which the IDIQ contract was awarded, and would include the total dollar amount of subsequent orders under the exception expected at the time of award.

Example 2: The contracting officer awards an IDIQ contract with no commercial item exceptions anticipated. The contracting officer later modifies the contract for an order that will meet commercial item exceptions, and the subsequent order(s) are expected to exceed $15 million. Reporting (in the year the modification was issued) will include this IDIQ contract, the amount of this order, and any other expected future orders that will use the exception.

(i) For the above examples, after the contract is reported as receiving the exception with expected awards over $15 million, there would be no further report, e.g., when a subsequent order under that contract exceeds $15 million, because reporting for that contract was already accomplished.

(ii) When explaining price reasonableness in accordance with paragraph (c)(3)(B)*(1)*(6) of this subsection, if pricing was accomplished when the IDIQ contract was awarded, also explain how price reasonableness was determined. In circumstances where pricing will take place on the order at a future date, explain how pricing techniques at FAR 15.404-1 will be used, including obtaining cost information, if that is the only way to determine price reasonableness.

(4) *Waivers*.

(A) *Exceptional case TINA waiver*.

(1) In determining that an exceptional case TINA waiver is appropriate, the head of the contracting activity must exercise care to ensure that the supplies or services could not be obtained without the waiver and that the determination is clearly documented. See DPAP March 23, 2007, policy memorandum. The intent is not to relieve entities that normally perform Government contracts subject to TINA from an obligation to certify that

cost or pricing data are accurate, complete, and current. Instead, waivers must be used judiciously, in situations where the Government could not otherwise obtain a needed item without a waiver. A prime example would be when a particular company offers an item that is essential to DoD's mission but is not available from other sources, and the company refuses to submit cost or pricing data. In such cases, a waiver may be appropriate. However, the procuring agency should, in conjunction with the waiver, develop a strategy for procuring the item in the future that will not require such a waiver (e.g., develop a second source, develop an alternative product that satisfies the department's needs, or have DoD produce the item).

(2) Senior procurement executive coordination. An exceptional case TINA waiver that exceeds $100 million shall be coordinated with the senior procurement executive prior to granting the waiver.

(3) Waiver for part of a proposal. The requirement for submission of cost or pricing data may be waived for part of an offeror's proposed price when it is possible to clearly identify that part of the offeror's cost proposal to which the waiver applies as separate and distinct from the balance of the proposal. In granting a partial waiver, in addition to complying with the requirements in DFARS 215.403-1(c)(4), the head of the contracting activity must address why it is in the Government's best interests to grant a partial waiver, given that the offeror has no objection to certifying to the balance of its cost proposal.

(4) Waivers for unpriced supplies or services. Because there is no price, unpriced supplies or services cannot be subject to cost or pricing data certification requirements. The Government cannot agree in advance to waive certification requirements for unpriced supplies or services, and may only consider a waiver at such time as an offeror proposes a price that would otherwise be subject to certification requirements.

(B) The annual report of waiver of TINA requirements shall include the following:

Title: Waiver of TINA Requirements

(1) Contract number, including modification number, if applicable, and program name.

(2) Contractor name.

(3) Contracting activity.

(4) Total dollar amount waived.

(5) Brief description of why the item(s) could not be obtained without a

waiver. See DPAP March 23, 2007, policy memorandum.

(6) Brief description of the specific steps taken to ensure price reasonableness.

(7) Brief description of the demonstrated benefits of granting the waiver.

PGI 215.403-3 Requiring information other than cost or pricing data.

To the extent that cost or pricing data are not required by FAR 15.403-4 and there is no other means for the contracting officer to determine that prices are fair and reasonable, the offeror is required to submit "information other than cost or pricing data" (see definition at FAR 2.101). In accordance with FAR 15.403-3(a), the offeror must provide appropriate information on the prices at which the same or similar items have previously been sold, adequate for determining the reasonableness of the price. The following clarifies these requirements:

(1) *Information other than cost or pricing data*. When cost or pricing data are not required, the contracting officer must obtain whatever information is necessary in order to determine the reasonableness of the price. The FAR defines this as "information other than cost or pricing data." When TINA does not apply and there is no other means of determining that prices are fair and reasonable, the contracting officer must obtain appropriate information on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price. Sales data must be comparable to the quantities, capabilities, specifications, etc., of the product or service proposed. Sufficient steps must be taken to verify the integrity of the sales data, to include assistance from the Defense Contract Management Agency, the Defense Contract Audit Agency, and/or other agencies if required. See PGI 215.404-1 for more detailed procedures for obtaining information and data from offerors to determine price reasonableness.

(2) *Previously been sold*. Contracting officers shall request offerors to provide information related to prior sales (or "offered for sale") in support of price reasonableness determinations.

(3) *Adequacy of sales data for pricing*. The contracting officer must determine if the prior sales information is sufficient for determining that prices are fair and reasonable. If the sales information is not sufficient, additional information shall be obtained, including cost information if necessary. See PGI 215.404-1 for more detailed procedures for obtaining whatever data or information is needed to determine fair and reasonable prices.

(4) *Reliance on prior prices paid by the Government*. Before relying on a prior price paid by the Government, the contracting officer must verify and document that sufficient analysis was performed to determine that the prior price was fair and reasonable.

Sometimes, due to exigent situations, supplies or services are purchased even though an adequate price or cost analysis could not be performed. The problem is exacerbated when other contracting officers assume these prices were adequately analyzed and determined to be fair and reasonable. The contracting officer also must verify that the prices previously paid were for quantities consistent with the current solicitation. Not verifying that a previous analysis was performed, or the consistencies in quantities, has been a recurring issue on sole source commercial items reported by oversight organizations. Sole source commercial items require extra attention to verify that previous prices paid on Government contracts were sufficiently analyzed and determined to be fair and reasonable. At a minimum, a contracting officer reviewing price history shall discuss the basis of previous prices paid with the contracting organization that previously bought the item. These discussions shall be documented in the contract file.

PGI 215.404 Proposal analysis.

PGI 215.404-1 Proposal analysis techniques.

(a) *General*.

(i) The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable. When the contracting officer needs information to determine price reasonableness and the offeror will not furnish that information, use the following sequence of steps to resolve the issue:

(A) The contracting officer should make it clear what information is required and why it is needed to determine fair and reasonable prices, and should be flexible in requesting data and information in existing formats with appropriate explanations from the offeror.

(B) If the offeror refuses to provide the data, the contracting officer should elevate the issue within the contracting activity.

(C) Contracting activity management shall, with support from the contracting officer, discuss the issue with appropriate levels of the offeror's management.

(D) If the offeror continues to refuse to provide the data, contracting activity management shall elevate the issue to the head of the contracting activity for a decision in accordance with FAR 15.403-3(a)(4).

(E) The contracting officer shall document the contract file to describe—

(1) The data requested and the contracting officer's need for that data;

(2) Why there is currently no other alternative but to procure the item from

this particular source; and

(3) A written plan for avoiding this situation in the future (e.g., develop a second source by...; bring the procurement in house to the Government by...).

(F) Consistent with the requirements at FAR 15.304 and 42.1502 and the DoD Guide to Collection and Use of Past Performance Information, Version 3, dated May 2003, the contracting officer shall provide input into the past performance system, noting the offeror's refusal to provide the requested information.

(ii) In some cases, supplies or services that are not subject to TINA may require a cost analysis (see paragraph (b)(iv) of this section). This will occur when a price analysis is not sufficient for determining prices to be fair and reasonable. In such cases, the contracting officer should consider the need for a Defense Contract Audit Agency audit of the cost data.

(iii) Particular attention should be paid to sole source commercial supplies or services. While the order of preference at FAR 15.402 must be followed, if the contracting officer cannot determine price reasonableness without obtaining information or cost data from the offeror, at a minimum, the contracting officer must obtain appropriate information on the prices at which the same or similar items have been sold previously (often previous sales information was the basis of the commercial item determination and must be requested during price analysis of the information or data provided by the offeror). If previous sales information is not sufficient to determine price reasonableness, the contracting officer must obtain "information other than cost or pricing data" and, if necessary, perform a cost analysis.

(b) *Price analysis*.

(i) Price analysis should generally be performed on supplies or services that are not subject to TINA. Available commercial sales, published catalogs or prices, etc., can sometimes be obtained through market research and can provide a basis for determining if the proposed prices are fair and reasonable.

(ii) In some cases, commercial sales are not available and there is no other market information for determining fair and reasonable prices. This is especially true when buying supplies or services that have been determined to be commercial, but have only been "offered for sale" or purchased on a sole source basis with no prior commercial sales upon which to rely. In such cases, the contracting officer must require the offeror to submit whatever cost information is needed to determine price reasonableness.

(iii) The following procedures shall be adhered to when executing the price analysis steps at FAR 15.404-1(b)(2):

(A) When the contracting officer is relying on information obtained from sources other than the offeror, the contracting officer must obtain and document sufficient information to confirm that previous prices paid by the Government were based on a thorough price and/or cost analysis. For example, it would not be sufficient to use price(s) from a database paid by another contracting officer without understanding the type of analysis that was performed to determine the price(s), and without verifying that the quantities were similar for pricing purposes. This does not necessarily need to be another analysis, but there should be coordination with the other office that acknowledges an analysis was performed previously.

(B) When purchasing sole source commercial items, the contracting officer must request non-Government sales data for quantities comparable to those in the solicitation. In addition, if there have not been any non-Government sales, "information other than cost or pricing data" shall be obtained and a price or cost analysis performed as required.

(iv) When considering advice and assistance from others, the contracting officer must pay particular attention to supplies or services that are not subject to TINA because they are "of a type" customarily used by the general public or "similar to" the item being purchased. There must be a thorough analysis of—

(A) The available price information for the similar-type item;

(B) The changes required by the solicitation; and

(C) The cost of modifying the base item.

(v) In some cases, the contracting officer will have to obtain "information other than cost or pricing data" from the offeror because there is not sufficient information from other sources to determine if prices are fair and reasonable. The contracting officer must use business judgment to determine the level of information needed from the offeror, but must ensure that the information is sufficient for making a reasonableness determination. For example, the offeror may have significant sales of the item in comparable quantities to non-Government entities, and that may be all the information needed, once the sales information is appropriately verified. On the other hand, there may be no non-Government sales and the contracting officer may be required to obtain cost information, and should do so. The request for additional information shall be limited to only that needed to determine prices to be fair and reasonable. For example, assume the proposal is 40 percent purchase parts, 30 percent labor, and the balance indirect rates. Also assume that the Defense Contract Management Agency (DCMA) has a forward pricing rate agreement with the offeror. It may be sufficient to limit requests to historical purchase records and/or vendor quotes and the proposed labor hours. Based on this information and the forward pricing rates from DCMA, the contracting officer may be able to determine price reasonableness.

(c) *Cost analysis*.

(i) When the contracting officer cannot obtain sufficient information to perform a price analysis in accordance with the pricing steps in FAR 15.404-1(b), a cost analysis is required.

(ii) When a solicitation is not subject to TINA and a cost analysis is required, the contracting officer must clearly communicate to the offeror the cost information that will be needed to determine if the proposed price is fair and reasonable.

(iii) To the extent possible, when cost or pricing data are not required to be submitted in accordance with Table 15-2 of FAR 15.408, the contracting officer should accept the cost data in a format consistent with the offeror's records.

(iv) The contracting officer must always consider the need for field pricing support from the Defense Contract Management Agency, the Defense Contract Audit Agency, and/or other agencies.

(e) *Technical analysis*.

Requesting technical assistance is particularly important when evaluating pricing related to items that are "similar to" items being purchased or commercial items that are "of a type" or require "minor modifications." Technical analysis can assist in pricing these types of items by identifying any differences between the item being acquired and the "similar to" item. In particular, the technical review can assist in evaluating the changes that are required to get from the "similar to" item, to the item being solicited, so the contracting officer can determine sufficient price/cost analysis techniques when evaluating that the price for the item being solicited is fair and reasonable.

PGI 215.404-2 Information to support proposal analysis.

(a) *Field pricing assistance.*

(i) The contracting officer should consider requesting field pricing assistance (See PGI 215.404-2(c) for when audit assistance should be requested) for—

(A) Fixed-price proposals exceeding the cost or pricing data threshold;

(B) Cost-type proposals exceeding the cost or pricing data threshold from offerors with significant estimating system deficiencies (see DFARS 215.407-5-70(a)(4) and (c)(2)(i)); or

(C) Cost-type proposals exceeding $10 million from offerors without significant estimating system deficiencies.

(ii) The contracting officer should not request field pricing support for proposed contracts or modifications in an amount less than that specified in paragraph (a)(i) of this subsection. An exception may be made when a reasonable pricing result cannot be established because of—

(A) A lack of knowledge of the particular offeror; or

(B) Sensitive conditions (e.g., a change in, or unusual problems with, an offeror's internal systems).

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

(i) The contracting officer should consider requesting audit assistance from DCAA for—

(A) Fixed-price proposals exceeding $10 million;

(B) Cost-type proposals exceeding $100 million.

(ii) The contracting officer should not request DCAA audit assistance for proposed contracts or modifications in an amount less than that specified in paragraph (c)(i) of this subsection unless there are exceptional circumstances explained in the request for audit. (See PGI 215.404-2(a)(i) for requesting field pricing assistance without a DCAA audit.)

(iii) If, in the opinion of the contracting officer or auditor, the review of a prime contractor's proposal requires further review of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor), the contracting officer should inform the administrative contracting officer (ACO) having cognizance of the prime contractor before the review is initiated.

(iv) Notify the appropriate contract administration activities when extensive, special, or expedited field pricing assistance will be needed to review and evaluate subcontractors' proposals under a major weapon system acquisition. If audit reports are received on contracting actions that are subsequently cancelled, notify the cognizant auditor in writing.

(v) Requests for audit assistance for subcontracts should use the same criteria as established in paragraphs (c)(i) and (c)(ii) of this subsection.

PGI 215.404-3 Subcontract pricing considerations.

(a) The contracting officer should consider the need for field pricing analysis and evaluation of lower-tier subcontractor proposals, and assistance to prime contractors when they are being denied access to lower-tier subcontractor records.

(i) When obtaining field pricing assistance on a prime contractor's proposal, the contracting officer should request audit or field pricing assistance to analyze and evaluate the proposal of a subcontractor at any tier (notwithstanding availability of data or analyses performed by the prime contractor) if the contracting officer believes that such assistance is necessary to ensure the reasonableness of the total proposed price. Such assistance may be appropriate when, for example—

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

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

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

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

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

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

(ii) It may be appropriate for the contracting officer or the ACO to provide assistance to a contractor or subcontractor at any tier, when the contractor or higher-tier subcontractor has been denied access to a subcontractor's records in carrying out the responsibilities at FAR 15.404-3 to conduct price or cost analysis to determine the reasonableness of proposed subcontract prices. Under these circumstances, the contracting officer or the ACO should consider whether providing audit or field pricing assistance will serve a valid Government interest.

(iii) When DoD performs the subcontract analysis, DoD shall furnish to the prime contractor or higher-tier subcontractor, with the consent of the subcontractor reviewed, a summary of the analysis performed in determining any unacceptable costs included in the subcontract proposal. If the subcontractor withholds consent, DoD shall furnish a range of unacceptable costs for each element in such a way as to prevent disclosure of subcontractor proprietary data.

(iv) Price redeterminable or fixed-price incentive contracts may include

subcontracts placed on the same basis. When the contracting officer wants to reprice the prime contract even though the contractor has not yet established final prices for the subcontracts, the contracting officer may negotiate a firm contract price—

(A) If cost or pricing data on the subcontracts show the amounts to be reasonable and realistic; or

(B) If cost or pricing data on the subcontracts are too indefinite to determine whether the amounts are reasonable and realistic, but—

(1) Circumstances require prompt negotiation; and

(2) A statement substantially as follows is included in the repricing modification of the prime contract:

> As soon as the Contractor establishes firm prices for each subcontract listed below, the Contractor shall submit (in the format and with the level of detail specified by the Contracting Officer) to the Contracting Officer the subcontractor's cost incurred in performing the subcontract and the final subcontract price. The Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect the final subcontract price.

(v) If the selection of the subcontractor is based on a trade-off among cost or price and other non-cost factors rather than lowest price, the analysis supporting subcontractor selection should include a discussion of the factors considered in the selection (also see FAR 15.101 and 15.304 and DFARS 215.304). If the contractor's analysis is not adequate, return it for correction of deficiencies.

(vi) The contracting officer shall make every effort to ensure that fees negotiated by contractors for cost-plus-fixed-fee subcontracts do not exceed the fee limitations in FAR 15.404-4(c)(4).

PGI 215.404-70 DD Form 1547, Record of Weighted Guidelines Method Application.

(1) The DD Form 1547—

(i) Provides a vehicle for performing the analysis necessary to develop a profit objective;

(ii) Provides a format for summarizing profit amounts subsequently negotiated as part of the contract price; and

(iii) Serves as the principal source document for reporting profit statistics to DoD's management information system.

(2) The military departments are responsible for establishing policies and procedures for feeding the DoD-wide management information system on profit and fee statistics (see PGI 215.404-76).

(3) The contracting officer shall—

(i) Use and prepare a DD Form 1547 whenever a structured approach to profit analysis is required by DFARS 215.404-4(b) (see DFARS 215.404-71, 215.404-72, and 215.404-73 for guidance on using the structured approaches). Administrative instructions for completing the form are in PGI 253.215-70.

(ii) Ensure that the DD Form 1547 is accurately completed. The contracting officer is responsible for the correction of any errors detected by the management system auditing process.

PGI 215.404-71 Weighted guidelines method.

PGI 215.404-71-4 Facilities capital employed.

(c) *Use of DD Form 1861 - Field pricing support*.

(i) The contracting officer may ask the ACO to complete the forms as part of field pricing support.

(ii) When the Weighted Guidelines Method is used, completion of the DD Form 1861 requires information not included on the Form CASB-CMF, i.e., distribution percentages of land, building, and equipment for the business unit performing the contract. Choose the most practical method for obtaining this information, for example—

(A) Contract administration offices could obtain the information through the process used to establish factors for facilities capital cost of money or could establish advance agreements on distribution percentages for inclusion in field pricing reports;

(B) The corporate ACO could obtain distribution percentages; or

(C) The contracting officer could request the information through a solicitation provision.

PGI 215.404-76 Reporting profit and fee statistics.

(1) Contracting officers in contracting offices that participate in the management information system for profit and fee statistics must send completed DD Forms 1547 on actions that exceed the cost or pricing data threshold, where the contracting officer used the weighted guidelines method, an alternate structured approach, or the modified weighted guidelines method, to their designated office within 30 days after contract award.

(2) Participating contracting offices and their designated offices are—

Contracting Office	Designated Office
ARMY	
All	*
NAVY	
All	Commander Fleet and Industrial Supply Center, Norfolk Washington Detachment, Code 402 Washington Navy Yard Washington, DC 20374-5000
AIR FORCE	
Air Force Materiel Command (all field offices)	*

* Use the automated system, Profit Weighted Guidelines and Application at https://www.wgl.wpafb.af.mil/wgl, as required by your department.

(3) When the contracting officer delegates negotiation of a contract action that exceeds the cost or pricing data threshold to another agency (e.g., to an ACO), that agency must ensure that a copy of the DD Form 1547 is provided to the delegating office for reporting purposes within 30 days after negotiation of the contract action.

(4) Contracting offices outside the United States and its outlying areas are exempt from reporting.

(5) Designated offices send a quarterly (non-cumulative) report of DD Form 1547 data to—

Washington Headquarters Services
Directorate for Information Operations and Reports (WHS/DIOR)
1215 Jefferson Davis Highway
Suite 1204
Arlington, VA 22202-4302

(6) In preparing and sending the quarterly report, designated offices—

(i) Perform the necessary audits to ensure information accuracy;

(ii) Do not enter classified information;

(iii) Transmit the report using approved electronic means; and

(iv) Send the reports not later than the 30th day after the close of the quarterly reporting periods.

(7) These reporting requirements have been assigned Report Control Symbol DD-AT&L(Q)1751.

PGI 215.406-1 Prenegotiation objectives.

(a) Also consider—

(i) Data resulting from application of work measurement systems in developing prenegotiation objectives; and

(ii) Field pricing assistance personnel participation in planned prenegotiation and negotiation activities.

(b) Prenegotiation objectives, including objectives related to disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports, shall be documented and reviewed in accordance with departmental procedures.

(i) *Significant Disagreements.* (A) Contracting officers and contract auditors have complementary roles in the contracting process and are expected to collaborate to determine fair and reasonable contract values, in accordance with Director, Defense Procurement and Acquisition Policy memorandum dated December 4, 2009, Subject: Resolving Contract Audit Recommendations. When a significant disagreement arises on questioned costs, the contracting officer and the auditor shall discuss the basis of the disagreement. The contracting officer shall document that discussion and their disagreement in a written communication to the auditor. The contracting officer shall also document the disagreement in the prenegotiation objective (or pre-business clearance). The contracting officer may then proceed with negotiations when the prenegotiation objectives are approved.

(B) A significant disagreement is defined as the contracting officer planning to sustain less than 75-percent of the total recommended questioned costs in a Defense Contract Audit Agency (DCAA) audit report of a contractor proposal for an initial contract or a contract modification with a value equal to or greater than $10 million. It does not apply to

costs that DCAA has categorized as unsupported or unresolved in its audit report.

(ii) *Adjudication Procedures.* DCAA has three days to elevate the issues within the contracting officer's activity after receipt of the contracting officers' written communication confirming the disagreement. Furthermore, DCAA may appeal the significant issues up the chain of command as established in each Component's "Resolving Contract Audit Recommendations" policy. If issues remain, the Director, DCAA may escalate from the Defense Component's Head of Contracting Activity or Senior Procurement Executive, to the Director, Defense Procurement and Acquisition Policy (DPAP). If the DCAA Director believes that the Director, DPAP has not adequately addressed the matter, the disagreement may finally be elevated to the Under Secretary of Defense for Acquisition, Technology, and Logistics, and the Comptroller.

(iii) Notwithstanding the above, the Director, DCAA, may always raise audit issues to the Director, DPAP.

PGI 215.406-3 Documenting the negotiation.

(a)(7) Include the principal factors related to the disposition of findings and recommendations contained in preaward and postaward contract audit and other advisory reports.

(10) The documentation—

(A) Must address significant deviations from the prenegotiation profit objective;

(B) Should include the DD Form 1547, Record of Weighted Guidelines Application (see DFARS 215.404-70), if used, with supporting rationale; and

(C) Must address the rationale for not using the weighted guidelines method when its use would otherwise be required by DFARS 215.404-70.

PGI 215.407-4 Should-cost review.

(b) *Program should-cost review***.**

(2) DoD contracting activities should consider performing a program should-cost review before award of a definitive contract for a major system as defined by DoDI 5000.2. See DoDI 5000.2 regarding industry participation.

(c) *Overhead should-cost review*.

(1) Contact the Defense Contract Management Agency (DCMA) (http://www.dcma.mil/) for questions on overhead should-cost analysis.

(2)(A) DCMA or the military department responsible for performing contract administration functions (e.g., Navy SUPSHIP) should consider, based on risk assessment, performing an overhead should-cost review of a contractor business unit (as defined in FAR 2.101) when all of the following conditions exist:

(1) Projected annual sales to DoD exceed $1 billion;

(2) Projected DoD versus total business exceeds 30 percent;

(3) Level of sole-source DoD contracts is high;

(4) Significant volume of proposal activity is anticipated;

(5) Production or development of a major weapon system or program is anticipated; and

(6) Contractor cost control/reduction initiatives appear inadequate.

(B) The head of the contracting activity may request an overhead should-cost review for a business unit that does not meet the criteria in paragraph (c)(2)(A) of this subsection.

(C) Overhead should-cost reviews are labor intensive. These reviews generally involve participation by the contracting, contract administration, and contract audit elements. The extent of availability of military department, contract administration, and contract audit resources to support DCMA-led teams should be considered when determining whether a review will be conducted. Overhead should-cost reviews generally should not be conducted at a contractor business segment more frequently than every 3 years.

PGI 215.407-5 Estimating systems.

PGI 215.407-5-70 Disclosure, maintenance, and review requirements.

(e) *Disposition of findings*.

(2) *Initial determination*.

(ii)(A) Within 10 days of receiving the report, if the contracting officer makes a determination that there is a significant deficiency, the contracting officer should provide an initial determination of deficiencies and a copy of the report to the contractor and require the contractor to submit a written response.

(C) *Evaluation of contractor's response*. Within 30 days of receiving the

contractor's response, the contracting officer, in consultation with the auditor or cognizant functional specialist, should evaluate the contractor's response and make a final determination.

(3) *Final Determination.*

(ii)(A) *Monitoring contractor's corrective action*. The auditor and the contracting officer shall monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the contracting officer shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the contracting officer can take are: bringing the issue to the attention of higher level management, reducing or suspending progress payments (see FAR 32.503-6), implementing or increasing the withholding in accordance with 252.242-7005, Contractor Business Systems, if applicable, and recommending non-award of potential contracts.

(B) *Correction of significant deficiencies*.

(*1*) When the contractor notifies the contracting officer, in writing, that the contractor has corrected the significant deficiencies, the contracting officer shall request that the auditor review the correction to determine if the deficiencies have been resolved.

(*2*) The contracting officer shall determine if the contractor has corrected the deficiencies.

(*3*) If the contracting officer determines the contractor has corrected the deficiencies, the contracting officer's notification shall be sent to the auditor; payment office; appropriate action officers responsible for reporting past performance at the requiring activities; and each contracting and contract administration office having substantial business with the contractor, as applicable.

PGI 215.470 Estimated data prices.

(b)(i) The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons—

(A) Differences in business practices in competitive situations;

(B) Differences in accounting systems among offerors;

(C) Use of factors or rates on some portions of the data;

(D) Application of common effort to two or more data items; and

(E) Differences in data preparation methods among offerors.

(ii) Data price estimates should not be used for contract pricing purposes without further analysis.