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~~Parent topic: Federal Acquisition Regulation~~

~~15.000 Scope of part.~~

This part ~~prescribes~~[addresses](#) policies and procedures ~~governing~~[used in](#) competitive and noncompetitive negotiated acquisitions. ~~A contract awarded using other than sealed bidding procedures is~~ [These acquisition procedures provide an opportunity for back-and-forth negotiation between the Government and an offeror\(s\) upon receipt of a negotiated contract \(see 14.101 proposal submitted in response to a request for proposals \(RFP\).](#)

15.001 Definitions.

As used in this part—

Deficiency is any part of an offer that does not conform to a material requirement of a RFP. A material requirement is one that affects price, quantity, quality, or a combination of significant weaknesses in a proposal that increases delivery, or that the RFP requires to be met at the time of proposal submission. ~~failure of a proposal to meet a Government requirement of a RFP. A material requirement is one that affects price, quantity, quality, or a combination of significant weaknesses in a proposal that increases delivery, or that the risk RFP requires to be met at the time of unsuccessful contract performance to an unacceptable level proposal submission.~~

Proposal modification is a change made to a proposal before the ~~solicitation~~ RFP 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 material elements of a proposal made after the ~~solicitation~~ RFP 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~~ Noncompetitive acquisitions. Noncompetitive, or sole source, acquisition is a process whereby an award is made to a single vendor without soliciting offers from multiple sources. When contracting in a sole source environment, the request for proposals (RFP) using this acquisition strategy, agencies should be tailored to remove unnecessary information and requirements; e.g., evaluation criteria and from the request for proposal (RFP), including voluminous proposal preparation instructions and evaluation factors. ~~When contracting in a sole source environment, the request for proposals (RFP) using this acquisition strategy, agencies should be tailored to remove unnecessary information and requirements; e.g., evaluation criteria and from the request for proposal (RFP), including voluminous proposal preparation instructions and evaluation factors.~~

(b) Competitive acquisitions. Competitive acquisition is a process whereby an award is made after soliciting offers from multiple sources. When contracting in a competitive environment, the procedures of this part are intended to minimize using this acquisition strategy, agencies should tailor the complexity of the solicitation, the RFP, evaluation, and the source selection decision to the circumstances of the acquisition, while maintaining a process designed to foster that promotes an impartial and comprehensive evaluation of offerors' proposals, leading to selection of the proposal representing the best value to the Government (see 2.101). ~~Competitive acquisition is a process whereby an award is made after soliciting offers from multiple sources. When contracting in a competitive environment, the procedures of this part are intended to minimize using this acquisition strategy, agencies should tailor the complexity of the solicitation, the RFP, evaluation, and the source selection decision to the circumstances of the acquisition, while maintaining a process designed to foster that promotes 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~~ Presolicitation and ~~Techniques~~ Solicitation

15.100 Scope ~~of subpart.~~

This subpart ~~describes some of the acquisition processes~~ addresses policies and techniques that may be procedures for preparing requests for proposals (RFPs) and receiving proposals. RFPs are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to request proposals. ~~describes some of the acquisition processes addresses policies and techniques that may be procedures for preparing requests for proposals (RFPs) and receiving proposals. RFPs are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to request proposals.~~

15.101 Early exchanges with industry.

(a) General. design Exchanges of information among all interested parties are encouraged and can occur at any time between the identification of a requirement through the receipt of proposals. These exchanges can improve both the Government's understanding of industry capabilities and

the industry's understanding of the Government's needs. Any exchange of information must be consistent with procurement integrity requirements in part 3 and protected in accordance with part 24.

(b) Draft RFPs. Agencies are encouraged to release draft RFPs and conduct conferences with industry before issuing competitive RFPs.

(c) Requests for Information. Agencies are encouraged to release requests for information (RFI) when the Government does not currently intend to award a contract, but wants to obtain price, delivery, market, or capabilities information for planning purposes.

(1) There is no required format for RFIs.

(2) Responses to RFIs are not offers and cannot be accepted by the Government to form a binding contract.

(3) RFIs must state that—

(i) The Government does not intend to award a contract on the basis of the RFI or otherwise pay for the information requested; and

(ii) Responses will be treated as information only and not as a proposal.

(4) Information received in response to an RFI must be safeguarded adequately from unauthorized disclosure. Contracting officers should mark the information with date and time of receipt and provide the information to designated officials.

(d) Mission needs and requirements. General information on an agency's current or anticipated needs and requirements may be disclosed at any time. When information about a proposed acquisition is disclosed to one or more potential offerors and that information is necessary for the preparation of proposals, the information should 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.

(e) Advisory multistep process.(1) Agencies may publish a notice that provides a general description of the scope or purpose of the acquisition ~~strategies suitable for the specific circumstances of the~~ and invites potential offerors to submit information that allows the Government to advise offerors about their potential to be viable competitors.

(2) When using this process, agencies must—

(i) Evaluate all responses in accordance with the criteria stated in the notice;

(ii) 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;

(iii) Advise respondents considered not to be viable competitors of the general basis for that opinion; and

(iv) Inform all respondents that, notwithstanding the advice provided by the Government in response to their submissions, they may participate in the resultant acquisition.

15.102 Structuring a request for proposals.

(a) Method. RFPs may be issued in writing or orally.

(b) Format.(1) Requirement. Contracting officers should prepare RFPs and resulting contracts using the uniform contract format at 15.109.

(i) Streamlined RFPs may be used in non-competitive acquisitions and other acquisitions in which a standard RFP would be unnecessarily lengthy.

(ii) Oral RFPs may be used when processing a written RFP would delay the acquisition of supplies or services to the detriment of the Government and an RFP is not required to be posted under part 5.

(2) Exceptions. Agencies do not need to use the uniform contract format for:

(i) Construction and architect-engineer contracts.

(ii) Subsistence contracts.

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

(iv) Streamlined RFPs.

(v) Contracts exempted by the agency head or designee.

(3) Minimum content when not using the uniform contract format. When the uniform contract format is not used, contracting officers must ensure—

(i) Competitive RFPs, at a minimum, describe the Government's requirement; any anticipated terms and conditions that will apply to the contract; the information required to be in the offeror's proposal; the factors and significant subfactors that will be used to evaluate the proposal and their relative importance, and one of the statements at 15.104(d).

(ii) Streamlined RFPs must be streamlined to remove unnecessary information and requirements and, at a minimum, contain the following:

(A) RFP number and date;

(B) Name, address, and telephone number of the contracting officer;

(C) Type of contract contemplated;

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

(E) Applicable certifications and representations;

(~~15.101~~-F) Anticipated contract terms and conditions;

(G) Proposal due date and time;

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

(I) For competitive streamlined RFPs, instructions to offerors and evaluation factors and significant subfactors in accordance with 15.104.

15.103 Developing a competitive source selection approach.

The goal of source selection is to select the proposal that represents the best value continuum. An agency can to the Government. To obtain best value-in, agencies use a range of approaches for evaluating competitive offers, where the importance of cost or price varies relative to other factors such as technical merit and past performance. Agencies can obtain best value in competitive 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, including but not limited to the approaches mentioned in this section.

15.~~101~~103-1 Tradeoff ~~process~~approach.

(a) AThe tradeoff ~~process~~approach to source selection is appropriate when it may be in the Government's best interest-of the Government to consider award to other than the lowest priced offeror or other than the highest technically rated offeror. This process permits tradeoffs among cost or price and non-cost or non-price factors. The anticipated benefits of a higher priced proposal must merit the additional cost.

(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 price15.103-2 Lowest price technically acceptable approach.

(a) General.

~~(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 (LPTA) approach to source selection process is appropriate when it is in the Government's best value-is-expected interest to award to result from selection of the the offeror that submits a technically acceptable proposal with the lowest evaluated price. This approach does not permit tradeoffs.~~

~~(b) Required Information. When using this approach, the lowest price technically acceptable process, the following apply: RFP must—~~

~~(1) Identify the evaluation factors and significant subfactors that establish the minimum requirements of for acceptability; and~~

~~(2) shall be set forth in the solicitation. Solicitations shall Specify that the award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the requirements for 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)).~~

~~(c) Limitations. 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~~

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

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

~~(e) 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)~~

~~(1) The LPTA source selection process shall approach must only be used when—~~

~~(4i) 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;~~

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

(3iii) 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;

(4iv) 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;

(5v) 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

(6vi) The contracting officer documents the contract file describing the circumstances that justify the use of the ~~lowest price technically acceptable~~LPTA 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),~~(2) Contracting officers ~~shall~~must avoid, to the maximum extent practicable, using the ~~lowest price technically acceptable~~LPTA source selection process in the case of a procurement that is predominantly for the acquisition of—

(1i) 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;

(2ii) Personal protective equipment; or

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

15.101103-3 Highest technically rated with a fair and reasonable price approach

(a) General.

(1) The highest technically rated with a fair and reasonable price approach to source selection is appropriate when the Government determines in advance that it would not be advantageous to consider tradeoffs between cost or price and non-cost or non-price factors; rather, the acquisition warrants paying any fair and reasonable price for the highest quality performance.

(2) ~~Tiered~~In this approach, all proposals are evaluated based on the non-price factors outlined in the solicitation and the source selection authority determines the highest technically rated proposal. The price of the highest technically rated proposal is evaluated to determine if it is fair and reasonable in accordance with subpart 15.4.

(3) If the highest technically rated proposal's price is fair and reasonable, the proposal is selected for award. If the price is not fair and reasonable, the source selection authority must determine the next highest technically rated proposal and evaluate whether the price is fair and reasonable in accordance with subpart 15.4. This process continues until a contract is awarded to the highest technically rated responsible offeror with a fair and reasonable price.

(b) Required information. When using this approach, the RFP must advise offerors that the Government will not consider tradeoffs between cost or price and non-cost or non-price factors, and that the highest technically rated proposal will be selected for award if it offers a fair and reasonable price.

15.103-4 Phased acquisition.

(a) Phased acquisitions break down complex or high-risk acquisitions into distinct parts for contract award. Instead of a single and comprehensive proposal and ~~evaluation of small business offers~~ process, phased acquisitions are structured to make separate awards at distinct phases of the acquisition. This approach can reduce source selection timeframes and promote flexibility by permitting adjustments to the requirement between phases.

~~An agency shall not create a tiered (or "cascading")~~

(b) When using a phased approach, the RFP must—

(1) Establish the phases for the acquisition; and

(2) Describe the process that will be used to evaluate proposals and any criteria offerors must meet to progress to the next phase in the RFP.

15.104 Establishing competitive evaluation factors and significant subfactors.

(a) General. A competitive award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition. Evaluation factors and significant subfactors must represent the key areas of importance and emphasis to be considered in the source selection decision; and support meaningful differentiation between competing proposals. All factors and significant subfactors that will affect contract award and their relative importance must be stated clearly in the RFP (10 U.S.C. 3206(b)(1) and 41 U.S.C. 3306(b)(1)).

(b) Required factors. 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) Price or cost.

(i) Price or cost to the Government ~~of offers~~ must be evaluated in every competitive source selection (10 U.S.C. 3206(c)(1)(B) and 41 U.S.C. 3306(c)(1)(B)). Proposed price reductions under an offeror's other contracts cannot be used as an evaluation factor.

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

(A) Contracting officers may choose not to include price or cost as an evaluation factor for award when an RFP—

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

~~described~~ (2) Will result in 13 CFR 125.2, for multiple-award contracts unless an agency has statutory authority 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.

(B) If the contracting officer chooses not to include price or cost as an evaluation factor for the contract award, in accordance with paragraph (b)(1)(ii)(A) of this section, the contracting officer must 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 (B)(1)(ii)(A) of this section must not apply to RFPs 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) Quality. The quality of the product or service must be evaluated in every competitive source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with RFP 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)).

(3) Past performance.

(i) Past performance must be evaluated in every competitive source selection, unless the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition. This evaluation is separate from the responsibility determination required under part 9.

(ii) The RFP must—

(A) Describe the general approach for evaluating past performance information, including evaluating offerors with no relevant performance history;

(B) Provide offerors an opportunity to: identify past or current contracts (including Federal, State, and local government, private sector, and other contracts) for efforts similar to the Government requirement, and provide information on problems encountered on the identified contracts and the offeror corrective actions; and

(iii) The RFP may describe the agency's approach to considering the currency and relevance, source, and context of the information to be requested.

(c) Situational factors. For competitive RFPs that are not set aside for small business concerns, involving consolidation or bundling, that offer a significant opportunity for subcontracting, the contracting officer must include—

(1) 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)); and

(2) A factor to evaluate the proposed small business subcontracting participation in the subcontracting plan (15 U.S.C. 637(d)(4)(G)(i)).

(d) Factor importance. In addition to stating the relative importance of each evaluation factor, and unless the exception at paragraph (b)(1)(ii) of this section applies, the RFP must 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

15.102(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)).

15.105 Other considerations.

15.105-1 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~~(a) Oral presentations may be used as a substitute for requesting portions of a written proposal information from offerors. Information on an offeror's capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks ~~(or other types of tests) may~~can 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;~~

(b) Oral presentations may occur at any time during the source selection process. When requesting oral presentations, the RFP must provide offerors with the necessary information to prepare and provide the presentation.

15.105-2) ~~The need~~ Negotiations disclosure.

Competitive RFPs must advise offerors whether the Government intends to ~~incorporate any~~ evaluate proposals and award a contract with or without conducting negotiations with offerors whose proposals have been determined to be within the competitive range. FAR provision 52.215-1, Instructions to Offerors-Competitive Acquisition, and its Alternate I, contain this disclosure.

15.105-3 Limitation on tiered evaluations for multiple award contracts.

When soliciting for a multiple award contract, agencies must not create a tiered or cascading evaluation of small business offers, as described in 13 CFR 125.2, unless the agency has statutory authority to do so.

15.105-4 Request for cost or pricing data.

(a) Required information ~~into the resultant contract~~; In accordance with 15.402(a), contracting officers must state in the RFP—

(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) Format for submission of data.

(1) Certified cost or pricing data. Contracting officers may require submission of certified cost or pricing data in the format indicated in Table 15-1 at 15.408-2, specify an alternative format, or permit submission in the contractor's format, unless the data are required to be submitted on one of the termination forms specified in part 49.

(i) Offerors must describe any forward pricing rate agreements (FRPA) or other advanced agreements in each specific pricing proposal to which the rates apply and identify the latest cost or pricing data already submitted in accordance with the FPRA.

(ii) Data supporting FRPAs, other advanced agreements, or final indirect cost proposals must be submitted in a form acceptable to the contracting officer.

(2) Data other than certified cost or pricing data. 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 RFP.

15.105-5 Make-or-buy decision.

(a) General. The Government may choose to review and agree on the offeror's make-or-buy program when necessary to ensure negotiation of reasonable contract prices, satisfactory performance, or implementation of socioeconomic policies.

(b) Acquisitions requiring make-or-buy programs.

(1) Contracting officers may require offerors to submit make-or-buy program plans for acquisitions requiring certified cost or pricing data whose estimated value is \$20 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 only require offerors to submit make-or-buy programs for acquisitions whose estimated value is under \$20 million if the contracting officer—

(i) Determines that the information is necessary; and

(ii) Documents the reasons in the contract file.

(c) RFP requirements. When offerors must submit proposed make-or-buy programs, the RFP must 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.

(d) Required information from offerors.

(1) The information required from an offeror about a make-or-buy program must—

(i) 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;

(ii)

~~(3) The~~ Not include raw materials, products, commercial services, and off-the-shelf items, unless their potential impact on contract cost or schedule is critical; and,

(iii) 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) To support a make-or-buy program, the following information must be provided by an offeror in its proposal:

(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 RFP 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.

(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.

~~the efficiency of~~ 15.105-6 Should-cost review.

When a program should-cost review is planned in accordance with 15.405-4, the contracting officer should state this fact in the acquisition; plan and in the RFP.

~~(4) The impact (including cost) on small businesses. In considering the costs of oral presentations~~ 15.105-7 Unit prices.

To facilitate the analysis at 15.404-5, 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 require offerers to 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;~~

~~in~~

~~(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.~~

proposals those items of supply that they will not manufacture or to which they will not contribute

~~(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~~
value when adequate price competition is not anticipated. This requirement does not apply to acquisitions for commercial products or commercial services.

~~(b) An RFP may be issued for OMB Circular A-76 studies. See subpart 7.3 for additional information regarding cost comparisons between~~ 15.106 Amending a request for proposal.

~~(a) General. When the Government and contractor performance changes its requirements or terms and conditions=~~

~~(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~~ must amend the RFP.

~~(i) Anticipated proposal size~~ (1) Amendments issued before the established time and date 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~~ receipt of proposals, and ensuring their timely delivery must be issued to all parties receiving the designated proposal delivery location RFP.

~~(2) If facsimile~~ Amendments issued after the established time and date for receipt of proposals are authorized, contracting officers may request offeror(s) must be issued 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~~ all offerors that have not relieve the contracting officer been eliminated from complying with other FAR requirements. Letter RFPs should be as complete as possible and, at a minimum, should contain the following: the competition.

~~(1)~~ (b) Content. At a minimum, each amendment must include—

(1) The name and address of issuing activity;

(2) The RFP number and date;

~~(2) Name, address (including electronic address and facsimile address, if appropriate), and telephone~~ (3) The amendment number and date;

(4) The number of pages in the amendment;

(5) A description of the change being made;

(6) The contracting officer's name and contact information; and

(7) The revised RFP closing date, if applicable.

(c) Forms. Prescribed forms are not required to amend RFPs described in this part. Agencies may use Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract, and Optional Form (OF) 309, Amendment of Solicitation.

(d) Oral notices. Oral notices may be used when time is of the essence. Contracting officers should document the contract file and formalize the notice with a written amendment.

(e) Requirement changes.

(1) Contracting officers must amend the RFP if the Government is interested in a proposal that involves a departure from the stated requirements. The amendment should not reveal the alternate solution proposed or any other information that is entitled to protection.

(2) Contracting officers must cancel the RFP and issue a new one, regardless of the stage of the acquisition if an amendment—

(i) Is proposed after offers have been received, and

(ii) In the judgment of the contracting officer, based on market research or otherwise, has a requirement change that is so substantial it exceeds what prospective offerors reasonably could have anticipated as a change to the RFP, and additional sources likely would have submitted offers had the change been in the RFP.

15.107 Submission, modification, revision, and withdrawal of proposals.

(a) Submission. Offerors are responsible for submitting proposals, and any revisions or modifications, so as to reach the Government office designated in the RFP by the time specified in the RFP.

(1) Method. Offerors may use any transmission method authorized in the RFP.

(2) Time. If no time is specified in the RFP, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

(b) Late submission.(1) General. 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 RFP, 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;

(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) Exception. 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 by the contracting officer.

(3) Proof of receipt. Acceptable evidence to establish the time of receipt at the Government installation includes electronic timestamps, 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.

(4) Notification. Contracting officers must promptly notify any offeror if its proposal, modification, or revision was received late, and inform the offeror whether its proposal will be considered, unless contract award is imminent and the award notice at 15.207-2 will suffice.

(5) Documentation.(i) When available, the file for each late proposal, modification, revision, or withdrawal received must include the date and hour of receipt; a statement regarding whether the proposal was considered for award, with supporting rationale; and the envelope, wrapper, or other evidence of date of receipt.

(ii) 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.

(c) Interruption. If proposals cannot be received at the Government office designated for receipt of proposals by the exact time specified in the RFP because an emergency or unanticipated event interrupts normal Government processes, and urgent Government requirements preclude amendment of the RFP closing date, the time specified for RFP will be deemed to be extended to the same time of day specified in the RFP on the first work day on which normal Government processes resume.

(d) Withdrawal. Proposals may be withdrawn by written notice at any time before award. A copy of withdrawn proposals should be retained in the contract file.

(1) Extra copies of the withdrawn proposals may be destroyed or returned to the offeror at the offeror's request. Extremely bulky proposals must only be returned at the offeror's request and expense.

~~(2)~~ Oral proposals in response to oral RFPs may be withdrawn orally. Contracting officers must document the contract file when oral withdrawals are made.

15.108 Receiving proposals.

(a) Marking. When there is no electronic record, contracting officers must mark proposals with the date and time of receipt and provide them to the designated officials.

(b) Handling. Proposals should be safeguarded from unauthorized disclosure throughout the source selection process in accordance with part 3.

(c) Unreadable proposals. If any portion of a proposal submitted electronically is unreadable, contracting officers must immediately notify the offeror and permit the offeror to resubmit the unreadable portion of the proposal. Contracting officers must establish the method and time for resubmission after consultation with the offeror and document the file. For the purpose of determining timeliness under 15.107, the resubmission is considered as if it were received at the date and time of the original unreadable submission, provided the offeror complies with the time and format requirements established by the contracting officer for resubmission.

~~15.109) 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 (c) 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~~ [RFPs](#) ~~using the uniform contract format outlined in Table 15-1 of this subsection.~~

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

~~Table 15-1—Uniform, Contract Format~~ [Terms and Conditions-Commercial Products and Commercial Services.](#)

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

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

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

~~The contracting officer shall prepare the contract Schedule as follows:-~~

[15.109-1 Part I - The Schedule.](#)

(a) Section A, Solicitation/contract form.

~~(1)~~ (1) Prescribed forms are not required to prepare RFPs described in this part. Agencies may use Optional Form (OF) 308, Solicitation and Offer-Negotiated Acquisition, or Standard Form (SF) 33, Solicitation, Offer and of 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~~RFP:

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

(ii) ~~Solicitation~~RFP number.

(iii) Date of issuance.

(iv) Closing date and time.

(v) Number of RFP 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~~email 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).~~ including any incidental deliverables.

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

(d) Section D, Packaging and marking. ~~Provide~~Include 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~~Include 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 not included in other than those on sections of the solicitation form uniform contract format. 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~~109-2 Part II- - Contract Clauses.

Section I, Contract clauses. ~~The contracting officer shall include in this section~~Include the clauses required by law or by this ~~regulation~~part 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~~109-3 Part III- - List of Documents, Exhibits, and Other Attachments.

Section J, List of attachments. ~~The contracting officer shall~~Include a list of 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~~109-4 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 these solicitation~~RFP 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~~Include 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~~.

(1) Include the method(s) offerors ~~or respondents~~may use to submit a proposal.

(2) Offerors 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-~~Agencies may also require the proposal to be further organized into sections (e.g., administrative, management, technical, past performance, and certified cost and pricing data or data other than certified cost and pricing data).

~~(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~~, and one of the phrases in 15.304(e), 104(d), as required.

~~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 110 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~~ (a) Insert the provision at 52.215-1, Instructions to Offerors—
Competitive Acquisition, in all competitive ~~solicitations~~ RFPs where the Government intends to
award a contract without ~~discussions~~ negotiations.

(1) If the Government intends to make award after ~~discussions~~ negotiating 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~~ (1) 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~~ RFPs 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.

(2) [Reserved]

~~(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 [part 25.1001](#), use the clause with its Alternate III.

~~(e) 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.~~

[\(c\) \[Reserved\]](#)

(d) [\[Reserved\]](#)

[\(e\) \[Reserved\]](#)

~~(f)(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~~[RFPs](#), unless the place of performance is specified by the Government.

[\(g\) \[Reserved\]](#)

~~(g) [Reserved]~~

~~(h) The contracting officer shall~~[\(h\)](#) Insert the clause at 52.215-8, Order of Precedence—~~Uniform Contract Format~~, in ~~solicitations~~[RFPs](#) and contracts using the format at 15.~~204~~[108](#).

[\(i\) Insert the clause at 52.215-9, Changes or Additions to Make-or-Buy Program, in RFPs 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 must 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.](#)

(j) Insert the clause at 52.215-10, Price Reduction for Defective Certified Cost or Pricing Data, in RFPs and contracts when it is contemplated that certified cost or pricing data will be required from the contractor or any subcontractor.

(k) ~~15.210 Forms:~~

~~Prescribed forms are~~Insert the clause at 52.215-11, Price Reduction for Defective Certified Cost or Pricing Data—Modifications, in RFPs and contracts when it is contemplated that certified cost or pricing data will be required from the contractor or any subcontractor for the pricing of contract modifications, and the clause prescribed in paragraph (j) of this section has not been included.

(l) Contracting officers must —

(1) Insert the clause at 52.215-12, Subcontractor Certified Cost or Pricing Data, in RFPs and contracts when the clause prescribed in paragraph (j) 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, modify the contract without requiring consideration, to replace clause 52.215-12, Subcontractor Certified Cost or Pricing Data, with its Alternate I.

(m) Contracting officers must—

(1) Insert the clause at 52.215-13, Subcontractor Certified Cost or Pricing Data—Modifications, in RFPs and contracts when the clause prescribed in paragraph (k) 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, modify the contract without requiring consideration, to replace clause 52.215-13, Subcontractor Certified Cost or Pricing Data—Modifications, with its Alternate I.

(n)(1) Insert the clause at 52.215-14, Integrity of Unit Prices, in RFPs 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) Use the clause with its Alternate I when contracting without adequate price competition or when prescribed by agency regulations.

(o) Insert the clause at 52.215-15, Pension Adjustments and Asset Reversions, in RFPs 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.

(p) Insert the provision at 52.215-16, Facilities Capital Cost of Money, in RFPs expected to result in contracts that are subject to the cost principles for contracts with commercial organizations.

(q) Insert the clause at 52.215-17, Waiver of Facilities Capital Cost of Money, in the resulting contract if the prospective contractor does not propose facilities capital cost of money in its offer.

(r) Insert the clause at 52.215-18, Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions, in RFPs 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.

(s) Insert the clause at 52.215-19, Notification of Ownership Changes, in RFPs 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.

(t) Considering the hierarchy at 15.403-1(a), insert the provision at 52.215-20, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, in RFPs 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.

(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 15-1 at 15.408-2;

(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 15.403-1.

(u) Considering the hierarchy at 15.403-1(a), 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 RFPs 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.

(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 15-1 at 15.408-2;

(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 15.403-1.

(v)(1) Insert the provision at 52.215-22, Limitations on Pass-Through Charges—Identification of Subcontract Effort, in RFPs containing the clause at 52.215-23.(2)(i) Except as provided in paragraph (v)(2)(ii) of this section, insert the clause 52.215-23, Limitations on Pass-Through Charges, in RFPs and contracts including task or delivery orders as follows:

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

(1) ~~prepare solicitations described in this part.~~ The total estimated contract or order value exceeds the simplified acquisition threshold as defined in part 2; and

(2) The contemplated contract type is expected to be a cost-reimbursement type contract as defined in part 16; 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 15.403-3(a); 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; or

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

(ii) ~~The following forms clause~~ may be used ~~at the discretion of~~ when the total estimated contract or order value is below the thresholds identified in 15.110(v)(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.

~~(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~~ 2 - Evaluation and Award

~~15.300~~ 200 ~~Scope of subpart.~~

This subpart ~~prescribes~~ addresses policies and procedures for ~~selection of a source or sources in evaluating and negotiating~~ competitive ~~negotiated acquisitions~~ proposals and awarding contracts.

~~15.301 [Reserved]~~

~~15.302~~ 201 ~~Source selection~~ objective responsibilities.

~~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~~ A contracting officer is designated as the source selection authority; (SSA), unless the agency head appoints another individual for a particular acquisition or group of acquisitions.

(b) ~~The source selection authority shall~~ SSA must—

(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~~ proposals;

(2) Approve the source selection ~~strategy~~ approach or acquisition plan, if applicable, before ~~solicitation release;~~ issuance of the request for proposal (RFP);

(3) Ensure consistency among the ~~solicitation~~ RFP 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~~ RFP ((10 U.S.C. 3303(c) and 41 U.S.C. 3703(c));

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

(6) Select the ~~source~~offeror or ~~sources~~offerors whose proposal is the best value to the Government (10 U.S.C. 3303(c) and 41 U.S.C. 3703(c)). The SSA may reject all proposals received in response to a RFP, if doing so is in the best interest of the Government.

~~(c) The contracting officer shall—~~

(c) Contracting officers must—

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

(2) After receipt of proposals, control ~~exchanges~~communications with offerors;

(3) When negotiating noncompetitive proposals, evaluate the proposal and document the reasonableness of the offered prices in accordance with subpart 15.3064; and

~~(34)~~ 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(e), 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 (d) Limitations. 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(e)(1)(A) and 41 U.S.C. 3306(e)(1)(A)); and~~

~~(3)~~
involved in the acquisition must not engage in conduct

~~(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)(iii)).~~

~~(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).~~

(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.

~~(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(e)). 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~~

(4) Reveals the names of individuals providing ~~(3) Significantly less important than cost~~ information about an offeror's past performance; or price (10 U.S.C. 3206(e)(1)(C))

(5) Knowingly furnishes source selection information in violation of 3.104 and 41 U.S.C. 3306(e)(1)(C)). 2102 and 2107.

~~15.305 Proposal evaluation.~~

15.202 Evaluating competitive proposals.

(a) General.

(1) Proposal evaluation is an assessment of the proposal and the ~~an~~ offeror's ability to perform the prospective contract successfully. An agency shall ~~Agencies must~~ evaluate each competitive proposals and then assess their relative qualities ~~proposal based~~ solely on the factors and subfactors specified in the RFP.

(2) Clarifications.

(i) Clarifications are exchanges between the Government and offerors where offerors are given the opportunity to resolve minor or clerical errors or clarify certain aspects of their proposal. Clarifications can be used to enhance the Government's understanding of a proposal, allow reasonable interpretation of a proposal, or facilitate the Government's evaluation process.

(ii) Clarifications include, but are not limited to, addressing: ambiguities of the proposal; other concerns such as perceived deficiencies, weaknesses, errors, omissions, or mistakes; 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.

(iii) ~~solicitation. Evaluations~~ Clarifications do not permit offerors to revise their proposal and cannot be used to cure proposal deficiencies or material omissions or materially alter the technical or cost elements of the proposal. However, contracting officers may request additional information or documentation provided the cost/price or other material elements of the proposal are unchanged.

(iv) Clarifications may occur, at the contracting officer's discretion, at any time after receipt of proposals through contract award. Contracting officers are not required to conduct clarifications with an offeror. If the contracting officer conducts clarifications with one or more offerors, it is not required to conduct clarifications with any other offeror.

(3) Oral Presentations. Contracting officers must 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) is at the discretion of the SSA. When an oral presentation includes information that the parties intend to include in the contract as material terms or conditions, the information must be put in writing and incorporated in the proposal and any resultant contract. Incorporation by reference of oral statements is not permitted.

~~(be conducted)~~ b) Technical evaluation.

(1) When using the lowest price technically acceptable (LPTA) approach, proposals are evaluated for technical acceptability only.

(2) When using the tradeoff approach, the evaluation must include-

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

~~any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings.~~ (ii) An evaluation of 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)~~(3) If teleworking is not prohibited, agencies must not unfavorably evaluate an offer that includes telework unless the contracting officer executes a written determination in accordance with part 7.

(c) Past performance evaluation.

~~(1)~~No past performance information. An offeror without a record of relevant past performance or for whom information on past performance is not available may not be evaluated favorably or unfavorably on past performance.

~~(one indicator of an offeror's ability to)~~2) LPTA source selection process. If past performance is evaluated when using the LPTA source selection process, contracting officers must only determine if the performance is technically acceptable and not perform a comparative assessment of the information.

~~(3) the contract successfully.~~Considerations. Evaluations should consider the following:

(i) The information provided by the offeror, as well as information obtained from any other sources.

(ii) 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. The SSA determines the relevance of similar 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) Any

~~(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, when evaluating an offer from a 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 must be considered.

~~(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(e)(3)(ii) and (e)(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).~~

(4) Small business. When using the LPTA source selection approach and a small business would have been in contention for award, but their past performance is determined to be unacceptable, the matter must be referred to the SBA for a Certificate of Competency determination.

(d) Cost or price evaluation. Agencies must purchase supplies and services from responsible sources at fair and reasonable prices. Contracting officers are responsible for evaluating and documenting the reasonableness of the awarded price in accordance with subpart 15.4.

15.306 Exchanges with offerors after receipt of proposals.

(a) ~~Clarifications and~~ 203 Competitive award without ~~discussions~~ negotiation.

(1) ~~Clarifications are limited exchanges, between the Government and offerors, that Contracting officers may occur when award~~ make competitive awards 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~~ negotiations if the ~~solicitation~~ RFP states that the Government intends to evaluate proposals and make award without ~~discussions~~ negotiation. If the ~~solicitation contains~~ RFP includes such a notice and the Government determines it is necessary to ~~conduct discussions~~ negotiate, the rationale for doing so ~~shall~~ must 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~~ 15.204 Competitive award with ~~offerors before establishment of the~~ negotiation.

15.204-1 Establishing a competitive range. ~~Communications are exchanges, between the Government and offerors, after receipt of proposals, leading to establishment of the~~

(a) Competitive range. ~~If~~ A competitive range is the group of evaluated proposals that the contracting officer determines are best suited for further negotiation. Contracting officers must establish a competitive range ~~is to be established, these communications if negotiations will occur after evaluating competitive proposals.~~

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

(b) Narrowing

(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~~ for efficiency. When 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~~[officers](#) ~~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](#)~~evaluated~~[evaluated](#) ~~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.~~[\(c\) Notice.](#) ~~Written notice of this decision shall~~[must](#) ~~be provided to unsuccessful offerors in accordance with 15.503.~~

~~(4) Offerors excluded or otherwise eliminated from the competitive range may request~~[206-1\(a\)](#) ~~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.~~

15.204-2 Competitive negotiations.

(a) General. The scope and extent of negotiations are a matter of contracting officer judgment.

(b) Requirement.

~~(1) Discussions are tailored to—~~Contracting officers must—

~~(i) Negotiate with each offeror's proposal, and must be conducted by the contracting officer with each offeror~~responsible offeror within the competitive range; and

~~(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)(ii) Tailor the negotiation to the offeror's proposal, but 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~~negotiate with, each offeror ~~still being considered for award; any~~ deficiencies; or significant weaknesses; ~~and adverse past performance information to which the~~ in the proposal.

~~(2) Contracting officers may further negotiate with an offeror, if necessary. Having further negotiations with a particular offeror has does not yet had an opportunity to respond. The obligate contracting officer~~officers to have further negotiations with any other offerors.

~~(3) Contracting officers may also is encouraged to discuss~~negotiate 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~~Contracting officers are not required to ~~discuss~~negotiate 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~~(4) When an RFP stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, contracting officers may 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~~proposed 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;~~

(c) Elimination from the competitive range. A proposal must be eliminated from consideration for award when the contracting officer determines that a proposal should no longer be included in the competitive range. Written notice of this decision must be provided to unsuccessful offerors in accordance with 15.206-1(a).

(1) When a proposal is eliminated

~~(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~~the ~~proposal shall~~can ~~be accepted or considered.~~

~~(b) The contracting officer may request or allow~~(2) Contracting officers may eliminate a proposal revisions to clarify and document understandings reached during from the competitive range at any time upon concluding that the offeror is unlikely to receive an award. Contracting officers are not required to have an additional negotiation with an offeror prior to taking such action.

(d) Proposal revision.

(1) When negotiations. At the conclusion of discussions, each offeror still in with an offeror are finished, and that offeror has not been eliminated from the competitive range shall be given, contracting officers must provide the offeror with—

(i) 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; and

(ii) A notice requiring the proposal revisions. Requests for final proposal revisions shall advise offerors that the final proposal revisions shall be revision in writing and stating that the Government intends to make award without obtaining further revisions.

(2) Each offeror with a proposal still within the competitive range must be given an equal amount of time within which to submit their proposal revision.

15.308205 Source selection decision.

The source selection ~~authority's (SSA)~~ decision ~~shall~~must represent the SSA's independent judgement and 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.~~RFP. The source selection decision ~~shall~~must 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~~The documentation does not need ~~not~~to quantify the tradeoffs that led to the decision.

15.206 Preaward notices and debriefings.

(a) Definition. Day, as used in this section, has the meaning set forth at part 33.

(b) Applicability. Sections 15.206 through 15.206-2 apply to competitive proposals, except for those using the other competitive procedures described in subpart 6.1 for architect-engineer contracts and basic and applied research. The procedures for award notification, with reasonable modification, should be followed for contracts awarded using those other competitive procedures.

15.206-1 Preaward notices.

(a) Notice of exclusion from competitive range. Contracting officers must notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice must state the basis for the determination and that proposal revisions will not be considered. These offerors may request a debriefing in accordance with 15.206-2 and 15.301.

(b) Notice of small business set-aside award.

(1) When using a set-aside for small business, HUBZone, the Service-Disabled Veteran-Owned Small Business Program, or the Women-Owned Small Business Program, contracting officers must notify each offeror, in writing, prior to award and upon completion of negotiations and determinations of responsibility—

(i) Of the name and address of the apparently successful offeror; and

(ii) That the Government will not consider subsequent revisions of the offeror's proposal.

(2) This notice is in addition to any notice of exclusion from competitive range.

(3) This 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.

15.206-2 Preaward debriefing.

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). The contracting officer should chair any debriefing held. Individuals who conducted evaluations must provide support.

(a) Request timeframe.

(1) Offerors 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 must include all information normally provided in a postaward debriefing. 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) Method. Debriefings may be done by any method acceptable to the contracting officer.

(c) Content.

(1) At a minimum, preaward debriefings must include—

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

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

(iii) Reasonable responses to relevant questions about whether source selection procedures contained in the RFP, applicable regulations, and other applicable authorities were followed by the agency.

(2) A summary of the debriefing must be included in the contract file.

(d) Nondisclosure. Preaward debriefings must 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 15.301-1(d).

(e) Delay until after award. Contracting officers must 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.

(1) The rationale for delaying the debriefing must be documented in the contract file.

(2) If the contracting officer delays the debriefing, it must be provided no later than the time postaward debriefings are provided under 15.301-1. In that event, the contracting officer must include the information at 15.301-1(c) in the debriefing.

15.207 Award.

15.207-1 Award to successful offeror.

(a) General. Contracting officers must award a contract to the successful offeror by furnishing the executed contract or other notice of the award to that offeror.

(b) Award document.

(1) Contracting officers may use OF 307, Contract Award; SF 26, Award/Contract; or SF 33, Solicitation, Offer and Award, to award negotiated contracts in which the signature of both parties on a single document is appropriate. Do not use Block 18 of SF 26.

(2) When not using the OF 307, SF26, or SF 33 to award the contract:

(i) The first page of the award document must include—

(A) The Government's acceptance statement from Block 15 of the OF 307, exclusive of the Item 3 reference language; and

(B) The contracting officer's name, signature, and date.

(ii) If the award document includes information that is different than the signed proposal, as amended by the offeror's written correspondence, the first page of the award document must include—

(A) The contractor's agreement statement from Block 14 of the OF 307; and

(B) The signature of the contractor's authorized representative.

15.207-2 Award notice.

(a) Definition. Day, as used in this subsection, has the meaning set forth at part 33.

(b) Requirement. Within 3 days after the date of contract award, contracting officers must 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 previously received a notice in accordance with 15.206-1(a). The notice must include—

(1) The number of offerors solicited;

(2) The number of proposals received;

(3) The name and address of each offeror receiving an award;

(4) The items, quantities, and any stated unit prices of each award.

(i) 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.

(ii) The items, quantities, and any stated unit prices of each award must be made publicly available, upon request; and

(5) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (b)(4) of this section readily reveals the reason. An offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information must not be disclosed to any other offeror.

(c) Requests for information. Upon request, contracting officers must provide the information in paragraph (b) of this section to unsuccessful offerors that received a preaward notice of exclusion from the competitive range.

Subpart 15.3 - Postaward

15.300 Scope.

This subpart addresses postaward actions and considerations for negotiated contracts. The procedures for postaward debriefings, protests, and mistakes do not apply to contracts awarded using the other competitive procedures described in subpart 6.1 for architect-engineer contracts and basic and applied research. The procedures for postaward debriefings, protests, and mistakes, with reasonable modification, should be followed for contracts awarded using those other competitive procedures.

15.301 Postaward debriefing of offerors.

Definition—

Day, as used in this section, has the meaning set forth at part 33.

15.301-1 Debriefing process.

The awardee and offerors that received the award notice at 15.207-2 may request a postaward debriefing after receiving a notice of contract award. Contracting officers must chair any debriefing held and individuals who conducted evaluations must provide support.

(a) Request timeframe.

(1) Offerors may request a postaward debriefing by submitting a written request for the debriefing to the contracting officer within 3 days after receipt of the award notice in accordance with 15.207-2. Such offerors must 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) Untimely debriefing requests may be accommodated.

(4) An offeror that was notified of its exclusion from the competitive range is not entitled to a postaward debriefing if the offeror failed to submit a timely preaward debriefing request, however such a request may be accommodated.

(5) The deadlines for filing protests are not extended when the Government accommodates an untimely debriefing request or an offeror's request to delay a preaward debriefing until after award. Preaward debriefings delayed pursuant to 15.206-2(a)(2) could affect the timeliness of any protest filed subsequent to the debriefing.

(b) Method. Debriefings may be done by any method acceptable to the contracting officer.

(c) Content.

(1) At a minimum, the debriefing information must include—

(i) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(ii) The overall evaluated cost or price and technical rating of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;

(iii) The overall ranking of all offerors, when any ranking was developed by the agency during the source selection;

(iv) A summary of the rationale for award;

(v) For acquisitions of commercial products, the make and model of the product to be delivered by the successful offeror;

(vi) Reasonable responses to relevant questions about whether source selection procedures contained in the request for proposals (RFP), applicable regulations, and other applicable authorities were followed by the agency;

(vii) For DoD contracts in excess of \$10 million but not in excess of \$100 million with a small business or nontraditional defense contractor (10 U.S.C. 3014), an option for the contractor to request disclosure of the agency's written source selection decision document, redacted to protect the confidential and proprietary information of other offerors for the contract award.

(viii) For award of a DoD contract in excess of \$100 million, disclosure of the agency's written source selection decision document, redacted to protect the information of other offerors for the contract award, in accordance with paragraph (d) of this subsection.

(2) An official summary of the debriefing must be included in the contract file.

(d) Nondisclosure. The debriefing must not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing must not reveal any information prohibited from disclosure by part 24 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.

15.301-2 Opportunity for follow-up questions.

If time permits, contracting officers may provide successful and unsuccessful offerors an opportunity to submit follow up questions after the postaward debriefing.

15.302 Protests against award.

(a) Protests against award in negotiated acquisitions must 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 RFP on the protested contract award, contracting officers must provide the information in paragraph (c) of this section to all prospective offerors for the new RFP; or

(2) Issue a new request for revised proposals on the protested contract award, the contracting officer must 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.

15.303 Discovery of mistakes.

Mistakes in a contractor's proposal that are disclosed after award must be processed substantially in accordance with the procedures for mistakes in bids in part 14.

15.304 Defective certified cost or pricing data after award.

(a)(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.

(i) This entitlement is ensured by including in the contract one of the clauses prescribed in 15.110(j) and (k), 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.

(ii) 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, contracting officers must 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 (a)(1)(i) 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 (a)(5) and (6) of this subsection, contracting officers must 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 must 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 must 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 [part 32](#).

(ii) In calculating the interest amount due, contracting officers must—

(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 must 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, contracting officers must obtain an amount equal to the amount of overpayment made. Before taking any contractual actions concerning penalties, the contracting officer must obtain the advice of counsel.

(iv) In the demand letter, contracting officers must 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.

(b) 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 must 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. Contracting officers must not reprice the contract solely because the profit was greater than forecast or because a contingency specified in the submission failed to materialize.

(c) For each advisory audit received based on a postaward review that indicates defective pricing, contracting officers must make a determination as to whether or not the data submitted were defective and relied upon. Before making such a determination, contracting officers should give the contractor an opportunity to support the accuracy, completeness, and currency of the data in question. Contracting officers must prepare a memorandum documenting both the determination and any corrective action taken as a result. Contracting officers must 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 must 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, must ensure that information relating to the contracting officer's final determination is reported as part of the contractor's performance information in accordance with part 42. Agencies must 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.

(d) 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.

(e) 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, contracting officers 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 officers must release it only under conditions that will protect it from improper disclosure. Information made available under this paragraph must be limited to that used as the basis for the prime contract price reduction. In order to afford an opportunity for corrective action, contracting officers 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 must be the basis for disallowance or nonrecognition of costs under the clauses prescribed in 15.110(j) and (k). The Government has a continuing and direct financial interest in such payments that is unaffected by the initial agreement on prime contract price.

15.305 Estimating systems.

(a) Cognizant audit activities, when appropriate, must 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 must be documented in survey reports.

(b) Auditors must 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 must be considered in subsequent proposal analyses and negotiations.

Subpart 15.4 - Contract Pricing

15.400 Scope of subpart.

This subpart ~~prescribes the~~contains 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~~405~~-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~~2)).

15.402 ~~Pricing policy~~General.

~~Contracting officers shall—~~

(a) ~~Purchase supplies and services from responsible sources at fair and reasonable prices.~~Requirement for cost or pricing data. In establishing the reasonableness of the offered prices, ~~the contracting officer~~officers must—

(1) ~~Shall~~ Obtain certified cost or pricing data when required by 15.403-~~4~~3, 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 15.403-3, obtain data other than certified cost or pricing data as necessary to establish a fair and reasonable price; ~~or~~ (10 U.S.C. 3705(a) and 41 U.S.C. 3505(a)).

~~(2) When certified cost or pricing data are.~~ (b) Obtaining data are. Contracting officers must obtain the type and quantity of data necessary to establish a fair and reasonable price, but not more data than is needed. Contracting officers must require the submission of additional data sufficient for the contracting officer to support the determination of the fair and reasonable price, if the contracting officer cannot establish a fair and reasonable price from an analysis of the data obtained or submitted to date.

(c) Independent Price. Contracting officers must price each contract separately and independently and not—

(1) Consider proposed price reductions under other contracts;

(2) Consider losses or profits realized or anticipated under other contracts~~required by~~; or

(3) 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.

15.403-4, ~~shall obtain~~ Obtaining cost or pricing data.

15.403-1 Data other than certified cost or pricing data~~as necessary to establish a fair and reasonable price,~~

(a) Order of preference. For acquisitions that do not require certified cost or pricing data, contracting officers must generally ~~using~~ use the following order of preference ~~in determining to determine~~ the type of data required to require:

(i) No additional data from the offeror, if the price is based on ~~when~~ adequate price competition, except as provided by exists (see 15.403-3(b)-2);

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

~~(A)(2) 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)(i) Data available within the Government; then~~

(ii) Data obtained from sources other than the offeror; and then, if necessary,

(iii) Data obtained from the offeror; then,

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

~~(3) Obtain the type and quantity~~ (b) Requirement.

(1) Contracting officers must require submission of data other than certified cost or pricing data to the extent necessary to ~~establish~~ determine a fair and reasonable price (10 U.S.C. 3705(a) and 41 U.S.C. 3505(a)). At a minimum, the data must include 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. This data is not required when price reasonableness is established through adequate price competition or prices set by law or regulation, unless paragraph (c) of this subsection applies.

(2) Contracting officers may require data other than certified cost or pricing data to determine the cost realism of competing offers or to evaluate competing approaches.

(c) Data Requests. When requesting data, contracting officers—

(1) Must use the contractor's format for data submission, but ~~not more data than is necessary. Requesting unnecessary data can lead to increased~~ see 15.105-4(b)(2);

(2) Must ensure that data used to support price negotiations are sufficiently current to permit negotiation of a fair and reasonable price; and

(3) Should limit requests for updated data to the data that affect the adequacy of the proposal for negotiations (e.g., changes in price lists).

(d) Refusals to submit data. As specified in section 808 of the Strom Thurmond National Defense Authorization Act (NDAA) 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 head of the contracting activity (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:

(1) The effort made to obtain the data.

(2) The need for the item or service.

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

~~(preparation costs, generally extend acquisition lead time, and consume)~~ Data when adequate price competition exists. If adequate price competition exists, but there are unusual circumstances in which additional ~~contractor and Government resources~~, data are necessary to determine the reasonableness of price, contracting officers must obtain the additional data from sources other than the offeror, to the maximum extent practicable. In addition, contracting officers should request data to determine the cost realism of competing offers or to evaluate competing approaches.

(f) Data for commercial products and commercial services. When acquiring a commercial product or commercial service, contracting officers must—

(1) 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~~ to determine whether the price is fair and reasonable ~~price cannot be established by;~~

(2) Require the offeror to submit data other than certified cost or pricing data when 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~~ is unable to determine a price fair and reasonable ~~price~~ after obtaining data from sources other than the offeror. This data may include history of sales to non-

governmental and governmental entities, cost data, or any other information the contracting officer requires;

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

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

(3) Limit requests for sales data to data for the same or similar items during a relevant time period;

(4) To the maximum extent practicable, request data in the format regularly maintained by the offeror as part of its commercial operations;

(5) Not disclose outside the Government data obtained relating to commercial products or commercial services that is exempt from disclosure under part 24 or the Freedom of Information Act (5 U.S.C. 552(b)); and

(6) 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 15.403-2(c)(3)(ii).

~~(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~~ 2 Prohibitions on obtaining certified cost or pricing data ~~(10 U.S.C. chapter 271 and 41 U.S.C. CHAPTER 35).~~

(a) At or below the simplified acquisition threshold. Certified cost or pricing data ~~shall~~ must 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~~ Contracting officers must 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~~subsection).

(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~~request for proposal's (RFP) 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))~~ applies, the contracting officer ~~shall~~ must 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~~ officers 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~~3(a) 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~~2(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~~3(a) 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)~~001(b), except sole source contracts greater than \$25 million, is exempt from the requirements for certified cost or pricing data (41 U.S.C. 1903).

(4) Waivers. ~~The head of~~

(i) In exceptional cases, 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.~~ The authorization for the waiver and the supporting rationale must be in writing.

(ii) 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~~must 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~~A) An exception otherwise applies to the subcontract; or

(~~ii~~B) The waiver specifically includes the subcontract and the rationale supporting the waiver for that subcontract.

~~15.403-2 Other circumstances where~~3 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;~~

(a) Threshold.

~~(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 at 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, contracting officers must obtain ~~the data.~~certified cost or pricing data when an action meets or exceeds~~

~~(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.

(e) 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 of \$2.5 million (for prime contracts awarded on or after July 1, 2018). The threshold is \$950,000 for prime contracts awarded before July 1, 2018, and \$2.5 million for prime contracts awarded on or after prior to 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; unless otherwise stated in the contract. Contracting officers should consider requesting a waiver when the standards at 15.403-2(c)(4) can be met.~~

(b) Actions requiring certified cost or pricing data. Certified cost or pricing data are required before completing any of the following actions expected to exceed the current threshold or, in the case of existing contracts, the threshold specified in the existing contract:

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

(2) 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(e)(4)).~~

(3) 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)(i)~~ (b)(2) of this subsection.

(i) 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 \$2,000,500,000 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.

(ii) Negotiated final pricing actions (~~such as e.g.,~~ 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(e)(15)).~~

(iii) Certified cost or pricing data are not required for modifications—

(A) Solely for overrun funding or interim billing price adjustments; or

(B) To exercise an option at the price established at contract award or initial negotiation.

(c) Required documentation from offerors. When certified cost or pricing data are required, contracting officers must 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 15.403-4, 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.

~~(2)~~(d) Inflation adjustments. When a clause refers to the certified cost or pricing threshold and the threshold is adjusted for inflation pursuant to part 1, the changed threshold applies throughout the remaining term of the contract, unless there is another threshold adjustment.

(e) Requests for certified data below the threshold. Unless prohibited because an exception at 15.403-~~1(b)~~2 applies, the ~~head of the contracting activity,~~HCA 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~~The HCA must justify the requirement for certified cost or pricing data. ~~The documentation shall include and provide~~ 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 \$2.5 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(f) Delayed exception, 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.~~

~~(e) 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 15.406-2403-4.~~

~~(d)(g) Foreign governments.~~ 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~~ 4 Certificate of current cost or pricing data.

~~(a) When certified cost or pricing data and data other than certified cost or pricing data.~~

~~(a) Taking into consideration the policy at 15.402, the are required, 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 officers must require submission the contractor to execute a Certificate of certified Current Cost or Pricing Data in, using the format indicated in 15.408 Solicitation provisions and in this paragraph, and must include the executed certificate in the contract clauses. of 15.408, specify an alternative format, or permit submission in the contractor's format (See 15.408(l)(1)), unless the data are required to be submitted on one of the termination forms specified in subpart 49.6 file.~~

~~(2) Format for submission Certificate of data other than certified Current Cost or Pricing Data. When required by~~

~~This is to certify that, to the contracting officer, data other than certified best of my knowledge and belief, the cost or pricing data may be (as defined in part 2 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-3) submitted in the offeror's own format unless the contracting officer decides that use of a, either actually or by specific format is essential for evaluating and determining that identification in writing, to the price is fair and reasonable 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.

~~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~~ Cost and/or price 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~~ Contracting officers are responsible for evaluating the reasonableness of the offered prices. The analytical techniques and procedures described in this ~~subsection~~ section may be used, ~~singly~~ individually 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~~ must be used when certified cost or pricing data are not required ~~(see paragraph (b) of this subsection and 15.404-3).~~ When a fair and reasonable price cannot be determined through price analysis alone, cost analysis may also be used to evaluate data other than certified cost or pricing data to determine cost reasonableness or cost realism.

(3) Cost analysis ~~shall be used to evaluate the reasonableness of individual cost elements~~ must be used when certified cost or pricing data are required. However, price analysis ~~should~~ must 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~~ (4) Cost realism must be used when contemplating the award of a cost-reimbursement contract.

(b) Advice and assistance. Contracting officers 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~~ must not be disclosed to the offeror or contractor without the concurrence of the contracting officer.

(c) Mistakes and discrepancies in data. 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~~must 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.~~

~~(b)~~15.404-1 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)~~(a) General. Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

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

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

~~(2)~~2) 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)~~1) 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.

(Bii) 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.

(Eiii) 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.

(iii3) 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.

(iv4) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(v5) Comparison of proposed prices with independent Government cost estimates.

(vi6) Comparison of proposed prices with prices obtained through market research for the same or similar items.

(vii7) Analysis of data other than certified cost or pricing data (~~as defined at 2.101~~) provided by the offeror.

~~(3)~~(c) Preferred method of analysis. The ~~first two~~ techniques at 15.404-1(b)(1) and (2) are the preferred ~~techniques~~methods for price analysis. 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. The fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable.

~~(4)~~(d) Value analysis. 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.

~~(e)~~15.404-2 Cost analysis.

~~(4)~~(a) General. 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)(b) Techniques. 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~~ including, but not limited to, the following:

(1) 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.

(2) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, ~~the contracting officer shall~~ officers must 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~~ officers should perform a trend analysis of basic labor and materials, even in periods of relative price stability.

(3) 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.

(4) 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~~.

(5) 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~~ officers must attempt to obtain and use them in the negotiations or make satisfactory allowance for the incomplete data.

~~(vi)~~ (6) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs ~~(see~~ 15.407-2).

~~(d)~~ 404-3 Cost realism analysis.

~~(1)~~ (a) General. 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)~~ (b) Probable Cost. Cost realism analyses ~~shall~~ must be performed on cost-reimbursement ~~contracts~~ contracts to determine the probable cost of performance for each offeror.

~~(i)~~ (1) 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~~ must be used for purposes of evaluation to determine the best value.

~~(ii)~~ (2) 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)~~ (c) Competitive fixed-price-type contracts. 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~~ must be evaluated using the criteria in the ~~solicitation~~ RFP, and the offered prices ~~shall~~ must not be adjusted as a result of the analysis.

~~(e)~~ 15.404-4 Technical cost or price analysis.

(a) Labor and materials. At a minimum, the technical analysis must 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.

~~(1) The contracting officer~~ (b) Technical assistance. Contracting officers should request ~~that:~~

(1) 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~~ (2) 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)~~ 15.404-5 Unit prices.

~~(1)(a) General.~~ Except when pricing an item on the basis of adequate price competition or catalog or market price, unit prices ~~shall~~ must 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)(b) Price distortion.~~ (1) Except for the acquisition of commercial products, ~~contracting officers shall require that~~ when 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~~ the information must 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)(2) Any method of distributing costs to line items that distorts the unit prices must 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. (10 U.S.C. 3703(a)(1)(A) and 41 U.S.C. 3503(a)(1)(A)).~~

15.404-6 Unbalanced pricing.

~~(a) General.~~ (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—~~

(2) 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.

~~(2b)~~ Policy. (1) All offers with separately priced line items or subline items ~~shall~~must 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~~officers must—

(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)~~ 2 An offer may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the Government.

~~(h)~~ 15.404-7 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,~~ Policy. When an offeror ~~for a contract or a task or delivery order~~ informs the contracting officer, pursuant to clause 52.215-22, Limitations on Pass-Through Charges-Identification of Subcontractor Effort, 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~~must—

~~(1)~~ 1 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~~RFP must be issued in accordance with the competition requirements under FAR part 6;

~~(2)~~ 2 Make a written determination that the contracting approach selected is in the best interest of the Government; and

~~(3)~~ 3 Document the basis for such determination. (section 802 of the NDAA for FY 2013 (Pub. L. 112.239)).

~~(3)~~ (b) Exemption. Contract actions ~~awarded pursuant to subparts 19.5, 19.8, 19.13, 19.14, or 19.15~~ set aside for small business, 8, 19.13, 19.14, or 19.15(a), HUBZone, SDVOSB, and WOSB concerns are exempt

from the requirements of this ~~paragraph (h)~~ subsection (see section 1615 of the ~~National Defense Authorization Act for Fiscal Year~~ NDAA for FY 2014 (Pub. L. 113-66)).

15.404-8 Subcontract pricing considerations.

(a) Policy. Contracting officers are responsible for the determination of a fair and reasonable price for the prime contract, including subcontracting costs. To support this effort, the prime contractor or subcontractor must—

(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 (b) of this subsection, submit subcontractor certified cost or pricing data to the Government as part of its own certified cost or pricing data.

(b) Certified cost or pricing data. Any contractor or subcontractor that is required to submit certified cost or pricing data also must 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 15.403-2 applies to that action.

(1) The contractor must 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) \$20 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) Contracting officers 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 (b)(1) of this section 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 must be submitted in the format provided in Table 15-1 of 15.408-2 or the alternate format specified in the RFP.

(4) Subcontractor certified cost or pricing data must 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. Contractors must 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.

(c) Approved purchasing system. Contracting officers 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 contracting officers from the responsibility to analyze the contractor's submission, including subcontractor's certified cost or pricing data.

15.404-9 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.

(b) Policy. 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.

(1) Subject to the authorities in part 1, agencies making noncompetitive contract awards over \$100,000 totaling \$50 million or more a year—

(i) Must use a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis (Agencies may use another agency's structured approach); and

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

(2) When the price negotiation is based on cost analysis, contracting officers in agencies that have a structured approach must use it to analyze profit. When not using a structured approach, contracting officers must comply with paragraph (d)(1) of this subsection in developing profit or fee prenegotiation objectives.

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

(c) Contracting officer responsibilities. Contracting officers –

(1) Must use the Government prenegotiation cost objective amounts as the basis for calculating the profit or fee prenegotiation objective.

(2) Must 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.

(3) Before applying profit or fee factors, must exclude-

(i) From the pre-negotiation cost objective amounts, the purchase cost of contractor-acquired property that is categorized as equipment, as defined in FAR 45, and where such equipment is to be charged directly to the contract; and

(ii) 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, facilities capital cost of money will not be an allowable cost in any resulting contract.

(4) Must 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:

(i) For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee must not exceed 15 percent of the contract's estimated cost, excluding fee.

(ii) 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 must not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.

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

(iv) 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) May use the basic contract's profit or fee rate as the prenegotiation objective for a change or modification, if that 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, contracting officers.

(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 must 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 must 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 must, 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, WOSB concerns, veteran-owned, HUBZone, SDVOSB 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 Special cost or pricing areas.

15.405-1 Inaccurate, incomplete, or noncurrent 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 must immediately bring the matter to the attention of the prospective contractor, whether the defective data increase or decrease the contract price.

(b) The contracting officer must 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 must reflect the adjustments made to the data or the corrected data used to negotiate the contract price.

15.405-2 Make-or-buy programs.

(a) Evaluation, negotiation, and agreement. Contracting officers must 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, contracting officers must notify the prospective contractor in writing that these items or efforts, when identifiable, must be added under the clause at 52.215-9, Changes or Additions to Make-or-Buy Program.

(2) Contracting officers normally must 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. Contracting officers 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, contracting officers must 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. If the contractor proposes to reverse the categorization of such items during contract performance, the contract price must be subject to equitable reduction.

(b) Incorporating make-or-buy programs in contracts. Contracting officers may incorporate the make-or-buy program in negotiated contracts for—

(1) Major systems 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.

15.405-3 Forward pricing rate agreements.

(a) All data submitted in connection with the Forward Rate Pricing Agreement (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.

(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 must be reported promptly to the administrative contracting officer (ACO). If the ACO determines that a changed condition

invalidates the agreement, the ACO must notify all interested parties of the extent of its effect and status of efforts to establish a revised FPRA.

(c) Contracting officers must 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 must cover the data supplied to support the FPRA or other advance agreement, and all other data supporting the action.

15.405-4 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 and overhead should-cost review. 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, 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) Contracting officers 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. Contracting officers must consider the findings and recommendations contained in the program should-cost review team report when negotiating the contract price. After completing the negotiation, contracting officers must 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. Contracting officers must establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

(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.

215.406 Data to support proposal analysis.

(a) Field pricing assistance.

(1) ~~The contracting officer~~ Contracting officers 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~~ The request must reflect the minimum essential supplementary information needed to conduct a technical or cost or pricing analysis.

(2) ~~The contracting officer shall~~ Contracting officers must 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~~ Contracting officers and field pricing experts are encouraged to use telephonic and/or electronic means to request and ~~transmit~~ send pricing information.

(ii) When it is necessary to have written technical and audit reports, ~~the contracting officer shall~~ officers must request that the audit agency concurrently forward the audit report to the requesting contracting officer and the ~~administrative contracting officer (ACO).~~ 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~~ must be provided to the audit agency.

(2) Audit and field pricing information, whether written or reported telephonically or electronically, ~~shall~~ must 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~~ Contracting officers should contact the cognizant audit office directly to request assistance, particularly when an audit is the only field pricing support required. The audit office ~~shall~~ must send the audit report, or otherwise transmit the audit recommendations, directly to the contracting officer.

(i) The auditor ~~shall~~must 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~~Contracting officers must 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~~must be issued.

(2) ~~The contracting officer shall~~Contracting officers must 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~~must 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.

(1) The ACO or the auditor, as appropriate, ~~shall~~must 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~~must be confirmed promptly in writing, including a description of deficient or denied data or records.

(2) The contracting officer must 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~~must 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) \$20 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(e), 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~~⁴⁰⁷ 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~~ Contracting officers are 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~~ officers 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~~ officers must 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~~ must refer the contract action to a level above the contracting officer. ~~Disposition of and document the action should be documented~~ contract file.

15.406408 Documentation.

15.406408-1 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~~ are 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~~ Contracting officers must establish prenegotiation objectives before ~~the negotiation of any~~ negotiating a 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~~ officers must document the pertinent issues to be negotiated, the cost objectives, and a profit or fee objective.

15.406408-2 ~~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~~ Contracting officers must document in the contract file the principal elements of the negotiated agreement. The documentation (e.g., price negotiation memorandum ~~(PNM)) shall~~ must 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.~~

(i) When the determination of a fair and reasonable price is based on cost analysis, the summary must address each major cost element.

(ii) When determination of a fair and reasonable price is based on price analysis, the summary must 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~~must 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.

Table 15.407-Special-1—Instructions for Submitting Cost/Price Proposals When Certified Cost or Pricing ~~Areas~~ Data Are Required

~~15.407-1 Defective~~

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

~~(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.~~

~~(e) 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 FAPHS 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 \$20 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 \$20 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.~~

~~(c) 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 (e) 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~~

~~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.~~

~~H. 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 HIA(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 \$20 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 Form CASB-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	<u>Instruction</u>					
(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.

(1)

Cutoff Date

(2)

Number of Units Completed

(3)

Number of Units To Be Completed

(4)

Contract Amount

(5)

Redetermination Proposal Amount

(6)

Difference

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
n

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.)~~

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) RFP, contract, and/or modification number;

(2) Name and address of offeror;

(3) Name, telephone number, and email address of the 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 the RFP and FAR 15.408-2, Table 15-1. 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 15.403-4, 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 15.403-3(a). 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 15.403-3(a) 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).

(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 15.403-3(a) and not otherwise exempt, in accordance with FAR 15.403-2. 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 \$20 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 part 27 and 31).

F. Facilities Capital Cost of Money. When you elect to claim facilities capital cost of money as an allowable cost, you must submit Form CASB CMF and show the calculation of the proposed amount (see 31.205-10 and 48 CFR 9904.414).

III. Formats for Submission of Line Item Summaries

A. New Contracts (Including Letter Contracts)

<u>Cost elements</u> <u>(1)</u>	<u>Proposed contract estimate—total cost</u> <u>(2)</u>	<u>Proposed contract estimate—unit cost</u> <u>(3)</u>	<u>Reference</u> <u>(4)</u>
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Column and 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

<u>Cost element</u> <u>s</u> <u>(1)</u>	<u>Estimate d cost of all work deleted</u> <u>(2)</u>	<u>Cost of deleted work already performe d</u> <u>(3)</u>	<u>Net cost to be delete d</u> <u>(4)</u>	<u>Cost of work adde d</u> <u>(5)</u>	<u>Net cost of chang e</u> <u>(6)</u>	<u>Referenc e</u> <u>(7)</u>
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Column and 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

<u>C</u>	<u>N</u>	<u>N</u>	<u>C</u>			<u>In</u>	<u>I</u>	<u>I</u>	<u>T</u>	<u>E</u>	<u>E</u>	<u>R</u>
<u>u</u>	<u>u</u>	<u>u</u>	<u>o</u>	<u>Re</u>	<u>C</u>	<u>cu</u>	<u>n</u>	<u>n</u>	<u>o</u>	<u>st</u>	<u>st</u>	<u>e</u>
<u>t</u>	<u>m</u>	<u>m</u>	<u>n</u>	<u>de</u>	<u>D</u>	<u>rr</u>	<u>c</u>	<u>c</u>	<u>t</u>	<u>i</u>	<u>i</u>	<u>f</u>
<u>o</u>	<u>b</u>	<u>b</u>	<u>t</u>	<u>ter</u>	<u>if</u>	<u>ed</u>	<u>u</u>	<u>u</u>	<u>a</u>	<u>m</u>	<u>m</u>	<u>r</u>
<u>f</u>	<u>e</u>	<u>e</u>	<u>r</u>	<u>mi</u>	<u>fe</u>	<u>co</u>	<u>r</u>	<u>r</u>	<u>i</u>	<u>a</u>	<u>a</u>	<u>e</u>
<u>f</u>	<u>r</u>	<u>r</u>	<u>a</u>	<u>na</u>	<u>r</u>	<u>st</u>	<u>e</u>	<u>e</u>	<u>n</u>	<u>t</u>	<u>t</u>	<u>e</u>
<u>d</u>	<u>o</u>	<u>o</u>	<u>c</u>	<u>tio</u>	<u>e</u>	<u>=</u>	<u>pr</u>	<u>d</u>	<u>c</u>	<u>d</u>	<u>d</u>	<u>n</u>
<u>a</u>	<u>u</u>	<u>u</u>	<u>a</u>	<u>pr</u>	<u>n</u>	<u>e</u>	<u>ep</u>	<u>c</u>	<u>u</u>	<u>c</u>	<u>c</u>	<u>c</u>
<u>t</u>	<u>n</u>	<u>n</u>	<u>m</u>	<u>op</u>	<u>c</u>	<u>m</u>	<u>ro</u>	<u>o</u>	<u>r</u>	<u>o</u>	<u>o</u>	<u>e</u>
<u>e</u>	<u>it</u>	<u>it</u>	<u>o</u>	<u>os</u>	<u>e</u>	<u>e</u>	<u>d</u>	<u>st</u>	<u>s</u>	<u>st</u>	<u>t</u>	<u>(</u>
<u>(</u>	<u>s</u>	<u>s</u>	<u>u</u>	<u>al</u>	<u>(</u>	<u>n</u>	<u>uc</u>	<u>=</u>	<u>t</u>	<u>t</u>	<u>a</u>	<u>1</u>
<u>1</u>	<u>c</u>	<u>t</u>	<u>n</u>	<u>a</u>	<u>6</u>	<u>t</u>	<u>ti</u>	<u>o</u>	<u>d</u>	<u>o</u>	<u>l</u>	<u>4</u>
<u>)</u>	<u>o</u>	<u>o</u>	<u>t</u>	<u>m</u>	<u>)</u>	<u>s</u>	<u>on</u>	<u>o</u>	<u>w</u>	<u>c</u>	<u>c</u>	<u>)</u>

<u>m</u>	<u>b</u>	<u>(</u>	<u>ou</u>	<u>(</u>	<u>(8</u>	<u>m</u>	<u>o</u>	<u>o</u>	<u>o</u>	<u>o</u>
<u>p</u>	<u>e</u>	<u>4</u>	<u>nt</u>	<u>7</u>	<u>)</u>	<u>p</u>	<u>r</u>	<u>s</u>	<u>m</u>	<u>st</u>
<u>le</u>	<u>c</u>	<u>)</u>	<u>(5)</u>	<u>)</u>		<u>le</u>	<u>k</u>	<u>t</u>	<u>p</u>	<u>(</u>
<u>te</u>	<u>o</u>					<u>te</u>	<u>i</u>	<u>(</u>	<u>le</u>	<u>1</u>
<u>d</u>	<u>m</u>					<u>d</u>	<u>n</u>	<u>1</u>	<u>t</u>	<u>3</u>
<u>(</u>	<u>p</u>					<u>u</u>	<u>p</u>	<u>)</u>	<u>e</u>	<u>)</u>
<u>2</u>	<u>le</u>					<u>n</u>	<u>r</u>		<u>(</u>	
<u>)</u>	<u>te</u>					<u>it</u>	<u>o</u>		<u>1</u>	
	<u>d</u>					<u>s</u>	<u>c</u>		<u>2</u>	
	<u>(</u>					<u>(</u>	<u>e</u>		<u>)</u>	
	<u>3</u>					<u>9</u>	<u>s</u>			
	<u>)</u>					<u>)</u>	<u>s</u>			
							<u>(</u>			
							<u>1</u>			
							<u>0</u>			
							<u>)</u>			

(Use as applicable)

Column and 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 (40 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~~500 Scope of subpart.

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

~~15.601~~501 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~~502 General.

(a) Purpose. 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~~ accomplishing their missions.

(b) Intent. Unsolicited proposals are offered with the intent that the Government will ~~enter into~~ award a contract ~~with~~ to the offeror for research and development or other efforts supporting the Government mission. Only the cognizant contracting officer has the authority to bind the Government regarding unsolicited proposals.

~~, and often represent a substantial investment of~~ (c) Early exchanges. Preliminary contact with technical and other appropriate agency personnel before preparing a detailed unsolicited proposal or submitting proprietary information to the Government may save considerable time and effort ~~by the offeror~~ for both parties.

(d) Information for potential offerors. Agencies must make the following information available to potential offerors of unsolicited proposals:

(1) Definition and content of an unsolicited proposal acceptable for formal evaluation.

(2) Requirements concerning responsible prospective contractors and organizational conflicts of interest.

(3) Guidance on preferred methods for submitting ideas/concepts to the Government, such as any agency: upcoming requests for proposals (RFP); Broad Agency Announcements (BAA); Small Business Innovative Research programs (SBIR); Small Business Technology Transfer (STTR) 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 this subpart.

(e) Prohibitions.

(1) Government personnel should not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a RFP or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. This prohibition does not preclude using any data, concept, or idea in the proposal that also is available from another source without restriction.

(2) Government personnel should not disclose restrictively marked information 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.

~~(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.~~

~~(e) 15.503 Preparing unsolicited proposals.~~

~~15.503-1 Scope of proposals.~~

(a) Unsolicited proposals may be submitted for new and innovative ideas that do not already fall under topic areas publicized under BAA, SBIR topics, STTR topics, program research and development announcements, or any other Government-initiated RFP or program.

(b) 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.

(c) Advertising material, commercial product or commercial service offers, contributions, or routine correspondence on technical issues, are not unsolicited proposals.

(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 CFR 436.33(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~~ [15.503-2 Content of proposals.](#)

~~Unsolicited proposals must:~~

~~(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 [short](#) 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.

[15.503-3 Restricting use and disclosure of data.](#)

[\(a\) Unsolicited proposals 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 use and disclosure of data, the title page must be marked the following legend:](#)

[Use and Disclosure of Data](#)

[This proposal includes data that must not be disclosed outside the Government and must 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 must 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].

(1) The offeror must 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.

~~(15.606 Agency procedures.~~

2) An offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the Government

15.504 Receipt and initial review of unsolicited proposals.

(a) Agencies ~~shall~~must establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals ~~consistent with the requirements of this subpart.~~ The procedures ~~shall~~must include controls on the reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions; and identify agency points of contact to coordinate the receipt and handling of unsolicited proposals.

(b) Agencies ~~shall establish agency points of contact (see 15.604) to coordinate the receipt and handling~~may decline evaluation or consideration of unsolicited proposals submitted concurrently to more than one agency, or distributed in bulk.

~~15.606~~504-1 ~~Receipt and~~ Initial Review.

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

(1) Is a valid unsolicited proposal, ~~meeting the requirements of 15.603(e)~~as described at 15.503-1(b);

(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~~this subpart.

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

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

~~15.606~~15.504-2 ~~Evaluation~~Handling use and disclosure of data restrictions.

(a) ~~Comprehensive evaluations shall be coordinated by the agency contact point, who shall attach or imprint on each unsolicited proposal, circulated for evaluation, the Alternate legend required by 15.609(d).~~ When ~~performing a comprehensive evaluation of~~ an unsolicited proposal meeting the requirements at 15.504-1(a) is marked with a legend different from that at 15.503-3, the agency point of contact must—

(1) Return the proposal to the offeror and notify them 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; and

(2) Unless the offeror clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal, mark the unsolicited proposal as follows:

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 part 3, 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 must 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 must 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.

(3) 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).

(b) Evaluation by personnel outside of the agency or the Government.

(1) When an agency receives an unsolicited proposal from other than an educational or nonprofit organization or institution, and an evaluation by Government personnel outside the agency or non-Government personnel is necessary, written permission must be obtained from the offeror before releasing the proposal for evaluation. The agency point of contact should—

(i) Attach a cover sheet marked with the legend in paragraph (a)(2) of this section;

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

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

(2) When an agency receives an unsolicited proposal without a restrictive legend from an educational or nonprofit organization or institution, and evaluation outside of the Government is necessary, the agency point of contact should follow paragraphs (b)(1)(i) through (iii) of this section.

(3) When an agency receives an unsolicited proposal with a restrictive legend from an educational or nonprofit organization or institution, and evaluation by non-Government personnel is necessary, the agency point of contact must—

(i) Follow paragraphs (b)(1)(i) through (iii) of this section; and

(ii) Obtain written permission from the offeror before releasing the proposal for evaluation.

15.505 Evaluation of unsolicited proposals.

(a) Agencies must evaluate unsolicited proposals for energy savings performance contracts in accordance with the procedures in 10 CFR 436.33(b).

(b) The agency point of contact must coordinate the evaluation of proposals and attach the legend at 15.504-2(a)(2) to each copy of the proposal distributed for evaluation.

(c) When evaluating unsolicited proposals, evaluators ~~shall~~should consider, at a minimum, 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~~ (d) Evaluators must notify the agency point of contact of their recommendations when the evaluation is ~~completed~~ complete.

~~15.607 Criteria for acceptance and negotiation of an unsolicited proposal.~~

~~(a)(e)~~ 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~~ should 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~~ 15.506 Criteria for acceptance and negotiation of an unsolicited proposal.

Contracting officers may ~~commence~~ begin negotiations on a sole source basis only when—

- ~~(1)~~ (a) An unsolicited proposal ~~has received~~ receives a favorable comprehensive evaluation;
- ~~(2)~~ (b) A justification and approval ~~has been~~ is obtained ~~(see in accordance with part 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~~ (d) The 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 synopsizing a proposed 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 action are met. ~~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.~~